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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917

No. 207

THE UNITED STATES, APPELLANT,

vs.

UNITED SHOE MACHINERY COMPANY OF NEW JERSEY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

VOLUME 5.

DEFENDANTS' EXHIBITS.

FILED JULY 1, 1918.

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Vol. 5

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RECORD IN DISTRICT COURT

(IN TWELVE VOLUMES)

District Court of the United States,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 301

THE UNITED STATES OF AMERICA

vs.

UNITED SHOE MACHINERY COMPANY,
OF NEW JERSEY, AND OTHERS.

VOLUME XII—DEFENDANTS' EXHIBITS.

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Rounding " Goodyear Heel Seat.			
" " Planet Sole — Models C and D.			
Rounding and Randing Machine: Goodyear Heel Seat.			
Sanding Machine — Model A: Tap and Sole.			
Scarfing " — Model N: Tap.			
Scalloping " Model B: Top Piece.			
Scouring " Model X: Heel.			

	Exhibit No.	Put in Evidence Vol.	Page
Screw Machine — Rapid Standard.			
" " Model B: Rapid Standard.			
Skiving " Model A: Champion Heel Lift.			
" " " " " Shank.			
" " Eros Rand.			
" " Pluma: Models C and D.			
Skiving and Finishing Machine: Monarch Counter and Box Toe.			
Skiving or Rand Splitting Machine — Model C: Apex Tap.			
Slashing Machine: XX Welt.			
Snipping " Goodyear Insole Toe.			
Softening " Toe: Models C and D.			
" " " Model E.			
Splitting Machine: Empire: Models C and D.			
" " Summit.			
Stamping " Model C: Eagle Sole.			
" " " " " Upper.			
" " Regent: Models B and C.			
Slicking " Model B: Shank Piece.			
Tacking " Model A: Grip.			
" " " B: "			
" " No. 1 — USMC: Insole.			
" " Power Welt.			
Trimming " Spring Heel.			
" " Ultima "			
Turning " Goodyear Forepart.			
" " " Heel.			
" " " Lip.			
" " " Welt Edge.			
Wheeling " No. 2: Goodyear Impression Stitch.			
Shoe Machine, Model K, Goodyear Welt and Turn	347	V	2836 (78)
" " " G, " " " "			
Assembling Machine, Rex.			
Nailing Machine: Alpha Wood Heel.			
Cementing " Model F: Hub Lining.			
Finishing " U.S.M.C. Buttonhole.			
Grooving and Beveling Machine, Model X: Goodyear Welt.			
Lasting Machine, U. S. M. C., No. 5.			
Lockstitch Machine, Model M: Goodyear Outsole Rapid.			
Making Machine: Buttonhole.			
Marker: Improved Star Sole.			
Molding Machine: American Twin Sole.			
Pounding and Beating-up Machine, Model A: Rex Rotary.			
Pulling and Resetting Machine, Goodyear Tack.			
Pulling-Over Machine, Models A, B and C: Rex.			
Reducing Machine, Goodyear Outsole Channel Shank.			
Rounding and Ranging Machine: Goodyear Heel Seat.			
Scarfing Machine — Model M: Tap.			

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" " Model D: Pluma.			
Snipping " Goodyear Insole Toe.			
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Breasting " "	166	V	2477
Channeling " Insole	119	V	2329
Clicking " and Dies	191	V	2597
Compressing " Heel	162	V	2477
Eyeletting " Duplex	196	V	2621
Jointing " Goodyear	195	V	2616
Lacing " Ensign	192	V	2606
Lasting " Chase	150	V	2417
" " Consolidated Hand Method	154	V	2418
" " Ideal	152	V	2417
" " McKay and Copeland	153	V	2417
" " No. 5	151	V	2417
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" " Turn—(Hercules, Atlas and Goodyear types)	188	V	2587
Loose Nailing Machines	163	V	2477
Pegging "	129	V	2354
Pounding and Toe Trimming Machines	187	V	2573
Pulling-Over Machines	185	V	2572
Reducing Machines: Shank Welt	173	V	2516
Reinforcing Insole Machines and Insoles	169	V	2494
Rough Rounding and Channeling Machines	116	V	2317
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" " " " Outsole	113	V	2301
" " " " Welt and Turn	108	V	2275
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Stitch Separating Machines	122	V	2345
Trimming Machines: Inseam	172	V	2510
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" " (Upper) and Tack Pulling Machines	176	V	2539
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United Shoe Machinery Co.,			
Patents, copies of —			
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" " " (turn heel seat) —	148	V	2412
" " " (welt — women's) —	146	V	2401
" " " (welt side in shank and foreparts and No. 5 at toe and heel)	149	V	2417
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" " " "	349	V	2836 (80)
" " " "	350	V	2836 (80)

District Court of the United States,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 301 (C. C. 911).

UNITED STATES OF AMERICA

v.

UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL.

EXHIBITS FOR DEFENDANTS.

DEFENDANTS' EXHIBIT 10.

[Put in Evidence, page 450.]

Heeling Machine Department. (1305)

Lease and License Number .

This Lease and Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use the machine or machines of the Heeling Machine

Department of the lessor now or hereafter delivered to the lessee and designated by number or numbers in the following schedule, viz. : —

SCHEDULE OF MACHINES.

Automatic Heel Compressing Machine (No. 4, Model), No.
McKay Rapid Nailing Machine, No.
McKay Automatic Heel Loading and Attaching Machine, No.
American Lightning Nailing Machine, No.
Improved National Nailing Machine, No.
McKay Heel Trimming and Randing Machine, No.
McKay Knife Grinding Machine, No.
Smith Heel Trimming Machine, No.
Bussel Heel Trimming Machine, No.
Ultima Heel Trimming Machine, No.

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform : —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the

lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases,

licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed: provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Four. The lessee shall use the leased machinery to its full capacity for doing all work in manufacturing, preparing and attaching all heels and top-lifts and in manufacturing and preparing all soles and taps made or prepared or attached in his factory in the manufacture or preparation or attaching of which it can be used, and the leased machinery shall be used for no other purpose.

Five. The lessee shall pay to the lessor immediately upon the execution hereof as a lease premium the sum of dollars and the lessee shall also pay to the lessor on the last day of each calendar month as rent or royalty the sum of one-half of one cent for each pair of heels manufactured or prepared or attached during the next preceding calendar month in any way, whether wholly or in part, by the aid of the leased machinery or any part thereof: **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for**

the next preceding calendar month the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month.

Six. In case any Compressing Machine (or Machines) hereby leased shall be used for compressing or otherwise operating upon top-lifts, soles or taps the lessee shall pay to the lessor independently of and in addition to the rental or royalty provided for in Article Five hereof a rental or royalty of one-quarter of one cent for each pair of top-lifts, soles or taps so compressed or operated upon. Such royalty shall be paid at the same time and in the same manner as the royalty provided for in said Article Five and shall be subject to discount for prompt cash payment, as in said Article Five provided.

Seven. The lessee guarantees that the rent or royalty herein provided (less all abatements) shall amount to at least dollars during each year embraced by this lease and at the end of each year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty; provided, however, that if in any year the factory of the lessee remains wholly idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle.

Eight. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed,

broken, or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, one-half of one cent per pair for each pair of heels, top-lifts, soles or taps, in the manufacture or preparation or attaching of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of heels, top-lifts, soles and taps, in the manufacture or preparation or attaching of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of such heels, top-lifts, soles and taps, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number of heels, top-lifts, soles or taps, in the manufacture or preparation or attaching of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, none of the leased machinery has been used, the lessee shall notify the lessor in writing of that fact, on or before the fifth day of the next succeeding calendar month. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following agreements, stipulations and provisions are agreed to: —

Nine. If at any time the lessee shall fail or cease to use exclu-

sively heel attaching machinery held by him under lease from the lessor, for attaching the heels of all boots, shoes and other footwear made by or for the lessee the heels of which are attached by the aid of machinery, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases of or licenses to use machinery of any or all the kinds mentioned by name in said schedule then existing between the lessor and the lessee (whether as the result of assignment to the lessor or otherwise) and the possession of and full right to and control of all machinery, the lease of which is so terminated, shall thereupon revest in the lessor, free from all claims and demands whatsoever.

Ten. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration of this lease and license or any extension thereof or its termination by notice or by reason of any default

on the part of the lessee as to the terms of this lease and license or any other lease and license from the lessor, or otherwise in any manner whatsoever, the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, in good order, reasonable wear and tear alone excepted; and without prejudice to any other rights or remedies of the lessor hereunder, shall pay to the lessor upon demand such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee; and the lessee for himself, his heirs, executors, and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same.

Eleven. A notice in writing, signed by the president, a vice-president, the treasurer or the assistant treasurer of the lessor, or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Twelve. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed

in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the Schedule of Patents hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Thirteen. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Fourteen. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Twelve herein.)

Nos. 520,768, June 5, 1894; 528,805, Nov. 6, 1894; 530,046, Nov. 27, 1894; 531,644, Jan. 1, 1895; 531,645, Jan. 1, 1895; design 24,268, April 30, 1895; 541,481, June 25, 1895; 542,205, July 2, 1895; 542,616, July 9, 1895; 543,349, July 23, 1895; 543,647, July 30, 1895; 543,682, July 30, 1895; 543,732, July 30, 1895; 543,804, July 30, 1895; 544,771, Aug. 20, 1895; 548,-438, Oct. 22, 1895; 548,528, Oct. 22, 1895; 555,240, Feb. 25,

1896; 555,241, Feb. 25, 1896; 559,554, May 5, 1896; 559,789, May 5, 1896; 561,607, June 9, 1896; 561,608, June 9, 1896; 561,609, June 9, 1896; 561,610, June 9, 1896; 561,611, June 9, 1896; 565,467, Aug. 11, 1896; 569,055, Oct. 6, 1896; 569,517, Oct. 13, 1896; 569,518, Oct. 13, 1896; 570,437, Oct. 27, 1896; 570,648, Nov. 3, 1896; 571,087, Nov. 10, 1896; 571,499, Nov. 17, 1896; 571,931, Nov. 24, 1896; 575,040, Jan. 12, 1897; 577,-212, Feb. 16, 1897; 577,213, Feb. 16, 1897; 577,241, Feb. 16, 1897; 581,039, April 20, 1897; 581,408, April 27, 1897; 583,093, May 25, 1897; 584,601, June 15, 1897; 584,602, June 15, 1897; 584,752, June 15, 1897; 588,936, Aug. 24, 1897; 589,396, Aug. 31, 1897; 589,501, Sept. 7, 1897; 595,707, Dec. 21, 1897; 596,-064, Dec. 28, 1897; 596,305, Dec. 28, 1897; 598,256, Feb. 1, 1898; 599,012, Feb. 15, 1898; 599,627, Feb. 22, 1898; 605,647, June 14, 1898; 607,939, July 26, 1898; 607,940, July 26, 1898; 607,941, July 26, 1898; 607,942, July 26, 1898; 609,519, Aug. 23, 1898; 619,707, Feb. 14, 1899; 624,538, May 9, 1899; 624,539, May 9, 1899; 625,728, May 23, 1899; 629,441, July 25, 1899; 631,029, Aug. 15, 1899; 635,196, Oct. 17, 1899; 637,216, Nov. 14, 1899; 638,664, Dec. 5, 1899; 641,226, Jan. 9, 1900; 650,420, May 29, 1900; 651,447, June 12, 1900; 652,371, June 26, 1900; 681,344, Aug. 27, 1901; 684,588, Oct. 15, 1901; 694,656, March 4, 1902; 694,665, March 4, 1902; 699,113, April 29, 1902; 707,-136, Aug. 19, 1902; 707,137, Aug. 19, 1902; 707,138, Aug. 19, 1902; 707,139, Aug. 19, 1902; 707,140, Aug. 19, 1902; 707,141, Aug. 19, 1902; 707,142, Aug. 19, 1902; 707,143, Aug. 19, 1902; 707,144, Aug. 19, 1902; 734,584, July 28, 1903; 735,546, Aug. 4, 1903; 745,971, Dec. 1, 1903; 764,668, July 12, 1904; 764,-696, July 12, 1904; 767,520, Aug. 16, 1904; 767,521, Aug. 16, 1904; 772,840, Oct. 18, 1904; 776,787, Dec. 6, 1904; 776,823, Dec. 6, 1904; 776,832, Dec. 6, 1904; 776,860, Dec. 6, 1904; 776,-875, Dec. 6, 1904; 781,236, Jan. 31, 1905; 784,340, March 7, 1905; 799,768, Sept. 19, 1905; 823,582, June 19, 1906; 834,085, Oct. 23, 1906; 860,692, July 23, 1907; 874,921, Dec. 31, 1907; 876,626, Jan. 14, 1908; 880,583, March 3, 1908; 880,898, March 3, 1908; 884,513, April 14, 1908; 884,524, April 14, 1908; 887,-

870, May 19, 1908; 889,383, June 2, 1908; 890,434, June 9, 1908; 891,192, June 16, 1908; 891,513, June 23, 1908; 900,244, Oct. 6, 1908; 911,120, Feb. 2, 1909; 919,678, April 27, 1909; 929,830, Aug. 3, 1909; 938,118, Oct. 26, 1909; 939,302, Nov. 9, 1909; 943,723, Dec. 21, 1909; 958,896, May 24, 1910; 959,869, May 31, 1910; 961,752, June 21, 1910; 974,405, Nov. 1, 1910; 982,550, Jan. 24, 1911; 996,656, July 4, 1911.

[On back:]
United Shoe Machinery Company.
Heeling Machine Department.
(Lease Premium)
Lease No. , Lessee.
Date, 19 .
Machines.

DEFENDANTS' EXHIBIT 33.

[Put in Evidence, page 974.]

Lease and License No. *L149*

Transfer from *Florsheim & Co.* Lease No. *124*

This Lease and License, made at Boston, Massachusetts, this *Seventh* day of *January* A. D. 1897, by and between Goodyear Shoe Machinery Company, a corporation incorporated under the laws of the State of Maine, and having an office in said Boston, Lessor, and party hereto of the first part, and *Florsheim & Co.* doing business in *Chicago, Ill.* Lessee, and party hereto of the second part, witnesseth,

That, Whereas, the Lessor is the owner of or is licensed under the several Letters Patent of the United States, recited in the schedule following, viz.: —

SCHEDULE OF PATENTS.

No. 211,612, dated January 21, 1879.	No. 343,689, dated June 15, 1886.
No. 212,131, dated February 11, 1879.	No. 354,462, dated December 14, 1886.
No. 214,754, dated April 29, 1879.	No. 360,147, dated March 29, 1887.
No. 215,438, dated May 20, 1879.	No. 365,497, dated June 28, 1887.
No. 216,926, dated June 24, 1879.	No. 365,504, dated June 28, 1887.
No. 218,354, dated August 5, 1879.	No. 365,505, dated June 28, 1887.
No. 219,224, dated September 2, 1879.	No. 365,731, dated June 28, 1887.

No. 224,516, dated February 17, 1880.
No. 226,817, dated April 20, 1880.
No. 226,818, dated April 20, 1880.
No. 230,386, dated July 20, 1880.
No. 234,854, dated November 30, 1880.
No. 247,143, dated September 13, 1881.
No. 248,398, dated October 18, 1881.
No. 253,250, dated February 7, 1882.
No. 312,691, dated February 24, 1885.
No. 329,280, dated October 27, 1885.
No. 329,282, dated October 27, 1885.
No. 329,283, dated October 27, 1885.
No. 329,366, dated October 27, 1885.
No. 329,367, dated October 27, 1885.
No. 333,709, dated January 5, 1886.
No. 336,539, dated February 16, 1886.
No. 385,747, dated July 10, 1888.
No. 420,268, dated January 28, 1890.
No. 422,734, dated March 4, 1890.
No. 439,051, dated October 21, 1890.
No. 446,631, dated February 17, 1891.
No. 455,174, dated June 30, 1891.
No. 465,073, dated December 15, 1891.
No. 500,225, dated June 27, 1893.
No. 500,319, dated June 27, 1893.
No. 501,872, dated July 18, 1893.
No. 501,873, dated July 18, 1893.
No. 513,384, dated January 23, 1894.
No. 521,954, dated June 26, 1894.
No. 521,975, dated June 26, 1894.
No. 517,947, dated April 10, 1894.

And, Whereas, the Lessee desires a license to use the inventions, or some of them, which are patented in and by the above-recited Letters Patent, and also desires a lease of the machines which are designated by their numbers in the schedule of machines following, viz. : —

SCHEDULE OF MACHINES.

Ideal Lasting Machines.	No. , No. , No. , No. , No.
Rapid Lasting Machines (foot power)	No. , No. , No. , No. , No.
Rapid Lasting Machines (foot power)	No. , No. , No. , No. , No.
3 Rapid Power Lasting Machines,	No. *51*, No. *55*, No. *56*, No. , No.
Rapid Loose Tackers, with Hoppers,	No. , No. , No. , No. , No.
6 Rapid Loose Tackers, with Hoppers, No. *411-412*.	No. *405*, No. *406*, No. *399*, No. *400*,
Nicking Machines,	No. , No. , No. , No. , No.

The said machines being the property of the Lessor.

Now, Therefore, the Lessor, in consideration of one dollar and other valuable consideration to it paid by the Lessee, in full for rental and royalty hereunder, the receipt of which is hereby acknowledged, and in further consideration of the agreements and conditions hereinafter contained, on the part of the Lessee to be kept and performed, doth lease unto the Lessee the machines designated by their numbers in the foregoing Schedule of Machines, and doth license the Lessee and the operatives in his employment to use the machines hereby leased, and also such of the inventions patented as aforesaid as are embodied in the said machines, or

either or any of them, but upon the agreements and conditions hereinafter set forth; and this lease and license is granted by the Lessor and accepted by the Lessee on the express condition that the Lessee shall faithfully keep and perform all the agreements and conditions herein contained on his part to be kept and performed, and upon breach of the same, or either or any of them, by the Lessee, the Lessor, notwithstanding any express or implied waiver of any prior breach, may at its option cancel and terminate this lease and license, and upon written notice thereof by the Lessor to the Lessee or to any one in the possession or apparent control of the machines hereby leased, or either or any of them, this lease and license shall terminate, and possession of the said machines shall thereupon re-vest in the Lessor;

And the Lessee hereby agrees to keep and perform all the following conditions of this lease and license: —

First. The Lessee hereby agrees to use, and is hereby licensed to use, the machines hereby leased and the inventions patented as aforesaid only in his factory in *Chicago*, in the State of *Illinois*, and agrees to keep the said machines in working order at his own expense, and to purchase of the Lessor or its agents all parts for repairing the machines hereby leased, and all tacks to be used in the loose tackers and hoppers hereby leased, and agrees not to add to or subtract from the said machines any part or mechanism whatever, now or hereafter organized or connected therewith by the Lessor, nor to make nor allow to be made any change or alteration in the same, except by an authorized agent or employee of the Lessor, nor to remove or deface any dates, numbers, or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessor.

Second. The Lessee hereby agrees to permit the agents and inspectors of the Lessor, at all reasonable times, to have convenient access to the machines, to examine and inspect the same and the use thereof, and to add improvements to or alter the machines as the Lessor may see fit; and the agreements and conditions herein contained shall apply to all improvements which the Lessor shall hereafter add to the machines, and to all patented inventions here-

after embodied therein, with the same effect as if the patents therefor were included in the foregoing schedule of patents.

Third. The Lessee agrees that he will not use or permit the use of the machines hereby leased, or either or any of them, on boots or shoes which are to be partially or wholly completed by the aid of any sole- or welt-sewing machine not leased to him by the Lessor (except that they may be used in lasting boots and shoes known in the trade as "McKay Sewed"), and that he will not use or permit the use of any of the tackers hereby leased on boots or shoes which have been partially or wholly lasted by the aid of any lasting machine not leased to him by the Lessor.

Fourth. This lease and license is not assignable by the Lessee by his own act or by operation of law; and all the rights and interests which under this instrument, and by reason of the ownership of said machines and patents and patent rights belong to the Lessor, shall be deemed to belong to and may be enforced in the names of the successors and assigns of the Lessor, and all the agreements and conditions binding on the Lessee shall be binding on his executors or administrators.

Fifth. It is agreed that the numbers of the machines named in this lease may be entered herein by the Lessee after signing; and, in case the Lessee shall require more than one machine, it is agreed that the termination of words relating to the machines shall be construed and considered as written in the singular or plural as the number of machines entered in the lease and license may require; and also that this instrument may be used in cases where the party of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained.

Sixth. The Lessee agrees that he will not in any way violate or infringe or contest the validity of any of the patents under which he is hereby licensed, or the sufficiency of their specifications, or

the validity of the title of the Lessor to said patents, or any of them.

Seventh. The following are also agreed to by the parties as conditions of this lease and license: —

(a) That the power conveyed by this lease and license is only the right to use the said machines, and not the right to make or sell any machine embodying the inventions patented as aforesaid, or any of them; and that a transfer or removal of the machines hereby leased, or either or any of them, can only be made with the consent of the Lessor; and that if the Lessee is or becomes at any time insolvent or bankrupt, or shall make an assignment for the benefit of his creditors, or if a sale, lease, transfer, or removal of said machines, or any of them, shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative, or assignee, as the property of the Lessee, without the written consent of the Lessor, this lease and license shall thereupon terminate and expire, and the Lessor may take possession of said machines without the Lessee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this lease and license, or for lease and royalty under this instrument.

(b) That in case the Lessee refuses or neglects to perform, or violates, any of the conditions in this lease and license contained, the Lessor, notwithstanding any express or implied waiver of any prior breach, shall have the right to terminate this lease and license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this lease and license shall be terminated, and the possession of said machines shall thereupon revest in the Lessor free and discharged of this lease and license; and the Lessor, or its authorized agent or agents, may thereupon enter any premises where said machines may be, and may take and remove them, and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease and license.

(c) That this lease and license shall continue (provided the Lessee complies with the agreements and conditions herein con-

tained) until the expiration of all and every the Letters Patent referred to in the foregoing Schedule of Patents, or any extensions or renewals of the same; and upon the expiration thereof the Lessee shall deliver to the Lessor, its successors or assigns, the machines hereby leased in good order, natural wear and tear alone excepted.

In witness whereof, the Lessor has caused these presents to be signed and its corporate seal to be affixed hereto by its *Treasurer*, and the Lessee has set his hand and seal hereto the day and year first above written.

[SEAL] GOODYEAR SHOE MACHINERY COMPANY,
by Geo. W. Randall, Treas.

Lessee will please sign here. ☞ FLORSHEIM & COMPANY [SEAL]
Milton J. Florsheim, Pres.

[Attached to Defendants' Exhibit 33.]

REQUEST.

To the Goodyear Shoe Machinery Company, No. 158 Summer Street, Boston, Mass.

The undersigned, Lessee under Lease No. *124*, granted by the Copeland Rapid Laster Manufacturing Company, dated *June 2*, 189*4*, hereby requests you to terminate said lease, and to grant him a new lease [Form 595] of the lasting and other machines referred to in said Copeland lease, upon the terms mentioned in your circular letter dated May, 1895.

And the undersigned herewith returns his said Copeland lease for cancellation, and sends a check for *$300.* as consideration for the grant of said new lease.

Dat this *seventh* day of *January*, 1897.

[Address] FLORSHEIM & COMPANY
Milton J. Florsheim, Pres.

DEFENDANTS' EXHIBIT 34.

[Put in Evidence, page 974.]

[Stamped :]
From Goodyear Shoe Mach'y Co.
51–53 Franklin St. Chicago,— Illinois.
George E. Milner.

[Duplicate Form 1291.] *Chicago, Ills.* Dated *June 25, 1894*

We hereby propose to take a lease of the machinery mentioned below, of the Copeland Rapid Laster Manufacturing Company, according to the form of lease adopted by the Company therefor, and *we* agree to pay upon delivery of the said machinery, the sum of *$300.* as consideration for the delivery of said lease, for the expenses of setting up said machinery, and for possession under the lease of said machinery.

One Power Lasting Machines. *#55 July 3/94*
Lasting Machines.
Two Loose Tackers. *#399, 400.* "

No title to the above mentioned machinery is acquired other than is given in the lease aforesaid.

A competent man is to be sent to set up said machinery at the expense of the said Company.

Freight and transportation charges on said machinery from Boston, Mass., shall be paid by the lessee.

How shall we ship, by freight or express? *"Blue Line".*

Applicant sign here. FLORSHEIM & Co.

Send us pattern of the innersole of the largest and widest of each style men's shoe you make. This is necessary before the machine can be shipped, as the toe wipers are made from these patterns.

We accept the above proposition, and promise to deliver the lease and machinery as specified therein.

Boston, July 2 1894

COPELAND RAPID LASTER MANUFACTURING COMPANY,
By S. V. A. Hunter Treasurer.

[Duplicate Form 1291.] *Chicago, Ills.* Dated *June 25, 1894*

We hereby propose to take a lease of the machinery mentioned below, of the Copeland Rapid Laster Manufacturing Company, according to the form of lease adopted by the Company therefor, and *we* agree to pay upon upon delivery of the said machinery, the sum of *$300.* as consideration for the delivery of said lease, for the expenses of setting up said machinery, and for possession under the lease of said machinery.

One Power Lasting Machines. *#56 July 3/74*
Lasting Machines
Two Loose Tackers. *411, 412.* "
Hand Tackers.

No title to the above mentioned machinery is acquired other than is given in the lease aforesaid.

A competent man is to be sent to set up said machinery at the expense of the said Company.

Freight and transportation charges on said machinery from Boston, Mass., shall be paid by the lessee.

How shall we ship, by freight or express? *"Blue Line".*

Applicant sign here. FLORSHEIM & Co.

Send us pattern of the innersole of the largest and widest of each style men's shoe you make. This is necessary before the machine can be shipped, as the toe wipers are made from these patterns.

We accept the above proposition, and promise to deliver the lease and machinery as specified therein.

Boston, July 2 1904

COPELAND RAPID LASTER MANUFACTURING COMPANY,
By S. V. A. Hunter Treasurer.

[Duplicate Form 1291.] *Chicago, Ills.* Dated *May 21, 1894.*

We hereby propose to take a lease of the machinery mentioned below, of the Copeland Rapid Laster Manufacturing Company, according to the form of lease adopted by the Company therefor and *we* agree to pay, upon delivery of the said machinery, the

sum of *$300.* as consideration for the delivery of said lease, for the expenses of setting up said machinery, and for the possession under the lease of said machinery.

One Power Lasting Machines. *#51 June 2/94.*
Lasting Machines.
Two Loose Tackers. *405, 406.*
Hand Tackers.
Hand Pegger.
Nicking Machines.
Shank Pullers.

It being understood and agreed that we are to have a trial of the above machines for a period of sixty days from date of delivery of same to us; at the expiration of which time we hereby agree either to return the same to the Copeland Rapid Laster Mfg. Co. or send check to cover the above consideration. It is also understood and agreed that if we decide to return the machines we are to pay for the wipers furnished.

No title to the above mentioned machinery is acquired other than is given in the lease aforesaid.

A competent man is to be sent to set up said machinery at the expense of the said Company.

Freight and transportation charges on said machinery from Boston, Mass., shall be paid by the lessee.

How shall we ship, by freight or express? *Blue Line.*

Applicant sign here. FLORSHEIM & Co.

Send us pattern of innersole of the largest and widest of each style men's shoe you make. This is necessary before the machine can be shipped, as the toe wipers are made from these patterns.

We accept the above proposition, and promise to deliver the lease and machinery as specified therein.

Boston, May 26 1894.

COPELAND RAPID LASTER MANUFACTURING COMPANY,
By S. V. A. Hunter Treas.

Lease and License No. *124*.

Transfer from Lease No. [Form 1094.]

This Lease and License, made at Boston, Massachusetts, this *2nd* day of *June* A. D. 189*4*, by and between Copeland Rapid Laster Manufacturing Company, a corporation incorporated under the laws of the State of Maine, and having an office in said Boston, Lessor, and party hereto of the first part, and *Florsheim & Co.* doing business in *Chicago, Ill.* Lessee, and party hereto of the second part, witnesseth,

That, Whereas, the Lessor is the owner of or is licensed under the several Letters Patent of the United States, recited in the schedule following, viz. : —

SCHEDULE OF PATENTS.

No. 211,612, dated January 21, 1879.	No. 333,709, dated January 5, 1886.
No. 212,131, dated February 11, 1879.	No. 336,539, dated February 16, 1886.
No. 214,754, dated April 29, 1879.	No. 343,689, dated June 15, 1886.
No. 215,438, dated May 20, 1879.	No. 354,462, dated December 14, 1886.
No. 216,926, dated June 24, 1879.	No. 360,147, dated March 29, 1887.
No. 218,354, dated August 5, 1879.	No. 365,497, dated June 28, 1887.
No. 219,224, dated September 2, 1879.	No. 365,504, dated June 28, 1887.
No. 224,516, dated February 17, 1880.	No. 365,505, dated June 28, 1887.
No. 226,817, dated April 20, 1880.	No. 365,731, dated June 28, 1887.
No. 226,818, dated April 20, 1880.	No. 385,747, dated July 10, 1888.
No. 230,386, dated July 20, 1880.	No. 420,268, dated January 28, 1890.
No. 234,854, dated November 30, 1880.	No. 422,734, dated March 4, 1890.
No. 247,143, dated September 13, 1881.	No. 439,051, dated October 21, 1890.
No. 248,398, dated October 18, 1881.	No. 446,631, dated February 17, 1891.
No. 253,250, dated February 7, 1882.	No. 455,174, dated June 30, 1891.
No. 312,691, dated February 24, 1885.	No. 465,073, dated December 15, 1891.
No. 329,280, dated October 27, 1885.	No. 500,225, dated June 27, 1893.
No. 329,282, dated October 27, 1885.	No. 500,319, dated June 27, 1893.
No. 329,283, dated October 27, 1885.	No. 501,872, dated July 18, 1893.
No. 329,366, dated October 27, 1885.	No. 501,873, dated July 18, 1893.
No. 329,367, dated October 27, 1885.	No. 513,384, dated January 23, 1894.

And, Whereas, the Lessee desires a license to use the inventions, or some of them, which are patented in and by the above-recited Letters Patent, and also desires a lease of the machines which are designated by their numbers in the schedule of machines following, viz. : —

SCHEDULE OF MACHINES.

Rapid Lasting Machines,	No. , No. , No. , No. , No.
Rapid Power Lasting Machines,	No. *51*, No. *55*, No. *56*, No. , No.
Rapid Loose Tackers, with Hoppers,	No. , No. , No. , No. , No.
Rapid Loose Tackers, with Hoppers, No. *411–412*.	No. *405*, No. *406*, No. *399*, No. *400*,
Nicking Machines,	No. , No. , No. , No. , No.
Paper Strip Tackers,	No. , No. , No. , No. , No.

The said machines being the property of the Lessor.

Now, therefore, the Lessor, in consideration of one dollar and other valuable consideration to it paid by the Lessee, the receipt of which is hereby acknowledged, and in further consideration of the agreements and conditions hereinafter contained, on the part of the Lessee to be kept and performed, doth lease unto the Lessee the machines designated by their numbers in the foregoing Schedule of Machines, and doth license the Lessee and the operatives in his employment to use the machines hereby leased, and also such of the inventions patented as aforesaid as are embodied in the said machines, or either or any of them, but upon the agreements and conditions hereinafter set forth; and this lease and license is granted by the Lessor and accepted by the Lessee on the express condition that the Lessee shall faithfully keep and perform all the agreements and conditions herein contained on his part to be kept and performed, and upon breach of the same, or either or any of them, by the Lessee, the Lessor, notwithstanding any express or implied waiver of any prior breach, may at its option cancel and terminate this lease and license, and upon written notice thereof by the Lessor to the Lessee or to anyone in the possession or apparent control of the machines hereby leased, or either or any of them, this lease and license shall terminate, and possession of the said machines shall thereupon revest in the Lessor;

And the Lessee hereby agrees to keep and perform all the following conditions of this lease and license: —

First. The Lessee hereby agrees to use, and is hereby licensed to use, the machines hereby leased and the inventions patented as aforesaid only in his factory in *Chicago*, in the State of *Illinois*, and agrees to keep the said machines in working order at his own expense, and to purchase of the Lessor or its agents all parts for repairing the machines hereby leased, and all the tack strips to be

used in the hand tackers hereby leased, and all tacks to be used in the loose tackers and hoppers hereby leased, and agrees not to add to or subtract from the said machines any part or mechanism whatever, now or hereafter organized or connected therewith by the Lessor, nor to make nor allow to be made any change or alteration in the same, except by an authorized agent or employee of the Lessor, nor to remove or deface any dates, numbers, or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessor.

Second. The Lessee hereby agrees to permit the agents and inspectors of the Lessor, at all reasonable times, to have convenient access to the machines, to examine and inspect the same and the use thereof, and to verify the operator's reports, and to add improvements to or alter the machines as the Lessor may see fit; and the agreements and conditions herein contained shall apply to all improvements which the Lessor shall hereafter add to the machines, and to all patented inventions hereafter embodied therein, with the same effect as if the patents therefor were included in the foregoing schedule of patents.

Third. The Lessee agrees to keep proper books of account and to make true and complete entries therein, showing the number of pairs of boots or shoes which are lasted, in whole or in part, upon or by the aid of the machines hereby leased, or either or any of them, or by the use of the inventions patented as aforesaid, or either or any of them, and to render an account thereof to the Lessor on or before the tenth day of each month, which account shall specify the number of pairs of boots and shoes so lasted, in whole or in part, as aforesaid; and the Lessee agrees to require each operator on said lasting machines to keep in duplicate in books or on printed forms to be furnished by the Lessor, a daily record of all the boots or shoes lasted, in whole or in part, upon or by the aid of the said machines, one copy of which, containing the record for the calendar month next preceding, the Lessee agrees to send, on or before the tenth day of each month, to the Lessor, and, whenever requested by the Lessor, to make oath to the correctness of said record, and to allow the Lessor, by its agents and attorneys,

to examine and take copies or extracts from the original book or books of account of the Lessee and the record kept by the operator or operators as aforesaid; and the Lessee hereby agrees to send to the Lessor, on or before the tenth day of each month, on a form to be furnished by the Lessor, the number of movements or revolutions of the shaft of each lasting machine hereby leased, as registered by the indicator thereon on the last day of the calendar month next preceding; and the Lessee heaeby agrees to send to the Lessor, on or before the tenth day of each month, in case the machines hereby leased have not been run during the month preceding one of the aforesaid books or forms furnished by the Lessor, marked across the face with the words, "not running", or "not in use".

Fourth. The Lessee agrees to pay unto the Lessor, as rent for the machines hereby leased and as royalty for the use of the inventions patented as aforesaid as hereby licensed, the sum of one cent for each and every pair of boots or shoes lasted, in whole or in part, upon or by the aid of the machines hereby leased, or either or any of them, or by the use of the said inventions, or either or any of them, the rents and royalties for all such boots and shoes lasted as aforesaid during one calendar month to be due and payable on the last day of the calendar month next following; but the Lessor hereby agrees that if the rents and royalties due on the last day of any month shall be paid on or before the fifteenth day of that month, it will, in consideration thereof, grant a discount of fifty per cent. from the rents and royalties above specified.

Fifth. The Lessee agrees that he will not in any way violate or infringe or contest the validity of any of the patents under which he is hereby licensed, or the sufficiency of their specifications, or the validity of the title of the Lessor to said patents, or any of them.

Sixth. The following are also agreed to by the parties as conditions of this lease and license: —

(a) That the power conveyed by this lease and license is only the right to use the said machines, and not the right to make or sell any machine embodying the inventions patented as aforesaid, or any of them; and that a transfer or removal of the machines hereby

leased, or either or any of them, can only be made with the consent of the Lessor; and that if the Lessee is or becomes at any time insolvent or bankrupt, or shall make an assignment for the benefit of his creditors, or if a sale, lease, transfer or removal of said machines, or any of them, shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative, or assignee, as the property of the Lessee, without the written consent of the Lessor, this lease and license shall thereupon terminate and expire; and the Lessor may take possession of said machines without the Lessee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this lease and license, or for rent and royalty under this instrument.

(b) That in case the Lessee refuses or neglects to perform, or violates, any of the conditions in this lease and license contained, the Lessor, notwithstanding any express or implied waiver of any prior breach, shall have the right to terminate this lease and license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this lease and license shall be terminated, and the possession of said machines shall thereupon revest in the Lessor free and discharged of this lease and license; and the Lessor, or its authorized agent or agents, may thereupon enter any premises where said machines may be, and may take and remove them, and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease and license.

(c) That this lease and license shall continue (provided the Lessee complies with the agreements and conditions herein contained) until the expiration of all and every the Letters Patent referred to in the foregoing Schedule of Patents, or any extensions or renewals of the same; and upon the expiration thereof the Lessee shall deliver to the Lessor, its successors or assigns, the machines hereby leased in good order, natural wear and tear alone excepted.

Seventh. The Lessee hereby agrees that if the indicator attached to any lasting machine hereby leased shall cease to register or indi-

cate correctly the number of movements or revolutions of the shaft to which it is connected, or if the glass covering of the face of the indicator shall be broken, he will not use the said lasting machine, or allow it to be used, until the indicator thereon shall have been repaired or replaced by the Lessor; and agrees that if the glass covering of the indicator shall become broken, or if, for any reason, the indicator shall cease to indicate or register correctly, he will forthwith notify the Lessor in writing thereof; and the Lessee agrees that he will not, nor will he allow anyone, except an authorized agent or employee of the Lessor, to remove the indicator from the said lasting machine, or injure, alter, or in any way tamper therewith, or permit any such alteration, injury, or tampering to take place.

Eighth. This lease and license is not assignable by the Lessee by his own act or by operation of law; and all the rights and interests which under this instrument, and by reason of the ownership of said machines and patents and patent rights belong to the Lessor, shall be deemed to belong to and may be enforced in the names of the successors and assigns of the Lessor, and all the agreements and conditions binding on the Lessee shall be binding on his executors or administrators.

Ninth. It is agreed that the number of the machines named in this lease may be entered herein by the Lessor after signing; and, in case the Lessee shall require more than one machine, it is agreed that the termination of words relating to the machines shall be construed and considered as written in the singular or plural as the number of machines entered in the lease and license may require; and also that this instrument may be used in cases where the party of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained.

In witness whereof, the Lessor has caused these presents to be

signed and its corporate seal to be affixed hereto by its Treasurer, and the Lessee has set his hand and seal hereto the day and year first above written.

Executed in Duplicate.

[SEAL] COPELAND RAPID LASTER MANUFACTURING COMPANY,
By S. V. A. Hunter, Treasurer.

Lessee will please sign here. ☞ FLORSHEIM & COMPANY, INCORPORATED, [SEAL]
Per Milton S. Florsheim, Pres.

DEFENDANTS' EXHIBIT 35.

[Put in Evidence. page 976.]

This Instrument Witnesseth that the United Shoe Machinery Company (hereinafter called the "United Company") the lessor or assignee of the lessor named in seventy-seven (77) several leases heretofore granted to Florsheim & Company, a corporation organized and existing under the laws of the State of Illinois, as lessee, covering certain machinery of the United Company all as set forth in the Schedule hereto attached and marked "Schedule A", said machinery being now in the possession of said Florsheim & Company as such lessee at its factory in Chicago, Illinois, does hereby consent and agree that said Florsheim & Company may permit The Florsheim Shoe Company, a corporation organized and existing under the laws of the State of West Virginia, to use in the factory above mentioned said machinery or any thereof; subject, however, to all the conditions, stipulations, provisions and agreements contained in said leases which shall be binding upon The Florsheim Shoe Company and during the continuance in force of this agreement shall have the same force and effect as if The Florsheim Shoe Company were named in said leases as a joint lessee thereunder with said Florsheim & Company; and that in consideration thereof the said Florsheim & Company and said The Florsheim Shoe Company do hereby jointly and severally covenant and agree to and with the United Company that said The Florsheim Shoe Company will faithfully observe and perform all said conditions, stipulations, provisions and agreements.

It is further agreed that during the continuance in force of this agreement or until the United Company has been notified that The Florsheim Shoe Company has ceased entirely the use of said machinery, all statements and accounts for moneys due or to become due to the United Company from either Florsheim & Company or The Florsheim Shoe Company in respect to said machinery, whether for rental or royalty for the use thereof or for parts or materials supplied for use in connection therewith or otherwise or by virtue of said leases may be rendered to The Florsheim Shoe Company.

Except as herein expressly set forth none of the conditions, stipulations, provisions or agreements contained in the leases above mentioned is hereby in any wise waived or modified, and this agreement may be cancelled and the consent hereby given withdrawn at any time by the United Company by notice in writing addressed to Florsheim & Company at Chicago, Illinois.

Executed in duplicate this 23rd day of April 1910.

[SEAL] FLORSHEIM & COMPANY,
By Milton S. Florsheim, Pres.

[SEAL] THE FLORSHEIM SHOE COMPANY
By Milton S. Florsheim, Pres.

UNITED SHOE MACHINERY COMPANY [SEAL]
By L. A. Coolidge, Treasurer.

SCHEDULE A.

I. Leases from the United Shoe Machinery Company, lessor.

a. Eyeletting Department.

Lease No.	Date	Machine	Number
874	July 13, 1903	Power Eyeletting Machine	583
875	July 13, 1903	" " "	500
876	July 13, 1903	" " "	512
3138	July 29, 1905	Duplex Eyeletting Machine	122
3139	April 11, 1906	" " "	373
4378	August 20, 1907	" " "	337

b. General Department.

188	Jan. 23, 1902	Ross Twin Edge Setter	600
188A	November 18, 1902.	Heel Seat Rough Rounding Mach.	51
		New Method Heel Seat Beading Mach.	861
		18 inch. Sole Evening Mach.	2499
		Post Trimming Machine	1777
		Heel Scouring Machine	234
188 B	May 19 1903	Ross Heel Breaster	392
		Power Heel Breaster	139
188 C	December 9, 1903	Feather Edge & Stitch Rubbing Mach.	30
188 D	January 24, 1905	Miller Treeing & Ironing Mach.	3937
		Right Tree Leg	14334
		Left Tree Leg	14250
188 E	January 14, 1905	Post Trimming Machine	4147
188 F	July 25, 1905	Heel Breast Scouring Machine	106
188 G	December 20, 1905	Heel Scouring Machine	451
		Heel Breast Scouring Machine	318
		Plain Split Roll Buffing Machine	121
		Feather Edge & Stitch Rubbing Mach.	44
		New Method Heel Seat Beading Mach.	204
188 H	November 1, 1905	Miller Treeing & Ironing Mach.	4176
		Right Tree Leg	14725
		Left Tree Leg	14867
188 I	November 1, 1905	Miller Treeing & Ironing Mach.	4771
		Right Tree Leg	14742
		Left Tree Leg	14868
188 J	November 1, 1905	Post Trimmer	4659
		" "	4660
		High Stand Tip Scouring Mach.	40
		Ross Twin Edge Setting Mach.	330
		" " " " "	541

		9 ft. Gearless Sole Cutting Mach.	1252
188 K	November 7, 1905	28 in. Summit Sole Leather Splitting Machine	79
		Heel Scouring Machine	469
188 M	December 2, 1905	Miller Treeing & Ironing Mach.	4219
		Right Tree Leg	15177
		Left Tree Leg	15185
188 N	December 2, 1905	Miller Treeing & Ironing Machine	4224
		Right Tree Leg	15141
		Left Tree Leg	15183
188 L	January 11, 1906	9 ft. Gearless Sole Cutting Machine	1312
188 O	March 26, 1906	Edge Trimming Machine	2214
188 P	May 3, 1906	Miller Treeing & Ironing Machine	4434
		Right Tree Leg	15708
		Left Tree Leg	15754
188 Q	May 3, 1906	Miller Treeing & Ironing Machine	4435
		Right Tree Leg	15709
		Left Tree Leg	15710
188 R	May 5, 1906	7½ inch. Summit Splitting Machine	608
188 S	" 7, 1906	Buffing Machine	271
188 T	" 31, 1906	Edge Trimming Machine	5253
188 U	June 2, 1906	Miller Treeing & Ironing Machine	4504
		Right Tree Leg	15738
		Left Tree Leg	15813
188 V	July 6, 1906	Apex Tap & Sole Rounding Machine	1246
188 W	March 7, 1907	Top Piece Scalloping Machine	37
188 X	April 11, 1907	Tip Scouring Machine	83
188 Y	May 8, 1907	Victor Rolling Machine	279

c. Goodyear Department.

5060	September 27, 1901	Goodyear Welt & Turn Shoe Machine	1336
		Goodyear Outsole Rapid Lockstitch Machine	1098
		Goodyear Outsole Rapid Lockstitch Machine	1260
		Goodyear Universal Welt Beating Machine	122
		Goodyear Universal Rounding & Channeling Machine	403
		Goodyear Universal Rounding & Channeling Machine	456
		Goodyear Automatic Sole Leveling Machine	160
		Goodyear Rotary Sole Laying Machine	147
		Goodyear Lip Turning Machine	56
		Goodyear Universal Shank Skiving Machine	61
		Extension Edge Attachment "A"	535
5060 A	December 23, 1901	Goodyear Welt & Turn Shoe Machine	1080
		~~Goodyear Outsole Rapid Lockstitch Machine . ret.~~	
		Goodyear Bobbin Winding Machine	709
5060 B	November 19, 1902	Goodyear Universal Welt Beating Machine	353
		Goodyear Universal Rounding & Channeling Machine	600
		Goodyear Moulding Machine	928
5060 C	July 17, 1903	Goodyear Turn Channeling Machine	2634

5060 D	January 15, 1904	Goodyear Lip Turning Machine 276
5060 E	August 4, 1904	Extension Edge Attachment "A" 1143
5060 F	September 1, 1904	Hadaway Stitch Separating Mach. 403
		Goodyear Channel Laying Mach. 176
5060 G	January 2, 1905	Goodyear Welt Beating & Slashing Mach. 43
		Goodyear Shank Welt Skiving Mach. 114
5060 H	January 2, 1905	Goodyear Outsole Rapid Lockstitch Mach. 371
		Extension Edge Attachment "A" 1214
5060 I	May 25, 1905	Goodyear Lip Turning Mach. 370
5060 J	October 24, 1905	Goodyear Welt & Turn Shoe Mach. 1951
		Goodyear Outsole Rapid Lockstitch Mach. 2168
		Goodyear Outsole Rapid Lockstitch Mach. 2179
		Extension Edge Attachment "A" 1643
		Extension Edge Attachment "A" 1652
5060 K	December 2, 1905	Goodyear Outsole Rapid Lockstitch Machine 2213
		Extension Edge Attachment "A" 1690
5060 L	November 21, 1905	Goodyear Welt & Turn Shoe Mach. 1960
5060 M	October 24, 1905	Goodyear Welt Beating & Slashing Mach. 263
		Goodyear Universal Rounding & Channeling Mach. 964

		Goodyear Automatic Sole Leveling Machine	427
		Goodyear Rotary Sole Laying Mach.	18
		Goodyear Channel Laying Machine	246
5060 N	May 17, 1906	Goodyear Universal Rounding & Chan. Mach.	963
5060 O	June 17, 1906	Goodyear Rotary Sole Laying Mach.	75
5060 P	May 22, 1906	Goodyear Welt Grooving & Beveling Mach.	1032
		Goodyear Insole Channeling Mach.	2799
		Goodyear Welt Beating & Slashing Mach.	446
5060 Q	February 20, 1908	Goodyear Power Welt Grooving & Beveling Machine	138

d. Heeling Department.

408	September 27, 1901	American Lightning Nailing Mach.	415
		American Lightning Nailing Mach.	648
		Bussell Heel Trimming Machine	869
408 A	November 18, 1902	American Lightning Nailing Mach.	850
		Bussell Heel Trimming Machine	593
408 B	February 19, 1904	" " " "	1076
408 C	January 30, 1905	" " " "	888
408 D	October 19, 1905	" " " "	1115
408 E	August 25, 1905	Automatic Heel Compressing Mach.	575
408 F	May 18, 1906	American Lightning Nailing Mach.	1671
408 G	December 28, 1906	American Lightning Nailing Mach.	1803

e. Metallic Department.

1128	September 27, 1901	Taper Nail Tacking Machine	933
1128 A	November 18, 1902	Universal Slugging Machine	1702
		" " "	1807
		" " "	1862
		Taper Nail Tacking Machine	994
		Knife Grinding Machine	5196
1128 B	February 26, 1904	Loose Nailing Machine	1854
		" " "	1855
1128 C	June 13, 1905	Taper Nail Tacking Machine	886
1128 D	October 20, 1905	Universal Slugging Machine	1474
		Taper Nail Tacking Machine	2863
		" " " "	2864
1128 E	January 15, 1907	Loose Nailing Machine	2372

f. Lasting Machine Department.

168	May 13, 1904	Chase Lasting Machine	446
		Hand Tacker	2079
168 A	October 30, 1905	Chase Lasting Machine	1109
		" " "	1186
168 B	November 24, 1905	Chase Lasting Machine	46
		" " "	966
		Hand Tacker	391
		" "	890
168 C	January 30, 1906	Chase Lasting Machine	381
		Hand Tacker	486
168 D	May 15, 1909	Chase Lasting Machine	1190
		Hand Tacker	154

II. Leases from the Goodyear Shoe Machinery Co.

3170	December 18, 1894	Goodyear Welt & Turn Shoe Mach.	733
		Goodyear Welt & Turn Shoe Mach.	711
		Goodyear Rapid Outsole Lock-stitch Machine	501

		Goodyear Rapid Outsole Lockstitch Machine	908
		Goodyear Channeling Machine	1491
		Goodyear Channel Lip Turning Machine	66
		Goodyear Channel Opening Machine	18
		Goodyear Welt Beating Mach.	392
		Goodyear Bobbin Winding "	418
		Goodyear Welt Grooving "	451
		Goodyear Welt Splitting "	431
3554	December 6, 1895	Hadaway Stitch Separating Mach.	39
3882	December 30, 1896	Goodyear Outsole Rapid Lockstitch Machine	262
L. 149	January 7, 1897	Rapid Power Lasting Machine	51
		" " " "	55
		" " " "	56
		" Loose Tacker "	405
		" " "	406
		" " "	399
		" " "	400
		" " "	411
		" " "	412

III. Leases from the Consolidated & McKay Lasting Machine Company.

A. A. A. 102	December 1, 1899	Chase Lasting Machine	1246
		" " "	1314
		Hand Tacker	2147
		" "	2148
A. A. A. 121	January 12, 1900	Chase Lasting Machine	941
		Hand Tacker	51
		" "	1528
A. A. A. 146	March 21, 1900	Chase Lasting Machine	106
		Hand Tacker	1247
		" "	1249

IV. Leases from the Chase Lasting Machine Company.

79	April 8, 1897	Chase Lasting Machine	7
		" " "	114
		" " "	861
		" " "	1144
		Hand Tacker	1000
		" "	1003
		" "	1498
		" "	1499
		" "	1753
		" "	1879

DEFENDANTS' EXHIBIT 36.

[Put in Evidence, page 977.]

[Stamped:]
E. N. C. May 2 1918
May 2 1913 N. B. T.

THE FLORSHEIM SHOE COMPANY

The Florsheim Shoe Milton S. Florsheim, President.

Private Office Chicago, U. S. A. April 30, 1913

Attention of Mr. Chase:

United Shoe Machinery Co., Boston, Mass.

Gentlemen: Referring to your communication of the 28th inst., in regard to enclosed drafts which you state were apparently prepared by our attorney in Chicago, transferring to The Florsheim Shoe Company the right to use the Goodyear Shoe Machinery Company's machines.

Would kindly ask you to return them to us for our files as we would like to look them over.

We believe we originally sent you two copies executed by ourselves.

Under the three year bonus proposition has your company as yet made any allotment of the certificates? We understood said dis-

tribution was to be made in January but up to this writing we have heard nothing further in regard to the same.

Yours very respectfully,

THE FLORSHEIM SHOE COMPANY,

MSF)W By Milton S. Florsheim President

DEFENDANTS' EXHIBIT 37.

[Put in Evidence, page 977.]

Whereas by Lease and License Agreement L 149, dated January 7, 1897, the Goodyear Shoe Machinery Company, as lessor, did lease to Florsheim & Company, a corporation, as lessee, and did license the said Florsheim & Company to use, in accordance with the terms and conditions in said lease and license Agreement set forth, certain Lasting Machinery, in said Lease and License described, and

Whereas the said machinery, the said Lease and Agreement, and all title and rights of the said lessor therein and thereunder, have, since the said 7th of January, 1897, been transferred to and are now vested in the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of Maine, and

Whereas the said corporation last above mentioned has requested that the rights of the said corporation, under said Lease and Agreement, to use the said machines, shall be transferred to The Florsheim Shoe Company, a corporation organized and existing under the laws of the State of Illinois.

Now, therefore, in compliance with said request the said United Shoe Machinery Company does hereby consent to the delivery of said machines to the said The Florsheim Shoe Company and does hereby transfer to the said The Florsheim Shoe Company the right to use in its factory at Chicago, Illinois, for the unexpired term of said Lease and Agreement the said machines designated by their numbers in the Schedule of machines contained in said Lease and Agreement, subject to all the conditions and agreements made incumbent upon the lessee by said Lease and Agreement, and does hereby accept the said The Florsheim Shoe Company as lessee of

said machines under said Lease and Agreement, in lieu of the said Florsheim & Company. The said The Florsheim Shoe Company, in consideration of the premises and the right hereby granted to it, does hereby covenant and agree with the United Shoe Machinery Company to keep and perform all of the conditions and agreements made incumbent upon the lessee in said Lease and Agreement contained.

In Witness Whereof the said United Shoe Machinery Company as lessor has caused its corporate seal to be hereto affixed and has caused these presents to be signed by its , and the said The Florsheim Shoe Company, as lessee, has caused its corporate seal to be hereto affixed and has caused these presents to be signed by its President, this 23rd day of April, 1908.

[SEAL] UNITED SHOE MACHINERY COMPANY
By

THE FLORSHEIM SHOE COMPANY
[SEAL] By Milton S. Florsheim, Pres.

DEFENDANTS' EXHIBIT 38.

[Put in Evidence, page 989.]

[Stamped:]
Received Apr 20 1900 F. G. K.

[Duplicate Form 1195.] Dated *Chicago, Ill., April 6th*, 1900.

We hereby propose to take a lease of the machinery mentioned below, of the Goodyear Shoe Machinery Company, according to the form of lease adopted by the Company therefor, and *we* agree to pay, upon delivery of the said machinery, the sum of *$1835.00* as consideration for the delivery of said lease, for the expenses of setting up said machinery, and for possession under the lease of said machinery.

One Goodyear Welt Shoe Machine , Chain Stitch, No. *1336*
Goodyear Turned Shoe Machine , Chain Stitch, No.
Goodyear Turned or Welt Shoe Machine , Lock Stitch, No.
One Goodyear Outsole Stitcher , (Lock Stitch, "Rapid"), No. *1098*
Welt Channeller , No.

Outsole Channeller , No.
Turn Channeller , No.
Channel Lip Turner , No.
One Universal Rounder and Channeller , No. *403*
One Sole Layer , No. *147*
Hadaway Stitch Separating Machine , No.
One Automatic Levelling Machine , No. *112*
One Welt Beater , No. *122* Universal
Bobbin Winder , No.
Welt Groover , No.
Welt Splitter , No.
Moulder , No
Channel Opener , No.
Universal Shanking-Out Machine , No.
Inseam Trimmer , No.

It being understood that we agree to send our check for above amount 30 days after machines are installed. It is further understood and agreed that we will return to the Goodyear S. M. Co. the following machines:

Eppler Welter #155
" *Stitcher 161*
" *Insole Chaneler 6*
" *Welt Splitter 90*
Eppler Welt Beater #92
" *Groover & Beveler 105*
" *Bobbin Winder 91*
Eppler Rounder 63
" *Grinder #53*
" *Pricker 58*
" *Channel Opener 4*
Briggs Rough Rounder #—
1 Set B. & S. S. L. Mchs

Upon receipt in Boston of said machines the Gdyr. S. M. Co. agrees to send to us their check for $1835., same being consideration in full for above machines and for any and all claims we have against the United S. M. Co., or any of its departments.

July 17/00 R. R. 76 rec'd 100.
Cr. Dec. 26/00 Eppler 1735.

Please answer these questions.	Answer here.
How will you heat Machines, by steam, gas, or lamps?	*Steam*
How will you heat Waxers, by steam, gas, or lamps?	*Steam*

How shall we ship, by freight or express? *Freight*
What kind of goods do you make? *Mens fine shoes*

No title to the above mentioned machinery is acquired other than is given in the lease aforesaid.

A competent man is to be sent to set up said machinery at the expense of the said Company.

Freight and transportation charges on said machinery from Boston, Mass., shall be paid by the lessee.

Applicant sign here. FLORSHEIM & COMPANY
1/4/13 per Louis Florsheim, Sec

We accept the above proposition, and promise to deliver the lease and machinery as specified therein.

GOODYEAR SHOE MACHINERY COMPANY,
By Fred G. King, General Manager.

Boston, *Apl 20th* 1900.

DEFENDANTS' EXHIBIT 39.

[Put in Evidence, page 991.]

FLORSHEIM & COMPANY, Incorporated.
Manufacturers Men's Fine Shoes,
278–286 Madison St.

[Stamped: Jun 29 1899]

Ans July 6/99

Chicago, June 27, 1899.

Goodyear Shoe Machinery Co. Boston, Mass.

Gentlemen: — We have had more or less correspondence with you regarding a royalty on your Company's machines. We have also had considerable difficulty in finding operators for these machines. If you will refer to previous correspondence, you will note that we have special arrangements with the Eppler Machinery Co., which entitle us to certain priviledges. Now we make this proposition, in order to adjust the matter; if you will agree to trade us Goodyear machines for the Eppler, that we now have, we will agree to sign all contracts, and also to pay you 4 cents per pair royalty. When your Mr. Lewis was here we spoke about the

matter to him, and he said he would advise us when he returned home.

We shall await your reply. Yours truly,

FLORSHEIM & COMPANY.

DEFENDANTS' EXHIBIT 40.

[Put in Evidence, page 1040.]

GOODYEAR WELT AND TURN SHOE MACHINE
AND
GOODYEAR OUTSOLE RAPID LOCKSTITCH MACHINE.

There is nothing in the leases of these machiness which requires the lessee to take from the Company any other machine or machines for any purpose whatsoever other than the welt sewing and outsole stitching of welt shoes and and the sole sewing of turn shoes, or which precludes the lessee from obtaining from any other source whatsoever any and all other machines which he may require for any and all operations whatsoever other than the welt sewing and outsole stitching of welt shoes and the sole sewing of turn shoes, or which precludes the lessee from using such other machines so obtained in conjunction with the leased Welt and Turn Sewing and Outsole Stitching Machines.

GOODYEAR AUXILIARY MACHINES.

There is nothing in any of the Company's leases which requires a lessee of any one or more of the Company's machines whatsoever to obtain from the Company any one or more of these Auxiliary Machines or which precludes a lessee of any one or more of the Company's machines from obtaining corresponding auxiliary machines from others or from using such machines so obtained in conjunction with any or all of the Company's machines, including the Company's Welting, Turn Sewing and Outsole Stitching Machines.

When obtained from the Company these machines are not in any way bound to or limited to use with Pulling Over, Lasting, Metallic, Heeling, General Department, or any other machinery obtained from the Company, excepting alone that they are limited to use on "Goodyear Welts and Turns" and in conjunction with the Good-

year Welt and Turn Shoe Machine and the Goodyear Stitcher, the two principal machines of the Goodyear System which together with the auxiliary machines form the system.

There is nothing in the leases of these auxiliary machines which requires the lessee to take from the Company or which precludes the lessee from obtaining from any other source whatsoever any and all auxiliary and other machines which he may require for any and all operations other than the welt sewing and outsole stitching of welt shoes and the sole sewing of turn shoes, or which precludes the lessee from using such other machines so obtained in conjunction with the leased Goodyear System Machines.

Rex Pulling Over Machine.

Rex Pulling Over Machines may be obtained from the Company on an Initial Payment form of lease under which the machines are not in any way bound to or limited to use with Pulling Over Auxiliary Machines, Welting, Stitching, Lasting, Metallic, Heeling, General Department or any other machinery obtained from the Company for any other operation upon the shoe; and there is nothing in this form of lease for these machines which requires the lessee to take from the Company, or which precludes the lessee from obtaining from any other source whatsoever any and all other kinds of machines which he may require for any and all operations whatsoever other than Pulling-over or from using such other machines so obtained in conjunction with the leased Pulling Over Machines held under this form of lease.

Rex Pulling Over System. — Auxiliary Machines.

If a lessee of the Company's Rex Pulling Over Machines under the above form of lease desires to obtain from the Company for use in conjunction with them one or more of the Auxiliary Machines of the Pulling Over System of the Company (which under this form of lease for the Pulling Over Machine he is under no obligation whatever to do) any or all of these Auxiliary Machines may be obtained by him on an Initial Payment form of lease under which the machines are not in any way bound to or limited to use with any other Pulling Over Auxiliary Machines, Welting, Stitching,

Lasting, Metallic, Heeling, General Department, or any other machinery, obtained from the Company for any other operation upon the shoe, excepting alone that such Pulling Over Auxiliary Machines leased on this form of lease are limited to use on shoes pulled over by the Rex Pulling Over Machine or machines held under lease from the Company under the above form of Initial Payment lease.

There is nothing in the above forms of lease for either the Pulling Over Machines or the Pulling Over Auxiliary Machines which requires the lessee to take from the Company or which precludes the lessee from obtaining from any other source whatsoever any and all Auxiliary and other machines which he may require for any and all operations other than Pulling Over, or which precludes the lessee from using such other machines so obtained in conjunction with the leased Pulling Over System Machines of the Company.

The royalty for Pulling Over System Machines held under the above form of lease is 1 cent (subject to 50% discount) for each pair of shoes operated upon by the Pulling Over Machines.

There is no additional royalty for the Auxiliary Machines.

CONSOLIDATED HAND METHOD LASTING MACHINE. — U. S. M. Co. LASTING MACHINE, No. 5.

Either or both of these machines may be obtained from the Company on an Initial Payment Lease under which the machines are not in any way bound to or limited to use with Welting, Stitching, Pulling Over, Metallic, Heeling, General Department, or any other machinery obtained from the Company for any purpose other than lasting, and there is nothing in this form of lease of these machines which requires the lessee to take from the Company any other machine or machines for any other purpose whatsoever or which precludes the lessee from obtaining from any other source whatsoever any and all other machines which he may require for any and all other operations, or from using such other machines so obtained in conjunction with the Company's lasting machines.

METALLIC MACHINES.

Any or all of these machines may be obtained from the Company on an initial payment lease under which the machines are not in

any way bound to or limited to use with Welting, Stitching, Pulling Over, Lasting, Heeling, General Department, or any other machinery obtained from the Company excepting Metallic machinery.

There is nothing in this form of lease for these machines which requires the lessee to take from the Company or which precludes the lessee from obtaining from any other source whatsoever any and all machines other than Metallic which he may require for any and all other operations or from using such other machines so obtained in conjunction with the Company's Metallic Machines.

HEELING MACHINES.

Any or all of these machines may be obtained from the Company on an Initial Payment Lease under which the machines are not in any way bound to or limited to use with Welting, Stitching, Pulling Over, Lasting, Metallic, General Department, or any other machinery obtained from the Company for any other operation upon the shoe, excepting alone those operations performed by the machines of the Heeling Department.

There is nothing in this form of lease for these machines which requires the lessee to take from the Company or which precludes the lessee from obtaining from any other source whatsoever any and all other machines which he may require for any and all operations whatsoever, other than the operations of the machines of the Heeling Department, or from using such other machines so obtained in conjuction with the Company's Heeling Machines.

CLICKING MACHINES.

There is nothing in any of the Company's leases for other machines which requires a lessee of any one or more of the other machines of the Company to obtain Clicking Machines from the Company, or which prevents a lessee of any one or more of the other machines of the Company from obtaining Clicking Machines from others or from using them in conjunction with any of the Company's other machines.

When obtained from the Company these machines are not bound to or limited to use with Welting, Stitching, Pulling Over, Lasting,

Metallic, Heeling, General Department, or any other machinery obtained from the Company, and there is nothing in the lease covering them which requires the lessee to take from the Company any other machine or machines for any other purpose whatsoever, or which precludes the lessee from obtaining from any other source whatsoever any and all other machines which he may require for any and all other operations or from using such other machines so obtained in conjunction with the Clicking Machines obtained from the Company.

GENERAL DEPARTMENT MACHINERY.

There is nothing in any of the Company's leases which requires a lessee of any one or more of the Company's machines whatsoever to obtain any of these machines from the Company, either by purchase or lease, or which requires a lessee having one or more of these machines to take others, or which prevents a lessee of any one or more of the machines of the Company from obtaining machines corresponding to these from others or from using such machines so obtained in conjunction with any of the Company's machines.

These machines are offered on outright sale to anyone desiring to use them.

The terms upon which they are put out on lease are available to those only who are users only of certain of the principal royalty machines of the Company and when leased they are limited to use with such principal royalty machines.

DEFENDANTS' EXHIBIT 41.

[Put in Evidence, page 1040.]

FOR WELTS AND TURNS.

	Initial Payment.
Goodyear Welt and Turn Shoe Machine	300.
Goodyear Outsole Rapid Lockstitch Machine	300.

AUXILIARY MACHINES.

Goodyear Power Welt Grooving and Beveling Machine	100.
Goodyear Flexible Sole Machine	100.

Goodyear Universal Channeling Machine	300.
Goodyear Tack Pulling and Resetting Machine	250.
Goodyear Insole Tack Pulling Machine	100.
Goodyear Universal Inseam Trimming Machine	300.
Goodyear Welt Beating and Slashing Machine	200.
Goodyear Shank Welt Skiving Machine	50.
Goodyear Improved Sole Laying Machine	300.
Goodyear Heel Seat Rounding Machine	200.
Goodyear Universal Rounding and Channeling Machine	300.
Goodyear Channel Opening Machine	25.
Goodyear Channel Laying Machine	35.
Goodyear Welt Indenting and Burnishing Machine	35.
Goodyear Automatic Sole Leveling Machine	500.
Hadaway Stitch Separating Machine	300.
Goodyear Impression Stitch Burnishing Machine, No. 2	75.
Goodyear Lip Turning Machine	50.
Goodyear Welt Splitting Machine	10.
Goodyear Fudge Edge Machine	125.
Goodyear Welt Edge Turning Machine	100.
Goodyear Outsole Stitch Rubbing Machine	50.
Goodyear Jointing Machine	125.
Goodyear Insole Heel Seat Trimming Machine	150.
Goodyear Upper Stapling Machine	
Goodyear Turn Leveling Machine	350.
Goodyear Power Moulding Machine	50.
Goodyear Turn Shoe Trimming Machine	40.
Goodyear Forepart Turning Machine	75.
Goodyear Heel Turning Machine	75.

PULLING OVER DEPARTMENT.

	Initial Payment.
Rex Pulling Over Machine	$750
Rex Pulling Over Machine (New Model)	1000
Rex Assembling Machine	200
Rex Assembling Machine (New Model)	400
Rex Toe Gumming Machine	150
Rex Rotary Pounding and Trimming Machine	300

Rex Upper Trimming Machine	200

LASTING MACHINE DEPARTMENT.

Consolidated Hand Method Lasting Machine	300
U. S. M. Co. Lasting Machine, No. 5	300

METALLIC DEPARTMENT.

	Initial Payment.
Loose Nailing Machine (old model single raceway)	$250
Loose Nailing Machine (new model single raceway)	300
Loose Nailing Machine (new model double raceway)	400
Universal Slugging Machine	250
Taper Nail Tacking Machine (D.H.)	150
Staple Fastening Machine	150
String Nail Tacking Machine	75

HEELING MACHINE DEPARTMENT.

Automatic Heel Compressing Machine, No. 4 Model	500
McKay Automatic Heel Loading and Attaching Mch.	400
McKay Automatic Heel Loading and Attaching Machine (new model)	750
McKay Heel Trimming and Randing Machine	150
Ultima Heel Trimming Machine	150

GENERAL DEPARTMENT. FOR WELTS AND TURNS.

	Outright Sale
Improved Gearless Sole Cutter, F.	$375
Victor Roller, E.	250
Splitting Machine, M.	75
Splitting Machine, P.	225
Stripping Machine, F.	125
Planet Sole Rounder, B.	250
Apex Feather Edger & Shank Reducer, B.	45
Rotary Cementer, J.	100
Eagle Sole & Upper Stamper, C.	150
Centennial Splitter, A.	125
Champion Heel Lift Skiver	150
Heel Press, S.	25

Royal Punching Machine, A.	75
Royal Perforating Machine, A.	90
Amazeen Skiver, No. 7	135
Pulma Skiver, C.	135
Eagle Sole & Upper Stamper, C.	150
Rapid Seam Rubber	60
Improved Vamp Marker, C.	60
Universal Cementer	85
Star Channel Cementer, C.	85
Imperial Heel Breaster	200
Heel Scourer, G.	65
Heel Breast Scourer, N.	100
Top Lift Scalloper, P.	75
Edge Trimmer, A.	55
Twin Edge Setter, R.	150
Heel Scourer, G.	65
Crest Heel Blacker	250
Buffer, G.	100
Climax Brush Shaft, C.	12
Stitch & Upper Cleaner	60
Tip Scourer, E.	100
Regent Bottom Stamper, C.	200
Miller Twin Shoe Treeing Machine	110
Splitting Machine, N.	150
Improved Gearless Sole Cutter, B.	200
Improved Cutter, P.	160
Improved Gearless Machine, A.	150
Improved Gearless Sole Cutter, K.	425
New Method Heel Seat Beader	150
Top Piece Sander	75
American Twin Sole Moulder, B.	450

DEFENDANTS' EXHIBIT 42.

[Put in Evidence, page 1118.]

SALE OF NON-ROYALTY SHOE MACHINERY.

Monday, June 2, 1913, at 10 A. M.

NON-ROYALTY SHOE MACHINERY.

Cutting Room Machinery

1 Lockett Crimping Machine		$350 00
1 Grind Stone and Frame		16 00

Fitting Room Machinery

2 Peerless Universal Skivers	each,	135 00
1 Fortuna Skiver		185 00
1 Universal 12 Wheel Lining Marker		125 00
1 Peerless Economy Fold Cementer		175 00
1 Peerless Gang Tip Press		100 00
1 Peerless Auto Tip Perforator		135 00
1 Union Special Zig Zag Closer, style 14700		205 00
1 Union Special 1/32 ga. 2 needle Back Strapper, style 12200		155 00
1 Union Special 2 needle 3/32 ga. Staying Machine, style 12200		155 00
1 Union Special 2 needle 3/32 ga. Staying Machine, style 7200		155 00
1 Union Special 3 needle Side Rower, class 8800		140 00
4 Singer style 61-W-30 Machines	each,	30 00
3 Singer style 44-30 Machines	each,	25 00
4 Singer style 22-W-41 Machines	each,	60 00
1 Singer style 29-W-6 Machine		32 50
2 Singer style 44-30 Machines	each,	25 00
1 Singer style 29-4 Machine		37 50
4 Singer style 29-W-15 Machines	each,	40 00
1 Singer style 23-W-8 Machine		27 50
2 Singer style 18-15 Machines	each,	13 50
1 Singer style 69-14 Machine		200 00
2 Singer style 52-W-8 Machines	each,	85 00

1 Singer style 52-W-7 Machine - - -		85 00
3 Singer style 51-W-19 Machines - - -	each,	70 00
1 Singer style 45-W-8 Machine - - -		60 00
2 Booth Power Folders - - - - -	each,	180 00
1 Booth Columbia Beader - - - -		55 00
1 Foot Power Eyeletter - - - - -		22 00
1 Hand Seam Rubber - - - - -		3 00
1 Small Emery Wheel Frame, one Vise and one Seam Opener - - - - - -		5 00
Lasting and Welt Room Machinery		
1 Freeman Insole Tacker - - - -		$150 00
3 Standard Rotary Lasting Machines -	each,	570 50
1 Freeman V Shaped Iron - - - -		15 00
1 Haverhill Welt Groover - - - -		35 00
1 Haverhill Welter - - - - - -		800 00
1 Universal Welter - - - - -		500 00
1 Freeman Insole and Side Tack Puller - -		125 00
1 Keighley Inseam Trimmer - - - -		500 00
1 Hamel Welt Beater - - - - -		35 00
1 Standard Rotary Sole Layer - - -		548 43
1 Universal String Nailer - - - -		225 00
2 Standard Rotary Rounders - - - -	each,	570 38
1 Standard Rotary Stitcher - - - -		658 13
2 Universal Stitchers - - - - -	each,	560 00
1 Stanbon Channel Cementer - - - -		75 00
1 Standard Rotary Channel Layer or closer -		31 79
1 Freeman Stitch Cleaning and Feathering Edge Machine - - - - - - -		55 00
1 Booth Fudge Wheeling Machine - - -		75 00
1 Standard Rotary Stitch Separator - - -		175 50
1 Standard Rotary Leveller - - - -		548 43
Machine Shop Machinery		
1 Colcord-Wright Lathe - - - - -		$253 00
1 Colcord-Wright Grinder - - - - -		19 60
1 Colcord-Wright Drill - - - - -		60 00

1 Forge, Anvil, Stand and Fan - - -		19 80
Bottoming and Finishing Room Machinery		
1 Haverhill Heeler - - - - - -		$900 00
1 Freeman Heel Seat Rounder - - -		100 00
1 Hamel Slugger - - - - - -		750 00
1 Haverhill Heel Trimmer - - - -		250 00
1 Rowan Heel Trimmer (Smith Shaver) - -		75 00
1 Haverhill Breaster - - - - -		225 00
1 Briggs-Belmer Edge Trimmer - - -		50 00
1 Haverhill Edge Trimmer - - - -		85 00
2 Rowen Heel Scourers - - - - -	each,	75 00
1 Rowen Edge Setter - - - - -		170 00
1 Booth Wheeler - - - - - -		125 00
1 Universal Loose Nailer - - - -		225 00
1 Matson Bros. Heel Burnisher - - -		150 00
1 Boylston Heel Finisher - - - -		100 00
2 Rowen Bottom Sanders - - - -	each,	75 00
4 Finishing Shafts and Rolls - - - -	each,	16 10
1 Gas Stove - - - - - - -		5 00
1 Edge Brusher and Edge Scourer - - -		27 00
1 Markem Embossing Machine - - -		275 00
2 Drier Frames - - - - - -	each,	8 00
Packing Room Machinery		
5 Copeland Treeing Machines - - - -	each,	$35 00
1 Miller Creasing Machine - - - -		200 00
1 Shaft Brush - - - - - -		16 10
Markem Carton Marker on Stand - - -		200 00
5 pr. Copeland Tree Legs - - - -	per pair,	60 00
1 Queen Tip Buffer - - - - -		40 00
1 110-Volt Electrical Tool Heater - - -		6 75
5 Electric Treeing Irons - - - - -	each,	12 00
Sole Leather and Heel Making Room Machinery		
1 102″ Geerless Sole Cutter (Seelye Mfg. Co.)		$350 00
1 46″ Geerless Sole Cutter (Seelye Mfg. Co.)		275 00
1 24″ Geerless Sole Cutter (Seelye Mfg. Co.) -		175 00

1 Splitting Machine (Seelye Mfg. Co.) - -		150 00
1 Rolling Machine (Seelye Mfg. Co.) - -		140 00
1 Peerless Tap Scourer - - - - -		200 00
1 Champion Power Tap Skiver on Stand - -		35 00
1 Rowen Twin Sole Moulder - - - -		225 00
1 Julian Power Cementer - - - -		125 00
1 Standard Rotary Sole Skiver - - -		21 90
1 Haverhill Lip Turner - - - - -		75 00
1 Hamel Insole Welt Channeller - - -		65 00
1 Haverhill Welt Channeller - - - -		65 00
1 Bresnahan Splitter - - - - -		6 00
1 Heel Gauge - - - - - -		2 00
1 Young's Heel Gauge - - - - -		135 00
1 Young's Wedge Stripper - - - -		125 00
1 Young's Heel Compresser - - - -		500 00
1 Julian Sole Rounder - - - - -		175 00
1 Rand Cutting Machine - - - -		35 00
1 Hand Heel Press - - - - -		20 00
Miscellaneous		
1 Chair, office - - - - - -		$2 50
2 Benches, office - - - - - -	each,	5 00
1 Stool, office - - - - - -		5 00
1 Typewriter Desk, office - - - -		35 00
2 Flat Top Desks, office - - - -	each,	30 00
1 Sample Case, office - - - - -		40 00
1 Cabinet, for machine parts - - - -		36 00
1 Table, office - - - - - -		15 00
2 Ceiling Fans, office - - - - -	each,	27 75
1 Safe, office - - - - - - -		75 00
1 Adding Machine, office - - - -		90 00
3 2-H. P. Motors - - - - - -	each,	60 35
3 5-H. P. Motor - - - - - -	each,	61 20
1 7½-H. P. Motors - - - - -	each,	144 50
1 10-H. P. Motor - - - - - -	each,	170 65
1 15-H. P. Motor - - - - - -	each,	201 25

Shafting, hangers, pulleys, couplings, drip pans, etc. (approximate) - - - - -		410 00
Tables and used lumber (approximate) - -		197 00
32 spaces double trough Sewing Machine Tables	per space,	4 50
50 Shoe Racks (Whitman Agricultural Co.) -	each,	5 75
50 Shoe Racks (W. F. Goessling Box Co.) -	each,	5 25
130 Shoe Racks (Second Hand) - - -	each,	0 50
About 3700 pr. various Welt Lasts - -	per pair,	1 37

DEFENDANTS' EXHIBIT 43.

[Put in Evidence, page 1242.]

[Stamped:]
Received Feb 2 1913 F. G. K.

THE EXCELSIOR SHOE COMPANY
Manufacturers of Men's, Boys Youths and Little Gents Fine Shoes.

Branch Offices, Berlin, Germany, New York, Philadelphia, Pittsburgh, Cincinnati, Chicago, St. Louis.

Cable Address "Excelsior"

D. C. Davies, Prest. W. G. Williams, Treas.
J. E. Williams, V. Prest. & Gen. Mgr. J. W. Bannon, Jr., Secy.

Portsmouth, Ohio, Feb. 25, 1913.

Colonel King, United Shoe Machinery Co., Boston, Mass.

Dear Sir: — Your Mr. Ross, Jr. of Cincinnati was here, and we spent the most of a day in going over our proposition for the new factory, and he stated the conditions on which the Company would allow us to equip our new factory with any machinery that we desired in same.

We find upon taking the cost of your machines and what royalty we would pay and the rate of interest and depreciation, that even if we could save on the royalty, it would be a question whether there was any profit, and as far as we can figure, there would possibly be about $1,000.00 to our advantage in a year, or perhaps a little over. We do not feel that this is interesting enough as a business proposition, and told your Mr. Ross that we would go

ahead equipping the factory with your machinery, but the writer thinks that this would be an ideal plant, as we believe we are really organizing economically in any line that would show a saving, as we believe in the next rear or two all American shoes will come in severe competition with English and German made shoes, as the tendency at Washington is to take off the tariff.

As this plant is to make only two or three shoes in a Mock Welt, and is particularly adapted to Boys' shoes and nothing but this one style shoe will be made there, and as we expect to equip fully with your machinery, why would it not be in line to take this plant and your Company use it as an experiment towards a new relation of royalty. For instance, if the Excelsior Shoe Co. makes just a certain shoe in style and grade under certain conditions, and does not branch out into all styles and different constructions in this factory, why should we not be entitled to a plan something like the following, — that we should be given a flat rate for the making of shoes under this head and conditions, probably showing a saving of say half a cent a pair over the old basis.

We feel that with some encouragement on this line that the general income of your machinery in that plant will average more than the general plant in running this plain simple line, and everything being done to produce quantity easily so that what machinery was there would even yield more income than machines in the plant, where all styles and the general line of work is done.

We feel that in doing this you would show an interest, as you have always professed in the manufacturer, and would also encourage a line of goods that would always keep the American shoes, even with Free Trade competition, possibly on the fighting line.

There is no fear of a precedent in considering this question, as we do not think there is another plant like it at present in the country, and we could almost assure you that the aggregate of the machinery in this plant even with a reduced flat rate would yield more than the average equipment that you have in another plant running a regular line.

We presented this matter to Mr. Ross, and he thought it was interesting, as I showed him in a way what we expected to do

there, and as you have always stated that the Company wished to do something to show that they were interested in the manufacturer in keeping costs down when they could feel they were safe in doing so, we felt that in presenting this proposition, we have really opened up a way for the Company to co-operate.

Trusting to hear from you at an early date, as we will soon be ready to start, we remain, Yours very truly,

THE EXCELSIOR SHOE CO.

Dict. — JEWGC. Jno. E. Williams, G. M.

DEFENDANTS' EXHIBIT 44.

[Put in Evidence, page 1319.]

Lease No. *227*

Transfer from Lease No.

This Lease and Agreement, made the *30th* day of *September* A. D. 189*8*, by and between the Eppler Welt Machine Company, a corporation existing under the laws of the State of Maine, having a place of business at Boston, Massachusetts, Lessor, the party of the first part, and *R. H. Long Shoe Mfg. Co. doing business at Springfield, Mass.* Lessee, the party of the second part, witnesseth:

Whereas, the Lessor is now the owner of the following Letters Patent of the United States, viz.: —

No. 325,063, dated Aug. 25, 1885;
No. 387,059, dated July 31, 1888;
No. 487,011, dated Nov. 29, 1892;
No. 409,281, dated Aug. 20, 1889;
No. 507,873, dated Oct. 31, 1893.
No. 387,058, dated July 31, 1888;
No. 447,872, dated March 10, 1891;
No. 487,214, dated Nov. 29, 1892;
No. 498,017, dated May 23, 1893.

And whereas the Lessee desires to use the hereinafter described machines belonging to the Lessor;

Now, therefore, the Lessor, in consideration of one dollar to it paid by the said Lessee, the receipt whereof is hereby acknowledged, and of the stipulations and conditions hereinafter contained on the part of the Lessee to be kept and performed, doth lease unto the said party of the second part the machines designated by their numbers in the following schedule: —

Two Eppler Inseam Sewing Machine , Nos. *77, 151*

Three Eppler Outsole Lock Stitch Machine , Nos. *72, 145, 156*

One Eppler Insole Channeler , No. *103*

Eppler Outsole Channeler , No.

One Eppler Welt Groover and Beveler , No. *103*

One Eppler Welt Splitter , No. *88*

One Eppler Welt Beater , No. *89*

Eppler Channel Lip Turner , No.

Eppler Shank Skiver , No.

One Eppler Bobbin Winder , No. *87*

It is understood that said machines are and shall remain the property of said Eppler Welt Machine Company, and subject to the conditions of this lease and agreement.

And the Lessor doth hereby license the Lessee, and operatives in his employment, to use said machines, upon the terms and conditions hereinafter set forth; provided, however, and this lease is made and this license is granted on the express condition, that the Lessee shall faithfully keep and perform all the conditions and stipulations herein contained on his part to be kept and performed; and upon breach of the same or of any of them by the Lessee, the Lessor, its successors or assigns, may, at their option, cancel and terminate this lease and license; and upon written notice thereof by the Lessor, its successors or assigns, to the Lessee, or to any one in the possession or apparent control of the said machines, or any of them, this lease and license shall terminate, and possession of said machines shall thereupon be transferred to said Lessor, its successors or assigns. And the said party of the second part hereby agrees to keep and perform all the following conditions of this lease and license:—

First. The Lessee is by this lease and license authorized to use the machines hereby leased only in said *Springfield, Mass.* he shall not add to nor subtract from the said machines any mechanism whatever now or hereafter organized or connected therewith by the Lessor, nor make, nor allow to be made, any change or alteration in the same, without the consent thereto in writing by the Lessor, nor interfere with the proper operation of the machines, or any

mechanism forming a part thereof, or attached thereto, nor remove nor deface any dates, numbers, or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessor.

Second. It shall be lawful for the Lessor, or its duly authorized agent, at all reasonable times to have convenient access to the machines, to examine and inspect the same and the use thereof, and to verify the operator's reports, and to improve the machines, and to affix indicators thereto, as it may see fit; and the covenants, stipulations, and conditions herein contained shall apply to all improvements which the Lessor shall hereafter add to the machines, to indicators now or hereafter affixed thereto, and to all patents hereafter embodied therein, with the same effect as if said patents were included in the list herein set forth.

Third. The following is the schedule of rents or royalties hereinafter referred to, and which it is understood and agreed is to be paid on each pair of shoes or boots respectively made by the aid of these machines or any of them, or by the use of the said patents or any of them, viz.: —

SCHEDULE OF RENTS AND ROYALTIES.

Children's	3 cents.
Misses'	4 "
Women's	6 "
Youth's	4 "
Boys'	6 "
Men's	8 "

Fourth. The Lessee hereby agrees to keep an account of all boots and shoes sewed by him, or by any other person for him or for others, by the aid of the machines hereby leased, or by the use of the patents aforesaid and to render an account thereof to the Lessor, its successors or assigns, on or before the tenth day of each month; which account shall specify the number of pairs of boots and shoes, made under this lease and license during the calendar month next preceding, and the class to which they belong according to the above schedule; and the said Lessee agrees that he will require the operator or operators on said machines to keep a daily

account of all boots and shoes sewed on said machines, upon the printed forms to be furnished by the Lessor, in duplicate; one copy of which, containing such reports for the calendar month preceding, the Lessee agrees to send, on or before the tenth day of each month, to the Lessor; and whenever required by the Lessor, its successors or assigns, to make oath to the correctness of said returns; and to allow the Lessor, its successors, assigns, or authorized agents to examine the original books and accounts of the Lessee, in order to verify the returns aforesaid, and the Lessee agrees to send to the Lessor, on or before the tenth day of each month, in case the machines, or any of them, hereby leased have not been run during the month next preceding, one of the aforesaid printed forms furnished by the Lessor, for each such machine, signed by the Lessee, and marked across the face with the words "not running" or "not in use."

Fifth. The Lessee agrees to pay unto the Lessor, as rent for the machines hereby leased, the rent or royalty specified in the schedule forming part of Section Third herein, on each pair of boots or shoes of the respective kinds mentioned or described in said schedule made by the aid of the said machines or of any of them, or by the use of the said patents or any of them; the rents and royalties for all such boots and shoes made as aforesaid during one calendar month, to be due on the first day of the calendar month next following, and to be paid within three months from that day; but the Lessor hereby agrees that **if the rents and royalties due on the first day of any month shall be paid on or before the fifteenth day of that month, it will, in consideration thereof, grant a discount of fifty** and twenty-five **per cent. from the rents and royalties specified in the schedule aforesaid; and the Lessee further agrees to pay, while he shall retain possession of the machines hereby leased, all taxes thereon, to whomsoever laid or assessed.** The Lessee hereby further agrees that the rents or royalties actually paid by the Lessee for each sewing or stitching machine herein leased shall, in each and every year, during the continuance of this lease, amount in the aggregate to at least one hundred dollars. The

Lessee shall also pay the expense of transportation of the machines herein leased from and to the Lessor's premises, and also the expense of keeping said machines in repair; and shall keep said machines and all of them fully insured in the amounts hereinafter mentioned against loss by fire, and in case of loss or damage to said machines or any of them shall pay to the Lessor or its order upon demand the full amount of such insurance. The insurance upon said machines shall be in the following amounts, to wit: —

Eppler Inseam Sewing Machine	$250.00
Eppler Outsole Lock Stitch	190.00
Eppler Insole Channeler	50.00
Eppler Outsole Channeler	50.00
Eppler Welt Groover and Beveler	15.00
Eppler Welt Splitter	10.00
Eppler Welt Beater	25.00
Eppler Channel Lip Turner	25.00
Eppler Shank Skiver	35.00
Eppler Bobbin Winder	25.00

Sixth. The Lessee hereby agrees that he will not in any way violate, or infringe, or contest the validity of any of the patents he is hereby licensed to use, or the sufficiency of their specifications, or the validity of the title of the Lessor, or of its successors or assigns, to said patents or any of them.

Seventh. This lease and license is not assignable by the Lessee, by his own act or by operation of law.

Eighth. The following are also agreed to by the parties to this instrument as the terms of lease and license of the machines which the Lessee is hereby licensed to use: —

1st. That the power conveyed by this lease and license is only the right to use the said machines, and not the right to make or sell any machine embodying the patents aforesaid, or any of them; and that a transfer or removal of the machines hereby leased, or any of them, can only be made with the consent of the Lessor, its successors or assigns; and that if the Lessee is, or becomes at any time, insolvent or bankrupt, or makes an assignment for the benefit of creditors, or if a sale, lease, transfer, or removal of said ma-

chines, or any of them, shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative, or assignee, as the property of the Lessee, without the written consent of the Lessor, or its successors or assigns, this lease and license shall thereupon terminate and expire; and the Lessor, its successors or assigns, may take possession of said machines without the Lessee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this lease and license, or for rent or license under this instrument.

2d. The Lessee agrees that the machines hereby leased shall be used only in the manufacture of boots and shoes known in the trade as "Eppler Welts," and that he will not use or permit the use of said machines, or either or any of them, upon boots or shoes in the manufacture of which any sole or welt sewing machine not leased to him by the Lessor is employed, or for any other purpose, unless the consent in writing of the Lessor shall first have been obtained.

3d. That in case the Lessee refuses or neglects to perform, or violates any of the terms or conditions of this lease and license, the Lessor, its successors or assigns, shall have the right to terminate this lease and license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this lease and license shall be terminated, and the possession of said machines shall thereupon be transferred to the Lessor, its successors or assigns, free and discharged of this lease and license; and the Lessor, its successors or assigns, or its authorized agent or agents, may thereupon enter the premises where said machines may be, and may take and remove the same without being deemed guilty of any trespass; and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease or license.

4th. That this lease and license shall continue (provided the Lessee complies with the terms and conditions thereof) until the expiration of all the Letters Patent which the Lessee is hereunder licensed to use, or any extensions or renewals of the same, or addi-

tional patents; and upon the expiration thereof, the Lessee shall deliver to the Lessor, its successors or assigns, the machines hereby leased, in good order; natural wear and tear alone excepted.

Ninth. In case any other machines than these hereby leased and licensed, embracing any of the inventions patented in the aforesaid Letters Patent, or any of them, or any inventions or improvements for which Letters Patent shall be granted or assigned to the Lessor, shall hereafter come into possession of the Lessee, by exchange or otherwise, without lease or license from the Lessor, its successors or assigns, then in case the Lessor, its successors or assigns, shall so elect, all the covenants herein contained shall apply to such machines, inventions or improvements; and shall govern the parties respectively to the same extent as if the said machines, inventions or improvements had been expressly included in this lease and license. The Lessor shall give written notice of its election as aforesaid within thirty days after it shall have received written notice from the Lessee of the possession of such machines; but may give such notice without having received notice from the Lessee of the possession of such machines.

Tenth. The Lessee agrees that he will not disturb or interfere with, nor permit any one else to disturb or interfere with, any indicator which now is, or which may be hereafter, placed upon the machines as aforesaid.

Eleventh. All the rights and interests which under this instrument and by reason of the ownership of said machines and patents and patent rights belonging to the Lessor shall be deemed to belong to, and may be enforced in, the names of the Lessor and its successors and assigns, and all the stipulations binding on the Lessee shall be binding on his executors or administrators.

Twelfth. It is agreed that the numbers of the machines named in this lease may be entered herein by the Lessor after signing; and in case the Lessee shall require more than one machine, it is agreed that the termination to words relating to the machines shall be construed and considered as written in the single or plural, as the number of machines entered in the lease and license may require; and also that this instrument may be used in cases where the party

of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular, as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained.

In Witness whereof, the parties aforesaid have hereunto put their hands and seals: the said parties of the second part binding themselves to all the foregoing agreements, both jointly and severally.

[SEAL] EPPLER WELT MACHINE COMPANY,
By Walter B. Trowbridge, Treas.

[SEAL] R. H. LONG SHOE MFG CO.
R. H. Long Pres.

[On back:]

No. 227 Name R. H. Long Shoe Mfg. Co.
Address Springfield, Mass. Date Sept. 30, 1899.

Machine.	No.	Page.
Inseam Sewing Machine	77, 151	
Outsole Lock Stitch	72, 145, 156	
Insole Channeler	103	
Outsole Channeler		
Welt Groover and Beveler	103	
Welt Splitter	88	
Welt Beater	89	
Channel Lip Turner		
Shank Skiver		
Bobbin Winder	87	

[Attached to Defendants' Exhibit 44.]

Lease No. *56*.

This Agreement, made this *30th* day of *September, 1898*, by and between the Eppler Welt Machine Company, a corporation existing under the laws of the State of Maine, having a place of business in Boston, in the Commonwealth of Massachusetts, party of the first part, and *R. H. Long Shoe Mfg. Co.*, party of the second part.

Witnesseth: That said party of the first part agrees to the use

and the second party of the second part agrees to lease a certain machine manufactured and lease by said party of the first part called the *Stitch Separator*, for which said machine said party of the second part is to buy the privilege of using machines of the party of the first part for Two Hundred Dollars, provided, however, that said party of the second part is to have trial of said machine for Thirty Days from the date of receipt thereof, and if accepted or retained by said party of the second part after the said period of trial, then said purchase money, Two Hundred Dollars, shall then become due and payable, and said party of the second part agrees to keep said machine insured during the said period of thirty days in and the sum of two Hundred Dollars for the party of the second part, and not to injure or depreciate the value of said machine during the said period of trial, reasonable use and wear thereof excepted. And said party of the second part further agrees as a part of the consideration of said sale and purchase, that *they* will not during said period of trial and any time thereafter when title to said machine has vested in said party of the second part, use or employ said machine except in connection with the Eppler Welt Machine System in the manufacture of boots and shoes, and that *they* will not lease said machine without the consent in writing of said party of the first part.

In witness whereof, said parties have hereto interchangeably set their hands and seals by their officers duly empowered thereto, and their own act, in the day and year first above written.

EPPLER WELT MACHINE COMPANY.
By Walter B. Trowbridge, Treas [SEAL]
R. H. LONG SHOE MFG. CO.
R. H. Long, Pres [SEAL]

[On back:]
S. S. No. 56
Eppler Welt Machine Co. to R. H. Long Shoe Mfg. Co.
Springfield, Mass., September 30, 1898

[Attached to Defendants' Exhibit 44.]

Lease No. *61.*

This Agreement, made this *30th* day of *September, 1898*, by and between the Eppler Welt Machine Company, a corporation existing under the laws of the State of Maine, having a place of business in Boston, in the Commonwealth of Massachusetts, party of the first part, and *R. H. Long Shoe Mfg. Co.* party of the second part.

Witnesseth: That said party of the first part agrees to the use and the second party of the second part agrees to lease a certain machine manufactured and lease by said party of the first part called the *Rough Rounder*, for which said machine said party of the second part is to buy the privilege of using machines of the party of the first part for Two Hundred Dollars, provided, however, that said party of the second part is to have trial of said machine for Thirty Days from the date of receipt thereof, and if accepted or retained by said party of the second part after the said period of trial, then said purchase money, Two Hundred Dollars, shall then become due and payable, and said party of the second part agrees to keep said machine insured during the said period of thirty days in and the sum of Two Hundred Dollars for the party of the second part, and not to injure or depreciate the value of said machine during the said period of trial, reasonable use and wear thereof excepted. And said party of the second part further agrees as a part of the consideration of said sale and purchase, that *they* will not during said period of trial and any time thereafter when title to said machine has vested in said party of the second part, use or employ said machine except in connection with the Eppler Welt Machine System in the manufacture of boots and shoes, and that *they* will not lease said machine without the consent in writing of said party of the first part.

In witness whereof, said parties have hereto interchangeably set their hands and seals by their officers duly empowered thereto, and their own act, in the day and year first above written.

EPPLER WELT MACHINE COMPANY

By Walter B. Trowbridge Treas [SEAL]

R. H. Long Shoe Mfg. Co.

R. H. Long Pres [SEAL]

[On back:]

R. R. No. 61

Eppler Welt Machine Co. to R. H. Long Shoe Mfg. Co.
Springfield, Mass., Sept. 30, 1898.

DEFENDANTS' EXHIBIT 45.

[Put in Evidence, page 1319.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass., July 31 1899

Eppler Welt Mch Co. Boston

Gentlemen Enclosed Chk

Royalty Fee	194.76
Parts	25.18
	219.94

Please send us man at once to teach operator on Welter. We also need agent to fix up stitcher at once. We dont expect to do anything in Belchertown at present owing to certain circumstances. Will call on you when next in Boston. Yours truly

R. H. Long

DEFENDANTS' EXHIBIT 46.

[Put in Evidence, page 1320.]

[Stamped:]

Eppler Welt Machine Co., May 24 1899
Opened by Batchelder Answered May 24 1899

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. May 17, 1899

Eppler Welt Mch Co. Brockton Mass.

Gentlemen Enclosed find check for royalty to May 1 less 50%

	305.66
Parts a/c 30.78 — 5% 1.54	29.24
	334.90

We pay this royalty without deducting the 25% although we took the machines with royalty at 3c net. If other lessees only pay 3c we shall expect refund of the extra 1c Yours truly

R. H. Long

DEFENDANTS' EXHIBIT 47.

[Put in Evidence, page 1320.]

[Stamped :]

Eppler Welt Machine Co., Dec 19 1899
Opened by Batchelder Answered

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.
Makers of Fine Shoes.

Springfield, Mass. Dec 19, 1899.

Eppler Welt Mch Co. Boston Mass.

Gentlemen Your letter at hand. We will pay you October royalty this week and November royalty next week Hoping this will be satisfactory, I am Yours truly

R. H. Long

If they do not pay as agreed write to them again. Wait until 26 inst for Oct ck. F. E. K.

DEFENDANTS' EXHIBIT 48.

[Put in Evidence, page 1322.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.
Makers of Fine Shoes.

Springfield, Mass. Feb 13 1899

Eppler Welt Mach. Co. Boston.

Gentlemen, Please send us 6 awls for Eppler welter for use with No. 41 needles; also 4 needle guards for No. 41 needles.

Yours truly

R. H. Long Shoe Mfg Co.

Telephoned factory Feb. 15, 1899 W. S. B. F.

DEFENDANTS' EXHIBIT 49.

[Put in Evidence, page 1322.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 2/17 1899

Eppler Welt Mch Co.

Gentlemen Please send at once, One set of knives for Rounding Mch

50 No 47 needles for stitcher

50 " 41 " " welter

Resp Yours

R. H. LONG SHOE MFG CO.

Telephoned factory Feb 17, 1899 W. S. B.

DEFENDANTS' EXHIBIT 50.

[Put in Evidence, page 1322.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 2/2 1899

Eppler Welt Mch Co.

Gentlemen The springs you sent were not the ones wanted.

We want the spring that keeps the bobbin from turning too far around and thereby leaving slack thread

Resp Yours

R. H. LONG SHOE MFG CO.

Telephoned factory Feb 23, 1899 W. S. B.

DEFENDANTS' EXHIBIT 51.

[Put in Evidence, page 1323.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 2/22 1899

Eppler Welt Mch Co.

Gentlemen The number of the parts sent for were 543–544 Please send two of each at once Resp Yours

R. H. Long Shoe Mfg Co.

Telephoned factory Feb. 23, 1899 W. S. B.

DEFENDANTS' EXHIBIT 52.

[Put in Evidence, page 1323.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 2/28 1899

Eppler Welt Mch Co.

Gentlemen Please send by return mail 25 No 47 awls

50 " 41 welt needles

50 47 stitching needles

Resp Yours

R. H. Long Shoe Mfg Co.

DEFENDANTS' EXHIBIT 53.

[Put in Evidence, page 1323.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 3/1 1899

Eppler Welt Mch Co.

Gentlemen Please send by return mail 6 Gib Ring screws No 413 N S

Resp yours

R. H. Long Shoe Mfg Co.

Telephoned factory March 2, 1899 W. S. B.

DEFENDANTS' EXHIBIT 54.

[Put in Evidence, page 1323.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 3/13 1899

Eppler Welt Mch Co.

Gentlemen Please send by return mail

50 No 47 stitching needles

50 No. 41 Welt "

Resp yours

R. H. LONG SHOE MFG CO.

Telephoned Factory 3–14–99

DEFENDANTS' EXHIBIT 55.

[Put in Evidence, page 1323.]

[Stamped:] Mar 20 1899

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 3/18 1899

Goodyear Shoe Mch Co.

Gentlemen Please send us by return mail (6) six gem channelling knives No 7 for Eppler channeler Resp yours

R. H. LONG SHOE MFG CO

Telephoned factory March 29, 1899 W. S. B.

DEFENDANTS' EXHIBIT 56.

[Put in Evidence, page 1323.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 189

Eppler Welt Mch Co.

Gentlemen Please send by return mail 100 No. 41 welt needles

Resp yours

R. H. LONG SHOE MFG CO.

Telephoned factory April 7, 1899.

DEFENDANTS' EXHIBIT 57.

[Put in Evidence, page 1325.]

[Stamped:]
Apr 13 1899

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.
Makers of Fine Shoes.

Springfield, Mass. April 12, 1899

Goodyear Shoe Mch Co. Boston Mass.

Gentlemen: Please send us an agent to be here Monday and teach operator on the Eppler Welter. Would like to have him stay three or four days. Please send us 2 Gib or Jib rings for Eppler Stitcher Machines at once. Yours truly

R. H. Long.

Telephoned factory 4/13/99 W. S. B.
Advised Brockton by letter April 13/99 W. S. B.

DEFENDANTS' EXHIBIT 58.

[Put in Evidence, page 1325.]

[Stamped:]
Apr 14 1899

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.
Makers of Fine Shoes.

Springfield, Mass. April 14 1899

Goodyear Shoe Mch Co. Boston Mass.

Gentlemen Please send to us

1 Belt for rough rounder.
6 Knives " " " as head
(for Eppler Machine)

We need this at once Please rush Yours truly

R. H. Long Pres

Telephoned factory April 14/99 W. S. B.

DEFENDANTS' EXHIBIT 59.

[Put in Evidence, page 1326.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 4/15 1899

Eppler Welt Mch Co.

Gentlemen Enclosed find channel knives. The knives wanted are for Rough Rounder. Resp yours

R. H. LONG SHOE MFG CO.

Telephoned factory W. S. B.

DEFENDANTS' EXHIBIT 60.

[Put in Evidence, page 1326.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 4/22 1899

Eppler Welt Mch Co

Gentlemen Please send us by return mail (12) twelve gem channeling knives Resp yours

R. H. LONG SHOE MFG CO.

Telephoned factory April 24, 1899 W. S. B.

DEFENDANTS' EXHIBIT 61.

[Put in Evidence, page 1326.]

[Stamped:]

Eppler Welt Machine Co., Apr 26 1899

Opened by W. S. B. Answered Telephoned factory

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 189

Eppler Welt Mch Co.

Gentlemen Please send by return mail 100 No 47 stitching needles Resp yours

R. H. LONG SHOE MFG CO.

DEFENDANTS' EXHIBIT 62.

[Put in Evidence, page 1326.]

[Stamped:]

Eppler Welt Machine Co., May 3, 1899
Opened by W. S. B. Answered Telephoned factory

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.
Makers of Fine Shoes.

Springfield, Mass. 5/2, 1899.

Eppler Welt Mch Co.

Gentlemen Please send by return mail 200 No. 41 welt needles. Part No 466 for stitcher Resp Yours

R. H. Long Shoe Mfg Co.

DEFENDANTS' EXHIBIT 63.

[Put in Evidence, page 1327.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.
Makers of Fine Shoes.

Springfield, Mass. 10/28 1899.

Eppler Welt Mch Co.

Gentlemen Please send three screws. Do not know number. The screw that holds shield and welt spring to welt guide.

Resp yours

R. H. Long Shoe Mfg Co.

DEFENDANTS' EXHIBIT 64.

[Put in Evidence, page 1327.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.
Makers of Fine Shoes.

Springfield, Mass. Nov 3 1899

Eppler Welt Machine Co. Boston Mass.

Messrs. Kindly send us 6 each #0 and #7 Channelling Knives for Innersole machine.

A little while ago you sent us 2 Belts for Rough Rounder. Now

one is much shorter than the other, and the long one is all right but cannot use the short one.

Shall we send it back to you or give it to your man when he comes

Awaiting your reply I remain

Respectfully yours

R. H. Long Shoe Mch Co.

M

DEFENDANTS' EXHIBIT 65.

[Put in Evidence, page 1327.]

[Stamped:]

Eppler Welt Machine Co., Nov 23 1899
Opened by Batchelder Answered Telephoned factory
Confirmed Nov 23 1899

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. Nov 22 1899

Eppler Welt Co. Boston Mass.

Messrs: Kindly send us 6 Awls for Eppler Welt to run with 41 needle.

Your promptness will greatly oblige, Yours respy

R. H. Long M

DEFENDANTS' EXHIBIT 66.

[Put in Evidence, page 1327.]

[Stamped:]

Eppler Welt Machine Co., Nov 24 1899
Opened by Batchelder Answered Telephoned factory
Confirmed Nov 24 1899

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. Nov 23 1899

Eppler Welt Mch Co. 64 Lincoln St.

Messrs: Kindly send us 6 K. Channelling Knives like sample enclosed Respy yours

R. H. Long Shoe Mfg Co. M

DEFENDANTS' EXHIBIT 67.

[Put in Evidence, page 1330.]

[Stamped:]

Received Jun 5, 1900 — W. S. B.—
Received Jun 5, 1900 F. G. K.

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 6/4 1900

Eppler Welt Mch Co. Lincoln St.

Gentlemen Please send agent to fix Stitcher. This is machine we have had so much trouble with It has broken (4) four gears No 418 in a week. If you send agent from Brockton would prefer Mr. Torrey unless you think somebody else is better. Send (2) two gears No. 418 by return mail. Would like this machine fixed as soon as possible as we are very busy

Resp Yours

R. H. Long Shoe Mfg Co.

DEFENDANTS' EXHIBIT 68.

[Put in Evidence, page 1333.]

Lasting Machine Department.

Lease and License Number *142*.

Chase Lasting Machine.

This Lease and Agreement made at Boston in the State of Massachusetts this *sixteenth* day of *January* 190*4* between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey having an office in said Boston, hereinafter referred to as the lessor, of the one part, and *R. H. Long Shoe Manufacturing Company, South Framingham*, in the State of *Massachusetts*, hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under its patents to use the

machine or machines of the Lasting Machine Department of the lessor now or hereafter delivered to the lessee, and designated by number as follows, viz. : —

Chase Lasting Machine No. *42*, *275*, *561*, *572*, *1223*, *1259*.

Chase Hand Tacker (Stop Motion) No. *955*, *1557*, *1640*, *1652*, *1662*, *2306*,

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform : —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at *South Framingham* in the State of *Massachusetts*. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale or lease or removal of the leased machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any

other lease or license then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all the leased machinery, and any machinery held by the lessee under any other lease or license from the lessor, whether as the result of assignment to the lessor or otherwise, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction, or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same. The lessee shall also purchase from the lessor exclusively at the prices from time to time established by the lessor all supplies, including string nail, tack strips, and other fastening material used in connection with the leased machinery.

Three. The lessee shall at his own expense insure the leased machinery against loss by fire, and keep the same insured to the amount of Two Hundred (200) Dollars for each Chase Lasting Machine hereby leased, and in case the same is lost or destroyed by fire, or otherwise before the expiration or termination of this

lease, then the lessee shall pay to the lessor upon demand the sum of Two Hundred (200) Dollars for each Chase Lasting Machine and accessories as partial compensation for such loss or destruction. The lessee shall pay all taxes and assessments which shall be levied in respect to the leased machinery or in respect to this lease and license, or the right to payments hereunder upon whomsoever assessed.

Four. The lessee shall use the leased machinery to its full capacity on all boots, shoes, and other footwear made in his factory in the manufacture of which it can be used, but the leased machinery shall not nor shall any part thereof be used in the manufacture of any boots, shoes, or other footwear which are or shall be welted or the soles stitched on welt sewing or sole stitching machines not leased to the lessee by the lessor or its assignor or in the manufacture of any turn boots, shoes, or other footwear, the soles of which are or shall be attached to their uppers by turn sewing machines not leased to the lessee by the lessor or its assignor, or in the manufacture of any boots, shoes, or other footwear which have been or shall be slugged, heel seat nailed, or otherwise partly made by the aid of any "metallic" machinery not leased to the lessee by the lessor or its assignors.

Five. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of one and one half (1½) cents for each pair of long-legged boots and of one (1) cent for each pair of all other kinds of boots, shoes, or other footwear, or portions thereof, lasted or manufactured or prepared during the next preceding calendar month in any way, whether wholly or in part, by the aid of the leased machinery or any part thereof; **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month.** The lessee guarantees that for each Chase Lasting Machine hereby leased the rent or royalty herein provided (less all abatements)

shall amount in each calendar year, ending December 31, to at least (10) dollars for each calendar month and at the end of each such calendar year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty; provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle.

Six. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then, and as often as the same shall happen, the lessee shall immediately, by writing, notify the lessor, and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, one and one-half (1½) cents per pair for each pair of boots, shoes, or other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of each kind of boots, shoes, and other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and

to take copies of such accounts and entries of the lessee as may serve to determine the total number of boots, shoes, or other footwear or portions thereof made by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number of each kind of boots, shoes, and other footwear, or portions thereof, in the making of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, none of the leased machinery has been used, the lessee shall notify the lessor in writing of that fact, on or before the fifth day of the next succeeding calendar month. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following agreements, stipulations, and provisions are agreed to:—

Seven. If at any time the lessee shall fail or cease to use exclusively lasting machinery held by him under lease from the lessor for lasting all boots, shoes, and other footwear made by or for him, which are lasted by the aid of machinery, or shall fail or cease to use exclusively tacking mechanisms and appliances held by him under lease from the lessor, for doing all work in the manufacture of all boots, shoes, and other footwear made by or for him which is done by the aid of tacking mechanisms and appliances, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing this lease and license and any other lease or license of lasting machines, lasting machinery, lasting mechanisms, or lasting devices then existing between the lessor and the lessee, whether as the result of assignment to the lessor or

otherwise; and the possession of and full right to and control of all the leased machinery and all lasting machines, lasting machinery, lasting mechanisms, and lasting devices held by the lessee under lease or license from the lessor or its assignors shall thereupon revest in the lessor free from all claims and demands whatsoever.

Eight. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith this lease and license, and also if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor, or otherwise as herein provided, the lessee shall forthwith deliver the leased machinery to the lessor at its office or factory in good order, reasonable wear and tear alone excepted; and shall thereupon pay to the lessor the sum of

One Hundred (100) Dollars for each Chase Lasting Machine and its accessories as compensation for setting up the leased machinery in his factory, for instructing operators, and for deterioration of the leased machinery, and the lessee, for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power, and authority to enter upon the premises and into any factory, room, or any place where the leased machinery or any part thereof may be, and take possession thereof, and take away the same; and the lessee shall have no claim for the repayment of any sum or sums, or any part thereof, which he shall have paid as consideration for the grant of this lease and license or for rent or royalty, or otherwise in respect to the leased machinery. The lessee shall also without prejudice to any other rights and remedies of the lessor hereunder pay to the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee as well as pay the freight expense of returning the same.

Nine. A notice in writing, signed by the president, a vice-president, or the treasurer of the lessor, or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Ten. The lessee admits the validity of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or

contest the validity of, or the title of the lessor to, any of the patents referred to in the "Schedule of Patents" hereto annexed. The termination or cesser of this lease and license from any cause whatever shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admission and estoppel herein set forth.

Eleven. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Twelve. The term "lessor" shall include the said United Shoe Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

[SEAL] UNITED SHOE MACHINERY CO.
Meylert Bruner, Secretary.
R. H. LONG SHOE MFG. CO.
R. H. Long, Treas. [SEAL]

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.
(Referred to in Article Ten herein.)

Number.	Dated.	Number.	Dated.
302,885	August 5, 1884.	524,446	August 14, 1894.
306,671	October 14, 1884.	524,447	August 14, 1894.
309,519	December 23, 1884.	536,780	April 2, 1895.
312,550	February 17, 1885.	537,269	April 9, 1895.
312,962	February 24, 1885.	537,270	April 9, 1895.
319,784	June 9, 1885.	539,065	May 14, 1895.
337,662	March 9, 1886.	545,052	August 27, 1895.
337,924	March 16, 1886.	548,671	October 29, 1895.

337,925	March 16, 1886.	548,862	October 29, 1895.
338,930	March 30, 1886.	558,011	April 7, 1896.
340,860	April 27, 1886.	561,189	June 2, 1896.
352,851	November 16, 1886.	566,831	September 1, 1896.
356,619	January 25, 1887.	569,182	October 13, 1896.
256,620	January 25, 1887.	569,231	October 13, 1896.
363,283	May 17, 1887.	569,590	October 13, 1896.
364,088	May 31, 1887.	571,339	November 17, 1896.
371,816	October 18, 1887.	571,404	November 17, 1896.
376,368	January 10, 1888.	571,429	November 17, 1896.
391,688	October 23, 1888.	571,509	November 17, 1896.
444,792	January 13, 1891.	601,933	April 5, 1898.
458,000	August 18, 1891.	601,934	April 5, 1898.
458,001	August 18, 1891.	601,935	April 5, 1898.
473,873	April 26, 1892.	601,936	April 5, 1898.
477,788	June 28, 1892.	601,937	April 5, 1898.
477,789	June 28, 1892.	601,938	April 5, 1898.
478,501	July 5, 1892.	601,939	April 5, 1898.
483,375	September 27, 1892.	601,940	April 5, 1898.
507,551	October 31, 1893.	601,941	April 5, 1898.
516,074	March 6, 1894.	601,942	April 5, 1898.
524,445	August 14, 1894.		

[On back:]

United Shoe Machinery Company.
Lasting Machine Department.
Chase Lasting Machine. Lease No. 142.
R. H. Long Mfg. Co. Lessee.
Date, Jan. 16, 1904.

Chase Lasting Machine No. 42, 275, 561, 572, 1223, 1259.
Chase Hand Tacker No. 955, 1557, 1640, 1652, 1662, 2306.

DEFENDANTS' EXHIBIT 69.

[Put in Evidence, page 1334.]

[Stamped:]
Received Aug. 8, 1903, A. H.
Filing Department, Aug. 13, 1903, A. M.

Office of R. H. Long Shoe Manufacturing Co.,
Makers of Fine Shoes.

South Framingham, Mass., Aug 7 1903

United Shoe Machinery Co. Boston Mass.

Gentlemen Your favors of 1st and 6th at hand. Mr. John E. Long has charge of all the work in the factory and he has no desire to use the Chase machines on work that can be done well on the Consolidated. The price for lasting is less on the Consolidated than on the Chase and Mr. John E. Long and the writer are trying at all times to keep down cost of labor and will use the Consolidated machines so far as possible.

I believe we have six machines (Consolidated) four of them set up and have been running until yesterday one operator left, and we have a man to take his place tomorrow or Monday. I think the operators are satisfied and have been earning good pay. I think we will be able to run all the Consolidated machines we have to their full capacity as well as some of our Chase machines and reports that have come to you saying we did not wish to use the Consolidated machines are not true. We are now advertising for cutters and stitchers and when we get under way on the fall trade we expect to start the other two machines, which would have been running now if we had enough help in cutting and stitching room.

Yours truly,

R. H. Long.

The Consolidated operators have been earning about 3.00 for 9 hours work.

DEFENDANTS' EXHIBIT 70a.

[Put in Evidence, page 1337.]

License and Rental Lease No.

Transfer from License No.

This License and Rental Lease Agreement, made in duplicate the *twelfth* day of *January* A. D. 1*900*, by and between the Consolidated & McKay Lasting Machine Company (Chase Department), a corporation incorporated under the laws of the State of Maine, Licensor and party of the first part, and *R. H. Long Shoe Mfg. Co.* of *Springfield*, *Mass.*, Licensee and party of the second part. Witnesseth:

Whereas, the Licensor is now the owner of the following Letters Patent of the United States relating to Lasting Machines or auxiliary machines for lasting, to wit: No. 319,784, dated June 9, 1885; No. 337,662, dated March 9, 1886; No. 337,924, dated March 16, 1886; No. 337,925, dated March 16, 1886; No. 338,930, dated March 30, 1886; No. 340,860, dated April 27, 1886; No. 356,619, dated January 25, 1887; No. 356,620, dated January 25, 1887; No. 363,283, dated May 17, 1887; No. 364,088, dated May 31, 1887; No. 376,368, dated January 10, 1888; No. 391,688, dated October 23, 1888; No. 477,788, dated June 28, 1892; No. 477,789, dated June 28, 1892; No. 478,501, dated July 5, 1892; No. 483,375, dated September 27, 1892; No. 545,052, dated August 27, 1895; No. 558,011, dated April 7, 1896; No. 561,189, dated June 2, 1896; No. 566,831, dated September 1, 1896; No. 571,404, dated November 17, 1896; No. 569,590, dated October 13, 1896; No. 569,182, dated October 13, 1896; No. 569,231, dated October 13, 1896; No. 571,339, dated November 17, 1896; No. 571,429, dated November 17, 1896; No. 571,509, dated November 17, 1896; and other patents applied for and now pending, and is, moreover, the owner of other patents not herein enumerated;

And, whereas, the Licensee desires to use the hereinafter described machines belonging to the Licensor: —

Now, Therefore, the Licensor, in consideration of one dollar to

it paid by the Licensee, the receipt whereof is hereby acknowledged, and of the stipulations and conditions hereinafter contained on the part of the Licensee to be kept and performed, doth loan unto the Licensee the machines designated by their numbers in the following schedule, the said machines embodying some of the foregoing named patents: —

1 Lasting Machine (Chase) No. *1140*.

2 Hand Tackers (Chase Stop Motion) Nos. *323*, *1537*.

And the Licensor does hereby license the Licensee, and operatives in his employment, to use said specified loaned or rented machines upon the terms and conditions herein set forth; Provided, however, and this loan is made and this license is granted on the expressed Condition, that the Licensee shall faithfully keep and perform all the conditions and stipulations herein contained on his part to be kept and performed, and upon breach of the same, or either of them by the Licensee, the Licensor may, at its option, cancel and terminate this loan and license, and upon written notice thereof by the Licensor to the Licensee, or to any one in the possession or apparent control of the machines, this loan and license shall terminate, and possession of said machines shall thereupon revest in the Licensor. It is also agreed that the Licensor may, at its option, upon breach of any condition herein contained, take possession of said machines, or any of them, without termination of this agreement.

And the following are also agreed to as terms and conditions of the loan and license of the machines which the Licensee is hereby licensed to use, all of which, together with those hereinbefore expressed, the Licensee hereby agrees to keep and perform: —

First. — The Licensee is by this loan and license authorized to use the machines hereby loaned, only by himself or operatives in his direct employ, and only in *Springfield*, *Mass.*

He shall not add to nor subtract from the machines any mechanism whatever now or hereafter organized or connected therewith by the Licensor, nor make nor allow to be made any change or alteration in the same, without the consent thereto in writing of the Licensor, nor interfere with the proper operation of the ma-

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chines, nor any mechanism forming a part thereof, or attached thereto, nor remove nor deface any dates, numbers or inscriptions, now or hereafter impressed thereon or affixed thereto by the Licensor, and shall at all times, at his own expense, keep and maintain the machines in as good and efficient working order as the same now are or may hereafter be put by the Licensor. All risks and expense of transportation to and from the Licensee's factory shall be assumed by the Licensee. Inasmuch as the machines are only loaned by the Licensor, and the Licensee pays no purchase price for the machines, the said machines do and shall continue to belong exclusively to and remain wholly the property of, and subject to the control of the Licensor, and the Licensee acquires no right to buy or to retain said machines except by the written consent of the Licensor. The Licensee agrees to keep the Lasting Machines and accessories in first-class order and repair at his own expense. The Licensee also hereby covenants and agrees to keep the Lasting Machines and accessories insured by a policy satisfactory to the Chase Department of the Consolidated & McKay Lasting Machine Company for two hundred dollars each, and to pay all taxes assessed on said machines. In case any Lasting Machines are damaged by fire, directly or indirectly, the Licensee agrees to pay to the Licensor the sum of two hundred dollars for each Lasting Machine, including its accessories, so damaged.

Second. — The Licensor and its agents may, at all reasonable times, have convenient access to the machines to examine and inspect the same and the use thereof, and to repair and improve the same so far as it sees fit; and the covenants, stipulations and conditions herein contained shall apply to all improvements which the Licensor shall hereafter add to the machines and to all patents on said improvements, the right to use which shall be owned by the Licensor, with the same effect as if said patents were included in the list of patents hereinbefore set forth.

Third. — The Licensee agrees to pay unto the Licensor, on the fifteenth (15th) day of each month, as rent or royalty for the previous month for the machines hereby loaned, and for the use of the patents hereby licensed, for each and every pair of shoes or boots

lasted by the aid of said machines or any of them, or by the use of said patents or any of them, or in the making of which any of said patents shall be used, the sum set forth in the classified schedule hereto annexed in the column headed "Royalty Value"; and said royalty is hereby agreed upon by and between the parties hereto as the just, fair, and correct value to the Licensee for rental of the machines and for use of the patents and inventions hereby licensed to the Licensee by the Licensor, and that the "abated rent or royalty" hereinafter named is not the true value of the license hereby granted, but is a concession and abatement of such value for and in consideration of the conditions hereto attached, and this agreement and responsibility, and all others in this license contained shall extend to and in respect of all shoes or boots made or lasted by the aid of said machines or on any machine embracing any of the patents which the Licensee is hereby licensed to use, whether made by the Licensee or by other persons for him; provided, however, that in all cases when the Licensee shall pay to the Licensor, on or before the fifteenth day of each month, the "abated rent or royalty" as hereinafter set forth, per pair for each and every pair of shoes or boots lasted in whole or in part by the use of said machines or patents, or any of them; said payments so duly made shall be full payment and satisfaction of the rent or royalty for the use of said machines and of the license for the use of the patents, for such shoes or boots in respect to which said payments shall have been so duly made, and it is agreed that default of payment of said rent or royalty or of any indebtedness to the Licensor when due, that is, on or before the fifteenth (15th) of each month, shall forfeit the Licensee's right to any abatement of the full rent or royalty, as herein provided. And it is hereby agreed that for each and every pair of shoes and boots made or lasted by the aid of the machines hereby loaned, or made by or for the Licensee by the use of the patents hereby licensed, or any of them, and in respect of which there shall not have been paid the "abated rent or royalty" as hereinbefore set forth, the Licensee shall pay to the Licensor the rental or royalty value named in said classified schedule as liquidated, fixed, and settled damages. It is hereby agreed that

the monthly rent or royalty returns shall be computed at "abated rent or royalty." In addition to these agreements relating to rent or royalty, and to the "abated rent or royalty" and to payments as liquidated damages of the full rental or royalty value, in case of neglect or default of or refusal to make payment when due, it is agreed by the Licensee that in case he becomes insolvent or makes an assignment for the benefit of creditors, or in case his property or business goes into the hands of a receiver, all rent or royalty due to the Licensor shall be at once computed at the full rent or royalty value, as expressed in the schedule of rentals or royalties herewith attached, and the Licensee expressly agrees to this computation of the rental or royalty value, and further agrees not to contest or dispute any claim for the said full rental or royalty value. It is agreed and covenanted by the Licensee that whenever requested, in writing, by the Licensor, he will pay not less than ten dollars per month, as a minimum amount of rental or royalty for the use of each Lasting Machine, except when his factory is not running. But until further notice, given in writing, it is agreed between the parties hereto that if the Licensee pays the rental or royalty on or before the fifteenth (15th) of the month following the month when the lasting was done, and otherwise keeps all the terms of this License, there will be a discount made for such payment sufficient to reduce the cost of "abated rent or royalty" on all classes of shoes to one half cent per pair, excepting on long-legged boots, on which the abatement will be sufficient to reduce the cost to three fourths of a cent a pair, but it is specially agreed that this abatement ceases upon written notice given by the Licensor to the Licensee.

Fourth. — The Licensee agrees that the operator on each machine shall keep a daily account of the number of pairs of shoes and boots lasted by him and the class to which they belong; which account shall be signed by the operator and verified and signed by the Licensee and forwarded by the Licensee to the Licensor on the first day of each month, and rental or royalty shall be paid by the Licensee on the basis of said account. And the Licensee agrees to give the Licensor, its successors, or assigns, or its or their

authorized agent or agents, free access at all times to the premises where the machines hereby loaned are stored or operated, for the purpose of verifying the operators' reports, and in case operators' reports shall not be made as above provided, it shall be the right of the Licensor to appoint a competent man to keep the accounts herein required; and all reasonable compensation for the services and expenses of such man, which shall not exceed three dollars per day, shall be at the charge of the Licensee, and the Licensee hereby agrees to pay the same.

The Licensee agrees that he will allow the Licensor, its successors and assigns, and its and their agents at any time hereafter, to attach an indicator or counter to any machine embracing any of the patents hereby licensed, which now is or which may hereafter come into the possession of the Licensee, for the purpose of indicating the number of shoes or boots made, and to examine, modify, repair, or replace the said indicator, and that he, the Licensee, will not disturb or interfere with, nor permit any anyone else to disturb or interfere with, any indicator which now is or which may be hereafter placed upon any machine as aforesaid.

Fifth. — The Licensee hereby agrees that he will not in any way violate, or infringe, or contest, the validity of any of the patents, or any reissue or extension of the same, which he is hereby licensed to use, or the sufficiency of their specifications, or the validity of the title of the Licensor to said patents, or any of them, and expressly admits the validity and sufficiency thereof.

Sixth. — The machines cannot be transferred, and this loan and license is not assignable by the Licensee, by his own act or by operation of law.

Seventh. — The power conveyed by this license is only the right to use the said specific machines, and not the right to make, sell, or alter any machines embodying the patents aforesaid, or any of them; and a transfer or removal of the machines hereby loaned can only be made with the written consent of the Licensor; and if the Licensee is or becomes at any time insolvent or bankrupt, or if a sale, lease, transfer, alteration, or removal of said machines shall be made or attempted by the Licensee, or by operation of law, or

by any legal officer, representative, or assignee, as the property of the Licensee, without the written consent of the Licensor, the possession of said machines shall thereupon revest in the Licensor, and it may take possession of said machines without the Licensee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this license, or for rental or royalty under this instrument, nor shall he be released thereby from any of the conditions of this agreement.

Eighth. — In case any machine hereby loaned shall remain unused for the period of four consecutive months, the Licensor may, at any time thereafter, while it remains unused, cancel this loan and license so far as relates to said unused machines, by giving written notice, as herein provided, that it has elected so to do, and, upon giving such notice, this loan and license shall be terminated to the extent aforesaid, and the possession of said unused machines shall thereupon revest in said Licensor, but, in case of such cancellation and reclamation, the Licensee shall thereupon pay the Licensor the sum stated in article twelfth for deterioration of the machines by use or otherwise, and other expenses in reference to the same.

Ninth. — In case the Licensee refuses or neglects to perform, or violates any of the conditions of this license, the Licensor shall have the right to terminate this license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this license shall be terminated, or upon taking or demanding possession of the machines without cancellation of this agreement, the possession of said machines shall thereupon revest in the Licensor; and upon the termination of the loan and license by lapse of time, cancellation, breach of condition, or otherwise, it shall be the duty of the Licensee forthwith to deliver the machines hereby loaned and licensed, to the Licensor in good condition, reasonable wear and tear excepted; and upon such termination or taking or demanding possession of the machines by the Licensor, and without prejudice to any other legal rights or remedies for violation of contract, use of machines without right, or use of patents without license, the Licensor or its agents may thereupo

enter the premises where said machines may be, and may take and remove the same, and the Licensee shall have no claim whatever on account of any sum or sums he may have paid under this license as rent or royalty or otherwise, nor shall he be released from his agreements contained herein regarding sum due for return of machines, repairs, instruction of operators, deterioration, etc., as mentioned in article twelfth.

Tenth. — This license shall continue (unless the Licensor shall cancel this license for breach of condition) until the expiration of all the Letters Patent which the Licensee is hereby licensed to use, and which are or may hereafter be embodied in the hereby loaned machines, and the other patents or improvements referred to shall be considered as included in this license the same as if entered in this license by date and number, or any extensions or renewals of the same; and upon the expiration thereof the Licensee shall deliver to the Licensor the machines and accessories hereby loaned in good order, natural wear and tear alone excepted.

Eleventh. — In case any other machines than those now hereby loaned and licensed, embracing any of the patents hereby licensed, shall hereafter be ordered by, or come into the possession of, the Licensee then, in case the Licensor shall so elect, all the covenants herein contained shall apply to such machines, and shall govern the parties respectively to the same extent as if the said machines had been expressly included in this loan and license. The Licensor shall give written notice of its election as aforesaid, and the entry into and under this License Agreement of all machines in possession of the Licensee is hereby specially agreed to by the Licensee, but this shall not take away the Licensor's right to refuse such entry in case of machines transferred without written consent of the Licensor.

Twelfth. — It is declared and understood that it is the intention of the Licensee to use said machines herein licensed for lasting all of the shoes and boots that shall be made by him applicable to the said machines, and not to have them in his possession as a means of reducing the price of hand lasting, or of controlling hand-lasters, or of influencing a trade with the owners of any other Lasting

Machines or of reducing the price thereof, or the prices for labor thereon, and the Licensor enters into this contract because of and by reason of such understanding and intention on the part of the Licensee. It is agreed that the Licensee shall use such machines hereby loaned for lasting all of his shoes and boots, to their full capacity, limited only by the demands of his business; and should the demands of his business require, he shall take and pay for the loan of such additional machines as may be required to do all his work; and in case any Lasting Machine in this agreement is returned to the Licensor, whether voluntarily or because of the Licensee's insolvency or the appointment of a Receiver for his business, or for non-compliance with this agreement, or otherwise, the Licensee or his assigns shall pay the Licensor one hundred (100) dollars as compensation for setting up each machine at his factory, for instructing operators, and other expenses incurred, and he shall also pay, in addition thereto, the cost of putting the machine into good condition and repair, as well as freight expense of returning the same.

Thirteenth. — It is agreed that the Licensee shall buy of the Licensor, and only of it, all the fittings and all the spare parts for repairing the machines hereby licensed, and also all the string-nail, tack-strips, or other fastenings to be driven by any appliance for lasting the shoes or boots, whether lasted in whole or in part by the aid of any of the machines hereby licensed, or by the use of any of the said patents, or in the making of any of which any of said patents shall be used; and that the same shall be sold by the Licensor at the same prices to all Licensees for the time being. The prices and terms for the same to be fixed by the Licensor; and in all cases whenever the machines are returned to the possession of the Licensor all the accessories, which shall include all spare parts and fittings, shall be returned with the machines, free from any claim as to title, and all unused tack-strips remaining in the possession of the Licensee at the time of the return of the machines shall also be returned to the Licensor's possession free from any claim as to title, but credit for such tack-strips shall be given by the Licensor.

Fourteenth. — All the rights and interests which, under this

instrument and by reason of the ownership of said machines and patents and patent rights belonging to the Licensor, shall be deemed to belong to and may be enforced by the Licensor, its representatives, and assigns, and all the stipulations binding on the Licensee shall be binding on his or their representatives or assigns.

Fifteenth. — It is agreed that this instrument may be used for Licensees of the female sex, or for corporations, and in that case the masculine pronoun denoting the Licensee shall, whenever it occurs, be instead of and indicate the feminine, or neuter, as the case may be; and also that when the party of the second part shall consist of more than one person the termination of the words relating to the said party shall be considered as singular or plural, as the sense may require; and that when the party of the second part so consists of several persons, and they sign this License and Lease for Rental, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained, and also that the numbers of the machines named in or covered by this License and Lease may be entered herein by the Licensor after signing; and that as this instrument is designed and intended for continuous use between the parties hereto, in case the Licensee shall have more than one machine, it is agreed that the termination of words relating to the machine shall be considered as written in the singular or plural, as the number of machines entered in this License and Lease Agreement may require.

Schedule of Rentals or Royalties.

(Referred to in Article third.)

	Men's Shoes and Boots.					
	Plain.		Tips.		Tips & Boxes	
	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.
Buff and Grain . .	2c.	$\frac{6}{10}$c.	3c.	$\frac{8}{10}$c.	3c.	1c.
Flesh Split . . .	2c.	$\frac{6}{10}$c.	3c.	$\frac{8}{10}$c.	3c.	1c.
Calf, etc. . . .	2c.	$\frac{7}{10}$c.	3c.	$\frac{9}{10}$c.	3c.	1c.
Goodyear . . .	4c.	$1\frac{4}{10}$c.	4c.	$1\frac{4}{10}$c.	4c.	$1\frac{4}{10}$c.

	Boys' and Youths' Shoes.						Boots.		Women's.	
	Plain.		Tips.		Tips & Boxes.		Long Legs.			
	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value	Abated Royalty.
Buff and Grain,	2c.	$\frac{6}{10}$c.	3c.	$\frac{8}{10}$c.	3c.	$\frac{9}{10}$c.	3c.	1c.	2c.	$\frac{6}{10}$c.
Flesh Split .							3c.	1c.	2c.	$\frac{6}{10}$c.
Calf, etc. .							3c.	1c.	2c.	$\frac{6}{10}$c.
Goodyear .	3c.	1c.	3c.	1c.	3c.	1c.	4c.	1c.	4c.	1c.

In Witness Whereof, the parties aforesaid have hereunto set their hands and seals, the said parties of the second part binding themselves, their legal representatives, and assigns, to all the foregoing agreements, both jointly and severally.

[SEAL] CONSOLIDATED & MCKAY LASTING MACHINE COMPANY,
by Geo. W. Brown, Treasurer.

R. H. LONG SHOE MFG. CO., [SEAL]
R. H. Long, Pres.

[On back:]
"AAA" License No. *128*
Lasting Machines Nos. *1140*
Hand Tackers Nos. *323, 1537.*
R. H. Long Mfg. Co., Licensee.
Dated *January 12, 1900.*

DEFENDANTS' EXHIBIT 70b.

[Put in Evidence, page 1337.]

License and Rental Lease No.

Transfer from License No.

This License and Rental Lease Agreement, made in duplicate the *twenty third* day of *July* A. D. *1900*, by and between the United Shoe Machinery Co.

~~Consolidated & McKay Lasting Machine Company~~,

(Chase Department)

a corporation incorporated under the laws of the State of ~~Maine~~ New Jersey,

Licensor and party of the first part, and *R. H. Long Shoe Mfg. Co. of Springfield, Mass.* Licensee and party of the second part.

Witnesseth:

Whereas, the Licensor is now the owner of the following Letters Patent of the United States relating to Lasting Machines or auxiliary machines for lasting, to wit: No. 319,784, dated June 9, 1885; No. 337,662, dated March 9, 1886; No. 337,924, dated March 16, 1886; No. 337,925, dated March 16, 1886; No. 338,930, dated March 30, 1886; No. 340,860, dated April 27, 1886; No. 356,619, dated January 25, 1887; No. 356,620, dated January 25, 1887; No. 363,283, dated May 17, 1887; No. 364,088, dated May 31, 1887; No. 376,368, dated January 10, 1888; No. 391,688, dated October 23, 1888; No. 477,788, dated June 28, 1892; No. 477,789, dated June 28, 1892; No. 478,501, dated July 5, 1892; No. 483,375, dated September 27, 1892; No. 545,052, dated August 27, 1895; No. 558,011, dated April 7, 1896; No. 561,189, dated June 2, 1896; No. 566,831, dated September 1, 1896; No. 571,404, dated November 17, 1896; No. 569,590, dated October 13, 1896; No. 569,182, dated October 13, 1896; No. 569,231, dated October 13, 1896; No. 571,339, dated November 17, 1896; No. 571,429, dated November 17, 1896; No. 571,509, dated November 17, 1896; and other patents applied for and now pending, and is, moreover, the owner of other patents not herein enumerated:

And, whereas, the Licensee desires to use the hereinafter described machines belonging to the Licensor: —

Now, therefore, the Licensor, in consideration of one dollar to it paid by the Licensee, the receipt whereof is hereby acknowledged, and of the stipulations and conditions hereinafter contained on the part of the Licensee to be kept and performed, doth loan unto the Licensee the machines designated by their numbers in the following schedule, the said machines embodying some of the foregoing named patents: —

4 Lasting Machines (Chase) Nos *158, 323, 437, 774.*

8 Hand Tackers (Chase Stop Motion) Nos. *305, 307, 1094, 1150, 1456, 1767, 1914, 1980.*

And the Licensor does hereby license the Licensee, and opera-

tives in his employment, to use said specified loaned or rented machines upon the terms and conditions herein set forth; Provided, however, and this loan is made and this license is granted on the expressed Condition, that the Licensee shall faithfully keep and perform all the conditions and stipulations herein contained on his part to be kept and performed, and upon breach of the same or either of them by the Licensee, the Licensor may, at its option, cancel and terminate this loan and license, and upon written notice thereof by the Licensor to the Licensee, or to anyone in the possession or apparent control of the machines, this loan and license shall terminate, and possession of said machines shall thereupon revest in the Licensor. It is also agreed that the Licensor may, at its option, upon breach of any condition herein contained, take possession of said machines or any of them, without termination of this agreement.

And the following are also agreed to as terms and conditions of the loan and license of the machines which the Licensee is hereby licensed to use, all of which, together with those hereinbefore expressed, the Licensee hereby agrees to keep and perform: —

First. — The Licensee is by this loan and license authorized to use the machines hereby loaned, only by himself or operatives in his direct employ and only in *Springfield, Mass.*

He shall not add to nor subtract from the machines any mechanism whatever now or hereafter organized or connected therewith by the Licensor, nor make nor allow to be made any change or alteration in the same, without the consent thereto in writing of the Licensor, nor interfere with the proper operation of the machines, nor any mechanism forming a part thereof, or attached thereto, nor remove nor deface any dates, numbers or inscriptions, now or hereafter impressed thereon or affixed thereto by the Licensor, and shall at all times at his own expense, keep and maintain the machines in as good and efficient working order as the same now are or may hereafter be put by the Licensor. All risks and expense of transportation to and from the Licensee's factory shall be assumed by the Licensee. Inasmuch as the machines are only loaned by the Licensor, and the Licensee pays no purchase

price for the machines, the said machines do and shall continue to belong exclusively to and remain wholly the property of, and subject to the control of the Licensor, and the Licensee acquires no right to buy or to retain said machines except by the written consent of the Licensor. The Licensee agrees to keep the Lasting Machines and accessories in first-class order and repair at his own expense. The Licensee also hereby covenants and agrees to keep the Lasting Machines and accessories insured by a policy satisfactory to the ~~Chase Department of the Consolidated & McKay Lasting Machine Company~~ United Shoe Machinery Co for two hundred dollars each, and to pay all taxes assessed on said machines. In case any Lasting Machines are damaged by fire, directly or indirectly, the Licensee agrees to pay to the Licensor the sum of two hundred dollars for each Lasting Machine, including its accessories, so damaged.

Second. — The Licensor and its agents may, at all reasonable times, have convenient access to the machines to examine and inspect the same and the use thereof, and to repair and improve the same so far as it sees fit; and the covenants, stipulations and conditions herein contained shall apply to all improvements which the Licensor shall hereafter add to the machines and to all patents on said improvements, the right to use which shall be owned by the Licensor, with the same effect as if said patents were included in the list of patents hereinbefore set forth.

Third. — The Licensee agrees to pay unto the Licensor, on the fifteenth (15th) day of each month, as rent or royalty for the previous month for the machines hereby loaned, and for the use of the patents hereby licensed, for each and every pair of shoes or boots lasted by the aid of said machines or any of them, or by the use of said patents or any of them, or in the making of which any of said patents shall be used, the sum set forth in the classified schedule hereto annexed in the column headed "Royalty Value;" and said royalty is hereby agreed upon by and between the parties hereto as the just, fair and correct value to the Licensee for rental of the machines and for use of the patents and inventions hereby licensed to the Licensee by the Licensor, and that the "abated rent or

royalty" hereinafter named is not the true value of the license hereby granted, but is a concession and abatement of such value for and in consideration of the conditions hereto attached, and this agreement and responsibility, and all others in this license contained shall extend to and in respect of all shoes or boots made or lasted by the aid of said machines or on any machine embracing any of the patents which the Licensee is hereby licensed to use, whether made by the Licensee, or by other persons for him; provided, however, that in all cases when the Licensee shall pay to the Licensor, on or before the fifteenth day of each month, the "abated rent or royalty" as hereinafter set forth, per pair for each and every pair of shoes or boots lasted in whole or in part by the use of said machines or patents, or any of them; said payments so duly made shall be full payment and satisfaction of the rent or royalty for the use of said machines and of the license for the use of the patents, for such shoes or boots in respect to which said payments shall have been so duly made, and it is agreed that default of payment of said rent or royalty or of any indebtedness to the Licensor when due, that is, on or before the fifteenth (15th) of each month, shall forfeit the Licensee's right to any abatement of the full rent or royalty, as herein provided. And it is hereby agreed that for each and every pair of shoes and boots made or lasted by the aid of the machines hereby loaned, or made by or for the Licensee by the use of the patents hereby licensed, or any of them, and in respect of which there shall not have been paid the "abated rent or royalty" as hereinbefore set forth, the Licensee shall pay to the Licensor the rental or royalty value named in said classified schedule as liquidated, fixed, and settled damages. It is hereby agreed that the monthly rent or royalty returns shall be computed at "abated rent or royalty". In addition to these agreements relating to rent or royalty, and to the "abated rent or royalty" and to payments as liquidated damages of the full rental or royalty value, in case of neglect or default of or refusal to make payment when due, it is agreed by the Licensee that in case he becomes insolvent or makes an assignment for the benefit of creditors, or in case his property or business goes into the hands of a

receiver, all rent or royalty due to the Licensor shall be at once computed at the full rent or royalty value, as expressed in the schedule of rentals or royalties herewith attached, and the Licensee expressly agrees to this computation of the rental or royalty value, and further agrees not to contest or dispute any claim for the said full rental or royalty value. It is agreed and covenanted by the Licensee that whenever requested, in writing, by the Licensor, he will pay not less than ten dollars per month, as a minimum amount of rental or royalty for the use of each Lasting Machine, except when his factory is not running. But until further notice, given in writing, it is agreed between the parties hereto that if the Licensee pays rental or royalty on or before the fifteenth (15th) of the month following the month when the lasting was done, and otherwise keeps all the terms of this License, there will be a discount made for such payment sufficient to reduce the cost of "abated rent or royalty" on all classes of shoes to one-half cent per pair, excepting on long-legged boots, on which the abatement will be sufficient to reduce the cost to three-fourths of a cent a pair, but it is specially agreed that this abatement ceases upon written notice given by the Licensor to the Licensee.

Fourth.— The Licensee agrees that the operator on each machine shall keep a daily account of the number of pairs of shoes and boots lasted by him and the class to which they belong; which account shall be signed by the operator and verified and signed by the Licensee and forwarded by the Licensee to the Licensor on the first day of each month, and rental or royalty shall be paid by the Licensee on the basis of said account. And the Licensee agrees to give the Licensor, its successors, or assigns, or its or their authorized agent or agents, free access at all times to the premises where the machines hereby loaned are stored or operated, for the purpose of verifying the operators' reports, and in case operators' reports shall not be made as above provided, it shall be the right of the Licensor to appoint a competent man to keep the accounts herein required; and all reasonable compensation for the services and expenses of such man, which shall not exceed three dollars per day,

shall be at the charge of the Licensee, and the Licensee hereby agrees to pay the same.

The Licensee agrees that he will allow the Licensor, its successors, and assigns, and its and their agents at any time hereafter, to attach an indicator or counter to any machine embracing any of the patents hereby licensed, which now is or which may hereafter come into the possession of the Licensee, for the purpose of indicating the number of shoes or boots made, and to examine, modify, repair, or replace the said indicator, and that he, the Licensee, will not disturb or interfere with, nor permit anyone else to disturb or interfere with, any indicator which now is or which may be hereafter placed upon any machine as aforesaid.

Fifth. The Licensee hereby agrees that he will not in any way violate, or infringe, or contest, the validity of any of the patents, or any reissue or extension of the same, which he is hereby licensed to use, or the sufficiency of their specifications, or the validity of the title of the Licensor to said patents, or any of them, and expressly admits the validity and sufficiency thereof.

Sixth. The machines cannot be transferred, and this loan and license is not assignable by the Licensee, by his own act or by operation of law.

Seventh. The power conveyed by this license is only the right to use the said specific machines, and not the right to make, sell, or alter any machines embodying the patents aforesaid, or any of them; and a transfer or removal of the machines hereby loaned can only be made with the written consent of the Licensor; and if the Licensee is or becomes at any time insolvent or bankrupt, or if a sale, lease, transfer, alteration, or removal of said machines shall be made or attempted by the Licensee, or by operation of law, or by any legal officer, representative, or assignee, as the property of the Licensee, without the written consent of the Licensor, the possession of said machines shall thereupon revest in the Licensor, and it may take possession of said machines without the Licensee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this license,

or for rental or royalty under this instrument, nor shall he be released thereby from any of the conditions of this agreement.

Eighth. In case any machine hereby loaned shall remain unused for the period of four consecutive months, the Licensor may, at any time thereafter, while it remains unused, cancel this loan and license so far as relates to said unused machines, by giving written notice, as herein provided, that it has elected so to do, and, upon giving such notice, this loan and license shall be terminated to the extent aforesaid, and the possession of said unused machines shall thereupon revest in said Licensor, but in case of such cancellation and reclamation, the Licensee shall thereupon pay the Licensor the sum stated in article twelfth for deterioration of the machines by use or otherwise, and other expenses in reference to the same.

Ninth. In case the Licensee refuses or neglects to perform, or violates any of the conditions of this license, the Licensor shall have the right to terminate this license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this license shall be terminated, or upon taking or demanding possession of the machines without cancellation of this agreement, the possession of said machines shall thereupon revest in the Licensor; and upon the termination of the loan and license by lapse of time, cancellation, breach of condition, or otherwise, it shall be the duty of the Licensee forthwith to deliver the machines hereby loaned and licensed, to the Licensor in good condition, reasonable wear and tear excepted; and upon such termination or taking or demanding possession of the machines by the Licensor, and without prejudice to any other legal rights or remedies for violation of contract, use of machines without right, or use of patents without license, the Licensor or its agents may thereupon enter the premises where said machines may be, and may take and remove the same, and the Licensee shall have no claim whatever on account of any sum or sums he may have paid under this license as rent or royalty or otherwise, nor shall he be released from his agreements contained herein regarding sum due for return of machines, repairs, instruction of operators, deterioration, etc., as mentioned in article twelfth.

Tenth. This license shall continue (unless the Licensor shall cancel this license for breach of condition) until the expiration of all the Letters Patent which the Licensee is hereby licensed to use, and which are or may hereafter be embodied in the hereby loaned machines, and the other patents or improvements referred to shall be considered as included in this license the same as if entered in this license by date and number, or any extensions or renewals of the same; and upon the expiration thereof the Licensee shall deliver to the Licensor the machines and accessories hereby loaned in good order, natural wear and tear alone excepted.

Eleventh. — In case any other machines than those now hereby loaned and licensed, embracing any of the patents hereby licensed, shall hereafter be ordered by, or come into the possession of, the Licensee, then, in case the Licensor shall so elect, all the covenants herein contained shall apply to such machines, and shall govern the parties respectively to the same extent as if the said machines had been expressly included in this loan and license. The Licensor shall give written notice of its election as aforesaid, and the entry into and under this License Agreement of all machines in possession of the Licensee is hereby specially agreed to by the Licensee, but this shall not take away the Licensor's right to refuse such entry in case of machines transferred without the written consent of the Licensor.

Twelfth. — It is declared and understood that it is the intention of the Licensee to use said machines herein licensed for lasting all of the shoes and boots that shall be made by him applicable to the said machines, and not to have them in his possession as the means of reducing the price of hand-lasting, or of controlling hand-lasters, or of influencing a trade with the owners of any other Lasting Machines or of reducing the price thereof, or the prices for labor thereon, and the Licensor enters into this contract because of and by reason of such understanding and intention on the part of the Licensee. It is agreed that the Licensee shall use such machines hereby loaned for lasting all of his shoes and boots, to their full capacity, limited only by the demands of his business; and should the demands of his business require, he shall take and pay for the

loan of such additional machines as may be required to do all his work; and in case any Lasting Machine in this agreement is returned to the Licensor, whether voluntarily or because of the Licensee's insolvency or the appointment of a Receiver for his business, or for non-compliance with this agreement, or otherwise, the Licensee or his assigns shall pay the Licensor one hundred (100) dollars as compensation for setting up each machine at his factory, for instructing operators, and other expenses incurred, and he shall also pay, in addition thereto, the cost of putting the machine into good condition and repair, as well as freight expense of returning the same.

Thirteenth. — It is agreed that the Licensee shall buy of the Licensor, and only of it, all the fittings and all the spare parts for repairing the machines hereby licensed, and also all the string-nail, tack-strips, or other fastenings to be driven by any appliance for lasting the shoes or boots, whether lasted in whole or in part by the aid of any of the machines hereby licensed, or by the use of any of the said patents, or in the making of any of which any of said patents shall be used; and that the same shall be sold by the Licensor at the same prices to all Licensees for the time being. The prices and terms for the same to be fixed by the Licensor; and in all cases whenever the machines are returned to the possession of the Licensor all the accessories, which shall include all spare parts and fittings, shall be returned with the machines, free from any claim as to title, and all unused tack-strips remaining in the possession of the Licensee at the time of the return of the machines shall also be returned to the Licensor's possession free from any claim as to title, but credit for such tack-strips shall be given by the Licensor.

Fourteenth. — All the rights and interests which, under this instrument and by reason of the ownership of said machines and patents and patent rights belonging to the Licensor, shall be deemed to belong to and may be enforced by the Licensor, its representatives, and assigns, and all the stipulations binding on the Licensee shall be binding on his or their representatives or assigns.

Fifteenth. — It is agreed that this instrument may be used for

Licensees of the female sex, or for corporations, and in that case the masculine pronoun denoting the Licensee shall, whenever it occurs, be instead of and indicate the feminine, or neuter, as the case may be; and also that when the party of the second part shall consist of more than one person the termination of the words relating to the said party shall be considered as singular or plural, as the sense may require; and that when the party of the second part so consists of several persons, and they sign this License and Lease for Rental, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained, and also that the numbers of the machines named in or covered by this License and Lease may be entered herein by the Licensor after signing; and that as this instrument is designed and intended for continuous use between the parties hereto, in case the Licensee shall have more than one machine, it is agreed that the termination of words relating to the machine shall be considered as written in the singular or plural, as the number of machines entered in this License and Lease Agreement may require.

Schedule of Rentals or Royalties.

(Referred to in Article third.)

	Men's Shoes and Boots.					
	Plain.		Tips.		Tips & Boxes.	
	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.
Buff and Grain . .	2c.	$\frac{6}{10}$c.	3c.	$\frac{8}{10}$c.	3c.	1c.
Flesh Split . . .	2c.	$\frac{6}{10}$c.	3c.	$\frac{8}{10}$c.	3c.	1c.
Calf, etc. . . .	2c.	$\frac{7}{10}$c.	3c.	$\frac{9}{10}$c.	3c.	1c.
Goodyear . . .	4c.	$1\frac{4}{10}$c.	4c.	$1\frac{4}{10}$c.	4c.	$1\frac{4}{10}$c.

	Boys' and Youths' Shoes. Plain.		Tips.		Tips & Boxes.		Boots. Long Legs.		Women's.	
	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value	Abated Value.
Buff and Grain,	2c.	$\frac{6}{10}$c.	3c.	$\frac{8}{10}$c.	3c.	$\frac{9}{10}$c.	3c.	1c.	2c.	$\frac{6}{10}$c.
Flesh Split .							3c.	1c.	2c.	$\frac{6}{10}$c.
Calf, etc. .							3c.	1c.	2c.	$\frac{6}{10}$c.
Goodyear .	3c.	1c.	3c.	1c.	3c.	1c.	4c.	1c.	4c.	1c.

In Witness Whereof, the parties aforesaid have hereunto set their hands and seals, the said parties of the second part binding themselves, their legal representatives, and assigns, to all the foregoing agreements, both jointly and severally.

~~Consolidated & McKay Lasting Machine Company,~~

[SEAL] United Shoe Machinery Co.
by L. H. Baker, Secretary.

R. H. Long Shoe Mfg. Co., [SEAL]
R. H. Long, Pres.

[On back:]
"AAA" License No. *158.*
Lasting Machines Nos. *158, 323, 437, 774.*
Hand Tackers Nos. *305, 307, 1094, 1150, 1456, 1767, 1914, 1980.*
R. H. Long Mfg. Co. Licensee. Dated *July 23d 1900*

DEFENDANTS' EXHIBIT 70c.

[Put in Evidence, page 1337.]

[Stamped:]
Received Jun 10 1913 F. G. K.

Chase Lasting Machines Leased to R. H. Long Shoe Mfg. Co.

Machine No.	Shipped	
300	2.13.93	Returned 3.14.99
368	10.15.94	Returned 3.8.00
763	9.24.94	Returned 5.12.99
520	2.18.95	Transferred 1.17.96

1237	12.7.97	Returned 3.14.99
154	10.12.98	Returned 3.14.99
336	10.12.98	Returned 3.14.99
893	10.12.98	Returned 3.14.99
1026	10.12.98	Returned 3.14.99
1140	11.29.99	Still out
158	5.19.00	Still out
275	10.25.00	Still out
323	5.1.00	Still out
437	5.14.00	Still out
774	5.14.00	Still out
42	3.22.02	Still out
561	3.22.02	Still out
572	9.6.02	Still out
1259	7.31.02	Still out
1223	9.5.02	Still out

20 machines.

DEFENDANTS' EXHIBIT 71.

[Put in Evidence, page 1339.]

CIRCUIT COURT OF THE UNITED STATES.
District of Massachusetts.

In Equity No. 426.

United Shoe Machinery Company
v.
R. H. Long Shoe Manufacturing Company and Richard H. Long.

COMPLAINANT'S EXHIBIT, LONG ADVERTISEMENT.

Grand Rally in Concert Hall Natick Monday Eve. Nov. 5 1906 in the interest of James H. Vahey

The speakers will be Mr. Richard H. Long of South Framingham, Mr. James H. Vahey, Mr. David C. Ahearn of South Framingham, Mr. J. H. O'Brien of Clinton, Mr. Martin C. Hall of Natick and Ex-Sen. A. H. Ray of Ashland.

The Framingham friends of Mr. Vahey will leave on special cars at 7.15 P. M.

Vote for the Interest of Your Town.

VOTE FOR VAHEY

The election of Senator in this district is most important to the business interests of the towns of Framingham, Natick, Ashland, Holliston, Hopkinton and Sherborn.

The Framingham Shoe Company that is controlled by me has begun manufacturing shoe machinery. **I have also become a director of the Duplessis Independent Shoe Machinery Co., a Canadian company**, with a capital of $2,500,000, and **I will finance and control that company.** I am assured of all the money necessary to carry on the business of both companies named above in addition to the shoe factory now running and the new factory now being built.

With all these industries Framingham should grow very fast, and the value of real estate in Framingham and the surrounding towns should increase largely.

Good conditions for the workingmen will be provided in these new industries.

Workingmen whose homes are in Framingham and the towns nearby, who are now working away from their families, may find employment here at good wages.

Ask the workmen in our factory if they are well treated. Ask them if the conditions have improved as our business has grown.

Owing to the ironclad leases that the shoe machinery trust has forced on the shoe manufacturers our companies cannot sell machines to the shoe factories in this state.

McManus owes his nomination to the influence of the counsel of the shoe machinery trust. The trust favors his election.

Vahey will oppose the shoe machinery trust.

Vahey will work for a Bill in the Massachusetts Senate to give our companies the right to sell machines.

Will you help us and help your town by Voting for

JAMES H. VAHEY

Candidate of the Independent Republicans and the Democrats

RICHARD H. LONG

DEFENDANTS' EXHIBIT 72.

[Put in Evidence, page 1344.]

[MEMO. By direction of counsel this exhibit — catalogue of The R. H. Long Machinery Company entitled "Shoe Machinery and Needles" — is not here printed as it is to be considered as a physical exhibit.]

DEFENDANTS' EXHIBIT 73.

[Put in Evidence, page 1345.]

[MEMO. By direction of counsel this exhibit — catalogue of The R. H. Long Machinery Company entitled "Waldorf Rapid Lockstitch and Repair Machines" — is not here printed as it is to be considered as a physical exhibit.]

DEFENDANTS' EXHIBIT 74.

[Put in Evidence, page 1386.]

E. BOTTOMLEY & Co.

Manufacturers of Misses', Children's, Boys' and Youths' Low Cuts

Boston Office: 18 Lincoln Street.

Haverhill, Mass., Jan 25 1904

United Shoe Machinery Co.

Gentlemen, We have carefully considered the matter about which your Mr. King was in to see us about the 21st inst and have concluded to continue using the Duplessis Sewing Machine. We also give notice that we shall not pay any royalty for shoes sewn on Machines leased to Eldridge & Demeritt hereafter as we have discontinued using the same. Respectfully yours

E. BOTTOMLEY & Co.

E. B.

DEFENDANTS' EXHIBIT 75.

[Put in Evidence, page 1441.]

A COMPLETE LINE FOR TURNS

We have a complete line of bottoming machinery for turned shoes, which we can install at short notice.

Haverhill, Mass., is the greatest center for the manu-

facture of turned shoes in the world, and about 50% of the turns made in Haverhill and vicinity, including a large portion of the finest shoes made in the world, are now being sewed on our Sewing Machine.

[Electro here of Turn Sewer and Welter]

The Haverhill (or Fox) Turn Sewer has been on the market for nearly three years and has been brought to a high state of perfection after ten years of experimental work under practical conditions in a large shoe factory. It forms a very smooth, uniformly tight, flat seam, (which will not rip or unravel,) when run at any speed, and to do this requires only a light tension, so that thread breakage is small. 1020 pairs of woman's fine turns, sewed heel seats, have been sewed on it in 8 hours when run at ordinary speed, and at 725 revolutions, at which speed it is sometimes run, it sews at a considerably faster rate. It runs with but slight vibration, the upkeep is small, and it is much easier to operate than any other machine. If the best is wanted, get this machine.

The Haverhill (or Fox) Turn-Sole Channeler, avoids injury to the between substance, does much better work and is twice as rapid as any other channeler. We have had this machine on the market for over five years and is too well known to almost every manufacturer of turned shoes to require description.

We also furnish a full line of Auxiliary Machines for Turn Shoes.

Our machines are put out on rental, or royalty, or are sold. We do not require tying clauses in our leases, as we believe these clauses to be invalid, in view of recent decisions of the courts.

HAVERHILL SHOE MACHINERY COMPANY, Haverhill, Mass.

—The Weekly Bulletin Supplement March 22, 1913

DEFENDANTS' EXHIBIT 76.

[Put in Evidence, page 1463.]

[MEMO. By direction of counsel this exhibit — catalogue of The Boylston Manufacturing Company entitled "Shoe Machinery" — is not here printed as it is to be considered as a physical exhibit.]

DEFENDANTS' EXHIBIT 77.

[Put in Evidence, page 1526.]

Geo. A. Learned A. E. Haines

GEO. A. LEARNED CO.

Manufacturers Hand Turned Shoes Newburyport, Mass.

Trade Mark Registered "Popular as the Sun".

Boston Office 137 Lincoln Street Telephone, 323 Oxford

July 29, 1911

Mr. Sidney W. Winslow, United Shoe Mach. Co., Boston, Mass.

Dear Sir:— The Boston News Bureau in its issue of July 26th prints a statement purporting to come from you stating that "The United Shoe Mach. Co., has consistently pursued the policy of giving the same treatment to large and small manufacturers alike."

If this is a fact why is it that we cannot get a line of Welt machinery put in our factory on the same terms that our competitors are having same installed by your company?

Your representative has told us that because we are running two Turn Sole Stitching machines made by a competing company to yours that it will be impossible for us to get our Welt machinery on the same basis as people who do not run these Turn Sole Stitching machines; and this notwithstanding the fact that our royalties on your Goodyear Turn Sole Stitcher so far this year have amounted to $815.73.

Up to this time we have always felt very well pleased with the treatment accorded us by your company, but in view of the above facts we feel that we are unjustly discriminated against.

We would be very glad to have you advise us what we would have to do in order to get a line of Welt machinery in on the same basis you are furnishing our competitors who use nothing but your machines.

Awaiting with interest your reply, we are,

Yours very truly,

Dict. G. A. L. GEO. A. LEARNED CO.

DEFENDANTS' EXHIBIT 78.

[Put in Evidence, page 1527.]

UNITED SHOE MACHINERY COMPANY,
President's Office, Lincoln and Kneeland Sts.
S. W. Winslow, President.

Boston, Mass. August 3, 1911.

George A. Learned Company, Newburyport, Mass.

Gentlemen: Replying to your favor of the 29th of July, in which you quote the following statement from the Boston News Bureau made by me:

"The United Shoe Machinery Company has consistently pursued the policy of giving the same treatment to large and small manufacturers alike."

and you ask:

"If this is a fact why is it that we cannot get a line of Welt machinery put in our factory on the same terms that our competitors are having same installed by your company?"

In reply to your inquiry I desire to say that there is no reason whatever why you cannot get a line of Welt machinery put into your factory upon exactly the same terms as any of your competitors, provided you are ready and willing to respect the contracts already existing between your company and this company, and the contracts that would be signed by you in relation to the line of Welt machinery if put into your factory.

In reference to your statement that you have paid us this year $815.73 royalty on our Goodyear Turn Sewing Machines, would say that you must be misinformed regarding the facts, because our records show that for the use of these machines (of which there are three) you have paid us $296.96 from January, 1911, up to the present time; the last payment being 45 cents for the month of June.

I should be very glad to arrange for an interview with you regarding this whole situation, and if you are violating your existing contracts with us from inadvertence or misunderstanding of

the facts, we shall be very glad to adjust it with you in an equitable manner.

Awaiting your reply, I remain Very truly yours,
SWW–NW S. W. WINSLOW President.

DEFENDANTS' EXHIBIT 79.

[Put in Evidence, page 1528.]

Geo. A. Learned A. E. Haines

GEO. A. LEARNED CO.

Manufacturers Hand Turned Shoes Newburyport, Mass.

Trade Mark Registered "Popular as the Sun"

Boston Office 137 Lincoln Street Telephone, 323 Oxford

Aug. 3, 1911.

Mr. Sidney W. Wilson, United Shoe Mach. Co. Boston, Mass.

Dear Sir:—On July 27th your Mr. Gray, connected with the Haverhill office, called on us in connection with a line of Welt machinery that we had considered putting in and which we had asked for a list of different machines together with the terms they are put in on. He informed us that you had two prices for putting these in, a wholesale and a retail price. On the wholesale basis the machines were installed practically free the only charge being on royalties. On the retail basis which was the one we would have to come under owing to the fact that we used the Haverhill Turn Sole Stitchers, the charge for installing a Welt line would be $3000.00. In addition to this the royalty on the Gem Innersoling which is rebated to other manufacturers who use your machines exclusively would not be rebated to us.

In the course of conversation he informed us that a previous agreement which we had made verbally for a price as a return charge on the Goodyear Stitchers would not hold and that it would cost between $400.00 and $500.00 to send back the two machines which we had ordered returned six weeks or two months ago at a return charge of $20.00 a piece.

On July 29th we wrote you asking what we would have to do to get a line of Welt machinery on the same basis that you are furnishing our competitors who use nothing but your machines.

We are very anxious to get this matter straightened out as we have a large new factory under construction which we will be shortly occupying and must plan our output for.

Trusting that you will favor us with the information required, we are, Yours very truly,

Dict. by G. A. L.

DEFENDANTS' EXHIBIT 80.

[Put in Evidence, page 1530.]

Geo. A. Learned A. E. Haines

GEO. A. LEARNED CO.

Manufacturers Hand Turned Shoes Newburyport, Mass.

Trade Mark Registered "Popular as the Sun"

Boston Office 137 Lincoln Street Telephone, 323 Oxford

Aug. 4, 1911

Mr. Sidney W. Winslow, United Shoe Mach. Co., Boston, Mass.

Dear Sir: — We are in receipt of your favor of the 3rd inst and note with pleasure your willingness to furnish us a line of Welt Machinery on the same terms that other manufacturers enjoy from you.

We would be pleased to interview you personally as you suggest, but the writer is leaving town today for two or three weeks. Allow us please to state briefly our position and then perhaps you can write us exactly what we will have to do to meet your requirements for the Welt line.

In the first place we never have run but two of your Goodyear Turn Stitchers. The third one was a new model sent us in exchange for one of our old Briggs Machines and your representative said he would have this old machine sent back and we would not have to bother with it at all. We have repeatedly asked him to have this done and he never has attended to it.

We later requested the return of the other Briggs machines at the return charge of $20.00 as agreed upon. This your representative agreed to do a long time ago but has not attended to same up to the present time. Under these conditions we are responsible for only one Goodyear machine.

The reason our Royalties have dropped off with you is because our business is a one season business and we never do much in the summer months. Our operator on the Goodyear Machine got through because there was not enough work to keep him busy. We can, of course, return this one machine if you so desire and run only the Fox Stitchers, but we had intended as soon as business starts up in the fall to get it going again.

We have not knowingly violated any contract with you and are of course entirely ignorant of what your Welt contracts call for.

Regarding the matter of royalties if you will refer to our letter of July 29th, we did not make the statement that we had paid you $815.73 but that our royalties had amounted to that. We quote herewith your bills: —

Jan. 2, 1911	221.76
Feb. 1, 1911	183.85
Mar. 1, 1911	95.85
Apr. 1, 1911	133.05
May 1, 1911	151.39
June 1, 1911	28.93
July 1, 1911	.90
Total	815.73

on which there is a discount of 50% if paid by the 15th of the month, which of course we took advantage of.

Will you please write us pointing out just where we are in error and what we will have to do to get the Welt Machinery on the same terms as our competitors.

Yours very truly,

Dict. by G. A. L. GEO. A. LEARNED Co.

DEFENDANTS' EXHIBIT 81.

[Put in Evidence, page 1530.]

UNITED SHOE MACHINERY COMPANY,

President's Office, Lincoln and Kneeland Sts.

S. W. Winslow, President.

Boston, Mass. August 4, 1911.

Geo. A. Learned Company, Newburyport, Mass.

Gentlemen: I beg to acknowledge receipt of letter under date of August 3d, unsigned but apparently dictated by "G. A. L."

I wrote you yesterday (August 3rd) in reply to yours of July 29th, and in reply to yours of the 3rd would say that I shall be very glad to arrange for an interview with you regarding this whole situation as previously stated.

I shall be away to-morrow, but shall be here from Monday noon, and if you communicate with me, by 'phone or otherwise, will arrange an appointment with you.

Yours very truly,

S. W. WINSLOW, President.

SWW-NW N. W.

DEFENDANTS' EXHIBIT 82.

[Put in Evidence, page 1530.]

UNITED SHOE MACHINERY COMPANY

President's Office, Lincoln and Kneeland Sts.

S. W. Winslow, President.

Boston, Mass. August 8, 1911.

Mr. George A. Learned, George A. Learned Company, Newburyport, Mass.

Dear Sir: Replying to your favor of August 4th, in which you state:

"We have not knowingly violated any contract with you, and are, of course, entirely ignorant of what your Welt contracts call for."

we call your attention to Clause 6 in your Goodyear Department Lease & License Agreement No. 6327, under date of the 29th day of January, 1907, and to Clause 4 in your General Department Lease & License No. 1456, under date of the 29th day of January, 1907.

In view of the statement made in your letter of August 4th, and quoted above, will suggest that, upon your return at the end of two or three weeks, you call upon the writer to the end that this whole subject may receive proper consideration and adjustment for the past and future operation of such machines as you may now have, or desire to have, from this Company.

Yours very truly,

SWW-NW S. W. WINSLOW President.

DEFENDANTS' EXHIBIT 83.

[Put in Evidence, page 1531.]

Geo. A. Learned A. E. Haines

GEO. A. LEARNED CO.

Manufacturers Hand Turned Shoes Newburyport, Mass.

Trade Mark Registered "Popular as the Sun"

Boston Office 137 Lincoln Street Telephone, 323 Oxford

Aug. 14, 1911

Mr. Sidney W. Winslow, Boston, Mass.

Dear Sir: — Your letter of Aug. 8th is before us. In view of the fact that our Mr. Learned expects to leave on a Western business trip almost immediately upon returning from his vacation we believe it would simplify matters if you would write us as per our request of Aug. 4th just what we must do, under the circumstances outlined so fully there, in order to obtain your Machinery for making Welts.

Trusting that you will give us this information, we are,

Yours very truly,

GEO. A. LEARNED CO.

DEFENDANTS' EXHIBIT 84.

[Put in Evidence, page 1532.]

UNITED SHOE MACHINERY COMPANY,

President's Office, Lincoln and Kneeland Sts.

S. W. Winslow, President.

Boston, Mass. August 15, 1911.

George A. Learned Company, Newburyport, Mass.

Gentlemen: Your favor of the 14th inst. at hand, in which you state:

"It would simplify matters if you would write us, as per our request of August 4th, just what we must do under the circumstances outlined so fully there, in order to obtain your machinery for making welts."

In reply to same I refer you to the following statement contained in my letter to Mr. Learned, under date of August 3rd:

"In reply to your inquiry I desire to say that there is no reason whatever why you cannot get a line of Welt machinery put into your factory upon exactly the same terms as any of your competitors, provided you are ready and willing to respect the contracts already existing between your company and this company, and the contracts that would be signed by you in relation to the line of Welt machinery if put into your factory."

and would say that we should be very glad to arrange for an interview if Mr. Learned desires any further information than that which is already contained in the correspondence between us.

We wish to state that if the George A. Learned Company desire to respect the contracts that already exist, we think such an interview would be very desirable, and, as we stated in our letter of August 3rd, we shall be very glad to adjust any differences that now exist in an equitable manner. We believe that this can only be done at a personal interview.

Very sincerely yours,

S. W. WINSLOW

SWW-NW

President.

DEFENDANTS' EXHIBIT 85.

[Put in Evidence, Page 1532.]

Geo. A. Learned A. E. Haines

GEO. A. LEARNED CO.

Manufacturers Hand Turned Shoes Newburyport, Mass.

Trade Mark Registered "Popular as the Sun"

Boston Office 137 Lincoln Street Telephone, 323 Oxford

August 21, 1911.

Mr. S. W. Winslow Boston Mass.

Dear Sir. — I have just returned from my trip, and if agreeable to you would like to make an appointment with you for some day, other than Saturday, this week.

It will give me pleasure to meet you any time at your convenience. Awaiting your reply I am Very truly yours

GEO. A. LEARNED.

DEFENDANTS' EXHIBIT 86.

[Put in Evidence, page 1535.]

UNITED SHOE MACHINERY COMPANY

Albany Building Boston, Mass.

E. P. Brown, General Manager Boston, August 28, 1911.

Mr. George A. Learned, George A. Learned Company, Newburyport, Mass.

Dear Sir: In accordance with promise made you in our interview of the 24th inst., I am attaching hereto a list of machines now in your possession under lease from us, with initial payments opposite each should you desire to change to the "Departmental" lease basis, and the General Department Machines now in your possession on "Loan" and "Lease Premium" leases, with outright sale prices opposite each.

I have not included the amounts now due under the Goodyear leases, or the charge for cancelation of same should you decide that you wish to discontinue the use of the Goodyear Turn Sewing Machine and Auxiliaries now in your possession, and I have not included the interest at 6% that we should charge you, or the credits for such initial payments as you may have made on your General Department Machines.

I also understand that our Mr. Meyer visited your factory on the 25th inst., and is to send one of our experts to thoroughly test the Model G Turn Sewing Machine immediately you resume work after stock taking, which I assume will be on Tuesday, September 5th.

Yours very truly,

EPB-NW E. P. BROWN, General Manager.

Dictated not read by Mr. E. P. Brown. N. W.

List of Machines Showing Initial Payment on the Departmental Undependent Lease, and Sale Prices on General Department Machines in the Factory of George A. Learned Company, Newburyport, Mass.

Machine name.	No.	Initial Payment.
Perfection Eyeleter	#1797	$100,00
McKay Heel Loading & Attaching Mch.	#3413	400.00
McKay Knife Grinder	#1266	25.00

Premier Heel Pricker	#202	150.00
McKay Heel Trimming & Randing Mch.	#2242	150.00
Ensign Lacing Machine	#100	250.00
Universal Slugging Machine	#149	250.00
Stamping Machine — Model R	#307	25.00
7½" Summit Splitting Machine — Model M	#698	75.00
Split Roll Buffing Machine — Model G	#348	75.00
Heel Scouring Machine — Model R	#631	65.00
Planet Sole Rounding Machine — Model C	#726	250.00
Imperial Heel Breasting Mach. — Model B	#832	200.00
Edge Trimming Machine — Model A	#5480	55.00
Tip Scouring Machine — Model G	#78	100.00
Twin Edge Setting Machine — Model R	#1192	150.00
Heel Breast Souring Machine — Model H	#461	50.00
Miller Twin Shoe Treeing Mach. — Model H	#6101	110.00
Empire Splitting Machine — Model C	#179	100.00
Heel Breast Scouring Mach. — " R	#1503	65.00
Telescope Hub	#2032	1.50

DEFENDANTS' EXHIBIT 87.

[Put in Evidence, page 1536.]

Geo. A. Learned A. E. Haines

GEO. A. LEARNED CO.

Manufacturers Hand Turned Shoes, Newburyport, Mass.

Trade Mark Registered "Popular as the Sun"

Boston Office, 137 Lincoln Street Telephone, 323 Oxford

Dec. 6, 1911

Mr. Sidney W. Winslow, Boston, Mass.

Dear Sir: — Mr. Endicott told me last evening that he thought you would appreciate my writing you saying how pleased I was to learn that you did not intend, in our interview of last August, to give me the impression that I went away with; viz that you would drive me out of business if I did not throw out the machines competing with yours.

As I now understand the situation it puts a better light on matters and I will try to overcome as best I can the impression I have been laboring under. Yours very truly,

GEO. A. LEARNED.

DEFENDANTS' EXHIBIT 88.

[Put in Evidence, page 1537.]

UNITED SHOE MACHINERY COMPANY,
President's Office, Lincoln and Kneeland Sts.
S. W. Winslow, President.

Boston, Mass., December 18, 1911.

Mr. George A. Learned, c/o George A. Learned Company, Newburyport, Mass.

Dear Sir: At your interview with me on December 5th (at which there were present Mr. H. B. Endicott and Mr. E. P. Brown, General Manager of our Company) you acknowledged that the statement which you made to Mr. Harriman, to Mr. Endicott's nephew, and others, to the effect that I had said to you, at our interview last August,

"that I would drive you out of business if you did not throw out the machines competing with ours"

was untrue, and that you had no foundation whatever for making such a statement.

You expressed a desire to, and intention of correcting the false statements that you had made to such parties as you had talked with on this subject. Under these circumstances I had expected to receive a frank apology from you. Your letter, therefore, of December 6th, is not such a letter as I had a right to expect to receive.

Very sincerely yours,

S. W. WINSLOW.

DEFENDANTS' EXHIBIT 89.

[Put in Evidence, page 1538.]

Geo. A. Learned A. E. Haines

GEO. A. LEARNED CO.

Manufacturers Hand Turned Shoes, Newburyport, Mass.
Trade Mark Registered "Popular as the Sun"
Boston Office 137 Lincoln Street Telephone, 323 Oxford

Dec. 20, 1911.

Mr. Sidney W. Winslow, United Shoe Mach. Co., Boston, Mass.

Dear Sir:—I am amazed at the statement contained in your letter of the 18th inst.

Not only did I not acknowledge that what I had said about our interview of last August was untrue, but I made it perfectly plain that I recalled substantially your exact words which were what I have always stated them to be.

Not only was my recollection correct, but you know that it was correct and your attempt to put me in the position of a self confessed liar failed absolutely.

My letter of Dec. 6th is exactly in accordance with my statements in the interview of Dec. 5th.

Yours very truly,

GEO. A. LEARNED.

DEFENDANTS' EXHIBIT 90.

[Put in Evidence, page 1678.]

16 SUPERINTENDENT AND FOREMAN Nov. 29, 1911.

Mr. Alex Stone representing Atlas Werke, Leipsic, Germany, is now in Boston.

This firm manufactures a complete line of —

Complete Line for McKay Shoes

SHOE MACHINERY

Complete Line for Welt Shoes

for welted and McKay Shoes — that can be bought outright.

If you wish to throw off the royalty yoke and be the owner of your own factory send your inquiry to

Mr. Alex Stone
537 Massachusetts Ave.
Tel. Trem. 876–R
Boston, Mass.

Machine spare parts will be carried in stock in Boston.

DEFENDANTS' EXHIBIT 91.

[Put in Evidence, page 1684.]

UNITED STATES HOTEL,
Tilly Haynes, Proprietor.

Boston, Febr. 24th, 1912.

Mr. John H. Connor Frankfurt a/M.

Dear Sir: As I am to sail for England on the 29th inst., and thence for Leipzig, Ger; where I expect to stay for about six weeks, would respectfully request you to send me any information you may have, concerning my own self and the German United in Frankfurt.

I should be very thankful to you if through your kindness would not have to come back to the U. S. to settle down for a certain number of years.

Awaiting your kind answer and oblige, yours truly,

ALEX STONE,
Leipzig R. Lipsius str. 1.

DEFENDANTS' EXHIBIT 92.

[Put in Evidence, page 1684.]

New York, 19th May 1912.

Mr. John H. Connor Boston, Mass.

Dear Sir:—Referring to my last call upon you I beg to give you my present address below.

Thanking you beforehand for your kind introduction and reply, I beg to remark that am prepared to start for Boston on call at any time. Very truly yours

ALEX STONE,
#1191 Boston Road, Bronx, New York.

DEFENDANTS' EXHIBIT 93.

[Put in Evidence, page 1685.]

UNITED STATES HOTEL,
Tilly Haynes, Proprietor.

Boston, Sept. 7th 1912.

Mr. John H. Connor c/o U. S. M. C. Boston, Mass.

Dear Sir: Referring to my last call upon you I beg to give you my New York address below.

Believe me sir I am real sorry to disturb you so often, knowing that your time is valuable. But thinking that I deserve your good will through the honest work I have done in Europe in the interest of the Consolidated Lasting Machine Co., induces me to take the liberty again to ask you for a suitable position with your Company.

You may rest assured that in return for your kindness I shall do my duty only.

Thanking beforehand, I remain, Yours truly

ALEX STONE,
c/o Ostrom
226 E. 53rd. str. New York.

DEFENDANTS' EXHIBIT 94.

[Put in Evidence, page 1685.]

37 Prospect str. Greenwich Conn. Sept. 17 1912.

Mr. John H. Connor Boston, Mass.

Dear Sir: Not having the luck to get a suitable position with your Company, I am trying to get one outside the shoe machinery trade.

As you have known me for the past 14 years, I have taken the liberty to give your address amongst others, to a concern in Detroit, Mich. as reference concerning my ability and character. I am to be engaged there to manage the European sale.

I would beg of you to say a few good words concerning my past record, for wich I shall allways be thankfull to you.

It is my intention to publish my opinion and expirience in the

Superintendent & Foreman regarding the existing shoe machinery question in Europe and will mention all the hardships shoe manufacturers are having with the so called non-royalty machines, as soon as I have succeeded to get the above mentioned position.

Under no circumstances will I represent the Atlas Works any longer than I can help it.

Thanking you for your kindness beforehand

I remain respectfully yours

ALEX STONE.

DEFENDANTS' EXHIBIT 95.

[Put in Evidence, page 1818.]

MEMORANDUM OF NET EARNINGS, DIVIDENDS PAID AND AMOUNTS CARRIED TO SURPLUS FOR YEARS ENDING MARCH 1, 1906 TO 1911 INCLUSIVE—UNITED SHOE MACHINERY COMPANY AND UNITED SHOE MACHINERY CORPORATION TOGETHER WITH THE NET ASSETS OF BOTH COMPANIES AT MARCH 1, 1905 TO 1910.

	Earnings Company	Earnings Corporation	Total Earnings	Cash Dividends Paid During Year	Balance Carried to Surplus	Net Assets Company & Corporation at March 1st of Previous Year	Rate Per Cent Total Earnings to Net Assets	Rate Per Cent Cash Dividends to Net Assets
1906	3322137 93	11912 87	3334050.80	1343666 99	2190383 81	27368808.07	12 91	4.91
1907	4183220.51	*16591.46	4166629.05	1929471.69	2237157.36	29716596 38	14.02	6.49
1908	4064616.27	* 3656 01	4060960 26	2209628 33	2451331 93	33100684 44	14.08	6.67
1909	4796971.66	33066 35	4830038 01	2392115 68	2437922.33	35632484.87	13 55	6.71
1910	5640521.85	37378.13	5678099.98	2974616 97	2703483.01	38070380.60	14.91	7.81
1911	5772142.56	37332.46	5809675.02	*3685891.30	2123783.72	40771821.61	14.25	9.04
		*Indicates Loss		*Includes extra Dividend				
Totals	28579610.78	99842.34	28679453.12	14535330 96	14144062.16			
Average Year	4763268 46	16640 39	4779908.85	2422565.16		34110631 49	14.01	7.10

Company's Surplus 3-1-05		6710914.07
Totals		20854976.23
Stock issued to capitalize portion of undivided surplus as follows:		
July, 1907	4464468.75	
April, 1909	2239245.00	
July, 1910	2463132.50	
		9166846.25
Balance not distributed or capitalized		11688129.98
Viz.—		
Company	5900533.51	
Corporation	5787596 47	
		11688129.98

DEFENDANTS' EXHIBIT 96.

[Put in Evidence, page 1864.]

Lease No. *1808* Turn Set. [Form 292.]

Transfer from *J. L. Morgan & Co.* Lease No. *1137*

This Lease and Agreement made at Boston, Massachusetts, this *3d* day of *June* A. D. 189*2*, by and between The Goodyear Shoe Machinery Company, a corporation established under the laws of the State of Connecticut, Lessor, and party hereto of the first part, and *Curtis Jones & Co., doing business in Reading, Penn.* Lessee, and party hereto of the second part, witnesseth:—

Whereas, the Lessor is the owner of or is licensed under the several Letters Patent of the United States, recited in the schedule following, viz.:—

SCHEDULE OF PATENTS.

No. 190,709, dated May 15, 1877.	No. 317,759, dated May 12, 1885.
No. 199,802, dated January 29, 1878.	No. 320,075, dated June 16, 1885.
No. 236,938, dated January 25, 1881.	No. 366,935, dated July 19, 1887.
No. 251,240, dated December 20, 1881.	No. 369,563, dated September 6, 1887.
No. 240,307, dated April 19, 1881.	No. 412,703, dated October 8, 1889.
No. 253,156, dated January 31, 1882.	No. 412,704, dated October 8, 1889.
No. 258,696, dated May 30, 1882.	No. 424,966, dated April 8, 1890.
No. 260,990, dated July 7, 1882.	No. 453,999, dated June 9, 1891.
No. 267,798, dated November 21, 1882.	No. 461,793, dated October 20, 1891.
No. 274,091, dated March 13, 1883.	No. 463,967, dated November 24, 1891.
No. 281,258, dated July 17, 1883.	No. 463,982, dated November 24, 1891.
No. 317,758, dated May 12, 1885.	

And, whereas, the Lessee desires a license to use the inventions, or some of them, which are patented in and by the above recited Letters Patent, and also desires a lease of the machines which are designated by their numbers in the schedule of machines following, viz.:—

SHEDULE OF MACHINES.

Goodyear Turn Machine , No. *529*
Turn Channeler , No.
Moulder , No.

The said machines being the property of the Lessor.

Now, therefore, the Lessor, in consideration of one dollar and

other valuable consideration to it paid by the Lessee, the receipt of which is hereby acknowledged, and in further consideration of the agreements and conditions hereinafter contained, on the part of the Lessee to be kept and performed, doth lease unto the Lessee the machines designated by their numbers in the foregoing Schedule of Machines, and doth license the Lessee and the operatives in his employment to use the machines hereby leased, and also such of the inventions patented as aforesaid as are embodied in the said machines, or either or any of them, but upon the agreements and conditions hereinafter set forth ; and this lease and license is granted by the Lessor and accepted by the Lessee on the express condition that the Lessee shall faithfully keep and perform all the agreements and conditions herein contained on his part to be kept and performed, and upon breach of the same, or either or any of them, by the Lessee, the Lessor may at its option cancel and terminate this lease and license, and upon written notice thereof by the Lessor to the Lessee or to any one in the possession or apparent control of the machines hereby leased, or either or any of them, this lease and license shall terminate, and possession of the said machines shall thereupon re-vest in the Lessor ;

And the Lessee hereby agrees to keep and perform all the following conditions of this lease and license : —

First. The Lessee hereby agrees to use, and is hereby licensed to use the machines hereby leased and the inventions patented as aforesaid only in his factory in *Reading* in the State of *Pennsylvania* and only in the manufacture of boots and shoes, and agrees to keep the said machines in working order at his own expense, and to purchase of the Lessor or its agents all parts for repairing the machines hereby leased, and agrees not to add to or subtract from the said machines any part or mechanism whatever, now or hereafter organized or connected therewith by the Lessor, nor to make nor allow to be made any change or alteration in the same, nor to remove or deface any dates, numbers, or inscriptions now or hereafter impressed thereon, or affixed thereto by the Lessor.

Second. The Lessee hereby agrees to permit the agents and inspectors of the Lessor, at all reasonable times, to have convenient

access to the machines, to examine and inspect the same and the use thereof, and to verify the operator's reports, and to add improvements to the machines as the Lessor may see fit; and the agreements and conditions herein contained shall apply to all improvements which the Lessor shall hereafter add to the machines, and to all patented inventions hereafter embodied therein, with the same effect as if the patents therefor were included in the foregoing schedule of patents.

Third. The following is the schedule of rents and royalties hereinafter referred to, and which it is understood and agreed is to be paid by the Lessee for each pair of shoes or boots respectively made by the aid of the machines hereby leased, or either or any of them, or by the use of the inventions patented as aforesaid, or either or any of them, viz.:

SCHEDULE OF RENTS AND ROYALTIES FOR GOODYEAR TURNED WORK.

Children's	2	cents per pair.
Misses'	2	" "
Women's	3	" "
Youths'	3	" "
Boys'	3	" "
Men's	3	" "

Fourth. The Lessee hereby agrees to keep proper books of account, and make true and complete entries therein of all transactions relating to the manufacture and sale of all boots and shoes made by him, or by any other person for him or for others, by the aid of the machines hereby leased, or any of them, or by the use of the inventions patented as aforesaid, or either or any of them, and to render an account thereof to the Lessor on or before the tenth day of each month, which account shall specify the number of pairs of boots and shoes made under this lease and license during the calendar month next preceding, and the class to which they belong according to the above schedule; and the Lessee agrees that he will require the operator or operators on said machines to keep a daily account of all boots and shoes made by the aid of said

machines upon the printed forms to be furnished by the Lessor, in duplicate, one copy of which, containing such reports for the calendar month next preceding, the Lessee agrees to send, on or before the tenth day of each month, to the Lessor, and, whenever required by the Lessor, to make oath to the correctness of said returns, and to allow the Lessor, by its agents or attorneys, to examine and take copies or extracts from the original book or books of account of the Lessee, and the accounts kept by the operator or operators as aforesaid; and the Lessee hereby agrees to send to the Lessor, on or before the tenth day of each month, in case the machines hereby leased have not been run during the month next preceding, one of the aforesaid printed forms furnished by the Lessor, marked across the face with the words, "not running" or "not in use."

Fifth. The Lessee agrees to pay unto the Lessor, as rent for the machines hereby leased, and as royalty for the use of the inventions patented as aforesaid as hereby licensed, the rent and royalty specified in the schedule forming part of Section Third herein, on each pair of boots or shoes of the respective kinds mentioned or described in said schedule, made by the aid of the said machines, or either or any of them, or by the use of the said inventions, or either or any of them, the rents and royalties for all such boots and shoes, made as aforesaid during one calendar month, to be due and payable on the first day of the calendar month next following, and to be paid within one month from that day; but the Lessor hereby agrees that **if the rents and royalties due on the first day of any month shall be paid on or before the fifteenth day of that month, it will, in consideration thereof, grant a discount of fifty per cent. from the rents and royalties specified in the schedule aforesaid.**

Sixth. The Lessee agrees that the machines hereby leased shall be used only in the manufacture of boots or shoes known in the trade as "turns" or "turned work," and that he will not use, or permit the use of said machines, or either or any of them, upon boots or shoes of any other class, or for any other purpose, unless the consent in writing of the Lessor shall first have been obtained.

Seventh. The Lessee hereby agrees that he will not in any way violate or infringe, or contest the validity of any of the patents under which he is hereby licensed, or the sufficiency of their specifications, or the validity of the title of the Lessor, or of its successors or assigns, to said patents, or either or any of them.

Eighth. This lease and license is not assignable by the Lessee, by his own act or by operation at law.

Ninth. The following are also agreed to by the parties to this instrument as conditions of this lease and license: —

(*a*) That the power conveyed by this lease and license is only the right to use the said machines, and not the right to make or sell any machine embodying the patents aforesaid, or any of them; and that a transfer or removal of the machines hereby leased, or either or any of them, can only be made with the consent of the Lessor, its successors or assigns; and that if the Lessee is or becomes at any time insolvent or bankrupt, or shall make an assignment for the benefit of his creditors, or if a sale, lease, transfer, or removal of said machines, or any of them, shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative, or assignee, as the property of the Lessee, without the written consent of the Lessor, or its successors or assigns, this lease and license shall thereupon terminate and expire; and the Lessor, its successors or assigns, may take possession of said machines without the Lessee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this lease and license, or for rent and royalty under this instrument.

(*b*) That in case the Lessee refuses or neglects to perform, or violates, any of the conditions in this lease and license contained, the Lessor, its successors or assigns, shall have the right to terminate this lease and license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this lease and license shall be terminated, and the possession of said machines shall thereupon revest in the Lessor, its successors or assigns, free and discharged of this lease and license; and the Lessor, its successors or assigns, or its authorized agent or agents,

may thereupon enter any premises where said machines may be, and may take and remove them, and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease and license.

(*c*) That this lease and license shall continue (provided the Lessee complies with the agreements and conditions herein contained), until the expiration of all and every the Letters Patent referred to in the foregoing schedule of patents, or any extensions or renewals of the same; and upon the expiration thereof the Lessee shall deliver to the Lessor, its successors or assigns, the machines hereby leased in good order, natural wear and tear alone excepted.

Tenth. In case any other machines than these hereby leased and licensed, embracing any of the inventions patented in the aforesaid Letters Patent, or any of them, or any inventions or improvements for which Letters Patent shall be granted or assigned to the Lessor, shall hereafter come into possession of the Lessee, by exchange or otherwise, without lease or license from the Lessor, its successors or assigns, then in case the Lessor, its successors or assigns, shall so elect, all the covenants herein contained shall apply to such machines, inventions, or improvements, and shall govern the parties respectively to the same extent as if the said machines, inventions, or improvements had been expressly included in this lease and license. The Lessor shall give written notice of its election as aforesaid after it shall have received written notice from the Lessee of the possession of such machines, but may give such notice without having received notice from the Lessee of the possession of such machines.

Eleventh. The Lessee agrees that he will not disturb or interfere with, nor permit any one else to disturb or interfere with, any indicator which now is or which may be hereafter placed upon the machines as aforesaid.

Twelfth. All the rights and interests which under this instrument, and by reason of the ownership of said machines and patents and patent rights belong to the Lessor, shall be deemed to belong to and may be enforced in the names of the Lessor and its succes-

sors and assigns, and all the agreements and conditions binding on the Lessee, shall be binding on his executors or administrators.

Thirteenth. It is agreed that the numbers of the machines named in this lease may be entered herein by the Lessor after signing; and, in case the Lessee shall require more than one machine, it is agreed that the termination of words relating to the machines shall be construed and considered as written in the singular or plural, as the number of machines entered in the lease and license may require; and also that this instrument may be used in cases where the party of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular, as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally hereto.

In witness whereof the Lessor has caused these presents to be signed in its name, and its corporate seal to be affixed hereto by its Treasurer, and the Lessee has set his hand and seal hereto the day and year first above written.

[SEAL] GOODYEAR SHOE MACHINERY COMPANY,
By S. V. A. Hunter, Treasurer.
Lessee will please sign here. ☞ CURTIS JONES & Co. [SEAL]
Executed in duplicate.

DEFENDANTS' EXHIBIT 97.

[Put in Evidence, page 1865.]

[Attached to Defendants' Exhibit 97.]

1808

Lease No. *4152*, Turn Set, made between the Goodyear Shoe Machinery Company as lessor, and *Curtis Jones & Co. of Reading, Pa.* as lessee, dated *June 3d* 1892, is hereby amended as follows:—

Oct 16th 1897

The lessor hereby agrees that the rent and royalty to be paid by the lessee for Children's Turned Shoes, made after January 1, 1897, shall be 1 cent per pair, instead of 2 cents per pair as provided in

the Schedule of Section Third of said lease, on condition, however, that the lessee, while he retains possession of any machine leased to him by the lessor, shall not, without the consent in writing of the lessor, use, or allow to be used in his factory any sewing machine for uniting the soles of turned shoes to their uppers which is not leased to him by the lessor.

Executed in duplicate, *Oct 7th* 1897.

GOODYEAR SHOE MACHINERY COMPANY
by Geo. W. Randall Treasurer.

Lessee will sign here CURTIS JONES & Co.

Lease No. *4152* Turn Set.
Transfer from *Thomas H. Shinn* Lease No. *677*

This Lease and Agreement, made at Boston, Massachusstts, this *16th* day of *October* A. D. 1897, by and between Goodyear Shoe Machinery Company, a corporation established under the laws of the State of Maine, Lessor, and party hereto of the first part, and *Curtis, Jones & Co., doing business in Reading, Pa.* Lessee, and party hereto of the second part, Witnesseth: —

Whereas, the Lessor is the owner of or is licensed under the several Letters Patent of the United States, recited in the schedule following, viz.: —

SCHEDULE OF PATENTS.

No. 240,307, dated April 19, 1881.	No. 461,793, dated October 20, 1891.
No. 253,156, dated January 31, 1882.	No. 463,967, dated November 24, 1891.
No. 260,990, dated July 7, 1882.	No. 488,505, dated December 20, 1892.
No. 267,798, dated November 21, 1882.	No. 495,452, dated April 11, 1893.
No. 317,758. dated May 12, 1885.	No. 518,911, dated April 24, 1894.
No. 317,759, dated May 12, 1885.	No. 533,301, dated January 29, 1895.
No. 412,704, dated October 8, 1889.	No. 540,438, dated June 4, 1895.
No. 453,999, dated June 9, 1891.	No. 561,386, dated June 2, 1896.

And, whereas, the Lessee desires a license to use the inventions, or some of them, which are patented in and by the above-recited Letters Patent, and also desires a lease of the machines which are designated by their numbers in the schedule of machines following, viz.: —

SCHEDULE OF MACHINES.

Goodyear Turn Machine, No. *537*
Turn Channeler, No. *676*
Moulder, No. *389*
Turn Shoe Trimmer, No.

The said machines being the property of the Lessor: —

Now, therefore, the Lessor, in consideration of one dollar and other valuable consideration to it paid by the Lessee, the receipt of which is hereby acknowledged, and in further consideration of the agreements and conditions hereinafter contained, on the part of the Lessee to be kept and performed, doth lease unto the Lessee the machines designated by their numbers in the foregoing Schedule of Machines, and doth license the Lessee and the operatives in his employment to use the machines hereby leased, and also such of the inventions patented as aforesaid as are embodied in the said machines, or either or any of them, but upon the agreements and conditions hereinafter set forth; and this lease and license is granted by the Lessor and accepted by the Lessee on the express condition that the Lessee shall faithfully keep and perform all the agreements and conditions herein contained on his part to be kept and performed, and upon breach of the same, or either or any of them, by the Lessee, the Lessor, notwithstanding any express or implied waiver of any prior breach, may at its option cancel and terminate this lease and license, and upon written notice thereof by the Lessor to the Lessee or to any one in the possession or apparent control of the machines hereby leased, or either or any of them, this lease and license shall terminate, and possession of the said machines shall thereupon re-vest in the Lessor;

And the Lessee hereby agrees to keep and perform all the following conditions of this lease and license: —

First. The Lessee hereby agrees to use, and is hereby licensed to use, the machines hereby leased and the inventions patented as aforesaid only in his factory in *Reading* in the State of *Pennsylvania* and only in the manufacture of boots and shoes, and agrees to keep the said machines in working order at his own expense and to procure of the Lessor or its agents all parts for repairing the

machines hereby leased, and agrees not to add to or substract from the said machines any part or mechanism whatever, now or hereafter organized or connected therewith by the Lessor, nor to make nor allow to be made any change or alteration in the same, nor to remove or deface any dates, numbers or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessor.

Second. The Lessee hereby agrees to permit the agents and inspectors of the Lessor, at all reasonable times, to have convenient access to the machines, to examine and inspect the same and the use thereof, and to verify the operator's reports, and to add improvements to the machines as the Lessor may see fit; and the agreements and conditions herein contained shall apply to all improvements which the Lessor shall hereafter add to the machines, and to all patented inventions hereafter embodied therein, with the same effect as if the patents therefor were included in the foregoing schedule of patents.

Third. The following is the schedule of rents and royalties hereinafter referred to, and which it is understood and agreed is to be paid by the Lessee for each pair of shoes or boots respectively made by the aid of the machines hereby leased, or either or any of them, or by the use of the inventions patented as aforesaid, or either or any of them, viz.: —

SCHEDULE OF RENTS AND ROYALTIES FOR GOODYEAR TURNED WORK.

Children's . . .	2 cents per pair.
Misses'	2 " "
Women's . . .	3 " "
Youths' . . .	3 " "
Boys'	3 " "
Men's	3 " "

Fourth. The Lessee hereby agrees to keep proper books of account, and make true and complete entries therein of all transactions relating to the manufacture and sale of all boots and shoes made by him, or by any other person for him or for others, by the aid of the machines hereby leased, or any of them, or by the use of

the inventions patented as aforesaid, or either or any of them, and to render an account thereof to the Lessor on or before the tenth day of each month, which account shall specify the number of pairs of boots and shoes made under this lease and license during the calendar month next preceding, and the class to which they belong according to the above schedule of rents and royalties; and the Lessee agrees that he will require the operator or operators on said machines to keep a daily account of all boots or shoes made by the aid of said machines upon the printed forms to be furnished by the Lessor, in duplicate, one copy of which, containing such reports for the calendar month next preceding, the Lessee agrees to send, on or before the tenth day of each month, to the Lessor, and, whenever required by the Lessor, to make oath to the correctness of said returns, and to allow the Lessor, by its agents or attorneys, to examine and take copies or extracts from the original book or books of account of the Lessee and the accounts kept by the operator or operators as aforesaid; and the Lessee hereby agrees to send to the Lessor, on or before the tenth day of each month, in case the machines hereby leased have not been run during the month next preceding, one of the aforesaid printed forms furnished by the Lessor, marked across the face with the words "not running", or "not in use."

Fifth. The Lessee agrees to pay unto the Lessor, as rent for the machines hereby leased, and as royalty for the use of the inventions patented as aforesaid as hereby licensed, the rent and royalty specified in the schedule forming part of Section Third herein, for each pair of boots or shoes of the respective kinds mentioned or described in said schedule, made by the aid of the said machines, or either or any of them, or by the use of the said inventions, or either or any of them; the rents and royalties for all such boots and shoes, made as aforesaid during one calendar month, to be due and payable on the last day of the calendar month next following; but the Lessor hereby agrees that, **if the rents and royalties due on the last day of any month shall be paid on or before the fifteenth day of that month, it will, in consideration thereof, grant a dis-**

count of fifty per cent. from the rents and royalties specified in the schedule aforesaid.

Sixth. The Lessee agrees that the machines hereby leased shall be used only in the manufacture of boots or shoes known in the trade as "turns" or "turned work," and that he will not use or permit the use of said machines, or either or any of them, upon boots or shoes of any other class, or for any other purpose, unless the consent in writing of the Lessor shall first have been obtained, and that he will not use, or permit the use, in his factory, of any sewing machine for uniting the soles of turn shoes to their uppers which is not leased to him by the Lessor, unless the consent in writing of the Lessor shall first have been obtained.

Seventh. The Lessee hereby agrees that he will not in any way violate or infringe, or contest the validity of, any of the patents under which he is hereby licensed, or the sufficiency of their specifications, or the validity of the title of the Lessor, or of its successors or assigns, to said patents, or either or any of them.

Eighth. This lease and license is not assignable by the Lessee, by his own act or by operation of law.

Ninth. The following are also agreed to by the parties to this instrument as conditions of this lease and license: —

(a) That the power conveyed by this lease is only the right to use the said machines, and not the right to make or sell any machines embodying the patented inventions aforesaid, or any of them; and that a transfer or removal of the machines hereby leased, or either or any of them, can only be made with the consent of the Lessor, its successors or assigns; and that if the Lessee is or becomes at any time insolvent or bankrupt, or shall make an assignment for the benefit of his creditors, or if a sale, lease, transfer or removal of said machines, or any of them, shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative or assignee, as the property of the Lessee, without the written consent of the Lessor, or its successors or assigns, this lease and license shall thereupon terminate and expire, and the Lessor, its successors or assigns, may take possession of said machines without the Lessee having any claim for the repay-

ment of any part of the sum or sums which he may have paid as consideration for the delivery of this lease and license, or for rent and royalty under this instrument.

(b) That in case the Lessee refuses or neglects to perform, or violates, any of the conditions in this lease and license contained, the Lessor, its successors or assigns, notwithstanding any express or implied waiver of any prior breach, shall have the right to terminate this lease and license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this lease and license shall be terminated, and the possession of said machines shall thereupon revest in the Lessor, its successors or assigns, free and discharged of this lease and license; and the Lessor, its successors or assigns, or its authorized agent or agents, may thereupon enter any premises where said machines may be, and may take and remove them, and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease or license.

(c) That this lease and license shall continue (provided the Lessee complies with the agreements and conditions herein contained) until the expiration of all and every the Letters Patent referred to in the foregoing Schedule of Patents, or any extensions or renewals of the same, and upon the expiration thereof the Lessee shall deliver to the Lessor, its successors or assigns, the machines hereby leased in good order, natural wear and tear alone excepted.

Tenth. In case any other machines than those hereby leased and licensed, embracing any of the inventions patented in the aforesaid Letters Patent, or any of them, or any inventions or improvements for which Letters Patent shall be granted or assigned to the Lessor, shall hereafter come into possession of the Lessee, by exchange or otherwise, without lease or license from the Lessor, its successors or assigns, then in case the Lessor, its successors or assigns, shall so elect, all the covenants herein contained shall apply to such machines, inventions or improvements and shall govern the parties respectively to the same extent as if the said machines, inventions or improvements had been expressly included in this lease and license. The Lessor shall give written notice of

its election as aforesaid after it shall have received written notice from the Lessee of the possession of such machines, but may give such notice without having received notice from the Lessee of the possession of such machines.

Eleventh. The Lessee agrees that he will not disturb or interfere with, nor permit anyone else to disturb or interfere with, any indicator which now is or which may be hereafter placed upon the machines as aforesaid.

Twelfth. All the rights and interests which, under this instrument, and by reason of the ownership of said machines and patents and patent rights, belong to the Lessor, shall be deemed to belong to and may be enforced in the names of the Lessor and its successors and assigns, and all the agreements and conditions binding on the Lessee shall be binding on his legal representatives.

Thirteenth. It is agreed that the numbers of the machines named in this lease may be entered herein by the Lessor after signing; and, in case the Lessee shall require more than one machine, it is agreed that the termination of words relating to the machines shall be construed and considered as written in the singular or plural as the number of machines entered in the lease and license may require; and also that this instrument may be used in cases where the party of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally hereto.

In witness whereof, the Lessor has caused these presents to be signed in its name, and its corporate seal to be affixed hereto by its Treasurer, and the Lessee has set his hand and seal hereto the day and year first above written.

GOODYEAR SHOE MACHINERY COMPANY,

[SEAL] by Geo. W. Randall, Treasurer.

Lessee will sign here. ☞ CURTIS JONES & Co.

Executed in Duplicate.

DEFENDANTS' EXHIBIT 98.

[Put in Evidence, page 1866.]

CURTIS, JONES & Co.

Manufacturers of Infants' and Children's Turned Shoes

Fred W. Curtis Fred S. Jones

Fat Baby Factory No. 1, Reading, Pa.

Our [electro] Shoe Factory No. 2, Hamburg, Pa.

Boston Office, 66 Lincoln St.

Reading, Pa., Jan. 17th 1902

United Shoe Mch. Co., Albany Bldg. Boston Mass.

Gentlemen: — Please change all our leases to the modified lease as per arrangement made with manufacturers committee some months ago, and oblige Yours truly,

C. J. & Co.

Per Shinn.

DEFENDANTS' EXHIBIT 99.

[Put in Evidence, page 1867.]

Jan. 23, 1902.

Messrs. Curtis, Jones & Co., Reading, Pa.

Gentlemen: — Replying to your letter of January 17th, in which you ask us to change your leases of the Metallic department to the Independent lease, I will quote as follows from the Rider, which we agree, upon request, to attach to the United form of lease which you now hold.

"The lessee, if not in default in any respect with any of the conditions, agreements, stipulations, and provisions in the lease No. granted by the undersigned for certain Metallic department machinery, upon giving at least thirty days notice in writing of his intention so to do, shall have the privilege of surrendering this United lease and license at any time before February 1st, 1902, by executing the Independent form of lease and license agreement in respect to the leased machinery."

You will see from this that the time for changing from the United to the Independent form of lease has really passed, but we are willing that you should make the change now if you desire to,

and we enclose you herewith copy of the Independent form of lease for your signature. Yours truly,

UNITED SHOE MACHINERY COMPANY,

CHW-J Enclosure. Asst. Gen. Mgr.

DEFENDANTS' EXHIBIT 101.

[Put in Evidence, page 2088.]

CIRCUIT COURT OF THE UNITED STATES,
DISTRICT OF MASSACHUSETTS.

IN EQUITY.

JAMES W. BROOKS and FRANK F. STANLEY, Trustees of the McKay Metallic Fastening Association,

v.

ALBERT VAN WAGENEN, LOUIS GODDU, LOUIS H. GODDU, NAPOLEON GODDU, GEORGE GODDU, WILLIAM GODDU, ELOIE GODDU, the GODDU SONS METAL FASTENING COMPANY, and GEORGE N. SMALLEY.

BILL OF COMPLAINT.

To the Honorable the Judges of the Circuit Court of the United States in and for the District of Massachusetts:

James W. Brooks of Petersham in the state of Massachusetts, and Frank F. Stanley of Swampscott in said state of Massachusetts, trustees of the McKay Metallic Fastening Association, under a declaration of trust dated the 9th day of June, 1877, both being citizens of the said state and of the United States, bring this bill of complaint against Louis Goddu, Louis H. Goddu, Napoleon Goddu, George Goddu, William Goddu, Eloie Goddu, all of Winchester in said state, and against Albert Van Wagenen of Newton in said state, and George N. Smalley of Westboro in said state, all of said defendants being inhabitants of said state and the district aforesaid; and also against the Goddu Sons Metal Fastening Company, a corporation duly organized under the laws of the state of Maine, said corporation having committed acts of infringement in the said state of Massachusetts and district of Massachusetts, and having a regular and established place of business in said state of Massachusetts and district of Massachusetts.

And thereupon your orators complain and say, on information and belief, —

That on and prior to the twenty-sixth day of September A. D. 1882, Louis Goddu of Winchester in the commonwealth of Massachusetts was the original and first inventor of a certain new and useful improvement in machines for driving sole-fastenings, not in public use or on sale for more than two years prior to his application for a patent next hereinafter mentioned, and not known or used by others in this country or patented or described in any printed publication in this or any foreign country before his invention thereof, and not abandoned; and that, being such original and first inventor, the said Louis Goddu, before the said twenty-sixth day of September A. D. 1882, made application in due form of law to the Commissioner of Patents of the United States for Letters Patent for the said invention, and duly swore to the specification thereof, and the said Louis Goddu, by an assignment in writing, duly executed on the first day of June A. D. 1882, and recorded in the United States Patent Office on the second day of October A. D. 1882, assigned said application, the invention therein contained, and the Letters Patent which might be granted therefor, to Gordon McKay, then of Newport in the state of Rhode Island, and James W. Brooks, then of Cambridge in the commonwealth of Massachusetts, respectively, principal and associate trustees of the McKay Metallic Fastening Association of Boston, their successors and assigns, and requested the Commissioner of Patents to issue the Letters Patent that might be granted for the said invention to the said McKay and Brooks, as said trustees. And such proceedings were had that, on the said twenty-sixth day of September A. D. 1882, Letters Patent of the United States numbered 265,227 were granted on the said application for the said invention therein described and claimed, to the said Louis Goddu, his heirs or assigns, in conformity with the requirements of the statutes in such case made and provided; and the said Letters Patent in their terms granted to the said Goddu, his heirs or assigns, for the term of seventeen years from the said twenty-sixth day of September A. D. 1882, the exclusive right to make, use, and vend throughout the

United States and the territories thereof the invention therein described and claimed, referring to the specification for further particulars thereof; and your orators bring here into court a duly authenticated copy of said Letters Patent, and pray that the same may be taken as a part of this bill.

And your orators further aver on information and belief that, under and in accordance with the terms of the said declaration of trust dated the ninth day of June A. D. 1877, they are the true and lawful successors of the said McKay and Brooks, trustees, and that by virtue of the said assignment the said McKay and Brooks then became, on said twenty-sixth day of September A. D. 1882, and your orators, as successors in the said trust of the said McKay and Brooks, subsequently thereto, but prior to the infringement hereinafter complained of, became, and your orators ever since have been and are now, entitled to and possessed of the full and exclusive right and liberty to make, construct, use, and vend to others to be used, the aforesaid invention within and throughout the United States and the territories thereof, as in and by said assignment, or a certified copy thereof here in court to be produced, will more fully appear.

And your orators further aver on information and belief that on and prior to the 29th day of May A. D. 1888, Louis Goddu of Winchester in the commonwealth of Massachusetts was the original and first inventor of a certain new and useful improvement in nailing-machines, not in public use or on sale for more than two years prior to his application for a patent next hereinafter mentioned, and not known or used by others in this country, or patented or described in any printed publication in this or any foreign country before his invention thereof, and not abandoned; and that, being such original and first inventor, the said Louis Goddu, before the said 29th day of May A. D. 1888, made application in due form of law to the Commissioner of Patents of the United States for Letters Patent for his said invention, and duly swore to the specification thereof, and assigned said invention and application, and the Letters Patent that should be granted on said application, to James W. Brooks, then of Cambridge in the commonwealth of Massachusetts,

in trust for the McKay Metallic Fastening Association of Boston in said commonwealth, and requested the Commissioner of Patents to issue the Letters Patent that should be granted on said application to the said James W. Brooks, trustee as aforesaid. Whereupon such proceedings were had that, on the said 29th day of May A. D. 1888, Letters Patent of the United States numbered 383,455 were granted on the said application for the invention therein described and claimed, to the said James W. Brooks, as trustee as aforesaid, as assignee of the said Louis Goddu, in conformity with the requirements of the statutes in such case made and provided; and the said Letters Patent in their terms granted to the said James W. Brooks as trustee, his successors and assigns, for the term of seventeen years from said last-mentioned day, the exclusive right to make, use, and vend the invention therein described and claimed throughout the United States and the territories thereof, referring to the specification for the particulars thereof; and your orators bring here into court a duly authenticated copy of said Letters Patent, and pray that the same may be taken as a part of this bill.

And your orators further aver on information and belief that by a valid assignment duly recorded in the office of the Commissioner of Patents of the United States, all the right, title, and interest of the said James W. Brooks as trustee in and to the said Letters Patent, and in and to the invention secured by said Letters Patent, became vested in your orators, and your orators then became, and ever since have been, and now are, entitled to and possessed of the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the aforesaid invention within and throughout the United States and the territories thereof; and that by the said assignment all claims and demands, either at law or in equity, which the said James W. Brooks as trustee had at the date of the said assignment, or might thereafter acquire, on account of any infringement of the said Letters Patent prior to the date of the said assignment, were duly assigned and secured to your orators, as in and by the said assignment, or a certified copy thereof, here in court to be produced, will more fully appear.

And your orators further aver on information and belief that on

and prior to the tenth day of July A. D. 1888, Louis Goddu of Winchester in the commonwealth of Massachusetts was the original and first inventor of a certain new and useful improvement in boot and shoe nailing machines, not in public use or on sale for more than two years prior to his application for a patent next hereinafter mentioned, and not known or used by others in this country or patented or described in any printed publication in this or any foreign country before his invention thereof, and not abandoned; and that, being such original and first inventor, the said Louis Goddu, before the said tenth day of July A. D. 1888, made application in due form of law to the Commissioner of Patents of the United States for Letters Patent for his said invention, and duly swore to the specification thereof, and assigned said invention and application, and the Letters Patent which should be granted on said application, to your orators, the said James W. Brooks, then of Cambridge in the commonwealth of Massachusetts, as trustee, and the said Frank F. Stanley of Swampscott in said commonwealth, as associate trustee, of the McKay Metallic Fastening Association of Boston in said commonwealth, and requested the Commissioner of Patents to issue the Letters Patent that should be granted on said application to your orators as trustees as aforesaid. Whereupon such proceedings were had that, on the said tenth day of July A. D. 1888, Letters Patent of the United States numbered 385,802 were granted on the said application for the invention therein described and claimed, to your orators, the said James W. Brooks, trustee, and the said Frank F. Stanley, associate trustee, as assignees of the said Louis Goddu, in conformity with the requirements of the statutes in such case made and provided; and the said Letters Patent in their terms granted to your orators, the said James W. Brooks, trustee, and the said Frank F. Stanley, associate trustee, their successors or assigns, for the term of seventeen years from the said tenth day of July A. D. 1888, the exclusive right to make, use and vend throughout the United States and the territories thereof, the invention therein described and claimed, referring to the specification for the particulars thereof; and your orators bring here into court a duly authen-

ticated copy of said Letters Patent, and pray that the same may be taken as a part of this bill.

And your orators further aver on information and belief that ever since the issue of said Letters Patent, they have been, and now are, entitled to and possessed of the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the aforesaid invention within and throughout the United States and the territories thereof.

And your orators further aver on information and belief that on and prior to the twenty-seventh day of November A. D. 1883, William P. Hopkins, then of Lawrence in the commonwealth of Massachusetts, was the original and first inventor of a certain new and useful improvement in nailing-machines, not in public use or on sale for more than two years prior to his application for a patent next hereinafter mentioned, and not known or used by others in this country, or patented or described in any printed publication in this or any foreign country before his invention thereof, and not abandoned; that, being such original and first inventor, the said William P. Hopkins, before the said twenty-seventh day of November A. D. 1883, made application in due form of law to the Commissioner of Patents of the United States for Letters Patent for his said invention, and duly swore to the specification thereof, and assigned his said invention and application, and the Letters Patent that should be granted on said application, to Gordon McKay, then of Newport in the state of Rhode Island, and James W. Brooks, then of Cambridge in the commonwealth of Massachusetts, trustees of the McKay Metallic Fastening Association, and requested the Commissioner of Patents to issue the Letters Patent that should be granted on said application to the said McKay and Brooks, trustees. Whereupon such proceedings were had that, on the said twenty-seventh day of November A. D. 1883, Letters Patent of the United States numbered 289,103 were granted on the said application for the invention therein described and claimed, to the said McKay and Brooks, trustees, as assignees of the said William P. Hopkins, in conformity with the requirements of the statutes in such case made and provided; and the said Letters Patent in their

terms granted to the said McKay and Brooks, as trustees, their successors or assigns, for the term of seventeen years from the said twenty-seventh day of November A. D. 1883, the exclusive right to make, use, and vend throughout the United States and the territories thereof the invention therein described and claimed, referring to the specification for the particulars thereof; and your orators bring here into court a duly authenticated copy of the said Letters Patent, and pray that the same may be taken as a part of this bill.

And your orators further aver on information and belief that they are the true and lawful successors as aforesaid of the said McKay and Brooks, trustees, and that by reason of being such successors they became, prior to the infringement hereinafter complained of, and ever since have been, and now are, entitled to and possessed of the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the aforesaid invention within and throughout the United States and the territories thereof.

And your orators further aver on information and belief that, prior to the eighteenth day of January A. D. 1887, Henry Dunham, then of Abington in the commonwealth of Massachusetts, was the original and first inventor of a certain new and useful improvement in boot or shoe nailing machines, not in public use or on sale for more than two years prior to his application for a patent next hereinafter mentioned, and not known or used by others in this country, or patented or described in any printed publication in this or any foreign country before his invention thereof, and not abandoned; and that, being such original and first inventor, the said Henry Dunham, before the said eighteenth day of January A. D. 1887, made application in due form of law to the Commissioner of Patents of the United States for Letters Patent for his said invention, and duly swore to the specification thereof; and thereafter, but before Letters Patent issued on his said application, he, the said Henry Dunham, died; and thereafter his administratrix, Ella B. Dunham, assigned his said invention and application, and the Letters Patent that should be granted on said application, to Henry S. Jenkins of Boston in the commonwealth of Massachusetts, trustee

for the Clinching Screw Company. Whereupon such proceedings were had that, on the said eighteenth day of January A. D. 1887, Letters Patent of the United States numbered 356,107 were granted on the said application for the invention therein described and claimed to the said Henry S. Jenkins, trustee, as assignee of the said Ella B. Dunham, administratrix, in conformity with the requirements of the statutes in such case made and provided; and the said Letters Patent in their terms granted to the said Henry S. Jenkins, trustee, his successors or assigns, for the term of seventeen years from the said eighteenth day of January A. D. 1887, the exclusive right to make, use, and vend the invention therein described and claimed throughout the United States and the territories thereof, referring to the specification for the particulars thereof; and your orators bring here into court a duly authenticated copy of said Letters Patent, and pray that the same may be taken as a part of this bill.

And your orators further aver on information and belief that, by valid assignments duly recorded in the office of the Commissioner of Patents of the United States, all the right, title, and interest of the said Henry S. Jenkins, trustee, and of the said Clinching Screw Company, for which the said Henry S. Jenkins held the said Letters Patent in trust, in and to the said Letters Patent and in and to the invention secured by said Letters Patent, became vested in your orators prior to the infringement herein complained of, and your orators then became, and ever since have been, and now are, entitled to and possessed of the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the aforesaid invention within and throughout the United States and the territories thereof, as in and by said assignments, or certified copies thereof here in court to be produced, will more fully appear.

And your orators further aver on information and belief that the said several inventions for which the said several Letters Patent were granted are capable of conjoint use in one and the same machine, and that all of said inventions have been so conjointly used

in the machines constructed, used, or sold by the defendants, as hereinafter complained of.

Your orators further show on information and belief that they and their predecessors in title have invested and expended large sums of money, and have been to great trouble and expense in and about the said several inventions and in the manufacture of machines embodying the several inventions described and claimed in the said several Letters Patent; that the said several inventions have been and are of great benefit and advantage to the public, and that the public generally have acquiesced in the rights of your orators and their predecessors in title, as secured by the said several Letters Patent, except for the infringement hereinafter set forth, and that the said several inventions have been of great profit to your orators; and that your orators are engaged in making and leasing to shoe manufacturers, or otherwise disposing of machines constructed according to and embodying the several inventions shown and described in the said several Letters Patent, and are able to make and fill all demands for such machines on the part of the public and persons desiring to use the same, throughout the United States and the territories thereof; and your orators will continue to make and to lease and otherwise dispose of large numbers of such machines, and realize great profits therefrom unless interfered with by the unlawful acts of the said defendants, as hereinafter set forth; and that the infringement by the defendants hereinafter set forth has done and still is doing, great and irreparable damage to your orators, and deprives your orators of great gains and profits to which they are justly entitled under the law, and which they would surely receive except for the unlawful acts of the said defendants, and encourages other persons to use the said several inventions in infringement of your orators' rights under the said several Letters Patent, to the great and irreparable detriment of your orators.

Yet that the said several defendants, well knowing the premises, and the rights and privileges as aforesaid secured to your orators by the said several Letters Patent, but contriving to injure your orators and deprive them of the profits, benefits, and advantages which might and otherwise would have accrued to them from the

said several Letters Patent, have since the first day of October 1895, within the said district of Massachusetts, and elsewhere within the United States and territories thereof, unlawfully, wrongfully, and without license of your orators made, constructed, used, sold, or leased, and are still making, constructing, using, selling, leasing, and intending to make, use, and sell or otherwise dispose of to shoe manufacturers, machines constructed according to and containing the said several inventions patented in and by the said several Letters Patent, in violation and infringement of the aforesaid rights and privileges of your orators, but how many of the infringing machines the defendants have so made, constructed, used, or sold, or are now making, constructing, using, or selling, your orators are ignorant and cannot set forth, but they aver that the said defendants have derived and received and are still deriving and receiving, from the said construction, use, or sale, great gains and profits, but to what amount your orators are ignorant and cannot set forth, and your orators pray that the said defendants may be required to make a disclosure of all such gains and profits.

And your orators aver that the defendants are prepared and ready to continue such infringement, and threaten so to do; and will do so unless they are restrained from so doing by this honorable court, and your orators will suffer great and irreparable damage from the said unlawful acts of the said defendants.

And your orators aver that they and their predecessors in title, and all persons making or vending the machines or mechanisms patented by the said several Letters Patent for or under your orators or their predecessors in title, have given sufficient notice to the public that all articles made, used, or vended, or otherwise disposed of by your orators or their said predecessors in title, or made, or sold for or under your orators or their said predecessors in title, and patented in and by the said several Letters Patent, are patented by fixing thereon the word "Patented", together with the days and years on which the said several Letters Patent were granted respectively, or when, from the character or the article, this could not be done, by affixing to it or to the package wherein one or more of said articles were enclosed, a label containing the like notice.

And your orators further aver that the said defendants were duly notified of the said infringement herein complained of, and that the defendants have continued after such notice to make, use, and vend or otherwise dispose of machines infringing each of said several Letters Patent.

Your orators further complain and say that the McKay Metallic Fastening Association was formed on the 9th day of June, 1877, by the execution of a trust deed or declaration, and that under said trust deed Gordon McKay became the principal trustee and your orator James W. Brooks the associate trustee, and in accordance with the terms of said trust deed the principal trustee was vested with authority to transact the business of the Association under the direction of an executive committee composed of five shareholders of the Association, and also by the terms of said instrument the principal trustee was given authority to sign the name of the associate trustee to all transfers of patents, licenses, leases, and instruments whatsoever.

Thereafter, on the 13th day of July, 1884, the said Gordon McKay resigned as principal trustee, and your orator James W. Brooks became principal trustee in his place, and your orator Frank F. Stanley became associate trustee, and from and ever since the said last-mentioned date your orator James W. Brooks has been the principal trustee of the Association, having the executive control and management of the business, and your orator Frank F. Stanley has been the associate trustee.

Your orators further say that the said McKay Metallic Fastening Association was formed for the purpose of developing certain inventions and machines of the defendant Louis Goddu for inserting screws into the soles of boots and shoes, and also to develop certain tacking machines of the defendant Goddu which were adapted to drive a fastening for holding or securing together certain parts of a boot or shoe.

Your orators further aver that prior to the formation of said McKay Metallic Fastening Association the defendant Louis Goddu had made a number of inventions relating to machines for inserting metallic fastenings, and taken out Letters Patent of the United

States therefor, and had constructed or caused to be constructed machines embodying his inventions, including machines for inserting screws in the soles of boots and shoes, and also including cable-wire tacking machines for fastening the outer soles of boots and shoes to the uppers and inner soles, and for other kindred uses in the manufacture of boots and shoes.

These inventions and machines, embodying the inventions of the said defendant Louis Goddu, had been assigned by the said Louis Goddu to a corporation named the American Cable Screw Wire Company. On the 9th day of June, 1877, the said Gordon McKay, as the principal trustee of the McKay Metallic Fastening Association, and your orator the said James W. Brooks, as the associate trustee of said Association, bought from the said American Cable Screw Wire Company all the inventions, patents, and machines of the said defendant Goddu which had been assigned by him as aforesaid to the American Cable Screw Wire Company and also took over from the American Cable Screw Wire Company certain inventions and patents of the defendant Van Wagenen which had been assigned by the defendant Van Wagenen to the American Cable Screw Wire Company.

Your orators further aver that the said defendant Louis Goddu had shown rare inventive genius in inventing, originating, and developing these metallic-fastening machines, and that it was essential, if the said McKay Metallic Fastening Association was to carry on the business of developing and pefecting the said defendant Louis Goddu's machinery, that it should have the said Louis Goddu's future inventions relating to machines for driving metallic fastenings, and should secure his services as inventor to perfect his machines. Accordingly the said McKay and your orator the said Brooks, as trustees of the said Association, on the 9th day of June, 1877, purchased from the said defendant Louis Goddu personally, all future inventions which he should make for seventeen years relating to metallic fastenings or metallic-fastening machinery. Since the said 9th day of June, 1877, your orators have purchased from the said Louis Goddu all the metallic-fastening inventions made by him during his life, so that your orators are now, and

have been ever since the formation of the said Association, entitled to all inventions relating to metallic fastenings or metallic-fastening machines made by the said Louis Goddu. Besides thus purchasing the future metallic-fastening inventions of the defendant Louis Goddu, the trustees of the McKay Metallic Fastening Association also entered into a contract with Louis Goddu to secure his services as inventor to develop and perfect his machines acquired by the Association as aforesaid. By this contract, dated the 18th day of August, 1877, the defendant Louis Goddu promised to work for the McKay Metallic Fastening Association as inventor, and to use his best endeavors, faithfully, properly, economically, and in a good and workmanlike manner, to invent, devise, and construct metallic-fastening machinery. The said Louis Goddu has been paid by the Association for his services as inventor, large amounts of money in each year, and the total sum thus paid Louis Goddu by your orators as trustees for the Association exceeds two hundred and fifty thousand dollars.

Your orators further say that the plan of business adopted by the said McKay Metallic Fastening Association was to lease its patented machinery to shoe manufacturers in the United Stated and Canada, and to sell its machinery in other foreign countries. In the leases for all machines leased and licensed for use in the United States and Canada, shoe manufacturers have always agreed to purchase from the Association the fastening material used in the machines thus leased by the Association, and as it is agreed in the lease and license that the fastening material thus purchased by the licensees of the Association shall be sold by the Association at prices considerably above the cost of the fastening material, the Association in this way has obtained from the manufacturers a license fee or royalty for the use of its leased patented machinery.

Your orators further aver that, as the said Goddu machines originally taken over by the Association as aforesaid from the American Cable Screw Wire Company have continued to be developed and improved by the embodiment therein of further inventions of the said Louis Goddu, and as the Association has begun to lease to shoe manufacturers additional machines subsequently invented and devel-

oped by the said Louis Goddu, the business of the Association has steadily increased in size until, at the present time, the Association has over five thousand machines out under lease and license to shoe manufacturers in the United States and Canada, and is making sales of metallic-fastening material to its licensees at the rate of over three million pounds per year, and the gross receipts from the business of the Association exceed a million dollars per year.

Your orators further aver that simultaneously with the numerous inventions which have been made from time to time by the defendant Louis Goddu relating to machines for driving metallic fastenings, the said Louis Goddu, as the inventor of the Association, has made many inventions relating to new and improved metallic fastenings, and the said Louis Goddu, as the inventor of the Association, has made also many inventions relating to machinery for the production of the metallic fastenings sold by the Association to shoe manufacturers for use in the machines of the Association leased and licensed to them.

Your orators further say that upon the purchase of the Goddu and Van Wagenen inventions and patents from the American Cable Screw Wire Company, as above described, the defendant, the said Albert Van Wagenen, entered the employ of the Association and for some years previous to October 1, 1895, when Van Wagenen voluntarily left the employ of your orators, he occupied a position of confidence in the Association, — one of his especial duties being to see that the various inventions which the said Louis Goddu made from time to time as the inventor of the Association were duly patented. In this way the said Van Wagenen obtained a complete and thorough knowledge of the metallic-fastening art, and especially a knowledge of the large number of patents belonging to your orators, and the validity and scope of the claims thereof. And your orators further aver that it was customary for the defendant Van Wagenen, acting in this confidential capacity, to keep himself constantly informed as to just what improvements were being devised and invented by the said Louis Goddu, and to make it a part of his duty always to accompany the defendant Louis Goddu to the patent solicitor of the Association for the purpose of aiding the said Goddu

in expressing his ideas and in preparing his applications for Letters Patent. And your orators aver that because he thus served the Association in this confidential capacity, the defendant Van Wagenen succeeded in maintaining the most intimate relationship between himself and the said Louis Goddu, and at the same time obtained a detailed knowledge of the large number of patents belonging to the Metallic Association, and of the meaning and scope of the claims therein, and of the state of the patented art, which was and is today more extensive than the knowledge of any other person in the employ of the Association.

Your orators further aver that as the five sons of the defendant Louis Goddu grew up one by one, they were, at the request of their father, taken into the employ of the Association, and these five sons, who are the defendants Louis H. Goddu, William Goddu, Napoleon Goddu, Eloie Goddu, and George Goddu, were almost entirely engaged, while thus employed by the Association, in assisting their father, first, to embody his inventions in the wooden patterns which he was accustomed to make, and then to aid him in assembling and getting into running order the first experimental machine made from these patterns, so as to reduce the inventions of their father to practice and to make a machine perfect in design and detail so that its manufacture could be readily undertaken in large quantities.

Your orators further aver that during all the years that these five sons of the defendant Louis Goddu were in the employ of the Association, although they were working nearly all the time in the inventive department of the business, and most of the time in the very room where their father was making his inventions, and were thus placed under the most favorable conditions possible, and moreover had the strongest pecuniary incentives to make inventions in the metallic-fastening line, yet in fact, as your orators are informed and believe, the said five sons never did make any inventions whatever, but proved that, although they were good mechanics and experimenters, they did not have inventive ability.

Your orators further aver that about the beginning of the year 1895 the defendant Louis Goddu became very angry with your ora-

tor the said Brooks, as the principal trustee of the Association, and with the executive committee of the Association, because it was not deemed proper that he, as the inventor of the Association, should interfere with the management of the factory of the Association and the duties of the superintendent regularly employed by the Association for the purpose of managing the said factory, and the said Louis Goddu used language to your orators, the said Brooks and other members of the executive committee of the Association, which was, and was clearly intended to be, a threat that unless he were given his way he would in future take out patents for his metallic-fastening inventions in the names of his sons. At about this same time the defendant Van Wagenen also made the same threat to your orator the said Brooks, as the principal trustee of the Association, that the said Louis Goddu would in future take out patents for his metallic-fastening inventions in the names of his sons.

Your orators further aver that at the time when the defendant Louis Goddu thus became angry because he was not allowed to interfere with the management of the factory of the Association, and at about the time when the said threats were made to your orator the said James W. Brooks, and to other officers of the Association, by the defendant Louis Goddu and the defendant Albert Van Wagenen, the said Louis Goddu and the said Albert Van Wagenen conspired together and agreed with each other that the said Louis Goddu should invent and design a full line of metallic-fastening machinery for the purpose of performing the work accomplished by the machinery already invented by the said Goddu and belonging to the Association, and it was agreed between the said Louis Goddu and the said Van Wagenen that when the said machines had been invented by the said Louis Goddu the patents therefor should be falsely and fraudulently taken out in the names of the different sons of the said Goddu, so as to attempt to defeat the right of the said Association to the inventions of the said Louis Goddu and prevent the said Association from obtaining patents for the said inventions in the name of the said Louis Goddu to which the said Association was lawfully entitled under its existing agree-

ment with the said Louis Goddu. Your orators further aver that the said plan for having the said Louis Goddu invent and devise the said machines, and then fraudulently cause patents to be taken out therefor in the names of the said sons of the said Louis Goddu, was divulged by the said Van Wagenen and the said Louis Goddu to the said five sons of the said Louis Goddu, namely, the defendants Louis H. Goddu, William Goddu, Napoleon Goddu, Eloie Goddu, and George Goddu, and it was agreed between the said Van Wagenen and the said Louis Goddu and his said five sons that this plan for defrauding the McKay Company should be put into effect; and in pursuance of this scheme it was agreed between the said Van Wagenen and the said Louis Goddu and his five sons that the said Louis Goddu should continue to receive his pay as inventor for the Association, but that he would invent and develop the new metallic-fastening machines at a small shop belonging to him and located on his house lot next to his house at the said Winchester, where in the past, to suit his convenience, he had been accustomed to carry on much of his inventive work for the Association. It was also agreed that his said five sons should leave the employ of the Association from time to time as they should be needed by their father to assist him — just as they had previously assisted him when in the employ of the Association — in the work, first, of making the wooden patterns for, and then embodying in metal, the new metallic-fastening inventions which he was thus to make. It was further agreed that while these machines were being invented by the said Louis Goddu, and his sons were assisting him in making the wooden patterns and putting together the first machines, he, the said Louis Goddu, would pay his three married sons regular daily wages, and also support his two unmarried sons, and also pay such other sums as might be needed for additional help and for tools and for castings and material, and for taking out the proposed patents, and all other various expenses that might be incurred in connection with the enterprise.

In accordance with this plan, your orators aver that on or about October 1, 1895, the invention of this line of machines was begun by the said Louis Goddu, and in order that he might assist in pro-

moting the enterprise the said Van Wagenen, of his own accord, left the employ of the Association October 1, 1895; and furthermore, that they might assist in making the wooden patterns and doing the other work essential tc the embodiment of their father's new inventions, three of the sons of the defendant Louis Goddu, namely, Napoleon Goddu, Louis H. Goddu, and George Goddu, within a few days of the same time that Van Wagenen left, also voluntarily left the employ of the Association and went to work for their father in his said shop next his house; and also William L. Goff, an employee of the Association who had long been employed by the Association, not as an inventor, but in a confidential capacity to aid the said Louis Goddu to embody his inventive ideas, was persuaded by the said Louis Goddu and the said Van Wagenen to leave the employ of the Association, and accordingly he also, of his own accord, left the employ of the Association and went to work for the said Louis Goddu for daily wages paid by the said Louis Goddu in the said shop next Goddu's house. In 1896 the two remaining sons of the defendant Louis Goddu, namely, William Goddu and Eloie Goddu, also voluntarily left the employ of the Association for the sake of aiding their father, as they had previously done when in the employ of the Association, in embodying his inventions. In this manner the defendant Louis Goddu, with the aid and assistance of Albert Van Wagenen and his five sons, carried out his plan of making a large number of inventions relating to metallic fastenings, and then fraudulently taking out patents for these inventions in the names of his sons, and the work was continued until the said Louis Goddu had invented a complete line of metallic-fastening machinery for doing precisely the same work accomplished by the machines he had previously invented for the Association. In accordance with the original plan of the said Louis Goddu and his five sons and Van Wagenen, patents were fraudulently taken out for the said inventions of the said Louis Goddu in the names of his sons, Louis H. Goddu, William Goddu, and George Goddu.

Your orators aver that some time not long prior to May, 1897, as your orators are informed and believe, the defendant George N.

Smalley was informed of the plan to defraud your orators, and was invited to enter into the scheme, and to help it forward by investing money therein, and the said Smalley, though aware of the contract of the said Louis Goddu with your orator, and well knowing the fraudulent character of the enterprise, nevertheless became a party thereto and took an interest therein, and began to advance money, and in other ways to aid and promote the enterprise.

Your orators further aver that in May, 1897, the defendant Van Wagenen, and the defendants Louis Goddu, Louis H. Goddu, William Goddu, Napoleon Goddu, Eloie Goddu, George Goddu, and the defendant George N. Smalley, formed or caused to be formed, under the laws of the State of Maine, the defendant corporation, the Goddu Sons Metal Fastening Company, and caused to be issued to the said defendants Van Wagenen, Louis Goddu, Louis H. Goddu, William Goddu, Napoleon Goddu, Eloie Goddu, George Goddu, and George N. Smalley, stock for their respective interests in the said enterprise.

Your orator avers that since the formation of the said corporation the said Louis Goddu has continued to advance all, or substantially all, the money needed to carry on the enterprise, and is still, with the aid of his five sons and of the defendant Van Wagenen, and of the defendant Smalley, directing and managing the enterprise and supplying the money for carrying it on and making from time to time additional inventions, for which he is fraudulently causing patents to be applied for and taken out by his sons.

And your orators further aver on information and belief that the defendant George N. Smalley is the president of the defendant corporation; that the defendant Albert Van Wagenen is its treasurer; that the defendants George N. Smalley, Albert Van Wagenen, Louis H. Goddu, and George Goddu are directors thereof; and that these said defendants are managers of the defendant corporation, and direct and control the machinery and the methods of manufacture used and employed by the defendant corporation, and direct and control the sale of machines manufactured by the defendant corporation, and that they have authorized and directed the construction, use, and sale of machines which each embody the

inventions shown and described in the aforesaid several Letters Patent, and have thereby infringed the rights of your orators under the aforesaid several Letters Patent.

And your orators further aver on information and belief, that each of the defendants, other than the defendant corporation, is a stockholder in the defendant corporation, and that each of the said defendants is personally interested in the infringements herein complained of, and has actively and personally assisted in the construction of the said infringing machines, and has otherwise actively and personally participated in the said infringements.

And your orators further aver on information and belief that the defendant Louis Goddu is the inventor and designer of the said infringing machines constructed, used, and sold by the said defendant corporation, and has superintended and assisted in the construction of the said infringing machines.

And your orators further aver on information and belief that neither singly nor together are the defendants financially able to indemnify your orators for the loss and damage suffered by your orators on account of the infringements committed by the defendants and herein complained of.

Your orators further aver that the said Louis Goddu and the other defendants, Albert Van Wagenen, Louis H. Goddu, William Goddu, Napoleon Goddu, Eloie Goddu, George Goddu, and George N. Smalley, who have all well known the contract relations of the defendant Louis Goddu with your orators, and the fraudulent character of his enterprise, and who have constantly consulted with the said Louis Goddu in regard to his plans, and who have been constantly aiding him to carry out his fraudulent scheme, and who have been expecting to profit largely by the enterprise, are all estopped from denying the validity of any of the patents in suit belonging to your orators or issued to your orators as assignees of the said Louis Goddu.

Your orators further aver that the said defendant corporation, the Goddu Sons Metal Fastening Company, was created solely for the purpose of serving as a means to carry out the fraudulent plan hereinbefore set forth, and was formed wholly by these defendants and

by their solicitor, James H. Churchill, who had formerly been employed in the office of the solicitor who took out the patents of the said Louis Goddu for the Association, and who is therefore estopped from denying the validity of any of the patents belonging to your orators, and especially of the patents upon which this suit is brought which were taken out by the said Louis Goddu and assigned by the said Goddu to the Association.

And your orators further pray that said defendants may be compelled, by a decree of this court, to account for and pay over to your orators all such gains and profits as have accrued to or been received by them, and all such gains and profits as they may be entitled to by reason of the aforesaid construction, use, or sale or lease of said metal-fastening machinery and the sale of materials or fastenings sold to be used therein, and all such gains and profits as your orators would have received but for the unlawful acts of the said several defendants, and the damages which your orators have sustained by the said unlawful acts of the said several defendants: and that the said several defendants, their clerks, attorneys, agents, servants, and workmen may be perpetually enjoined and restrained by the decree and injunction of this court from directly or indirectly making, constructing, using, or vending to others to be used, metal-fastening machinery containing or embodying the inventions described and patented in said several Letters Patent or any of them, and that they may be decreed to pay the costs of this suit, and that they may be also enjoined and restrained as aforesaid, during the pendency of this suit, and that your orators may have such other and further relief as the equity of the case may require, and to this court may seem meet.

To the end, therefore, that the said several defendants may, if they can, show cause why your orators should not have the relief hereby prayed, and may full, true, direct, and perfect answer make (but not under oath, which is hereby expressly waived) to the several matters hereinbefore stated and charged, as fully and particularly as if the same were here repeated and the several defendants especially interrogated in reference thereto; and especially that they may set forth whether, since said first day of October, 1895, they

have made, constructed, used, or sold, or are now making, constructing, using, or selling, or causing or permitting to be made, used, or sold, within the district aforesaid or elsewhere in the United States, any metal-fastening machinery containing or embodying the inventions aforesaid, and how many they have so made, constructed, used, or sold, or caused or permitted to be made, used, or sold and whether they claim so to make, construct, use, or sell the said articles, or cause or permit the same to be made, used, or sold under any pretended grant or license held by them or by others under any of said several Letters Patent:

May it please your Honors to grant unto your orators not only writs of injunction conformable to the prayer of this bill, but also a writ or writs of *subpoena ad respondendum* issuing out of and under the seal of this honorable court, directed to the said defendants Louis Goddu, Albert Van Wagenen, Louis H. Goddu, William Goddu, Napoleon Goddu, Eloie Goddu, George Goddu, the Goddu Sons Metal Fastening Company, and George N. Smalley, commanding them to appear and make answer to this bill of complaint, and to perform and abide by such order and decree herein as to this court may seem required by the principles of equity and good conscience.

And your orators as in duty bound will ever pray.

JAMES W. BROOKS,
Principal Trustee of
McKay Metallic Fastening Association.

FRANK F. STANLEY,
Associate Trustee of
McKay Metallic Fastening Association.

Fish, Richardson & Storrow,
Solicitors and of Counsel.

AFFIDAVIT OF JAMES W. BROOKS.

James W. Brooks, being duly sworn, doth depose and say as follows: —

I am sixty-five years of age, and live at Petersham in the state of

Massachusetts. I have been one of the trustees of the McKay Metallic Fastening Association since the formation of the Association, June 9, 1877. The Association carries on its business under a declaration of trust dated June 9, 1877. By this trust deed the title to all the property stands in the name of two trustees, one of whom is called the principal trustee and the other the associate trustee. The principal trustee has authority to transact the business of the Association under the direction of an executive committee composed of five shareholders of the Association, and the principal trustee can also, at any time, sign the name of the associate trustee to any assignments of patents, licenses, or other instruments or contracts relating to the business of the Association, When the Association was first formed, on June 9, 1877, Gordon McKay, then of Cambridge, Massachusetts, became the principal trustee, and I was the associate trustee. On July 30, 1884, Gordon McKay resigned as principal trustee, and I took his place as principal trustee, and Frank F. Stanley of Swampscott, Massachusetts, became associate trustee. From that date until the present time, I have continued as principal trustee, having the executive control and management of the business, and Frank F. Stanley has remained as associate trustee.

The McKay Metallic Fastening Association was created chiefly to develop certain inventions and machines of the defendant, Louis Goddu, for inserting screws into the soles of boots and shoes so as to serve as a fastening for holding together the outer sole, the inner sole, and the upper; and also to develop certain tacking machines of Goddu used for driving a fastening to hold the outer sole and inner sole together during the shoe-making process, as a step preparatory to the insertion of the standard screws, or whatever other fastening may be finally employed for attaching the outer sole to the upper and the inner sole. These tacking machines are also used for tacking on the rand or narrow strip of leather which comes between the heel and the sole and serves to level up the somewhat rounded surface of the heel end of the sole, so as to afford a flat surface for the reception of the heel.

Before the formation of the McKay Metallic Fastening Associa-

tion the defendant Louis Goddu had invented a machine for inserting these screws through the outer sole, inner sole, and upper of shoes, and the defendant Albert Van Wagenen had also made some inventions relating to this class of shoe machinery, and these inventions had been transferred by Goddu and by Van Wagenen to a corporation known as the American Cable Screw Wire Company. On June 9, 1877, Gordon McKay as the principal trustee, and I as the associate trustee, of the McKay Metallic Fastening Association, acquired these patents and inventions of the defendants Louis Goddu and Albert Van Wagenen from the American Cable Screw Wire Company, and we also acquired from others certain other patents and inventions relating to metallic fastenings in order that the Metallic Fastening Association might carry on the metallic-fastening business.

The defendant Louis Goddu, besides being the principal inventor of the standard screw machine, and of the tacking machine which the Association took over from the American Cable Screw Wire Company, had made also certain other inventions relating to another metallic-fastening machine called the cable screw machine, and another metallic machine for inserting short nails in the soles of shoes, called a quilter. As Goddu had shown rare genius in inventing these metallic-fastening machines, it was essential to the Association, if it was to carry on the business of perfecting and putting into use these Goddu machines, that Goddu's future inventions in this line should belong to the Association. The trustees, therefore, at the same time that they bought these Goddu patents and inventions from the American Cable Screw Wire Company, also bought from Goddu himself all his future inventions relating to "fastening together the soles and uppers of boots and shoes with metallic fastenings" for the period of seventeen years. This purchase of Goddu's future inventions was effected by a contract entered into by the defendant Louis Goddu and the trustees of the Association on the 9th of June, 1877, and the trustees, as the consideration for these future Goddu inventions, bound the Association to pay to Louis Goddu a sum equal to one and one half per cent of all dividends or profits declared or paid from time to time

by the Association to its shareholders; the payments thus provided for were to continue for so long as any of the Goddu Letters Patent purchased by the Association from the American Cable Screw Wire Company should continue in force, and also for such longer time as the patents for any of Goddu's future inventions thereafter assigned to the Association should remain in force.

Furthermore, as this contract of June 9, 1877, only provided for the assignment of such metallic inventions as Louis Goddu might happen to make, but did not bind him to give his time and services as inventor to the Association, and as the officers of the Association knew that if the Association was to carry on the business of improving and developing Goddu's machines, it must have not merely such future inventions as Goddu might happen to make, but must secure his services as inventor to improve and perfect his machines, therefore, on the 18th day of August, 1877, the Association made an additional contract with Goddu for his services as inventor. In this contract Goddu agreed to work for the trustees —

"in the capacity of inventor and as master mechanic, in constructing such machines as the said Trustees or the Agent of the Association shall require and to use his best endeavors to faithfully, properly, economically and in a good and workmanlike manner, devise and construct said machinery and devise all such machinery and improvements in machinery processes and instrumentalities relating to or in furtherance of the business of said Association, as may be useful or profitable for it, it being understood that 'by an agreement already made said Trustees are to own all such inventions and improvements'."

In order to thus secure Goddu's services as inventor, to perfect his machines, the trustees bound the Association by this contract to pay Goddu four thousand dollars a year, and besides this salary to give him a still further percentage of its dividends, in addition to the one and one half per cent already provided for in the contract of June 9, 1877. This additional percentage was to be one and one quarter per cent of the first seventy-five thousand dollars declared in dividends by the Association, with a varying per cent for such additional sums as might be paid out as dividends in each year.

The plan of business adopted by the Association from the beginning was to lease its patented machines to shoe manufacturers in the United States and Canada, and for the most part to sell them outright in all other countries. In the lease and license agreements covering the machines put out in the United States and Canada, the shoe manufacturers have always agreed to purchase from the Association all screw wire, tacker wire, and other metallic fastenings used in the operation of the machines, and it is expressly provided in these leases that the wire thus purchased from the Association shall be sold at a price considerably above the cost of the wire to the Association. In this way, a royalty or license fee has been obtained by the Association for the use of its patented machinery, and this royalty, inasmuch as it is based directly upon the amount of metallic fastenings driven by the machines, is proportioned exactly to the extent to which any particular machine is used, and at the same time the royalty to different manufacturers is always uniform for any given shoe.

During the first year of the business of the Association there were sold in this way to shoe manufacturers in the United States about 60,000 pounds of screw wire for the Goddu standard screw machine, and more than 200,000 pounds of cable fastening and cable tacker wire for the Goddu cable wire machine and the Goddu tackers. The cable wire machine was used both as a tacker and also for the purpose of permanently uniting soles to uppers, but its use as a machine for driving a permanent fastening was gradually abandoned in favor of the standard screw machine. The sale of standard screw wire increased rapidly, until in 1884 the sale of this wire amounted to nearly 325,000 pounds, and the sale of cable tacker wire amounted to over 100,000 pounds. It is to be noticed that the sale of tacker wire, owing to the substitution of standard screw wire therefor, fell off, but in much less proportion than the increase in the standard screw wire.

Since 1884 the sale of screw wire has more than trebled, so that during the present calendar year the sales of standard screw wire have been at the rate of more 1,000,000 pounds per annum and since 1884 the sale of tacker wire has increased fivefold, so that

sales of tacker wire are now going on at the rate of more than half a million pounds per annum.

In the year 1887 the Association began to put out a new patented machine for driving loose nails. This machine was invented by Goddu as the inventor of the Association, and uses nails supplied in mass to the hopper of the machine, as distinguished from fastenings fed to the machine from a spool or coil. The use of this loose nailer has rapidly increased from sales of 15,000 pounds of nails in 1887 to more than half a million pounds of nails in the year 1897, and the sale of nails has been going on in the present year at the rate of nearly three quarters of a million pounds per annum.

In the year 1896 the Association began to lease to the shoe manufacturers a new patented slugging machine, also invented by Louis Goddu as the inventor of the Association. This slugger uses a continuous wire, and drives a series of metallic slugs or short nails chiefly in the heels of shoes, though occasionally in the soles of some of the coarser shoes. These slugs are intended not for a fastening, but to resist wear, and also for ornament. Goddu had begun to invent his slugging machine about 1889 or 1890. The slugger, however, took Goddu more time than he usually spent on his inventions, and continued to be in the experimental stage until about 1895, although a few of the machines were put out from 1890 on, and the Association sold from 3000 to 7000 pounds of slug wire in each year from 1890 to 1895. By 1896 the machine had been perfected, so the Association began to put out these Goddu slugging machines in large numbers, selling about 33,000 pounds of wire in that year. In 1897 over 214,000 pounds of wire were sold, and in the first nine months of the present year sales have been going on at the rate of nearly 900,000 pounds per annum.

It will thus be seen that the business of the Association was originally founded upon two machines invented and patented by the defendant, Louis Goddu, and that the enormous growth of the business has been based upon these two original machines (the standard screw machine and the tacker) as further developed by the many subsequent inventions which Louis Goddu has made as the inventor of the Association, and also upon the two new machines (the loose

nailer and the slugger) invented and patented by Goddu as the inventor of the Association, and which the Association began to put out in 1887 and 1896, respectively.

The number of these patented machines licensed to shoe manufacturers in the United States and Canada has been steadily and rapidly increasing as the constantly increasing sales of metallic fastenings by the Association indicate, until at the present time the Association has licensed, and in use in the United States and Canada, more than five thousand of these different patented Goddu machines, and the total receipts of the Association from its sale of fastening material and spare parts for these machines are going at the present time at the rate of more than a million dollars per annum.

It should also be stated in this connection that, hand in hand with the numerous inventions made by Louis Goddu in improving and developing these four machines, he also carried on as the inventor of the Association the invention and perfection of a complete line of machinery for producing economically and in large quantities the standard screw wire and the tacker wire or string nail, and also some other fastenings supplied by the Association to its licensees. For example, Goddu first produced a machine for cutting the screw thread on the wire used in the standard screw machines, and more than two hundred of these machines were built by the Association, and kept running to supply the wire sold by the Association to the users of its standard screw machines. Later, in 1884 or 1885, Goddu invented a new and much more effective machine for making this screw-threaded wire by a rolling instead of a cutting process, and machines for doing the work in this way were built and put into use by the Association. Later, in 1887, when Goddu had very much increased the speed and efficiency of the standard screw machines by inventing the double-thread screw wire, Goddu perfected a third set of screw-wire making machinery for the new double-threaded screw wire. Goddu also at different times has produced a number of different machines for making tacker wire.

During all these years, from the formation of the American Cable Screw Wire Company to the formation of the McKay Metallic

Fastening Association in 1877, and thence down to the present time, Louis Goddu has shown, whenever he has felt well disposed, an inventive skill in this peculiar line of machinery which can hardly be called less than marvellous. He has taken out more than sixty patents for metallic-fastening inventions, and there has never been any one else in the world who could compare with Louis Goddu in the fecundity and originality of his inventions in the metallic-fastening field. It has apparently only been necessary for him to get implanted in his mind the desire to invent a machine for doing a particular line of metallic-fastening work in order to conceive the invention or inventions necessary to solve the problem. He certainly has been endowed with a special genius for dealing with wire-manipulating machinery. He is not a man who has received scientific education — he is not even a good draughtsman, as is the case with most inventors. Although the Association has at all times been ready to aid him by permitting him to call upon its expert draughtsmen for assistance, yet he rarely works out his conceptions by the aid of a mechanical drawing. He seems to work out his inventions in his mind in a complete, or nearly complete, form, and the first expression of his conception is in the form of the wooden patterns used for casting or shaping the parts. He is himself a fair pattern maker, and sometimes whittles out these wooden patterns for parts of his machines with his own hands, though generally he avails himself of the services of one or more expert pattern makers for this purpose. These pattern makers work, under his supervision and direction, generally with only an oral description or the merest pencil outline to aid them. Thus the whole new machine is first expressed by Goddu in wood, though I think the machine is never put together by him as a wooden model, for as fast as the wooden patterns are finished they are sent away to be cast or made from metal, and as these pieces of metal are made they are put together, so that the machine is gradually assembled in this way. After the first machine is thus assembled it almost always goes through a period of testing, changing, and experimenting. This experimenting is in part done by Goddu with his own hands, but in much

larger part, as in the case of the first wooden patterns, it is performed by mechanics under his general direction.

While Goddu has been in the employ of the Association he has, whenever engaged in inventing a new or an improved machine, had working under his control and direction in the manner I have indicated one or more pattern makers to first express his conceptions in wood, and also one or more mechanics to serve as experimenters when the new machines are first assembled.

The relations of Louis Goddu to the Association have been attended with much vexation and trouble. He is a French Canadian, and of an excitable and irritable disposition. The Association has always treated him with the greatest consideration, and he has constantly received larger pay than his contract called for, and larger than any inventor I know of, but he has many times expressed the greatest ill-will and animosity towards the trustees and the members of the executive committee. He has a number of times stated that if his pay were only increased to a certain point he would then give himself heart-whole to his inventive work for the Association. The Association has repeatedly met his demands for increased pay in the hope of satisfying him and persuading him to carry on his inventive work, but only to find that in every instance he has before long again become dissatisfied, and again begun to neglect his work and to assume an attitude of hostility towards the trustees and the executive committee of the Association, and particularly to scheme in some way to get from the Association bigger pay.

It will be recognized that no contract, no matter how faithfully observed by the Association, and no matter how faithfully Louis Goddu promised therein to devote himself as inventor to the interests of the Association, can be enforced by the Association so as to compel Goddu to live up to his agreement. The moment Goddu has felt disposed not to invent, the Association has had no legal remedy to compel him to honestly carry out his agreement.

As I have stated, in June, 1877, the Association purchased from Goddu for a percentage of its dividends all of his future metallic-fastening inventions for the period of seventeen years. On August 18 of that same year the Association also entered into an agreement

with Goddu (already referred to on page 3 [printed page of this record 164]) in which Goddu promised —

"to use his best endeavors to faithfully, properly, economically and in a good and workmanlike manner, devise and construct said machinery and devise all such machinery and improvements in machinery processes and instrumentalities relating to, or in furtherance of, the business of said Association, as may be useful or profitable for it."

In return for this promise on the part of Goddu, the Association bound itself to pay him a salary of $4000, and a still further percentage of its earnings, as stated *supra*, page 4 [printed page of this record 164].

However, on January 1, 1880, within less than three years from the date of the purchase by the Association of Goddu's future inventions, and although Goddu was still absolutely bound by his contract to convey to the Association all his inventions relating to metallic fastenings for the further period of fourteen years, yet, in the hope of satisfying Goddu, the Association agreed, by a new contract dated January 1, 1880, to give him a sum equal to two and one-half per cent of all dividends declared by the Association from the profits derived from his inventions in the United States, instead of the one and one-half per cent which had been the sum agreed to by Goddu in his contract of June 9, 1877. The Association also by this new contract of January 1, 1880, bound itself to give Goddu a sum equal to twenty per cent of all dividends derived from his inventions in foreign countries. Goddu, in return for these additional obligations assumed by the Association, sold to the Association all his future inventions relating to metallic fastenings.

Less than three years after this, on May 26, 1883, the Association felt obliged to agree to pay Goddu 5 per cent of the net earnings from the "new automatic nailing machine", although this machine was then built, and, by Goddu's contract of June 9, 1877, would have been absolutely the property of the Association in return for one and one-half per cent of the net earnings of the Association, and was in fact, by Goddu's contract of January 1, 1880, the property of the Association in return for two and one-half per cent of the earnings plus a percentage running from one

and one-half to one-half of one per cent given to Goddu by the contract of August 18, 1877. It was also agreed at this time (May 26, 1883) that Goddu's salary of $4000 per annum should continue, and also that his other percentage already mentioned running from one and one-quarter per cent to one-half of one per cent should still be paid by the Association. Goddu in return for this concession entered into a fresh agreement, in writing, to

"work and do all I can for the interests of the McKay Metallic Fastening Association."

Within only a little more than a year from this time, namely, in July, 1884, when I became, as I have stated, the principal trustee of the Association and assumed its active management, I found that although by the agreement of May 26, 1883, Goddu's salary had been fixed for three years, and the pay he was to receive for his inventions had been raised, yet he had again become dissatisfied and discontented. I knew that the Association was powerless to compel Goddu to carry out his agreement, because if he did not want to invent no court would be able to compel him to do so. I therefore talked the matter over with Goddu, and he assured me that if he could obtain from the Association a sum equal to an all-round 5 per cent of the dividends declared by the Association, in addition to his regular salary of $4000, he would then be fully satisfied with this as his total compensation, and would go to work as the inventor of the Association in good faith and without reserve. Accordingly I decided to meet Goddu's demands, and made an oral agreement with Goddu on behalf of the Association, which fixed the compensation he was to receive from the Association at a sum equal to 5 per cent on the entire dividends of the Association, in addition to his salary of $4000.

In 1889, but a few years after this time, I found that Goddu was once more failing to really devote his inventive skill to the Association, and that he and the defendant Albert Van Wagenen, who had been paid a salary by the Association ever since it started and was still in its employ, had undertaken a scheme to make money for themselves by organizing and starting a corporation named the Goddu Improvement Company. This corporation was

organized by Goddu and Van Wagenen under the laws of Maine with a capital stock of $40,000, Goddu and Van Wagenen holding a majority of the capital stock. Goddu, although he was the inventor of the Association, was at work for this Goddu Improvement Company, developing a machine which he had then invented for making wire nails, and which he had assigned to that Company. Goddu was at this time being paid by the Association a large annual sum, amounting for several years to $14,000 in each year, and in 1889 to $16,500, —

"to work and do all I can for the interests of the McKay Metallic Fastening Association," —

and Van Wagenen was also being paid a salary to work for the interest of the Association, and yet I found they were both very much more interested in having Goddu devote his inventive genius to the perfection of this wire-nail making machine for the Goddu Improvement Company rather than to the machines of the Association. I knew that so long as this state of affairs lasted I could not compel Goddu to keep his mind on the machines of the Association instead of the machines of the Goddu Improvement Company, so I decided to make another effort to persuade Goddu to devote his inventive skill to the Association. Goddu this time by contract dated June 10, 1889, agreed that if the Association would pay him $15,000 in cash for his shares in the Goddu Improvement Company, he would give the Association the exclusive right, not only to his inventions relating to metallic fastenings, but to his future inventions of every kind, and that thereafter he would devote himself exclusively to the affairs of the Association. As part of the same trade, and in order to be sure to get the inventive services of Goddu, I also paid Van Wagenen $15,000 for his stock in the Goddu Improvement Company. For Van Wagenen was the chief originator of the scheme, and he exercised such control over Goddu that I knew Goddu would be influenced by Van Wagenen not to devote himself to the inventive work of the Association so long as Van Wagenen continued to hold such a large interest in another machinery company.

The Association, as part of this fresh trade with Goddu, also

agreed to pay him a sum equal to 14 per cent of all dividends which should be declared from time to time out of profits derived from any invention of his not relating to metallic fastenings, and in case the dividends from these outside inventions amounted to more than $75,000 in any year, then an additional 5 per cent of the excess. And as part of the consideration necessary to buy out Van Wagenen's interest, the Association also bound itself to give Van Wagenen 10 per cent of the dividends declared from these other Goddu inventions. I find that, including this $15,000, the Association paid to Goddu in the year 1899 the sum of $31,500. I ought, perhaps, to add that the Association never obtained any profit or income whatever from the Goddu Improvement Company. The company was purchased because it was felt that the Association was helpless so far as compelling Goddu to live up in good faith to his contract to invent was concerned, and that the only alternative was to pay this additional sum of $30,000 demanded by Goddu and Van Wagenen for the purchase of Goddu's and Van Wagenen's stock in the Goddu Improvement Company, and in this way remove from Goddu the temptation to invent for his Goddu Improvement Company rather than for the Association, and also to remove from Van Wagenen, who to a large extent controlled Goddu, all inducement for urging Goddu to devote himself to the enhancement of Van Wagenen's investment in the Goddu Improvement Company rather than to his inventive work for the Association in accordance with his contract with the Association.

The defendant Albert Van Wagenen had been employed originally, as I have stated, by the American Cable Screw Wire Company. When the Metallic Fastening Association bought the Goddu inventions and also some of Van Wagenen's inventions from the American Cable Screw Wire Company, Van Wagenen was taken into the employ of the Metallic Fastening Association at a salary of $3000 per year. So long as Van Wagenen remained in the employ of the Association he was always given a good deal of latitude, and occupied a confidential position. He was in charge for some years of the advertising, which at first was very important, and upon which the Association spent a great many thousands of dollars.

Later he made it his especial business to keep a close watch on Goddu's inventive work, and also to aid the patent solicitors of the Association in taking out Goddu's patents. I think Goddu rarely, if ever, went to the office of our patent solicitor without being accompanied by Van Wagenen to aid him in explaining his invention and expressing his ideas. In this way Van Wagenen gradually became closely associated with Goddu and intimately acquainted with his inventions. In fact, I think that for many years before Van Wagenen left the employ of the Association he had been on more intimate terms with Goddu than any one else connected with the Association, and at the same time Van Wagenen in his confidential position acquired a complete and extensive knowledge of the patents owned by the Association, and also a knowledge of what forms of mechanism were controlled by the numerous patents of the Association or the patents of others still in force, and what forms of mechanism were free to public use. Van Wagenen continued in the employ of the Association until the friction between the Association and Goddu over the control of the new factory to which I shall refer hereafter, came to a head, and then Goddu and Van Wagenen together, as I believe, formulated a plan for getting up a line of metallic-fastening machinery for the purpose of compelling the McKay Metallic Fastening Association to buy them out in order to avoid a threatened cut in the price of its metallic fastenings and disaster to its business. In any event, Van Wagenen left the employ of the Association October 1, 1895, just as the first three sons of Louis Goddu were voluntarily leaving the employ of the Association to go to work in their father's shop to aid their father as I believe in getting up the infringing machines here in dispute.

About the year 1884, before I became principal trustee of the Association, the defendant Louis Goddu built a small machine and pattern shop immediately adjoining his house at Winchester, and since the completion of this small shop next to his house Goddu has there carried on the chief part of the pattern and experimental work connected with the embodiment of his inventions and the completion of his first machines. It has been the custom of the McKay

Association to permit Goddu to employ in this shop, under his own direction and control, but at the expense of the Association, such pattern makers as he might desire for the purpose of embodying his inventions in the manner I have indicated, and also one or more machinists for the purpose of experimenting with his new machines when they have been assembled.

As the defendants in this suit Louis H. Goddu, William Goddu, Napoleon Goddu, Eloie Goddu and George Goddu, all sons of the defendant Louis Goddu, have grown up from time to time, they have been taken into the employ of the Association, and Goddu, senior, has been permitted to employ them in this shop adjoining his house. Some of his sons have been brought up as pattern makers in order to embody his inventions in the first wooden patterns, in the manner I have described, and others as mechanics to experiment on his first machines after they have been assembled for the first time.

All of his sons have received, I believe, the whole, or substantially the whole, of their mechanical education and experience while in the employ of the Association, and up to the time they left the Association, about three years ago, they had practically never worked for any other company or concern.

Goddu bought, a good many years ago, quite a large tract of land adjoining his house, and somewhat separated from the other houses in Winchester, and as his children have grown up and become married he has built for each of them a house near his own, so that there has been for some years quite a Goddu colony, consisting of four or five houses situated rather by themselves in this part of the town. Three of the married sons and one married daughter thus live in houses built and given them by their father, and adjoining their father's house, while the two unmarried sons and one daughter live with their father in his own house. All five of the sons, up to the time they left the employ of the Association, two or three years ago, were in the pay of the Metallic Association, mainly under the control and direction of their father, and working almost wholly on machinery of his invention. After this experimental shop was built by Goddu next to his house, his sons spent but a small pro-

portion of their time in the factory at Lawrence, where the manufacturing of the Association was carried on until the Association built its new factory at Winchester, and the experimental department was then transferred from Goddu's shop next his house to the factory of the Association, a mile or more from Goddu's house, and the sons were asked to carry on their pattern and experimental work at the factory. This continued only for a very short time, however, for as I shall explain later, almost as soon as the new factory was completed Goddu again became dissatisfied and discontented, this time chiefly because he was not allowed to assume the control of the new factory, or at least to interfere with the authority of the superintendent as the executive head of the shop.

Goddu's oldest son, Louis H. Goddu, who is now thirty-five years of age, began working for the Association, as an experimenter under his father's control, nearly seventeen years ago, and, with the exception of a short time, when he was on the road looking after machines of the Association, he continued to work as a mechanic in the experimental department under his father, and, especially during the seven or eight years prior to October, 1895 (when he left the employ of the Association), he worked steadily in the shop next his father's house as an experimenter to aid his father in embodying his new inventions. During all of this time, although Louis H. was placed under circumstances where he had the best possible opportunity to invent, if he had the inventive capacity, he made no inventions whatever, so far as I know. He knew, as all his brothers knew, that the Association had been paying his father large sums of money annually for many years because of his value as an inventor; but although Louis H. was thus placed where he had the most inviting surroundings and the fullest opportunity, and the strongest pecuniary inducement, to invent, I believe he never, during the seventeen years that he was in the employ of the Association, succeeded in making a single invention, and he never earned from the Association more than mechanic's pay, although the officers of the Association would gladly have raised his wages, as they have that of others, if he had in any way proved himself to be of value as an

inventor instead of merely serving as a mechanic to aid his father as an experimenter.

Louis Goddu's son, the defendant William Goddu, went to work for the Association about 1883, and he also, with the exception of less than a single year, when he was at work in connection with the construction of the new factory of the Association at Winchester, was at work under his father's control and direction in the experimental department as an experimenter on his father's machines. He spent practically all of his time in the experimental shop adjoining his father's house, until the new factory of the Association was completed in the fall of 1894, when the experimental department was moved to the factory, and he went to work at the factory, though only for a short time, because, as I have stated, shortly after the factory was built friction began to develop between the officers of the Association and his father, and then the sons went back again to their father's experimental shop adjoining their father's house, to aid their father, as I believe, in getting up the line of infringing machines here complained of. During all these years Goddu's son William, though surrounded by the same favorable circumstances as his brother Louis H. Goddu, and having the same opportunity and inducement to invent, never, so far I know, succeeded in earning more than mechanic's wages or making any invention.

Goddu's son, the defendant Napoleon Goddu, went to work for the Association, I believe, about 1890, and also began work in this small experimental shop adjoining his father's house, and during the whole, or substantially the whole, of his working career he continued to work in his father's shop as a pattern maker, assisting his father to embody his inventions in wooden patterns in the manner I have described. When the factory of the Association was completed at Winchester in the fall of 1894, he went to work at the factory for a short time, but, as in the case of his brothers, after the friction developed between his father and the Association, he returned to work again in his father's experimental shop in the Goddu settlement for the purpose as I believe of assisting his father, just as he had always assisted him, in getting up the line of machines here in dispute, and thus he continued to work for his father in precisely the

same way, and in exactly the same place, that he had always worked for him. He never, while working for the Association, made any inventions, so far as I know, or showed himself entitled to more than mechanic's pay.

In the same way Goddu's son, the defendant Eloie Goddu, began to work, I believe, for the Association in the experimental shop of his father. He worked as a pattern maker, and was thus employed by the Association to embody his father's ideas in wooden patterns in the manner I have described, and he continued to carry on this work until after the factory of the Association was built at Winchester, when he went to work at the factory for a short time, and then again returned to his father's shop to aid, as I believe, his father in embodying his inventions which form the subject matter of this controversy, just as he had previously aided his father while working in the employ of the Association. Eloie never, so far as I know, made an invention while in the employ of the Association, and never earned or showed in any way that he ought to be paid more than ordinary mechanic's wages while in the employ of the Association.

Goddu's youngest son, the defendant George Goddu, went to work for the Association about 1890, and, as in the case of his brothers, he first went to work for the Association in the experimental shop adjoining his father's house to aid his father as an experimenter on new machines. George Goddu continued to work as an experimenter in this way for the Association under his father's direction until the new factory was built at Winchester, when he went to the factory to work, and worked there for a short time, and then with his brothers returned to work again in his father's experimental shop to aid his father, as I believe, just as he had aided his father before the invention of these infringing machines began. So far as I am aware George never made any inventions while in the employ of the Association, and never earned or showed himself entitled to more than ordinary mechanic's wages.

Prior to the year 1893 the Metallic Fastening Association had always carried on the manufacture of its machinery at the factory of the Stanley Manufacturing Company at Lawrence, Mass.; but in the year 1893, as I have already indicated, the executive com-

mittee of the shareholders decided that the Association ought to build its own factory and assume a more complete control of the manufacture of its machinery. Goddu himself was at this time one of the strongest objectors to the system of carrying on the manufacture of the machinery of the Association in the factory of the Stanley Manufacturing Company, and repeatedly urged upon the members of the executive committee that the Association should build its own factory, and thus more completely control the manufacture of its machinery. Goddu was also desirous that the new factory should be built in his home town of Winchester. In the year 1893 the Association decided to begin the construction of a factory, and in accordance with the wishes of Goddu, Winchester was selected as the place for the factory.

The fear was expressed to Goddu at that time by several members of the executive committee that when the factory was completed Goddu would be tempted to spend his time in trying to run the factory, for which work neither his temperament nor his experience fitted him, and for which task an experienced man could easily be found, instead of devoting himself to inventing, in which field he had shown himself pre-eminently successful, and in which class of work the Association could find no man to take his place if he abandoned or neglected it. But Goddu repeatedly stated to the officers of the Association that he realized that he was better fitted for the work of inventing than of running a factory, and he assured the members of the executive committee that if the factory were built he would not interfere in any way with the management of the factory, or permit the factory to divert his attention from his inventive work.

The factory was built, and the Association, after careful inquiry, selected as its superintendent Mr. S. D. Leland, whom the executive committee after careful inquiry believed to be the best man that could possibly be found for the situation. Mr. Leland, prior to his selection as superintendent for the new factory, was unknown to the officers of the Association, and his appointment was not prejudiced in any way whatever by any personal friendship for him by any officers of the Association. He was appointed simply because,

of the available candidates, he seemed to be the best fitted for the task. He was a mechanical engineer educated at the Worcester Polytechnic Institute, and he had also gained a very considerable shop experience in one of the best machine shops of the country, and he had also acquired experience in the position of superintendent, and he came with the highest commendation from those connected with the Worcester Polytechnic Institute and the shops where he had worked. The executive committee found, however, that no sooner was the factory completed than Goddu began to show a desire, instead of devoting himself to his inventive work, to interfere with the executive management of the shop. Mr. Leland was instructed to treat him with the utmost courtesy and consideration in every way possible, but to retain the actual management and executive control of the shop in his own hands. It was soon found that Goddu became more and more disposed to interfere with Mr. Leland in his management of the men and the control of the shop, and became more and more discontented because Leland, while as I believe always treating him courteously in accordance with his instructions from the Association, at the same time insisted upon retaining the control of the factory and the management of the men in his own hands as the superintendent of the factory. When the factory was constructed, a large, light, and attractive room was built at the top of the building for the express purpose of providing Goddu with an experimental room to which he could always have access, and which should be always under his own control, without interference from any one. The superintendent of the factory rarely visited this room, and no one else except Goddu's own experimenters and pattern makers had authority to do so.

Goddu, however, became more and more dissatisfied with the fact that he was not given more authority in the management of the shop, and by the early part of the year 1895, only a few months after the completion of the factory, he had become very bitter towards the Association and its officers.

I should perhaps here state that the Metallic Fastening Association has brought suit against Louis Goddu and his five sons, and the Goddu Sons Metal Fastening Company, and Albert Van Wage-

nen under the contract which the Association has with Louis Goddu, senior, for his metallic-fastening inventions, and that the Association is asking the court to enjoin the defendants from making, using, selling, or putting out the infringing machinery here in dispute on the ground that the inventions embodied therein are, in fact, the inventions of Louis Goddu, which belong to the Association under his contract with the Association, and are not, as the defendants allege, the inventions of his sons. The hearings in this litigation are now going on from day to day, and some of the facts to which I have already referred, and many of the facts to which I shall refer hereafter in my affidavit, are established by the admissions of Louis Goddu, senior, of Albert Van Wagenen, and of the five Goddu sons who have testified in this litigation.

In the testimony given in this other suit it is admitted by Goddu, senior, and one or more of his sons, that they were dissatisfied with the new shop of the Association, and had some talk together and decided early in 1895 that the sons should leave the employ of the Metallic Fastening Association and go to work getting up a line of competing machinery.

Soon after the time these sons admit in their testimony that they had made up their mind to leave the employ of the Association, and I think early in the spring of 1895, Louis Goddu, senior, came before some of the members of the executive committee of the Metallic Association, including myself, and, after expressing the greatest ill-will towards the Association, said to the members of the executive committee, in substance, "I am through inventing, but I have some boys; they can invent." He also said, "My boys can begin where I have left off". He further stated that he would in no case take directions from me as the managing trustee and agent of the Metallic Fastening Association. He further said during this interview or about this time that he would spend his last dollar, if it was necessary, to injure the Association, and he also stated to me at another interview about this time that he intended to get his "revenge", using, as I clearly remember, the word "revenge."

The members of the executive committee and myself formed at that time the opinion, from Goddu's manner and his statements to us,

that he was at least thinking, if not intending, to try to break his contract with the Association by taking out patents in the names of his sons, and immediately upon Goddu's withdrawal from the room the fact that this was what Goddu had in mind, and what he would probably attempt to do, was spoken of and discussed by the executive committee.

At an interview which took place between myself and the defendant Van Wagenen, the precise date of which I cannot fix, but which took place in the year 1895, and not long after this interview with Goddu, Van Wagenen stated to me in substance, "Goddu can, if he chooses, invent in the name of some one else", although Van Wagenen went on to say, "but Goddu is not that kind of a man". What Van Wagenen said to me made it perfectly clear to me at that time that Goddu and Van Wagenen were considering the possibility of trying to deprive the Association of Goddu's future inventions by applying for patents in the names of his boys instead of in his own name, and I can conceive of no reason why he should have said this to me except that he then wished me to understand it as a threat.

At an interview, which took place before October 1, 1895, Van Wagenen also stated to the executive committee, in substance, that he had worked long enough for the Association, and that he proposed to work for himself, and that the Association would find that their business would be destroyed, or words to this effect, and I remember that he also made the remark that if it were known that Goddu was not with the Association the stock would go "to ten dollars within twenty-four hours", the price of the stock then being in the neighborhood of twenty dollars. Van Wagenen also told the members of the executive committee that he was going to leave the employ of the Association on the 1st of October, 1895.

When the 1st of October came, Van Wagenen voluntarily left the employ of the Association.

A few days before October, 1895, Louis Goddu's youngest son, George, also left the Association of his own accord, and went to work for his father in the shop next his father's house.

Also a few days after the 1st of October, Louis Goddu's oldest son, Louis H., voluntarily left the employ of the Association, and went to work in the experimental shop adjoining his father's house.

In October, 1895, Napoleon Goddu also of his own accord left the employ of the Association and went to work in his father's experimental shop.

In October, 1895, William L. Goff, who had long been in the employ of the Association, and whose work for the Association had been chiefly to assist Louis Goddu, senior, in embodying his inventions, also voluntarily left the employ of the Association and went to work in Louis Goddu's shop adjoining his house.

In April, 1896, William Goddu voluntarily left the employ of the Association and he too went to work in his father's shop.

In December, 1896, the last son, Eloie Goddu, voluntarily left the employ of the Association and also went to work in his father's experimental shop adjoining his father's house.

It has now appeared from the admissions of Louis Goddu, senior, and of his sons, and of Van Wagenen, in the pending litigation to which I have referred, that from the date when the first son left us in the latter part of September, 1895, Louis Goddu, senior, has been present in the same room in his experimental shop adjoining his house where his sons have been working at least a portion of practically every working day from that date down to the present time.

The evidence of Louis Goddu, senior, and the evidence of his sons, and of Van Wagenen also shows that Louis Goddu, senior, besides supplying his shop and the machinery therein for the development of these infringing machines, also bought and paid for with his own money out of his own pocket the necessary materials, including the wood out of which the patterns were made, and the iron out of which the first of these infringing machines were built. Louis Goddu, senior, also paid, prior to the organization of the Goddu Sons Company, and until his death, daily wages to the William L. Goff to whom I have referred. He also paid Louis H. Goddu regular wages at the rate of $2 per day. He also paid his son William $2 per day, and he also paid his son Napoleon $2 per day. His sons Eloie and George, who were unmarried and living with him, but who had been earning wages from the Association, and supporting themselves, Louis Goddu, senior, at first entered

into an agreement to support while these infringing machines were being constructed, and later he paid them regular daily wages as in the case of his other three sons.

It is also admitted by George Goddu and Louis Goddu, senior, in their evidence in the litigation to which I have referred, that Louis Goddu, senior, besides working in the same room, and within speaking distance of his sons, where these machines were being made, also whittled with his own hands at least some of the patterns for these infringing machines.

After the work of inventing and building these infringing machines had been going on for some time in the shop of Goddu, senior, and at the expense of Goddu, senior, and in the presence of Goddu, senior, and, as these defendants have admitted, with at least some direct physical aid in whittling patterns from Goddu, senior, patents for new inventions relating to a standard screw machine, a loose nailer, a slugger, and a tacker were applied for in the names of several of these sons, and these patents have been issued by the Patent Office, and are referred to in the affidavits of Joseph P. Livermore and Franklin O. Tobey, which accompany this motion.

It appears further from the evidence to which I have referred that James H. Churchill, the solicitor employed to take out the majority of these patents, had been formerly employed in the office of the solicitor whom the Association had always employed for the purpose of taking out Goddu's patents. It also appears from this evidence that Louis Goddu himself and Albert Van Wagenen made repeated visits to the office of this solicitor while these applications for patents purporting to be granted for the inventions of the Goddu sons were being prepared, and it will be remembered in this connection that Louis Goddu's custom when taking out patents through our solicitor had been to take Van Wagenen with him, and it is also a significant fact in this connection that Louis Goddu admits by his evidence in this suit that his visits to the office of this solicitor, James H. Churchill, were sometimes made when not in company with any son, and it is also clear from his testimony that these visits which he made without any son did not relate to any other matter except these then pending applications.

This enterprise continued to develop in the shop of Louis Goddu, senior, at the expense of Louis Goddu, senior, and in the presence of Louis Goddu, senior, until finally the first machines were completed and apparantly ready for manufacture. The evidence of Louis Goddu and his sons, and Van Wagenen, shows that there have now been built about a hundred of the infringing tackers at the machine shop of Nutter & Barnes in Boston, Mass., and a lesser number of each of the other machines.

The evidence of Van Wagenen, of Goddu, senior, and of his sons in this other suit also shows that while these machines were being built, Louis Goddu, senior, repeatedly visited the firm of Nutter & Barnes for the sake of instructing that firm in regard to the manufacture of these tackers.

It also appears that Louis Goddu, senior, repeatedly visited some of the foundries where the castings were being made from the wooden patterns for the first of these infringing machines built in the experimental shop next to his house, and that he, in fact, himself was in the habit of carrying the patterns from his shop and delivering them at the foundry, and giving instructions to the foundrymen in regard to the nature or quality of the work which he desired, and that he paid for these castings, as he did other bills, out of his own pocket.

In May, 1897, a corporation with a capital of $500,000 was formed under the laws of Maine, as I believe at the instigation of Goddu, senior, and Van Wagenen and as a part of their plan. The incorporators and directors of this company were the defendant Van Wagenen, the defendants Louis H. Goddu and George Goddu, and the defendant George N. Smalley (who is a personal friend of Van Wagenen), and J. H. Churchill, who has acted as the solicitor in taking out these patents issued for the alleged inventions of the Goddu sons. Albert Van Wagenen became the treasurer of the company and Louis H. Goddu became the president, though Louis H. has since been succeeded as president by George N. Smalley, but the directors have continued to be the same as at the original incorporation.

The evidence in this other suit also shows that, at the time this

Goddu Sons Metal Fastening Company was formed, Goddu, senior, had paid out of his own pocket, (*a*) in wages to his sons, (*b*) for the purchase of material, (*c*) for buying tools, (*d*) for castings, (*e*) for patent soliciting, and (*f*) for building these machines at the machine shop of Nutter & Barnes, and various other expenses relating to the enterprise, substantially $15,000. When the company was formed Goddu took in his own name $30,000 of the par value of the stock, and stock to the par value of $60,000 was given to each of his five sons, and $60,000 at par value of the stock was also given to Van Wagenen. I believe that in fact the greater part of this stock thus issued to his sons belongs to Goddu, senior, though I cannot state this positively, but it has appeared from the testimony in the litigation to which I have referred that the certificate originally issued to Goddu's son Eloie Goddu was sometime after the formation of the company, assigned by Eloie on the back, and by him delivered to his father, who now holds the certificate in his safe, and also that the certificate of at least one other son is locked up in the safe of Goddu, senior. It also appears that the stock standing directly in the name of Goddu, senior, has now increased from $30,000 to about $70,000.

Since the Goddu Sons Metal Fastening Company was formed, some stock in the company has been disposed of, it appearing from the evidence of one or more of these defendants in their evidence given in the litigation to which I have referred, and also from the evidence of these defendants brought out in an interference in the Patent Office between Herbert H. Buffum and the defendant George Goddu, that the daughter of Louis Goddu, senior, has taken or been given by her father a thousand dollars at par value of the stock, paying therefor $500 in cash, and that a son-in-law of Louis Goddu, senior, has also taken or been given by Louis Goddu, senior, some stock, and also that another daughter has taken or been given by her father some stock, and also a granddaughter, and also that the domestic servant in the family of Louis Goddu, senior, has been sold $500 at par value of the stock, paying therefor $250, and furthermore that Joseph H. Taylor, a friend of Louis Goddu, senior, and who had been working under Goddu's direction upon the Goddu

sewing machine to which I refer below, also took or was given some stock, and that some stock has been sold or given to a few other parties, though the amount disposed of to these other parties, and the sums paid therefor, has not yet appeared in the evidence, in the other litigation to which I have referred, because the treasurer, Van Wagenen, has refused to produce the stock book of the company.

Much the greater part of the stock of the company, however, is still held by Goddu, senior, and his sons, and it also appears from the evidence in this pending litigation that whatever money has been needed for the enterprise, and has not been supplied since the company was formed by these sales of the stock, has been advanced from time to time by Goddu, senior; it appears that as late as October 15, 1898, Goddu, senior, made an advance of $2000 towards the expense of carrying on this enterprise, and I have no doubt that since that date Goddu, senior, has made additional advances. The total money paid by Louis Goddu, senior, out of his own pocket up to October 15, 1898, amounted to about $40,000, and since that date I am sure he has advanced additional sums.

I should add, as bearing on this matter, that Louis Goddu is in sound health, and that he has stated in my presence on more than one occasion since this enterprise began that he never felt in better mental condition, or more able in his life to make valuable inventions. These statements have been generally made by him when discussing the sewing-machine matters. Goddu has substantially a third interest in the Goddu Sewing Machine Company, of which the Association owns a little more than half the stock, and during the last eighteen months Goddu, with the consent of the Association, has been under contract to devote his time to the invention of and improvement of a sewing machine and a line of auxiliary machines intended to be used in connection therewith. Goddu has apparently been disposed to give a part of his time to this inventive work for the Sewing Machine Company, because of his large interest in the company, and in this work he has made a number of brilliant inventions showing clearly that his inventive faculties are to-day at their best. I have no doubt whatever that Goddu is at

the present time capable of doing the most valuable and brilliant work for the Association, but as a matter of fact, since January, 1895, he has done practically nothing for the Association.

Louis Goddu, senior, also stated to me, before the final break came and his boys had begun to leave the Association, that he felt he could very much lessen the number of the parts in the machines of the Association without in any way decreasing their efficiency, and he also stated to me then, as an idea which he thought would be of value to the Association, that, besides thus lessening the parts and simplifying the metallic-fastening machinery of the Association, he could design a single base or style of base which would do for all of the machines of the Association, instead of the several bases now used for the machines of the Association, which are different for the different machines.

I annex to my affidavit a pamphlet issued by the defendant corporation, the Goddu Sons Metal Fastening Company, signed by the defendant, Albert Van Wagenen, treasurer. It will be seen that the bases of these infringing Goddu machines have been made all of the same pattern so as to embody the idea which Goddu expressed to me before his final break with the Association, and before the enterprise of building these infringing machines was undertaken. It will also be noticed that the special claim of this catalogue is not so much for the increased efficiency of the machines as that the machines have been simplified, and the number of parts much lessened, as compared with the machinery of the Association, which is the only other machinery of this class in use.

The total amount paid Louis Goddu personally by the Association since he entered its employ is over two hundred and fifty thousand dollars, and besides this the Association, at his request, took into its employ his brother, and also one or two others of his relatives or connections, and paid them all good wages. Moreover, as each one of his five sons grew up, the Association, at their father's request, furnished them all with employment at good wages, and it was only when these sons, at the instigation of their father, and of their own accord, left the employ of the Association that their names ceased to appear on the pay roll of the Association. After the sons thus

left the employ of the Association and went to work in their father's shop for daily wages paid by their father, to aid him in getting up the infringing machines, Goddu, senior, still continued to draw pay from the Association. It is only within a few months of the present time, and only after the Association had obtained conclusive proofs that Goddu, senior, had been for more more than two years using the very money he drew from the Association to carry on in secret in the shop next his house his plan for ruining the Association, that the Association refused to permit Goddu, senior, to draw any more money.

During all the time that the sons of Louis Goddu have been employed by their father in building these infringing machines, — in fact, before the enterprise started, — all the sons knew well that their father had sold his future metallic-fastening inventions to the McKay Metallic Fastening Association, and the defendant Albert Van Wagenen also knew this fact; and I am sure that the defendant George N. Smalley was also informed of this fact before he took any interest in the enterprise, or became an incorporator in the Goddu Sons Metal Fastening Company, and the only remaining director of the company, James H. Churchill, was also well aware of Goddu's contract relations with the Association. The defendant corporation, the Goddu Sons Metal Fastening Company, was formed, as I believe, by the said Louis Goddu and the said Albert Van Wagenen as a mere convenient tool for carrying on the wrongful acts herein complained of. Van Wagenen, two of Louis Goddu's sons, their patent solicitor Churchill, and Van Wagenen's friend George N. Smalley were the original incorporators, and then constituted, and have constituted ever since, the board of directors and all the officers of the company. The said Louis Goddu and the said Albert Van Wagenen have directed every act of the company since the day it was formed. The defendant Louis Goddu has continued as before to supply to the company practically all the money needed to carry on the enterprise, and I believe that no person has taken any stock in the company who has not known of the contract relations between Louis Goddu and the Association, and that the com-

pany was formed for the purpose of aiding Louis Goddu to cheat the McKay Association out of its rights.

As I have stated, I have read the affidavits of Joseph P. Livermore and Franklin O. Tobey accompanying this motion for a preliminary injunction, but I should perhaps add that I believe the affidavits to be strictly true. I do not claim to have knowledge as to those portions of the affidavits which are purely mechanical and technical. No one of the patents upon which these suits are based has ever been infringed, so far as I am aware, by any one prior to the infringement here complained of, but on the contrary they have all been acquiesced in by the public and by rival manufacturers of shoe machinery ever since they were originally issued. There have been several times within the last few years when rival manufacturers have endeavored to put out competing machines, and when they would have been very glad indeed to infringe the patents which these defendants have begun to infringe, but these rival manufacturers have not felt that they could take the inventions of the Association, or infringe the patents here involved, and in consequence these rival manufacturers have been at a serious disadvantage in competing with the Association.

The infringing machines now built and belonging to the Goddu Sons Metal Fastening Company consist of twenty-one screw machines of the kind referred to as the defendants' screw machines in the affidavits of Franklin O. Tobey and Joseph P. Livermore; twenty-five slugging machines of the kind referred to in said affidavits, and eleven loose nailers, and one hundred and one tackers of the kind referred to in the affidavits of Messrs. Tobey and Livermore. The Goddu Sons Company have also on hand the jigs and special tools required to build these machines rapidly in large quantities.

So far, none of these machines have been put out, but the machines have been offered to shoe manufacturers, as appears from the catalogue to which I have already referred, and which is annexed to my affidavit, and as also appears from the copy of a circular which I annex to my affidavit directed to Isaac Prouty & Company, and bearing the name of the "Goddu Sons Metal Fastening Com-

pany, A. Van Wagenen, Treasurer", at the bottom. This circular, offering the machines of the Goddu Sons Company, has been sent, I am informed and believe, to quite a large number of the biggest shoe manufacturers in the country. I have all along felt that Goddu and Van Wagenen were getting up these infringing machines largely for the purpose of threatening the Association, and that very probably when they found their threats did not work, they would not seriously undertake the task of putting out their infringing machines, but I have recently been informed and believe that the defendants Louis Goddu and Albert Van Wagenen have within a few days made up their minds to begin to put out the machines now on hand and to at once manufacture more, and that all of the defendants, acting together, are just on the point of doing this; and I have also been informed and believe that the said Van Wagenen and Louis Goddu intend to offer the metallic fastenings intended for use in their machines, and which will go into immediate and direct competition with our metallic fastenings, at a very large reduction in price from the prices which have been established throughout the United States by the Association for its various fastenings.

The machines of the McKay Metallic Fastening Association put out in the United States and Canada are all owned by the Association. And all the machines thus put by the Association for some years, amounting to much the larger part of the machinery now in use, have been put out without any initial payment whatever from the manufacturer representing the cost of building the machines or the cost to the Association of installing them in the factories. The amount of money which the Association has thus invested in machinery in the hands of shoe manufacturers in the United States is very large indeed, and vital and irreparable injury will be done to the business of the Association if the defendants are permitted to offer their infringing machines to the licensees of the Association, and especially if the defendants, as they are threatening to do, should cut the prices established by the Association for the sale of its fastenings, because it is only by the sale of its fastenings, as I have pointed out, that the Association gets any rental or royalty

for the nearly five thousand machines under lease in the United States, and for which the Association has obtained no initial price to cover the cost of making the machines or the cost of installing them in the factories. Moreover, as the defendants well know, the Association has agreed in its leases that it will charge the same price for its fastenings to every manufacturer, and therefore, if the defendants offer the fastenings intended for use in their machines at a reduction in price, the Association will be obliged, at the very outset, in meeting this cut in price, to suffer enormous loss, because the first cut in the price of its fastening materials made by the Association to a single manufacturer will involve a corresponding reduction to every other licensee of the Association. Furthermore, if such a cut is once made by the Association, as will have to be done to meet the competition of the defendants if they are allowed to manufacture and put out their infringing machinery while this litigation is in progress, it will be practically impossible to afterwards restore the prices if the Association should eventually be successful in this litigation, because long experience has taught the officers of the Association that, while rentals and prices of parts can easily be lowered, they never can be advanced without raising among the manufacturers such a storm of objection and criticism, and causing so much ill-will and bad feeling, as to render the attempt to raise a rental once reduced extremely impolitic and practically impossible.

Affidavit of Franklin O. Tobey.

Franklin O. Tobey, being duly sworn, doth depose and say as follows: —

I am fifty-four years old, and live at Somerville, Massachusetts, and am a machinist by trade. I first began to work as a machinist in 1863 at Worcester, Massachusetts, and continued to work as a machinist in a number of different machine shops until about 1869, when I entered the machine shop of Elmer Townsend on Sudbury street, Boston. Townsend, at that time, was engaged in the business of building and selling wax-thread sewing machines, a pegging machine called the "New Era", and one or two metallic fas-

tening machines. During my first year in Townsend's machine shop I did quite a good deal of work on a new cable-wire tacker which had been invented by Louis Goddu, one of the defendants in these suits, who was then in Townsend's employ. After that I was chiefly occupied for some time as an experimenter to assist Goddu, who was then constantly making inventions and getting up new machines relating to metallic fastenings. When not engaged in helping Goddu I spent my time making special tools for the factory.

Soon after I entered Townsend's employ the American Cable Screw Wire Company was formed, and I continued in the employ of that company until the formation of the McKay Metallic Fastening Association in 1877, and I have been in the employ of that association ever since. I continued doing experimental work under Goddu and making special tools up to the year 1875, when I began to inspect and look after the Goddu machines of the American Cable Screw Wire Company in the different shoe factories, and after I began to work for the McKay Metallic Fastening Association I continued this work of starting and inspecting the Goddu machines put out under lease by the McKay Metallic Fastening Association.

In June and July of this present year 1898, I went to the experimental shop of the defendant Louis Goddu, adjoining his house in Winchester, and spent more than ten days in making a thorough examination of the loose-nail machine, the standard screw machine, the slugger and the string-nail tacker of the Goddu Sons' Metal Fastening Company. The machines were in running order, with power applied, and besides studying them carefully, I saw them operated repeatedly by the different members of the Goddu family, and also operated them myself.

During the ten or more days that I was at this experimental shop belonging to the defendant Louis Goddu, senior, I saw all of the Goddu boys,— Louis H. Goddu, Napoleon Goddu, Eloie Goddu, William Goddu, and George Goddu. They were at work assembling loose nailers, and also constructing machines for making standard screw wire, and doing other work preparatory to putting

these loose nailers, standard screw machines, tackers, and sluggers on the market. I also repeateedly saw Louis Goddu, senior, in the shop, meeting him there every day, or every day but one. The shop immediately adjoins his house, being distant not more than forty feet. The basement floor of the shop has no shafting or machinery, and is used as a store room, and no work is done there. There is a little blacksmith's forge at the back of the shop where hardening parts or other small forging can be done. All the work, except the little forging required from time to time, is carried on in a single room about forty feet by eighteen or twenty feet, which occupies the floor above the basement. The room is fitted up with work benches and shafting, and in this room are all the special tools and machines used in whatever work may be going on. A little gasoline engine placed at one end of the shop supplies the power for the machinery in this room. No work is done on the third or top floor, as it has no power or machinery or shafting, but is used as a place to store special tools, jigs, patterns, parts, and other things of that sort. There is also a small room which leads out of the machinery room which was apparently originally intended to be an office. It has no machinery, tools, or work benches, but has several desks and tables, and is now chiefly used as a store room. All the work done in the shop by any one, except such work as may be done occasionally at the little blacksmith's forge, is carried on within plain sight and within speaking distance, because the work room is entirely open without any dividing partitions, and, as I have stated, is only forty by eighteen or twenty feet.

There has been prepared, with my assistance, a set of drawings illustrating the loose nailer, the standard screw machine, the slugger and the string nail tacker of the Goddu Sons' Metal Fastening Company which I saw and examined, as I have stated, at this experimental shop adjoining the house of Louis Goddu, senior. I have written my initials on each of these drawings, and I will now refer to them in detail, taking up first the drawings relating to the loose nailer.

Defendants' Loose Nailer.

The drawing marked "Defendants' Loose Nailer" is a general

representation of the loose nailer of the Goddu Sons' Metal Fastening Company which I saw and examined at Louis Goddu's shop adjoining his house. I will, hereafter, for the sake of brevity, call this loose nailer the "Defendants' Loose Nailer". This drawing is made to show the machine from the right-hand side, and is an accurate representation of the machine except for the slight, and, so far as the operation or mode of operation of the machine is concerned, immaterial difference that the gear or teeth for revolving the nail pot *c*-17 are indicated in this drawing near the middle of the pot, while in the machine I saw at Winchester they were placed near the top of the pot.

The drawing marked "Defendants' Loose Nailer Awl Stroke Controlling Mechanism" is a detail drawing of the mechanisms used in the defendants' loose nailer for regulating the stroke of the awl according to the position of the horn, the position of the horn depending upon the thickness of the stock against which it is pressed.

The drawing "Defendants' Loose Nailer Detail Awl Actuating Mechanism" is an accurate representation of the mechanism used in the defendants' loose nailer for actuating the awl bar. The drawings "Defendants' Loose Nailer, Horn Depressing Mechanism" show in detail the mechanism employed in the defendants' loose nailer for depressing the horn to allow the work to be fed after each nail is driven.

The drawing "Defendants' Loose Nailer, Nail Feeding Mechanism" shows the roadway for the nails and the striker or clearer which in the operation of the machine is reciprocated to free the roadway from such nails as may be improperly lodged in it.

The drawing "Defendants' Clutch Mechanism" is a good representation of the clutch and brake mechanism used on the defendants' loose nailer. There is in the machine a suitable spring for depressing the end of the lever *d*-9 which carries the brake *d*-8 in order to apply the brake when the lever *d*-3 is allowed to drop.

I also carefully compared the loose nailer of the Goddu Sons' Metal Fastening Company, which I saw in Louis Goddu, senior's, experimental shop at Winchester, with the drawings and with the

description of United States Patent No. 583,044, issued to George Goddu of Winchester, Massachusetts, May 25, 1897. I found that this patent accurately represented and described the defendants' loose nailer except as to some few points in construction which do not affect the general character of the machine. In the defendants' loose nailer which I saw at Winchester instead of the slot shown in the drawings of the patent in the end of arm a^{33} of the awl-actuating mechanism, in which is fitted the block a^{35}, pivoted on the awl bar a^{36}, there has been substituted in the present defendants' loose nailer, a rack on the side of the awl bar, shown as a^{35a} in the drawing "Defendants' Loose Nailer Detail Awl Actuating Mechanism", with which engages a toothed sector on the arm a^{33}, shown in the said drawing as a^{34a}.

Again, in the horn-depressing mechanism, instead of longitudinal serrations on the end of lever a^{53}, as shown in the patent, with which co-operates a dog, a^{47}, which has corresponding longitudinal serrations, I found that in the defendants' loose nailer the end of the lever a^{53} was serrated transversely, and for the dog a^{47} there had been substituted a pawl adapted to engage the teeth formed by the transverse serrations on the end of lever a^{53}.

The lever which carries the pawl, corresponding to the lever shown in the patent as a^{42}, instead of being under the main shaft a^{23}, as shown in the patent, has in the defendants' loose nailer been carried over said shaft. This change from the construction of the patent is illustrated in drawing "Defendants' Loose Nailer, Horn Depressing Mechanism", where the pawl-carrying lever is shown as a^{42a}. This drawing also shows the transverse serrations on the end of lever a^{53} and the pawl-carrying lever a^{42a} carrying the pawl a^{47a}, adapted to engage the teeth on the end of lever a^{53}.

As I have stated before, there is no "clearer" or "striker" shown in the drawings of patent No. 583,044. There was, however, such a "striker" on the defendants' loose nailer which I examined at Louis Goddu's experimental shop, and this "striker" is shown in drawing "Defendants' Loose Nailer, Nail Feeding Mechanism".

I should also add that the gear on the revolving hopper, instead

of being around the middle portion of the conical-shaped hopper as shown in the drawings of patent No. 583,044, is, in the defendants' machine, around the upper end or base of the conical hopper. Of course there is a corresponding change in the pinion which engages this gear, and through it rotates the hopper.

In the defendants' loose nailer the feed bar c^{80} is given a reciprocating motion from right to left as one faces the machine. In the patent it is stated that this feed lever is given what is known as the four-motion feed, that is, in addition to the back-and-forth motion from right to left, it is shown as having additional movements toward and from the work. The effect of this change from the construction of the patent made slight modifications necessary in the feed-operating lever and cam.

Some other slight changes have been made in the defendants' loose nailer from the construction shown in the patent. Thus, the lever a^{42}, which operates to move the edge gauge toward or from the work is placed on the right side of the defendants' nailer instead of on the left, as shown in the patent. Also the spring a^{76}, which operates to move the vibrating head against the action of the cam a^{77} has been placed on the lower right-hand side of the vibrating head (viewing the front of the machine) instead of on the upper left hand, as shown in the drawings of the patent.

Except such changes as I have indicated above, the loose nailer of the Goddu Sons' Metal Fastening Company, which I examined at the shop of Louis Goddu, is, I believe, accurately represented by the drawings of said patent No. 583,044, and is built in accordance with the specification of that patent.

Defendants' Screw Machine.

Taking up next the standard screw machine of the Goddu Sons' Metal Fastening Company, which I saw at the experimental shop of Louis Goddu, senior, and which I will hereafter call defendants' screw machine, the drawing marked "Defendants' Screw Machine Wire Feed Mechanism" is an accurate representation of the mechanism employed in the defendants' machine for feeding the wire and for varying the amount of wire fed, according to the thickness of the stock, by means of connections between the feeding sleeve

and the horn. This drawing also shows the device used on defendants' screw machine for stopping the feeding of the wire, consisting of the arm h, carrying a latch plate, h^4, which is adapted to be swung under the lug or block h^5 on the sleeve-actuating lever b^1 when the sleeve is at its lowest point, to hold the sleeve at its lowest position against the action of the spring b^5.

This drawing, "Defendants' Screw Machine Wire Feed Mechanism", also shows the enlarged lower end of the spindle of the defendants' screw-thread machine with the enclosed feed rolls.

The horn-depressing mechanism on the defendants' screw machine is substantially the same as the mechanism illustrated in the drawing "Defendants' Loose Nailer Horn Depressing Mechanism", except that the lever which carries the pawl (shown as a-580 in said drawing) goes under the main shaft a-23 instead of over it.

I also compared the defendants' screw machine with the drawings and description of United States Letters Patent No. 583,045, issued to Louis H. Goddu May 25, 1897, and found that there was no substantial difference between the defendants' screw machine and the screw machine shown and described in that patent. In fact, except for some slight changes in the forms of some of the springs, the defendants' machine is, I think, built strictly in accordance with this patent No. 583,045.

Defendants' Slugger.

The feed roll and wire passage in the slugging machine of the Goddu Sons' Metal Fastening Company which I examined at Winchester are accurately illustrated in the drawing marked "Defendants' Slugging Machine." As shown in that drawing, the wire passage is formed entirely in the block a-16, which is secured by a bolt to the lever which carries the feed roll.

The clutch and brake mechanism which was on the defendants' slugging machine which I saw at Winchester is substantially the same as the corresponding mechanism on the loose nailer, and is well represented in drawing "Defendants' Clutch Mechanism".

I also carefully compared the defendants' slugging machine with the slugging machine shown and described in the United States Letters Patent No. 583,046, issued to the defendant Louis H.

Goddu May 25, 1897, and entitled "An Invention relating to Nailing Machines", but referred to in the specifications as a "nailing machine adapted for the insertion of nails or slugs".

As I remember, the clutch mechanism on the machine differed somewhat from the clutch mechanism shown in the patent on the machine No. 583,046. In the machine of the patent, the pin or rod *e* (see fig. 2 of patent) was not attached to the yoke *d'*, but merely rested upon it. As I remember the machine, this lever, shown as *e* in the patent, was securely attached to the yoke as shown in the drawing "Defendants' Clutch Mechanism", where the lever shown as *e* in the patent is marked *d*-21, and the wedge is shown as *d*.

The patent on this machine No. 583,046 shows an edge feed having a four-motion feed similar to that already described as shown in the loose nailer patent. The machine which I saw, however, had only a two-motion feed like the loose nailer which I saw, and, as in the case of the loose nailer, there were some changes, in the levers and in the cam which operate the feed bar, from the construction shown in the patent.

Except for these few changes, there is, so far as I was able to discover, no change in the slugging machine which I saw at Winchester from the machine shown and described in patent No. 583,046.

Defendants' Tacker.

The string-nail tacker of the Goddu Sons' Metal Fastening Company which I saw at the shop of Louis Goddu, senior, at Winchester is built substantially in accordance with patent No. 584,735 to William Goddu, dated June 15, 1897. In examining the machine, I noticed no deviation from the construction shown and described in that patent.

The work-supporting device of this string-nail tacker of the defendants which I examined at Winchester is accurately shown in the drawing "Defendants' String Nailer."

I have been asked to state to what extent the inventions pointed out by the several claims of the different patents here in suit, and which Mr. Livermore says in his affidavit are infringed by the

defendants, have been used by the McKay Metallic Fastening Association and its licensees.

The awl-actuating mechanism described in claim 1 of patent to Louis Goddu, No. 383,455, dated May 29, 1888 (which Mr. Livermore says is used in the defendants' loose nailer), has been used by the McKay Metallic Fastening Association in its loose nailers ever since that invention was made by Louis Goddu, now more than ten years ago, and the Association has in use to-day in the United States alone, in about 510 different factories, more than 780 of these loose nailers embodying the invention pointed out by this first claim of this patent. The Association has also used the awl-actuating mechanism of this first claim in all of its slugging machines, this construction having been first embodied by Louis Goddu in the slugging machine of the Association in 1894. There are to-day in use in the shoe factories of the United States about 660 of these slugging machines embodying this invention put out by the Association in about 367 different shoe factories. The mechanism pointed out in this claim for actuating the awl bar is much more practical and satisfactory than any other mechanism that has ever been invented for this purpose, so far as I have ever seen or known.

The horn-depressing mechanism referred to in claims 17 and 18 of the Louis Goddu patent in suit No. 265,227, dated September 26, 1882 (which Mr. Livermore says has been embodied in the defendants' loose nailer and the defendants' standard screw machine), has been used by the Metallic Association in its loose nailers ever since the mechanism pointed out by these claims was invented by Louis Goddu. It was first applied to the loose nailer some sixteen years ago, and has been in constant use in that machine ever since, there being, as I have stated, some 780 of these machines under lease in about 510 different shoe factories in the United States alone. This same horn-depressing mechanism pointed out by these claims 17 and 18 has also been applied to the rapid standard screw machine of the Association, and the Association now has 500 rapid standard machines under lease in about 294 different factories. The mechanism of these claims 17 and 18 was also applied by Louis Goddu, senior, to the old standard screw machines of the Association, though

in the case of the old standard screw machine there was a simple reversal of the motion, so that the head moved instead of the horn. This horn-depressing mechanism described in this Goddu patent, and pointed out by these claims 17 and 18, has proved entirely satisfactory for depressing the horn to allow the work to be fed, and it is the only mechanism which has ever been successfully used by any one, so far as I know, for this purpose.

The nail-feeding improvement pointed out by claim 3 of the Louis Goddu patent No. 265,227, was, so far as I know, the first device that ever went into practical use on a loose-nailing machine to throw off from the roadway nails improperly lodged in the roadway. This invention has been used in the loose nailers of the Metallic Association ever since the date of this patent, some sixteen years ago. There have been from time to time changes made by the Association in the specific form in which this invention has been applied to its loose nailer, but in one or another of these forms it has been in continuous use by the Association for upwards of sixteen years, and is now in use on more than 780 loose nailers of the Association under lease in shoe factories all over the United States.

As regards the mechanism of claim 1 of the patent in suit to Hopkins, No. 289,103, which consists of a reciprocating clearer in combination with a stationary roadway, the Association does not use this form of construction, because in the loose nailers of the Association the *raceway* is reciprocated instead of the clearer, so that the Association has used for its loose nailer a somewhat different construction covered by another one of its patents instead of the construction set forth in its Hopkins patent.

Taking up now the clinching mechanism described in claims 1, 2, 3, 5 and 6 of the Dunham patent No. 356,107, dated January 18, 1887, the construction referred to in these claims has been embodied in all the loose nailers put out by the Association since it first began to build and lease loose nailers in the year 1882. This Dunham invention — for which the application was pending in 1882, when the Association put out its first loose nailers — did not at that time belong to the McKay Metallic Fastening Association, but the Association soon found that it could not get along

without the use of the Dunham invention, and in 1887 the Association bought out the company controlling this patent, paying therefor a very large sum. The sum paid, which amounted to $125,000, was not paid wholly on account of this patent, but the patent was a large factor in determining this price, as the Association considered that in order to have a successful loose nailer it must use this Dunham invention. It is absolutely essential to a successful loose nailer that the nails, which are all of one length, but which are driven into leather of varying thicknesses, should be clinched on the inside of the shoe, and these Dunham claims cover the only practical mechanism, so far as I am aware, for properly clinching a nail.

The invention pointed out by claims 7 and 8 of the Louis Goddu patent No. 383,455 (which invention Mr. Livermore says is embodied in the defendants' loose nailer and the defendants' string-nail tacker and in the defendants' slugger) have been used by the Association in all loose nailers built by the Association since the invention pointed out by these claims was made by Louis Goddu, and to-day it is in use on every loose nailer of the Association under lease in the United States, amounting, as I have stated, to more than 780 loose nailers under lease in about 510 different factories distributed all over the United States. This invention pointed out by these claims 7 and 8 has also been embodied in the slugging machines of the Association which, as I have stated, are out under lease in large numbers in many shoe factories in different parts of the United States.

The invention pointed out by claim 7 of the Louis Goddu patent No. 385,802, which is an improvement upon the construction to which I have just referred as being pointed out by claims 7 and 8 of the prior Goddu patent 383,455, has also been embodied by the Association in all of its loose nailers and all of its slugging machines, so that it has been in use by the Association for a period of about ten years, and has now been applied to more than 780 loose nailers and 660 sluggers of the Association out under lease in the United States.

The wire-feed mechanism for the standard screw machine re-

ferred to in claims 10, 11 and 12 of Louis Goddu patent 403,835 (and which Mr. Livermore says has been put into the defendants' screw machine) has been used on the rapid standard screw machine of the Metallic Fastening Association ever since that machine was first put out by the Association in 1888 or 1889, and is in use to-day on all the rapid standard screw machines of the Association in more than 290 different factories in the United States. In the old standard screw machines of the Association manufactured prior to 1888 or 1889, the Association had employed a feed sleeve which was actuated by a lever connected to only one side of a collar surrounding the feed sleeve, and on account of the friction and binding between the sleeve and the collar which actuated it the speed of the machine was limited so that it was possible to insert only 100 screws a minute. After the adoption of the double-threaded wire with steeper pitch and the substitution of the yoke construction pointed out by these three claims for actuating the feed sleeve, instead of the old construction previously used, the machine was able to insert 240 screws a minute instead of 100. A large proportion of this increased speed was due directly to the adoption of this mechanism of claims 10, 11 and 12 of the patent in suit, 403,835. Claim 26 of this patent in suit 403,835 (which Mr. Livermore says is also infringed by the defendants' screw machine), covers the enlarged lower end of the spindle having the feed wheels and gears to drive them entirely enclosed within it. So far as I can see the defendants can only obtain a high speed for their machine by either adopting this construction pointed out by claim 26 of this Goddu patent in suit belonging to the Association, or else by adopting the construction set forth in the Goddu patent 490,622, also belonging to the Association. The defendants apparently have chosen the former of these two patented constructions belonging to the Association, and the Association in its own machines has used the latter of its two patented constructions.

The mechanism for stopping the feed of the screw wire set forth in claim 18 of the Louis Goddu patent in suit 403,835 (which Mr. Livermore in his affidavit says has been embodied by the defendants in their screw machine) has been in use by the Association in all of

its standard screw machines ever since the patent was taken out some ten years ago. In the standard screw machine of the Metallic Association the feed of the screw wire is produced by the up-and-down movement of the feed sleeve on the spindle, and this sleeve is operated by a lever which is moved positively downward to feed the wire and is moved upward by a spring. In order to stop the feed of the wire it is only necessary to interpose an obstruction to arrest the upward movement of the feed sleeve, and the mechanism referred to in this eighteenth claim of the Goddu patent in suit, 403,835, for accomplishing this result, consists of a pivoted lever or block which is adapted to be swung in and out of the path of movement of a lug on the lever which actuates the feed sleeve. This stopping mechanism of this eighteenth claim was at once applied, as I have said, to the rapid standard screw machine of the Metallic Association, and has been used in that machine ever since. It is by far the most efficient and most satisfactory device for this purpose which has ever been used on the standard screw machine of the Association.

The wire guideway referred to in claim 4 of patent to Louis Goddu, No. 563,478, dated July 7, 1896 (which Mr. Livermore says is embodied in the defendants' slugger), has been used on the slugging machines of the Association ever since that machine began to be put out in 1894 or 1895, so that it is in use here to-day on about 660 slugging machines leased by the Association to more than 360 shoe manufacturers distributed over all parts of the United States.

Affidavit of Joseph P. Livermore.

Joseph P. Livermore, being duly sworn, deposes and says as follows: —

I am forty-three years old; reside at Cambridge, Mass., and am a solicitor of patents and mechanical expert. I am a graduate of Harvard College, and of the Lawrence Scientific School, where I received the degree of civil engineer. For the past ten years or more I have been occupied as a mechanical expert, frequently testifying in patent cases, and making examinations and reports as to

the nature and scope of patented inventions. I have also been practising as a solicitor of patents since 1879, and in my work as patent solicitor and expert have been constantly employed in examining machinery and apparatus of various kinds, and descriptions and drawings thereof, and in making comparisons as to substantial resemblances and differences in the construction and mode of operation of the contrivances therein embodied or represented.

I have examined the drawing marked "Defendants' Loose Nailer" and identified by F. O. Tobey, which is a side elevation of the machine shown in patent to George Goddu, No. 583,044, dated May 25, 1897, with the exception of certain details or modifications which I will hereinafter describe, and I have also examined the drawings marked "Defendants' Loose Nailer Awl Stroke Controlling Mechanism", "Defendants' Loose Nailer Detail Awl Actuating Mechanism," "Defendants' Loose Nailer Horn Depressing Mechanism", "Defendants' Loose Nailer Nail Feeding Mechanism", "Defendants' Clutch Mechanism", for the purpose of ascertaining whether not in my opinion a machine constructed and operated like the machine shown and described in said drawing and said patent, which machine I will hereafter call "Defendants' Loose Nailer", embodies inventions forming the subject of claims in Letters Patent No. 383,455, dated May 29, 1888, to Louis Goddu, assignor to James W. Brooks, trustee; Letters Patent No. 265,227, dated September 26, 1882, to Louis Goddu; Letters Patent No. 493,910, dated March 21, 1893, to Cummings & Coupal, assignors to Stephen Moore, trustee; Letters Patent No. 356,107, dated January 18, 1887, to Henry Dunham, Ella B. Dunham, administratrix, assignor to Henry S. Jenkins, trustee; Letters Patent No. 385,802, dated July 10, 1888, to Louis Goddu; and Letters Patent No. 289,-103, dated November 27, 1883, to William P. Hopkins, assignor to Gordon McKay and James W. Brooks, trustee.

Loose Nailer.

The machine shown in said drawing, and shown and described in said patent to George Goddu, No. 583,044, is a nailing machine of the kind commonly employed for driving nails into the soles of boots and shoes for the purpose of fastening together the outsole,

upper, and insole of which the shoe is made. The machine is of the class commonly known as loose nailers, being one in which separate nails are supplied in mass, and are driven, one at a time, into the leather, as distinguished from those in which each nail or fastening is cut or separated from a wire or strip of indefinite length by the machine before or after being driven. The main working elements of the machine comprise a horn or work support adapted to extend up inside of the boot or shoe so as to afford a support for the insole directly under the point at which the nail is to be driven; a nose or guideway having a throat or passage through which the nail is driven into the leather; an awl which passes through the said throat and punctures the leather so as to make it easier for the nail to penetrate; a driver bar which works in the throat after the awl has been withdrawn therefrom, to drive the nail which has been introduced into said throat or guideway below the driver after the awl has been withdrawn; and feed mechanism which advances the material between successive driving operations so that the consecutive nails are driven at regular distances from one another around the edge of the sole, or along whatever path may be required for the line of fastenings in the finished work.

The nose containing the throat or guide passage through which the awl and nail driver operate is rigidly supported upon the framework of the machine directly over the upper end of the horn, and the latter has an up-and-down movement with relation to said nose, so that it can be withdrawn therefrom to permit a boot or shoe to be placed thereon, and so that it may rise to the proper height to clamp the leather or material between the upper end of the horn and the lower end of the nose, whatever may be the thickness of the said material. The horn is normally pressed upward by a spring (*b*-23, fig. 5 of the patent) so as to firmly clamp the material, and afford a solid wall or support for the material to resist the pressure of the awl and nail in penetrating it. In order that the feed of the material may take place between the successive nail-driving operations, the horn is depressed at the proper time so as to relax the clamping hold upon the material which it maintained during the nail-driving operation, in which operation is included

the penetration of the awl as well as the driving of the nail into the awl hole after the awl is withdrawn. It is obvious that the horn must stand at different heights with relation to the nose when the material is clamped, as the material varies widely in thickness in different parts of a given boot or shoe, as well as in the different boots or shoes which are operated upon in the use of the machine, and consequently the horn must be depressed, to provide for each feed operation, from whatever height it may be standing at the time when the given feed operation is to take place.

The nails, in a confused mass, are contained in a hopper or receptacle somewhat remote from the nose or throat through which each nail is driven into the material, and from said hopper there is an inclined chute or roadway leading to the throat, and means are provided for operating upon the confused mass of nails so that they are continually being deposited in the upper part of the roadway, which thus becomes filled, and contains a single row or column of nails resting one against the next, and all standing head up and point down, and tending to descend by gravity from the upper end of the roadway at the hopper to the lower end at the throat through which each nail is to be driven. The column of nails is arrested at the lower end of the guideway by a separator, which at the proper time is withdrawn and permits the lowermost nail to pass into the throat under the driver and then enters between said lowermost nail and the one next to it so as to hold back the remainder of the column while the nail thus separated therefrom is being driven, and until the proper time for the next nail to be supplied to the throat.

I will now describe more in detail certain of the above-named elements and the mechanism by which they are operated, and compare the same with the corresponding elements and mechanism forming the subject of certain prior patents which will be considered in connection therewith; and first I will take the awl and its actuating mechanism.

Awl, and Actuating Mechanism Therefor.

The awl is shown at *a* in the drawings of the George Goddu patent No. 583,044, and it is moved up and down to cause it to pene-

trate and be withdrawn from the material by a mechanism best shown in fig. 1 of said patent, comprising a lever, *a*-30, pivoted at *a*-32 and actuated by a cam, *a*-37, on the main driving-shaft *a*-23 of the machine, which shaft operates all the working elements of the machine at the proper time in relation to each other, performing a complete cycle of operations necessary for driving one nail and feeding the material to receive the next at each single rotation of said main shaft. As shown in the drawings of said patent, one arm, *a*-33, of the said lever *a*-30 is provided with a fork or slot, *a*-34, engaging a pivoted block, *a*-35, connected to one side of the awl-carrying bar *a*-2. I am requested, however, to consider a machine having substituted for this connection between the lever *a*-30 and the awl bar *a*-2 a connection such as shown in the drawing marked "Defendants' Loose Nailer", and also in the detail drawings marked "Defendants' Loose Nailer Awl Stroke Controlling Mechanism" and "Defendants' Loose Nailer Detail Awl Actuating Mechanism".

As shown in these drawings, the awl-actuating lever *a*-30 has a segmental gear, or curved toothed end, *a*-340, and the awl bar *a*-2 has a toothed portion or rack, *a*-350, meshing with the toothed end *a*-340, so that as the lever *a*-30 is vibrated on its pivot or fulcrum *a*-32 by the action of the cam *a*-37 on a cam roll, *a*-38, connected with the other arm *a*-39 of said lever, the said awl bar is moved up or down, the downward movement being effected by a stout spring, *a*-40, and the upward movement being positively produced by the cam.

The extent of vibration of the awl-actuating lever *a*-30 is not uniform at all times, but is automatically governed so as to give a varying awl stroke proportionate to the thickness of the material at the point to be penetrated. It is desirable that the awl should not fully penetrate the material, but should leave a portion below the point to be penetrated by the nail, so that the end of the nail will take firmer hold than it would if merely passed through a hole prepared for it by the awl. It is furthermore desirable that the thickness that is left by the awl to be penetrated by the nail should be substantially the same at all times, or, in other words, that the awl should always

penetrate to within a certain definite distance from the lower surface of the material being penetrated. If, therefore, for example, it is to enter to within $\frac{1}{8}$ of an inch of the lower surface, so as to leave a thickness of $\frac{1}{8}$ of an inch to be penetrated by the nail, the awl should enter to a depth of $\frac{1}{8}$ of an inch only, in material that is $\frac{1}{4}$ of an inch thick, but should enter to a depth of $\frac{1}{4}$ of an inch in material that is $\frac{3}{8}$ of an inch thick, and to a depth of $\frac{3}{8}$ of an inch in material that is $\frac{1}{2}$ an inch thick, and so on. This result is automatically accomplished by regulating the extent of the down stroke of the awl bar in accordance with the position of the horn, by connections from the horn to the awl-actuating mechanism, the result being that the awl always penetrates to within a certain definite distance from the end of the horn, whatever may be the position at which the horn stands at the time when the awl operates. In the specific construction shown in the drawings above referred to and in the George Goddu patent No. 583,044 this result is attained by a variable stop, *a*-51 (see fig. 1 of the patent), which arrests and thus determines the limit of movement of the awl-actuating lever and of the awl bar actuated thereby. The said stop is automatically shifted to arrest the movement of the awl bar at a higher or lower point according as the horn stands at a higher or lower point by connections from said stop to the horn, which are shown in drawing "Defendants' Loose Nailer Awl Stroke Controlling Mechanism", and are as follows: —

The stop *a*-51 is carried by a lever, *a*-53, pivoted at *a*-54 (see fig. 16 of the patent), and connected by a link, *b*-19, with one arm of a lever, *b*-6 (see fig. 5). The other arm of the lever *b*-6 is connected by rod *b*-13 with the horn post *b*-3 and horn *b*. This depression of the horn raises the stop *a*-51, or moves it further away from the coacting part *a*-50 on the awl-operating lever, giving a longer stroke to the awl, while the rising of the horn to a higher position lowers the stop *a*-51, bringing it nearer to the part *a*-50, and thus causing the awl to be arrested at a higher point.

I am of opinion that the appliances above described for automatically varying the depth of penetration of the awl in accordance with the thickness of the material, by mechanism connected with the horn and governed by the changes of position of the horn, embody

substantially the invention shown and described in patent to Cummings & Coupal, No. 493,910, and referred to in claim 2 thereof, which is as follows: —

"2. In a machine for driving metallic fastenings, the combination of a vertically movable work-supporting horn having an upward yielding movement, a perforating awl located over the horn, awl-operating mechanism substantially as described adapted to impart a varying depth of movement to the awl, and connections between said awl operating mechanism and the horn whereby the depth of movement of the awl is determined by the position of the horn, as set forth."

In specific construction the awl-operating mechanism of the Cummings & Coupal patent is somewhat different from that of the George Goddu patent No. 583,044 just described by me, but there is nothing in the specification or claim of said Cummings & Coupal patent which indicates that the invention is limited to specific construction of said mechanism; and in the absence of such limitation it is clear that the mechanism of the Goddu patent is substantially equivalent to that of the Cummings & Coupal patent, as it comprises the same essential elements, viz., the vertically movable upwardly spring-pressed horn, the awl, and awl-operating mechanism, and connections between said awl-operating mechanism and the horn whereby the awl is given a varying depth of movement determined by the position of the horn, these being the elements referred to in said claim 2 of the Cummings & Coupal patent. The specific construction of the connections between the horn and the awl-operating lever of the machine of the Cummings & Coupal patent is shown for convenience separate from the remainder of the machine in the drawing marked "Awl Stroke Controlling Mechanism, Cummings & Coupal in Suit No. 493,910", and is as follows: —

The horn *c* (see fig. 1 of the patent) is carried by post c^1, supported at its lower end upon one arm of a lever, *c*-3, fulcrumed at *c*-4. The other arm of this lever *c*-3 is connected by a rod, *c*-6, with one arm of a lever, *c*-7, fulcrumed (as best shown in fig. 3 of the patent) at *c*-8 upon one arm of a vibrating lever, *c*-9, fulcrumed at *c*-10, the other arm *c*-60 of which is actuated by a cam, *c*-61, on the driving shaft *b*. The forward end of the lever *c*-7 is connected

by a link, c-12, with the awl bar c-13 (see fig. 2) carrying a pair of awls, c-16. Looking at fig. 3 of the patent it will be seen that so long as the horn c remains stationary, the point c-70 of connection between lever c-7 and the rod c-6 remains stationary, and serves as a fulcrum or pivot for said lever c-7, which is then vibrated up and down on said pivot by the lever c-9, c-60, and cam c-61 at each rotation of the main shaft, giving the awl a uniform movement, and causing it always to descend or penetrate to the same level. If, however, the horn is depressed, it will raise the fulcrum c-70, the effect of which may be recognized by considering the connection c-8 as a fulcrum, so that raising the rear end c-70 of the lever serves to depress the front end of the lever and the awl bar c-13 connected therewith, so that the path of vibration of the awl bar will now extend to a lower point than before, corresponding to the distance to which the horn has been depressed. Similarly, if the horn were raised, the downward movement of the awl would terminate at a higher point. The only difference in effect between this connecting mechanism and that of the George Goddu patent 583,044 is that the Cummings & Coupal mechanism retains the length of stroke of the awl constant, but varies the location of the said stroke so that its lower terminus stands at a higher or lower point, depending on the position of the horn, and is substantially at the same distance from the horn, whatever its position may be. In the George Goddu machine, however, the length of stroke is variable, the awl always rising to the same point, but descending different distances therefrom according to the position of the horn. As the exact position of the awl at the end of the up stroke is immaterial, this difference in the mode of operation is of no material consequence, and it is to be borne in mind that the sole purpose of the mechanism of the Cummings & Coupal patent is to automatically regulate the extent of the downward movement of the awl, and it is only the effect of the mechanism in controlling the *downward* movement of the awl that is referred to in the claim, and the mechanism of the Goddu patent accomplishes precisely the same purpose in substantially the same way. The machine of the Cummings & Coupal patent is designed especially to operate with staples instead of with single

nails, and for this reason the awl bar is shown as provided with two awls, one for each leg of the staple. This difference in the character of the fastenings used, however, is immaterial so far as the purpose, mode of operation and result of regulating the depth of penetration of the awl is concerned, and the Cummings & Coupal patent clearly points out in the paragraph beginning at line 32, page 7, that these portions of the invention are not limited to —

"machines in which the fastening device is a staple, as several of the important features of our invention may be used in connection with machines . . . for making and driving single nails not of staple form."

For the above reasons I am of opinion that the machine shown and described in the George Goddu patent No. 583,044 either in the specific construction there shown, or modified as to the toothed connection between the awl bar and actuating lever shown in the drawings above referred to, clearly embodies the combination shown and described in the Cummings & Coupal patent, and referred to in claim 2 thereof. As possibly bearing upon the question whether or not claim 2 of the Cummings & Coupal patent is limited to the specific connecting mechanism between the horn and the awl bar, it is to be observed that claims 3 and 4 are otherwise for the same subject-matter as claim 2, but specify more definitely the mechanism of the connections from the horn to the awl-operating mechanism as including a lever having a shifting fulcrum, while claim 2 contains no limitation as to the details of construction of the "connections between said awl-operating mechanism and the horn".

I am also of opinion that a machine otherwise like that shown and described in the George Goddu patent No. 583,044, but having the toothed connection between the awl bar and its actuating lever as shown in the drawings "Defendants' Loose Nailer" and "Defendants' Loose Nailer Awl Stroke Controlling Mechanism" and "Defendants' Loose Nailer Detail Awl Actuating Mechanism", embodies the combination shown and described in patent to Louis Goddu No. 383,455, and referred to in claim 1 thereof. The said claim is as follows: —

"In a nailing-machine, a vibrating head, a driver-bar, and awl-

carrier therein, the latter provided at one side with teeth, and a toothed sector to move it, combined with a horn to support the work, substantially as described."

This claim refers specifically to the construction in which the awl bar is provided with teeth and actuated by a toothed sector, and is precisely the connection between the awl bar and lever shown in the said drawings "Defendants' Loose Nailer" and "Defendants' Loose Nailer Awl Stroke Controlling Mechanism" and "Defendants' Loose Nailer Detail Awl Actuating Mechanism". The mechanism forming the subject of this claim is shown in the drawing marked "Awl Actuating Mechanism Goddu Patent in Suit No. 383,455".

The elements of claim 1 of patent 383,455, other than the toothed awl bar and toothed sector to move it, are the vibrating head and the nail-driver bar and awl bar which reciprocate therein. The head has a vibrating movement by which the awl is brought, at the proper time, to the position at which the material is to be penetrated, and the driver is also brought at the proper time to the position where the nail is to be driven. In the machine of George Goddu patent No. 583,044, the awl bar *a*-2 and the driver bar *a*-3 are likewise guided in a vibrating head *a*-4 which vibrates on the pivot *a*-5 to alternately bring the awl and driver at the point where the material is to be penetrated and the nail to be driven. It is perfectly clear, therefore, that the machine of George Goddu patent 583,044, modified so as to embody the toothed connection between awl bar and its actuating lever, as illustrated in drawings "Defendants' Loose Nailer" and "Defendants' Loose Nailer Awl Stroke Controlling Mechanism" and "Defendants' Loose Nailer Detail Awl Actuating Mechanism", embodies all of the elements of the combination shown and described in Goddu patent No. 383,455, and referred to in claim 1 thereof. The identity of the specific connecting mechanism between the awl bar and the lever for moving it, which is the feature wherein the novelty of the combination of claim 1 of said patent No. 383,455 resides, is apparent upon inspection of the drawings "Defendants' Loose Nailer Detail Awl Actuating Mechanism" and "Awl Actuating Mechanism Goddu Patent in Suit, No. 383,455".

I will next take up the mechanism for depressing the horn to release the material for the feed operation.

Horn Depressing Mechanism.

As explained in my general preliminary description of the machine of George Goddu patent 583,044, the horn is depressed to provide for each feed operation, by means of mechanism adapted to lower the horn from whatever position it happens to occupy, this position of the horn depending upon the thickness of material which is clamped by it at the time when it has to be so moved. The specific mechanism for depressing the horn is shown in drawing "Defendants' Loose Nailer Horn Depressing Mechanism", and, as shown and described in George Goddu patent 583,044, the horn *b* (see fig. 5 of the patent) is constantly pressed upward by a spring, *b*-23, and this spring, unless the horn is otherwise controlled, will always hold it pressed against the under surface of the material, and thus clamp the material against the end of the nose through which the nails are driven. As before explained, the said horn is connected by rod *b*-13, lever *b*-6, and rod *b*-19 with the lever *a*-53 (see fig. 16 of the patent) in the head of the machine near the main shaft *a*-23. Thus said lever *a*-53 is moved up and down to correspond with the movement of the horn, moving up when the horn moves down, and down when the horn moves up, and any instrumentality which will positively lift the lever *a*-43 will correspondingly depress the horn. It is necessary, therefore, to provide mechanism which will lift the lever *a*-53 each time that the feed is to take place so as to depress the horn sufficiently to unclamp the material, and the means for thus lifting the lever *a*-53 must be able to take it from whatever position it happens to stand in, and, furthermore, must disengage or release it after the feed movement is finished so that the spring *b*-23 can press the horn up against the material to clamp it until the next feed operation. In said George Goddu patent the lever *a*-53 is thus engaged and actuated through the intervention of a friction dog, *a*-67, carried by arm *a*-62 of the lever *a*-56, the other arm *a*-58 of which has a cam roller, *a*-59, operated by a cam groove, *a*-60, in a disk, *a*-61, carried by the main shaft *a*-23 of the machine, so that said friction dog *a*-67 is vibrated up and down, once at each

rotation of the main shaft, and at the times when the horn is to be depressed, and again released. Near the end of the downward movement of the dog *a*-67 it is tripped so as to cease to take hold of the end of the lever *a*-53 by a trip arm, *a*-71, which engages a trip block or projection, *a*-72. Thus, towards the end of the downward movement of the dog-carrying arm *a*-62, which permits the horn to rise, the said dog is tripped and the lever *a*-53 thus wholly released and the horn left to continue its rising movement or to be pressed upward by the spring *b*-23 wholly independently of the horn-depressing mechanism. On the other hand, when the arm *a*-62 rises, the trip arm *a*-71 first leaves the trip block, and the dog *a*-67 then engages the lever *a*-53 (at whatever height it may happen to stand) and lifts the said lever, and correspondingly depresses the horn in the remainder of the upward movement of the dog-carrying arm *a*-62. Defendants' loose nailer is a machine having a horn-depressing mechanism otherwise like that of George Goddu patent 583,044, except that, instead of a friction dog, *a*-67, co-operating with a curved friction surface at the end of the lever *a*-53, it has a pawl co-operating with a ratchet-toothed surface on the end of the lever *a*-53, as shown in drawing "Defendants' Loose Nailer Horn Depressing Mechanism", on which the pawl is marked *a*-670, and the co-operating ratchet-toothed surface *a*-690, said drawing also showing a part marked *a*-580, which takes the place of the part designated in said patent by the letter *a*-62, the only difference being that in the patent the part *a*-62 is extended under the shaft *a*-23, while in the machine shown in said drawing the part *a*-580 is extended above said shaft, the remaining parts being designated by the same references as employed for the same parts in the drawing of said George Goddu patent 583,044. The operation of this mechanism is the same as that above described, except that the pawl takes a positive hold of the ratchet teeth instead of a frictional hold as is taken by the dog shown in the drawings of the patent, thus insuring a more certain depression of the horn, and a definite predetermined dowward movement from the position in which the horn is standing at each operation of the depressing mechanism. It will be recognized that if the friction dog should slip or fail to move the horn would not be de-

pressed at all, and if it slipped during a portion of its movement the horn would not be depressed the proper amount. I am of opinion that the horn-depressing mechanism above described of defendants' loose nailer (being the same as that of the George Goddu patent 583,044, except that it has a ratchet and pawl instead of a friction dog) embodies the combination shown and described in patent to Louis Goddu 265,227, and referred to in claims 17 and 18 thereof. Said claims are as follows: —

"17. The horn, its depressing lever, and connected rack-bar, combined with the pawl-carrier, its pawl, and means to lift the pawl-carrier preparatory to moving the stock over the horn, substantially as described.

"18. The horn, its depressing lever, its connected rack-bar, and the pawl-carrier and pawl and means to operate the pawl-carrier, combined with the stop to disengage the said pawl from the teeth of the toothed bar as the carrier descends, substantially as described."

The horn-depressing mechanism of the Louis Goddu patent, 265,227, referred to in the above claims, is substantially identical with that of the machine defendants' loose nailer, above described, except that, instead of having the ratchet-toothed portion and the pawl connected with levers, so as to have an oscillating movement, said ratchet is on a straight bar and the pawl is vibrated in a straight path. This difference is, in my opinion, wholly immaterial, as the effect of the curved ratchet *a*-690, and of the vibration of the lever *a*-53 produced thereby, in defendants' loose nailer, is merely to give an up-and-down movement to the connecting rod *b*-19, and through the connections therefrom to correspondingly move the horn in the reverse direction. Precisely the same effect would be produced if a straight ratchet were employed upon the rod *b*-19, as is done in the machine of Louis Goddu patent 265,227.

The levers *a*-53 and *a*-62 of defendants' loose nailer serve merely to properly guide the ratchet *a*-690 and the pawl *a*-670, the latter moving in a short arc of a relatively large circle, so that the movement does not differ substantially from a rectilinear movement, and does not differ at all, so far as the practical effect upon the horn is concerned.

The drawing "Horn Depressing Mechanism Goddu Patent in Suit No. 265,227" shows the horn-depressing mechanism of patent to Louis Goddu, 265,227, apart from the remaining mechanism of the machine, so that it can be readily compared with the corresponding mechanism of the machine of the George Goddu patent No. 583,044, modified as shown on drawing "Defendants' Loose Nailer Horn Depressing Mechanism". Except that in one case the ratchet and pawl are guided in a rectilinear path by a straight guideway, and in the other case in a curved path by pivoted levers, the mechanism is identical throughout. In both cases the horn is supported on one arm of a lever, the other arm of which is connected with a lifting rod, in turn having connected with it a ratchet-toothed rack bar. In both machines there is a pawl carrier and pawl, and means for lifting the pawl at a predetermined time at each rotation of the main shaft,— said means being a cam on the main shaft and a lever actuated thereby,— to depress the horn preparatory to making the feed movement of the material over the horn; the above being the elements referred to in claim 17 of the Louis Goddu patent No. 265,227. In both machines, furthermore, there is, in combination with the above-named elements, a stop to disengage the pawl from the teeth on the ratchet-toothed bar as the pawl carrier descends, so as to free the horn from the horn-depressing mechanism, in order that it may be pressed against the material, whatever may be its thickness, the said combination including the said pawl-disengaging stop, comprising the elements referred to in claim 18 of said Louis Goddu patent, No. 265,227. There is nothing in said claims which in any way refers to the specific manner in which the ratchet-toothed bar and pawl carrier are guided in their working movement, and there is no difference in the mode of operation or result due to the slight variation in detail of the mechanical construction of the two machines in this respect. For the above reasons I am of the opinion that the machine of the George Goddu patent No. 583,044, modified as stated, clearly embodies the combinations shown and described in Louis Goddu patent No. 265,227, and referred to in claims 17 and 18 thereof.

Nail Feeding Mechanism.

I will next take up the mechanism of defendants' loose nailer for properly supplying the nails from the hopper in which they are contained in a confused mass to the roadway in which they are placed in a single row, heads up and points down, so that they may be properly supplied one at a time to the driver.

The loose nails, which are in a confused mass, are placed in the hopper or receptacle B, of conical shape, rotating on an axis about on a line with the roadway leading to the nose through which the nails are driven. The apex of the cone is downward, and the hopper is rotated while the machine is running, and is provided on its inside with lifting arms or buckets *c*-20 which lift the nails and then drop them upon the upper part of the roadway which extends through the conical hopper from its apex to its base. More or less of the nails thus falling off drop with their points entering the roadway in a proper position to be fed down the same, while the remainder will fall off and be operated upon again by the lifting buckets in a similar manner. There is nothing shown or described in the George Goddu patent No. 583,044 to prevent the clogging of the nails thus deposited in the roadway, or to prevent one overriding another so as to become wedged, but I have been requested to consider a machine otherwise like that shown in the patent, but having above the roadway a clearing device which vibrates just above the tops of the nails in the roadway so that if a nail has been caught by the roadway, but improperly received therein, so that its head stands above the proper position for properly feeding down the roadway, or if a nail has been cross-lodged on the roadway between other nails, such improperly positioned nail will be engaged by the said clearer and either caused to assume the proper position in the roadway or will be thrown off from the roadway so as not to interfere with and clog the nails that are properly presented. The construction of roadway and clearer, which I have been requested to consider, is illustrated in the drawing "Defendants' Loose Nailer Nail Feeding Mechanism". I am of the opinion that a machine containing a roadway and clearer such as illustrated in the drawing referred to embodies the combination shown and

described in the Louis Goddu patent 265,227, and referred to in claim 3 thereof. In the construction shown in this patent, and illustrated in drawing "Nail Feeding Mechanism Goddu Patent in Suit No. 265,227", the loose nails are placed in a receptacle or hopper in the form of a rotating drum which is provided with internal buckets that raise the nails as the drum rotates and drops them upon the roadway which extends through the drum. There is also a clearer or knocking-off device *n*-4, which knocks off those fastenings which are improperly presented or override one another. As shown in the said Louis Goddu patent No. 265,227, the roadway itself has a slight longitudinal vibration, and the knocking-off finger *n*-4 stands still, the result being that the improperly presented nails are hit by the end of the knocking-off finger *n*-4, and thus dislodged from the shoe. The same relative movement and effect are produced in the machine shown in the George Goddu patent No. 583,044, having the clearing device represented in the drawing "Defendants' Loose Nailer Nail Feeding Mechanism", by the vibration of the clearer with relation to the stationary roadway. I am therefore of opinion that the last-named machine embodies the combination forming the subject of claim 3 of Goddu patent 265,227, which is as follows:—

"3. The rotating drum provided with buckets and the chute into which the nails or fastenings are dropped, combined with the knocking-off device a^4 [n^4], with its free end located just above the chute, to throw from the heads of the nails in the chute nails which are lodged therein and not in the chute, substantially as described."

It will be observed that the relative vibration of the roadway and the knocking-off device is not specifically referred to in the said claim, which does not suggest any limitation that would exclude the construction of the machine shown in patent 583,044 provided with a knocking-off device or clearer to dislodge the improperly presented nails.

Patent to Hopkins, No. 289,103, shows and describes specifically a construction by which a similar result to that above described may be attained when there is no vibration of the roadway, or its vibration is insufficient to properly dislodge the nails. As shown in the

Hopkins patent, and in drawing "Nail Feeding Mechanism Hopkins Patent in Suit No. 289,103", the roadway has combined with it a reciprocating clearer or striker, and means to vibrate it so as to cause it to strike against and move backward such headed nails as are not properly lodged in the roadway. I am of opinion that the machine of the George Goddu patent 583,044, provided with a vibrating nail-striker or clearer, such as shown in the drawing "Defendants' Loose Nailer, Nail Feeding Mechanism", embodies the combination recited in claim 1 of said Hopkins patent, which is as follows: —

"1. The roadway combined with a reciprocating striker, to strike against and move upward toward the receiving end of the roadway such headed nails as are not properly lodged in the said roadway, substantially as described."

Anvil or Horn Tip.

I will next take up the consideration of the anvil or tip of the horn which supports the material, and against which the nails are driven.

The horn of the machine shown in patent 583,044 is described in said patent (p. 3, line 65) as "provided at its upper end with a suitable tip or cup *b-x*", and I am requested to consider that the construction and form of said tip is as represented in the drawing "Defendants' Loose Nailer".

The concavity in the upper surface of the said tip serves to cause the end or point of the nail driven through the material to curl backward so as to imbed itself in the material and thus clinch the fastener, and at the same time remove the objectionable pointed projection from the inner surface of the material. I am of opinion that the machine containing such tip or anvil embodies the construction shown and described in patent to Dunham, No. 356,107, dated January 18, 1887, and referred to in claims 1, 2, 3, 5, and 6 thereof, which are as follows: —

"1. In a machine for uniting the soles and uppers of boots or shoes, a work-supporting horn having in its upper extremity a concavity for turning the points of the nails back into the stock, in combination with an awl, substantially as described.

"2. In a boot or shoe nailing machine for feeding and driving

loose nails, substantially as above described, the nail-tube Q, the awl S, and the driver P, in combination with a work-supporting horn having a concavity for clinching the nail, as set forth.

"3. In a boot and shoe nailing machine, guideways adapted to support the nails by the heads, a nail-tube through which the nails are driven into the shoe and mechanism to separate the nails one at a time, an awl, a driver, and a work-supporting horn having a concavity for clinching the nail, as set forth, in combination, substantially as described. . . .

"5. In a nailing machine, in combination, a work-supporting device having on its upper extremity a concavity and awl, substantially as and for the purpose specified.

"6. In a machine for uniting the soles and uppers of boots and shoes, the awl for making the holes for the nails, in combination with a horn having a concavity for clinching the nail, as set forth."

Each of the above claims refers to a combination including certain of the essential elements of a nailing machine for which corresponding elements are embodied in the machine of the George Goddu patent 583,044, in combination with a horn having a concavity for turning the points of the nails back into the stock so as to clinch the nails. It is obvious that the machine of the Goddu patent 583,044, when provided with a horn tip or cup of the form shown in the drawing "Defendants' Loose Nailer", embodies the subject matter of each of the above-named claims of the Dunham patent.

For convenience in comparison the mechanism of the machine of the Dunham patent forming the subject of the above-quoted claims is shown on drawing "Nailing Mechanism Dunham Patent in Suit, No. 356,107", the tip of the horn being shown in section to illustrate the construction which is described in the specification of the patent, as follows (line 78, page 1, to line 14, page 2):—

"W is a work-supporting horn, which has a concavity, *a*, in its upper extremity, the shape of which is adapted to turn the point of the nail into the stock in the form of a circle. This concavity, operating in combination with the awl, is an element of vital importance in my invention. I have found in practice that the use of an awl with the concavity in the horn is essential to good work. The peculiar clinch caused by the concavity is due to the point of the fastening striking the inclined part of the concavity, forming its curvature, and then turning back into the work. It is therefore

necessary that the fastening be directed to the inclined part of the concavity. If it should strike the bottom first, the fastening would be liable to be crippled. The degree of curve in the clinch of the fastening is determined by the distance from the bottom of the concavity at which the fastening strikes. I provide an awl for this purpose which is so operated and adjusted that it makes the holes in the shoe-sole so that the nails driven therein will strike the incline in the concavity, thereby making a perfect curved clinch. Without this relation of the awl and concavity the nails would be driven without any regularity whatever, sometimes not striking the horn at all, and not even penetrating the shoe sole. The combination of the awl and the horn is adapted as well to other shoe-nailing machines as to the class in which loose nails are driven. It is adapted to machines in which a fastening is driven which has any kind of a clinching point."

Clutch Mechanism.

I will next take up the clutch mechanism by which the starting and stopping of the machine is properly controlled.

It is necessary in nailing machines of the kind forming the subject of the Goddu patent No. 583,044 that the operator may quickly start and stop the machine, and that when stopped it should always come to rest at a predetermined point in the cycle of operations just after the nail has been driven, and thus stop in position to enable the finished boot or shoe to be removed and another to be placed on the horn, so that when started a machine will perform all the operations necessary to insert the first fastener, and as many more in succession as may be required. This operation is provided for by the clutch mechanism, which is shown for the most part in fig. 1 of the patent, and described in the matter beginning at line 40, page 6, of the specification. For convenience this mechanism is shown detached from the remainder of the machine in drawing entitled "Defendants' Clutch Mechanism". The machine is actuated by a constantly running pulley *d*-4, which is loose upon the main shaft, and therefore does not cause the same to rotate until a locking engagement is effected therewith. Said pulley is provided with a friction surface, which operates with a corresponding friction surface on a pulley or disk, *d*-5, which is fixed upon the main shaft, so that when said pulley *d*-4 is pressed against the disk *d*-5 their friction surfaces will interlock, and the disk *d*-5 and the main

shaft of the machine will be then driven by the power applied to the pulley *d*-4. When it is desired, therefore, to start the machine, the said pulley *d*-4 is pressed against the pulley *d*-5, this being done by a wedge block, *d'*, co-operating with a wedge, *d*, so that upward movement of the wedge *d* crowds the wedge *d'* against the pulley *d*-4 and presses it frictionally against the disk *d*-5. The wedge *d* is thus operated by a treadle, *d*-2, connected therewith by a rod, *d*-3. Thus, when the operator presses down on the treadle *d*-2 with his foot, the clutch members *d*-4 and *d*-5 are engaged and the machine is started; in order to control the stopping of the machine the said wedge *d* is connected by rod *d*-21 with a controlling lever, *d*-9, having a roller, *d*-13, which co-operates with the periphery of the disk *d*-5, which is provided with a depression, *d*-14, on a portion of its periphery, into which the roller *d*-13 may drop when the wedge *d* is to be dropped for the purpose of disengaging the clutch and stopping the machine. When, however, the machine is started as has been described, by the operator depressing the treadle *d*-2, the lever *d*-9 and its roll *d*-13 are raised, and in the rotation of the disk *d*-5 its unrecessed part comes under said roll and thus holds the lever up, and the clutch in engagement, during the greater part of each rotation of the shaft. Of course the said lever will be held up by the operator as long as he desires the machine to run, but just as he reaches the last fastening to be driven he releases the treadle, and the lever *d*-9 and wedge *d* will then remain supported by the disk *d*-5 until its recessed part *d*-14 arrives at roll *d*-13, when the lever *d*-9 will be permitted to drop, and will thus drop the wedge *d* and disengage the clutch, thus permitting the machine to stop only at the time in its cycle of operations when the recess *d*-14 arrives at the roller *d*-13. In order to insure prompt stopping of the machine when the clutch is thus disengaged, the lever *d*-9 is also provided with a brake, *d*-8, which, when the lever *d*-9 drops by the roll *d*-13 entering *d*-14, bears frictionally in the groove *d*-7, in the disk *d*-5, and this quickly arrests the rotation of the said disk on the main shaft of the machine. The said lever is described as pressed down so as to disengage the

clutch and apply the brake when permitted by the operator by a spring not shown in the drawings of George Goddu patent 583,044.

I am of opinion that said clutch mechanism of defendants' loose nailer, shown in the George Goddu patent No. 583,044, embodies substantially the combination shown and described in patent to Louis Goddu, No. 383,455, dated May 29, 1888, and referred to in claims 7 and 8 thereof, which are as follows: —

"7. The loose pulley, the shaft A^5, and the balance-wheel, provided with the cam-surface 2, combined with the yoke, and the roller A^{13}, to co-operate with the said cam-surface, substantially as described.

"8. The loose pulley, the shaft A^5, and the balance-wheel fast on it, combined with the pivoted yoke, and friction device carried by it to act on the balance-wheel, substantially as described."

For convenience, the construction forming the subject of the above claims in this Louis Goddu patent is shown detached from the remainder of the machine in drawing "Clutch Mechanism Goddu Patent in Suit No. 383,455". In the Goddu patent 383,455, as shown in this sketch, a constantly running belt pulley, A^{10}, is provided with a friction clutch surface adapted to co-operate with a corresponding clutch surface upon the balance wheel A^{12}, which is fixed upon the main shaft A^5, these parts thus corresponding to the pulley d^4 and disk d^5 of the machine of the Goddu patent No. 583,044. The said clutch members are pressed together by a lever, A^4, called in the patent "a yoke", fulcrumed or pivoted at A^3 on the frame-work, and operated by a rod, C^4, and treadle, C^5, these parts thus corresponding directly to the treadle d^1, connecting-rod d^2, and lever d^3 of the machine of the George Goddu patent No. 583,044, except that an arm of said lever A^4 operates directly to press the clutch members together instead of employing wedge blocks connected with said lever. The lever A^4 of Louis Goddu patent No. 383,455 is provided with a roll, A^{13}, which co-operates with a cam surface, 2, on the side of the balance wheel A^{12}, said cam surface having a recess, 3, at one point which permits the roll A^{13} to enter and the lever A^4 to drop so as to disengage the clutch. These parts thus correspond exactly to the roll d^{13} and cam surface d^6, having recess d^{14} in the clutch mechanism of the George Goddu

patent No. 583,044. The lever A^6 is also provided with a friction brake, A^{16}, A^{17}, which, when the roll A^{13} enters the recess 3, presses against the edge of the balance wheel A^{11}, and thus operates as a brake to quickly stop its movement, precisely like the brake d^7, co-operating with the disk d^5 in the machine of the George Goddu patent 583,044. The mode of operation and result is precisely the same in both machines. When the operator depresses the treadle, the clutch members are forced together, the brake is released, the machine starts, and the cam surface thereon then prevents the clutch from being disengaged and the machine stopped except at a definite place in the rotation of the main shaft; and the machine remains running so long as the operator retains the treadle depressed. When the operator releases the treadle, the machine continues running for the balance of a rotation, until the depression in the controlling cam arrives at the roll that supports the controlling lever, and said lever drops, and thereby permits the clutch members to separate, and also applies the brake. Except for slight differences in the terms used, the claims of the patent 383,455 are equally applicable to the clutch mechanism of patent 583,044, and the mechanisms themselves are substantially the same in construction, purpose, and mode of operation. The only difference, as above explained, is that, in the mechanism of patent 383,455, the clutch members are forced together by an arm of the lever directly, while in the mechanism of patent 583,044, *i. e.*, in defendants' loose nailer, they are forced together by a wedge connected with and controlled by said lever, the closing movement of the clutch in both cases being produced by the operator, but maintained by the lever, and the opening movement being in both cases produced by the lever after it has been released by the operator, and at the time determined by the cam carried by the main shaft. The specific device of a wedge to directly actuate the clutch members, as in the defendants' loose nailer (patent 583,044), is shown and described in patent to Louis Goddu, No. 385,802 (see figs. 2 and 3), and also, for convenience, shown in drawing "Clutch Mechanism Goddu Patent in Suit No. 385,802", where the wedge is shown at a' and is operated from a treadle by the connecting rod A^5 and

is controlled directly by a roll, a^7, governed by a cam, A^6, so that the wedge can only be depressed to separate the clutch members during a predetermined part of the rotation of the main shaft. This specific construction is referred to in claim 7 of patent 385,802, which is as follows: —

"7. In a nailing-machine, the main shaft, the clutch or friction pulleys thereon, and a wedge to operate the said pulleys, combined with a cam on the main shaft to control the operation or the wedge, to operate substantially as described."

The mechanism of the above claim is distinguished from that of 383,455 by the specific construction of the element for operating the friction clutch members, said device being a wedge, and the said specific construction is embodied in the clutch mechanism of defendants' loose nailer (patent 583,044).

I should add that I have read the affidavit of Franklin O. Tobey, entitled in these suits, and in dealing with the George Goddu patent 583,044 I have considered that this patent of George Goddu shows and describes the same machine illustrated by the several drawings "Defendants' Loose Nailer", "Defendants' Loose Nailer Awl Stroke Controlling Mechanism", "Defendants' Loose Nailer Detail Awl Actuating Mechanism", "Defendants' Loose Nailer Horn Depressing Mechanism", "Defendants' Loose Nailer Nail Feeding Mechanism", and "Defendants' Clutch Mechanism", except for the differences pointed out by Mr. Tobey in his affidavit. In dealing, as I shall hereafter, with the machines of the Louis H. Goddu patent No. 583,045, Louis H. Goddu patent No. 583,046, and the William Goddu patent No. 584,735, I will also bear in mind any differences pointed out by Mr. Tobey between the machines shown and described in these patents and the special drawings illustrating the defendants' construction to which I shall refer.

Screw Wire Machine.

I have examined the Letters Patent to Louis H. Goddu, No. 583,045, dated May 25, 1897, and the drawing marked "Defendants' Screw Machine, Wire Feed Mechanism", for the purpose of ascertaining whether or not in my opinoin the machine shown and described in said patent and drawing (which I will henceforth call

defendants' screw-wire machine) embodies inventions forming the subjects of prior patents to which my attention has been directed, viz., No. 265,227 to Louis Goddu, dated September 26, 1882; and No. 403,835 to Louis Goddu, assignor to James W. Brooks, principal trustee, and Frank F. Stanley, associate trustee, dated May 21, 1889. The machine of the said Louis H. Goddu patent is of the kind known as a screw-wire machine, in which the fastenings are cut immediately after insertion into the leather from a wire of indefinite length with which the machine is supplied. These machines, like the loose nailer previously described, are employed for uniting the soles and uppers of boots and shoes, and the wire from which the fastenings are cut is screw-threaded throughout its entire length, so that the short portions cut therefrom form screws by which the several layers of leather are united. The supply of wire, carried on a suitable reel or spool, is supported on a spindle which rotates rapidly as the machine is running, and said spindle has a longitudinal bore or passage through its axis, through which the wire passes, said spindle terminating at its lower end in a nose which rests directly over the leather, and from which the screw-threaded wire issues as it enters the leather. The rotation of the wire with the spindle tends to cause the wire to screw into the leather just as an ordinary wood screw is screwed into the wood when turned by a screwdriver; but in order to facilitate the entrance of the screw wire into leather, the wire is fed or pressed downward through the spindle and out of nose with a rate of movement properly proportioned to its speed of rotation to advance the wire into the material just in proportion as it tends to advance by the engagement of the screw threads on the wire with the material. These screw-wire machines do not require to have a hole prepared for them in the material, and consequently the machine has no awl; and furthermore, the means for rotating and pressing forward or feeding the wire serves the purpose of the driver in a loose-nailer machine, such as previously described. The screw-wire machine, therefore, generally comprises, as essential elements, a horn or work support to enter within the shoe, and means for rotating and feeding the wire, and means for cutting off the wire just above or

even with the surface of the leather after a sufficient length has been screwed into the leather to serve as a fastening, and means for feeding the material between the successive operations of inserting and cutting off the fastening.

Horn Depressing Mechanism.

In the defendants' screw-wire machine (Louis H. Goddu patent No. 583,045) means are provided for depressing the horn or work support at each feed operation, so as to unclamp the material which was held clamped while the fastening was being inserted. This operation of clamping the material by the horn when the fastening is being inserted, and unclamping it when the feed of the material is to take place, is of the same nature as has been explained in connection with the loose-nailer machine; and in the defendants' screw-wire machine of Louis H. Goddu patent No. 583,045, the horn-depressing mechanism is substantially the same as that employed in the loose-nailer machine previously explained by me, and therefore need not again be explained in detail.

In fig. 14 of the Louis H. Goddu patent No. 583,045 will be seen the curved ratchet-toothed arm or lever d^8 fulcrumed d^7 on the framework, and connected by rod d^9 with the treadle lever d^5 (see fig. 2), pivoted at d^{10} and having its other arm connected by d^{11} with the horn post and horn, all substantially as in the mechanism of the loose-nailer patent. The said curved ratchet-toothed end c is operated by the pawl c^3, which is vibrated up and down by a pawl-carrying lever, c^4, also pivoted at d^7, and operated by a cam groove, c^7, in a cam on the shaft b^{19} that rotates once for each cycle of operations by which a single fastening is inserted. The pawl c^3 thus engages the ratchet wherever it may stand, and lifts the arm d^8 a predetermined distance, correspondingly depressing the horn. When the pawl-carrying arm descends, the pawl is tripped out of engagement with the ratchet by a trip plate, c^{13} (see fig. 3), engaging an arm, c^{14}, connected with the pawl, thus leaving the horn free to be pressed up by its spring d^{10} (see fig. 2), the same as described in connection with the loose-nailer machine.

The construction by which the pawl is tripped does not appear clearly in fig. 14, but it is clearly described in the matter between

line 133, page 5, and line 81, page 6, of the Louis H. Goddu patent No. 583,045.

This horn-depressing mechanism of defendants' screw-wire machine (Louis H. Goddu patent No. 583,045) clearly embodies substantially the combinations shown and described in patent to Louis Goddu, No. 265,227, and referred to in claims 17 and 18 thereof, for reasons hereinbefore fully explained by me in comparing the horn-depressing mechanism of the loose-nailer machine of George Goddu patent No. 583,044 with the mechanism referred to in claims 17 and 18 of Louis Goddu patent No. 265,227.

Wire Feed Mechanism.

As already stated in connection with the general description of the defendants' screw-wire machine, the screw-threaded wire is rotated, and is also pressed forward or feed lengthwise, so as to cause it to penetrate the material by the lengthwise pressure as well as by the feed of the screw threads due to rotary motion. The longitudinal feed movement of the wire is intermittent, ceasing at the time when the inserted fastener is cut off from the wire and while the feeding of the material takes place, and beginning again directly after the material has been fed and clamped in position to receive the next fastening. The length of feed movement, furthermore, is variable, so that each fastener may be caused to pass wholly through, or to approach within any desired distance less than wholly through, the material, whatever the thickness of the material may be. The operation of the wire-feeding devices is automatically controlled by mechanism connected with the horn in such a manner as to limit the extent of feed movement in accordance with the position of the horn, so as to render the feed movement always equal to the thickness of the material at the point where the fastener is being inserted. The mechanism for feeding the wire in the defendants' screw-wire machine (Louis H. Goddu patent No. 583,045) is best shown in figs. 4, 5, and 6 of said patent, which show the construction of the spindle and elements of the feed mechanism directly connected therewith; in figs. 1 and 3, which show the mechanism actuated by the main cam shaft, that is combined with said elements carried by the spindle. For convenience, this mechanism is shown detached from the

remainder of the machine, and, on a larger scale, in drawing "Defendants' Screw Machine, Wire Feed Mechanism".

The spindle a^4 is rotated by a pulley, a^{12} (see fig. 4 of the patent), and carries above the pulley a reel, g, which sustains the supply of screw-threaded wire which passes from said reel down through the central bore or passage in the spindle.

About midway of the length of the spindle, it is provided with a worm, a^7, meshing with a worm gear, b^{22}, on the main cam shaft b^{19}, thus causing said cam shaft to rotate, and produce the necessary cycle of movements in the various parts of the machine in harmony with the rotary movement of the spindle. The lower end of the spindle is provided with a head or frame block, a^8, rigidly connected with it, and containing in suitable bearings a pair of feed rolls, a^{25}, a^{26}, which are grooved to receive the wire between them, and are toothed or serrated in the bottoms of the grooves to engage with the screw threads on the wire, so that as the said feed rolls are rotated in opposite directions they will positively advance the wire through the nose a^{10}. Said feed rolls are provided with gear teeth or pinions meshing together, so that if either one is rotated the other one will be correspondingly rotated in the other direction. One of said feed rolls, a^{25}, also meshes with a driving gear, a^{31}, which is connected with a ratchet, a^{32} (see fig. 10), which receives an intermittent rotary movement from a pawl, a^{33}, carried by an oscillating pawl carrier, a^{34}. Said pawl carrier a^{34} is fixed upon a sleeve, a^{30}, passing through the ratchet a^{32} and gear wheel a^{31}, and provided with a pinion, a^{27}, which meshes with a rack, a^{43} (see fig. 5), on a slide, a^{44}, projecting downward from a sleeve, a^{15}, mounted upon the spindle a^4 above the head a^8 that contains the feed rolls, said sleeve being free to slide up and down on said spindle. When the sleeve is caused to slide up and down, it rotates the pinion a^{27} first in one direction and then in the opposite direction, and in the downward movement of the rack bar a^{43} the pinion a^{27} oscillates the pawl carrier a^{34} in the direction to cause the pawl a^{33} to engage the ratchet a^{32}, and thus rotate the pinion a^{31}, which in turn rotates the pair of feed rolls to advance the wire down through the nose a^{10}. When the sleeve a^{15} and the rack a^{44} are moved upward, the pinion

a^{27} and pawl carrier a^{24} are rotated in the opposite direction, and the pawl slips over the teeth of the ratchet a^{22}, which is not rotated, and consequently the feed rolls receive no movement during this upward movement of the sleeve a^{15}.

The sleeve a^{15} derives its up-and-down movement from a ring, a^{18}, engaged with the said sleeve above and below, and provided with oppositely projecting arms a^{19}, a^{20}, which are engaged by the two branches b, b^1 (see figs. 1 and 3), of one arm of a lever fulcrumed at b^2; the other arm, b^3, of which (see fig. 3) is operated in one direction by a cam, b^{17}, on the main cam shaft b^{18}, which acts against a roller stud, b^5, on said arm, and in the other direction by a spring, b^9. The ring a^{18} (or collar, as it is called in the patent) thus forms a yoke to connect the two branches b, b^1, of the lever, so that the force of the lever is transmitted equally to both sides of the axis of the sleeve a^{15}, and thus has the same effect as if applied directly to the axis. If such connecting yoke were omitted, and the lever acted only at one side of the sleeve, it would tend to cause the sleeve to tip and bind in its up-and-down movement on the spindle, and would thus involve a greater expenditure of power, and more wear on the parts, than when the branched lever-and-yoke construction is employed.

As just above explained, the upward movement of the feed sleeve is effected by the spring b^9 when permitted by the cam, and said upward movement is arrested by a stop, d^{30}, engaging with a stop plate d^{31}, on the arm b^3 of the lever, as best shown in figure 3. The position of said stop d^{30} is variable, it being carried by the arm d^{28} of the horn-depressing mechanism above explained, which arm and stop d^{30} move up and down in accordance with the downward and upward movement of the horn. The higher the stop d^{30} stands, the greater movement will be permitted to the lever b^3, and consequently the greater will be the feed movement imparted therefrom to the wire, and the lower the stop d^{30} stands, the less will be the feed movement imparted to the wire; or, in other words, the feed movement will be greater or less according as the horn stands at a lower or higher point, dependent upon the greater or less thickness of the material. The spring b^9 that causes the return or idle

movement of the wire-feed sleeve a^{15} has a coiled portion connected with a roll or hub, b^{10}, b^{13} (see figure 11), adapted to be turned to tighten or adjust the tension of the spring, and to be locked by a bolt, b^{12}, to retain the spring at the desired adjustment.

In general principle of construction and mode of operation, the wire-feeding mechanism of defendants' screw-wire machine (L. H. Goddu patent No. 583,045), above described, is similar to that employed in the machine shown and described in the Louis Goddu patent No. 171,610, dated December 28, 1875, and now expired. The feeding mechanism of L. H. Goddu patent No. 583,045 is, however, referred to in said patent as being "of novel construction", and the main features of novelty, as compared with the mechanism of said expired patent No. 171,610, consist in the construction of the actuating lever and its connection by a yoke with the feed sleeve so that the moving force is applied equally at both sides of the axis of the feed sleeve, and in the construction of the head containing the feed rolls by which the gearing that actuates the feed rolls is all enclosed in the head instead of being at the outside and exposed as in the old machine of the Louis Goddu patent of 1875.

I am of opinion that the defendants' screw-wire machine of L. H. Goddu patent No. 583,045 embodies the combinations shown and described in patent to Louis Goddu, No. 403,835, dated May 21, 1889, and referred to in claims 10, 11, and 12 thereof, the said combinations constituting or embodying improvements on the old machine of the expired patent No. 171,610 just referred to. For convenience, the parts of the machine of said Goddu patent to be now considered are shown detached in drawing marked "Screw Machine, Wire Feed Mechanism, Goddu Patent in Suit, No. 403,-835".

In said patent to Louis Goddu, No. 403,835, the general construction and arrangement of the rotating spindle is best shown in fig. 3, and is substantially the same as that of the spindle of L. H. Goddu patent No. 583,045 above described, said spindle A^{10} being rotated by pulley A^{9} near the upper end, and carrying the reel a^{10}, containing the supply of threaded wire which passes down through

the bore in the axis of the spindle to the wire-feed mechanism, comprising feed rolls connected by gears and actuated by gearing operated by the downward movement of a sleeve, *c*, longitudinally movable on the spindle above the head containing the feed rollers. The connection from said sleeve to the feed rollers is somewhat different in specific construction from that employed in the machine of L. H. Goddu patent No. 583,045, and is as follows:—

Said sleeve *c* has a spirally threaded portion, e^1, which enters a corresponding threaded portion in a surrounding tube or sleeve, *e*, which is capable of rotation on and relative to the spindle, but has no longitudinal movement thereon.

The feed-actuating sleeve *c* has a longitudinally grooved connection with the spindle, so that it can move only lengthwise of said spindle, without rotation relative thereto. Thus, by reason of the spirally threaded connection between the sleeve *c* and the sleeve *e*, the latter is rotated back and forth with relation to the shaft as the former is moved up and down lengthwise of the shaft. At the lower end, the sleeve *e* is connected by a ratchet-clutch cennection with a bevel-toothed gear, *d*, encircling the spindle just above the head containing the feed rolls, and by reason of the ratchet-clutch connections said gear *d* is rotated when the sleeve *e* is turned in one direction (*i.e.*, by the downward movement of the sleeve *c*), but is not rotated when the sleeve *e* is turned in the opposite direction (by the upward movement of sleeve *c*). Said gear or toothed ring *d* meshes with a gear, c^5, in the head at the lower end of the spindle; said gear c^5 having a pinion, c^6, which meshes with the pinion c^{20} on one end of the feed roll b^4. On the other end of the feed roll b^4 there is a pinion, c^7, which engages a pinion, c^8, on the end of the other feed roll b^3. The sleeve *c* is engaged by a yoke, D^{13}, which is actuated to reciprocate the sleeve on the spindle, said yoke deriving its movement from the branched arm of a lever, D^{14}, having on its other arm a roller-stud, D^{16}, which is actuated, as in the L. H. Goddu patent, by one side of a face cam, D^{17}, said lever lifting said yoke at both sides, so that the force of the lever D^{14} is transmitted equally at both sides of the axis of rotation of the sleeve *c*, as in said L. H. Goddu patent No. 583,045. The result of this

connection is that the feed rolls are rotated intermittently, turning when the feed-actuating sleeve *c* is moved downward, and standing still when said sleeve is moved upward, precisely the same as in the feed mechanism of the Louis H. Goddu patent No. 583,045 above described, the said operation being produced by substantially the same elements, but with a somewhat different mechanical arrangement. In place of the vibrating rack bar connected by a ratchet and pawl with a pinion meshing with the feed rolls, there is the toothed ring *d* meshing with the feed rolls, and having the ratchet connection between it and the vibrating sleeve.

Claim 10 of the Louis Goddu patent No. 403,835 is as follows:—

"The wire-carrying spindle, the feeding-sleeve and the yoke to support the said sleeve, combined with a lever reciprocating the said yoke and with a cam to actuate the said lever, substantially as described."

This refers to the construction in which a yoke is employed as a connection between the branched lever arm and the feed sleeve in the wire-feeding mechanism, and said construction is clearly embodied in the machine of the Louis H. Goddu patent No. 583,045, wherein the spindle a^4 is the wire-carrying spindle, the sleeve a^{15} is the feeding sleeve; the ring a^{18} with its trunnions a^{19}, a^{20}, is the yoke to support the feed sleeve; the lever with its branched arm *b*, b^1 is the lever for reciprocating said yoke; and the cam b^{17} is the cam for actuating the lever. It will be observed that in claim 10 the connections from the feeding sleeve to the wire are not specifically referred to, and, so far as the coaction with the elements referred to in said claim is concerned, the mechanism from the sleeve a^{15} to the wire in the Louis H. Goddu patent No. 583,045 is a substantial equivalent for the mechanism from the feed sleeve *c* to the wire in the Louis Goddu patent No. 403,835.

Claim 11 of said patent No. 403,835 is as follows:—

"The wire-carrying spindle, the feeding sleeve, and the yoke to support the said sleeve, combined with a lever reciprocating the said yoke, and with a cam to actuate the said lever, and with an upwardly-pressed horn, a measuring-leg connected with the said lever, and intermediate connections between the said leg and horn, substantially as described."

This claims refers to the same elements as claim 10 (characterized by the yoke and branched lever for operating the feed sleeve), and in combination therewith, the horn and the measuring leg connected with the lever, and intermediate connections between the leg and the horn. The latter elements constitute the mechanism by which the length of the feed movement is governed in accordance with the position of the horn, and consequently in accordance with the thickness of the material, and are an equivalent for the corresponding mechanism of the machine of the Louis H. Goddu patent No. 583,045 before explained, wherein the stop projection d^{31} constitutes the measuring leg connected with the feed-sleeve actuating lever, and the connection from the said measuring leg to the upwardly pressed horn comprises the stop d^{30} on the arm d^{8}, the link d^{9}, lever d^{7}, and rod d^{18}.

The purpose and mode of operation of these connections are precisely the same as those of the connections of the machine shown in the Louis Goddu patent No. 403,835 referred to as an element in claim 11, and which consist specifically of the rigid arm G connected with the horn and a rod, G^{1}, extending upward therefrom so as to form a variable stop for the "measuring leg G^{2}", which is merely a long stop projection connected with the actuating lever D^{14} that directly operates the feed sleeve. In both machines the feed-sleeve actuating lever is moved positively by a cam in the direction to produce the feed, and in the reverse direction by a spring, and its reverse or idle movement is limited by the stop, the position of which varies as the height at which the horn stands varies, and therefore controls the length of the next feed movement of the wire in accordance with the thickness of the material. In the machine of the Louis Goddu patent No. 403,835 the lever, as has been stated, is actuated by a spring shown as a spiral spring, 14 (see fig. 1), the force of which, exerted to move the lever, is regulated by an adjusting nut, 16, said spring being coiled around a rod, 12, which retains it in place, and enables its adjustment to be effective.

Claim 12 of said Louis Goddu patent No. 403,835 is as follows:—

"The wire-carrying spindle, the feeding sleeve, and the yoke to

support the said sleeve, combined with a lever reciprocating the said yoke, and with a cam to actuate the said lever, and with the rod 12, spring 14, and adjusting-nut 16, to operate substantially as described."

This claim refers to the same elements as claim 10 (for which, as has been above explained, there are full equivalents in the machine of the Louis H. Goddu patent No. 583,045) in combination with the spring, its supporting rod, and adjusting nut. Substantial equivalents for these latter elements are found in the spring b^9, supporting hub b^{10}, b^{11}, and clamping bolt b^{12} (see fig. 11) of the Louis H. Goddu patent No. 583,045.

Claim 26 of the Louis Goddu patent No. 403,835 is as follows: —

"In a machine for uniting soles to uppers, the wire-carrying spindle having the enlarged lower end, combined with feed-rolls geared together and driven by a gear located wholly within the said enlarged lower end, substantially as described."

The above claim refers especially to the construction wherein the gear which drives the feed rolls is enclosed or located wholly within the head or enlargement at the lower end of the spindle, instead of being outside and exposed, as in the earlier machines of this type. As has been previously explained, the feed rolls in the machine of L. H. Goddu patent No. 583,045, and the gear a^{31} which drives them, are located wholly within the head or enlargement at the lower end of the spindle, and for this reason I am of the opinion that the said machine of L. H. Goddu patent No. 583,045 embodies the construction forming the subject of claim 26 of the Louis Goddu patent No. 403,835.

Claim 18 of said Goddu patent No. 403,835 is as follows: —

"The lever D^{14}, its attached measuring-leg having a collar, 40, the oscillating rod 22, and the block 25, attached thereto, combined with a stop, substantially as described, actuated by the said block to prevent the descent of the said measuring-leg when it is desired to arrest the feed of the wire, substantially as described."

The above claim refers somewhat specifically to the combination of the elements by which the effective operation of the machine is stopped. It will be recognized that in machines of this type the

spindle and other parts may remain running while the operator depresses the horn to remove the shoe and supply another one, provided that the wire-feeding mechanism is prevented from operating, since the rotation of the spindle (and the movement of the device that feeds the material when the machine is in operation) does no harm if the wire is not advanced from the nose. As has already been explained, the feed of the wire is produced by the up-and-down vibration of a feed sleeve on the spindle, and said sleeve is operated by a lever which is moved positively in the direction to feed the wire, and by a spring in the opposite direction. It is necessary, therefore, in order to prevent the spring-actuated return movement, and thus wholly stop the wire feed, only to interpose or place an obstruction to arrest the movement of the lever *b* of the L. H. Goddu machine, or the lever D'' of the Louis Goddu machine. Such stopping of the return movement of the feed sleeve is effected in the machine of the Louis Goddu patent No. 403,835 by a stop block or obstruction, 27, co-operating with a projection or collar, 40, on the measuring leg G', which, as has been explained, normally operates to limit the return movement of the feed sleeve in accordance with the thickness of the material. (See figs. 1 and 17 of patent 403,835, and see also drawing "Screw Machine Wire Feed Mechanism Goddu Patent in Suit No. 403,835".) Said stop block 27 is shifted so as to engage with the collar 40 when it is desired to stop the wire feed, or so as to be out of the path of the collar 40 when it is desired to permit the wire feed to go on, such shifting being effected by a block, 25, and a rock shaft, 22, operated by the operator through the intervention of a knee lever H'. In the macnine of the L. H. Goddu patent No. 583,045 the wire feed is stopped for the same purpose, in substantially the same manner, and by substantially equivalent mechanism. In the machine of this patent the measuring leg which determines the extent of the wire feed is not a separate rod connected with the feed-sleeve actuating lever, but is a projection of the lever itself. Said lever has a second projection, *h'* (see fig. 3, patent No. 583,045, and also drawing "Defendants' Screw Machine Wire Feed Mechanism"), corresponding to the collar 40 of the mechanism recited in claim 18

of patent No. 403,835; an oscillating hub pivoted on a pin or stud, h^3, said hub corresponding to the oscillating rod 22 of said claim; a block enlargement of said hub, and a stop, h^4, actuated by it to engage with the projection h^2 on the feed-sleeve actuating lever so as to prevent its descent, and consequently to prevent the operation of the feed sleeve when it is not desired to feed the wire. This mechanism, although differing somewhat in the details of mechanical construction and arrangement, and in being operated by a handle instead of a knee lever, corresponds in purpose and mode of operation with the wire-feed stop mechanism shown and described in said patent to Louis Goddu, No. 403,835, and referred to in claim 18 thereof, and operates in substantially the same manner, for the same purpose and with the same result.

Slugging Machine.

I have also examined patent No. 583,046 to L. H. Goddu, dated May 25, 1897, and the drawings "Defendants' Slugging Machine" and "Defendants' Clutch Mechanism" for the purpose of comparing the machine therein shown, which I will hereinafter call "defendants' slugging machine", with certain prior patents to which my attention has been directed, viz., No. 383,455 to Louis Goddu, dated May 28, 1888, and No. 563,478 to Louis Goddu, dated July 7, 1896. Said defendants' slugging machine is a nailing machine of the class commonly known as a "slugging" machine. Such machines are commonly employed for driving one or more rows of nails into the heel of a boot or shoe, mainly for the purpose of improving the appearance of the heel and increasing its capacity to resist wear. Such nails are not primarily for the purpose of fastening the heel to the upper, and it therefore is not necessary that they should penetrate wholly through, or to within a definite distance from, the insole of the boot. It is, however, desirable that the nails should be of some definite shape in cross section, and that different sizes of nails should be used in different classes of work. The nails are cut from a continuous strip of wire of the required sectional shape, said wire being of uniform section throughout, so that there is no enlargement — or head, properly speaking — for the individual nails cut therefrom. Defendants' slugging machine

contains a clutch mechanism operated by a treadle for starting the machine, with a device to stop the machine only at a definite point in the rotation of the main shaft. Said clutch mechanism is of substantially the same construction and mode of operation as that embodied in the loose nailer before described, except that the wedge that forces the clutch members together (as shown in the patent) is not linked to the lever that controls the brake in such manner that said lever may also control the movement of the wedge that permits the separation of the clutch members to take place. The wedge does, however, control the lever, so that when the wedge is moved to close the clutch, it lifts the lever, which thus removes the brake, and thereafter the lever and brake remain under the control of the cam on the main shaft. Thus, when the operator releases the treadle, the clutch members are permitted to separate, and the power is thus taken off from the driving shaft, which runs for the balance of a rotation by momentum until the controlling cam permits the controlling lever to drop and thus apply the brake and stop the machine at the desired point.

I am of the opinion that the clutch mechanism of defendants' slugging machine (shown in patent No. 583,046; see, also, drawing "Defendants' Clutch Mechanism") embodies the combination shown and described in the patent to Louis Goddu, No. 383,455, and recited in claims 7, 8, and 9 thereof, for the reasons given in comparing the clutch mechanism of the defendants' loose nailer with the subject matter of said claims, as the difference between the clutch mechanism of the defendants' slugging machine and that of the loose nailer is immaterial so far as the subject matter of the claims is concerned.

Wire Passage.

The wire from which the nails are cut passes through a passage, a^{15}, properly shaped to fit the sectional shape of wire desired, said passage being formed in a block, a^{16}, which is secured by a bolt, a^{17}, on the side of the lever a^{8}. (See drawing "Defendants' Slugging Machine".) There is thus formed a tubular passage, which entirely surrounds the wire, and said passage is produced by making the groove a^{15} in the block a^{16} of sufficient size to wholly imbed the wire,

so that the lever a^3 merely covers the side of the said groove, and does not itself have to be grooved to produce the desired wire passage. This is of importance where frequent changes are required in the size or sectional shape of the wire, as it is necessary only to remove one piece, namely, the grooved block a^{16}, when a change of wire is to be made, while if the wire passage were formed partly in each of two blocks, both would have to be changed when a different-sized passage was required. This construction of wire passage in defendants' slugging machine, in my opinion, embodies the invention shown and described in the patent to Louis Goddu, No. 563,478, dated July 7, 1896, and referred to in claim 4 thereof, which is as follows: —

"4. In a nailing machine for forming nails from a continuous length of wire, the following instrumentalities, viz: a wire-guideway composed of two pieces b, b^1, one of said pieces being grooved to receive the wire, the other piece presenting a plane or ungrooved face to the wire, feeding mechanism to feed the wire through said guideway, and cutting mechanism to sever the said wire into nail lengths, the provision of making the wire-receiving groove wholly in one-half the guideway enabling said half to be readily changed to adapt the machine to the use of wires of different cross-sections, substantially as described."

The mechanism referred to in the above claim is shown in drawing "Slugging Machine Goddu Patent in Suit, No. 563,478", and is characterized by the wire guide composed of two pieces, b, b^1, one only, b, of which is grooved to receive the wire, while the other covers the said groove by a plain or ungrooved face. With reference to the remaining elements of the said claim, viz., a feeding mechanism to feed the wire through the guideway and a cutting mechanism to sever the wire, there is no limitation in the claim to the specific construction of said elements, and the slugging machine of patent to Louis H. Goddu, No. 583,046, contains corresponding wire feeding and severing elements.

String Nailer.

I have also examined patent to William Goddu, No. 584,735, dated June 15, 1897, and the drawing marked "Defendants' String Nailer", for the purpose of comparing the machine therein shown

and described, which I shall hereinafter call "defendants' string nailer", with the subject matter of certain patents to which my attention has been directed, viz., No. 490,625, dated January 24, 1893, to Louis Goddu, assignor to James W. Brooks and Frank F. Stanley, trustees; No. 383,455, dated May 29, 1888, to Louis Goddu, assignor to James W. Brooks, trustee; and No. 385,802, dated July 10, 1888, to Louis Goddu, assignor to James W. Brooks and Frank F. Stanley, trustees. Said patent No. 584,735 shows and describes a nailing machine of the kind known as a "string nailer", on which a series of partially formed nails are made from wire which is kept continuous, but is shaped so as to provide portions of a definite length, each of which when separated from the wire, will form a nail having a point at one end and a head at the other end. Such machines are employed for various nailing operations other than that of uniting the soles and uppers, and consequently require, or are provided with, a different kind of anvil or work support from the horn employed in machines that are used to unite soles and uppers. As shown in said patent 584,735, the work support d^{15} is mounted on a rod or spindle, d^{8}, which is spring-supported in a swinging arm, D, having a shank which is pivotally supported in a socket in a lug, d, on the post A^{2} of the machine, so that the said arm D can be swung around out of the way when it is desired to afford free access to the driveway of the nailing machine. The work support is retained in a proper position under the driver passage by a locking device, shown as a set-screw, d^{3}. When the set-screw is loosened, the arm D carrying the work support can be swung around out from under the nail driver, as when it is desired to present, by hand, material to be nailed.

I am of opinion that the work support of this string-nailer machine embodies the construction shown and described in patent to Louis Goddu, No. 490,625, and referred to in claims 12 and 13 thereof, which are as follows: —

"12. A driver-bar having a driver, combined with a supporting column, work-support and a swing-frame for such support pivoted to said column out of line with the driver and adapted to be swung from the column to bring the work-support in line with the driver and a locking device to retain it in such position, and also adapted

to be swung toward and be arrested by the column to move the work-support out of line with the driver, substantially as described.

"13. A driver bar having a driver; an arm as A^3 pivoted at one side of the line of movement of the driver—a locking device to retain it in operative position, combined with a spring-sustained shank, a work-support secured thereto, and an adjusting device to control the effective strength of the said spring, and means to determine the position to which the work-supporting surface may rise, substantially as described."

The work support A^4 in said Louis Goddu patent No. 490,625 is supported by a swinging arm, A^3, pivoted to the framework, and free to be turned aside from or under the nose or driver passage of the machine, substantially the same as the work support of the defendants' string-nailer machine (shown and described in William Goddu patent No. 584,735).

In both defendants' string nailer and the machine of the Louis Goddu patent No. 490,625 there is a locking device for retaining the work-supporting arm in position in alignment with the nose or nail passage of the machine, and in both of said machines the work support proper (in the end of said arm) is spring-supported, and has an adjusting device to control the effective strength of the supporting spring, and means to determine the position to which this work-supporting surface may rise. The substantial identity in construction of this work-supporting mechanism in said machines is obvious upon inspection of drawings "Defendants' String Nailer" and "String Nailer Goddu Patent in Suit, No. 490,625", wherein said mechanisms are respectively represented.

Defendants' string nailer contains a clutch mechanism adapted to be operated to start the machine by a treadle actuated by the operator, and controlled, as to the point at which the clutch is disengaged and the machine stopped, by a cam and brake.

This clutch mechanism is substantially the same in construction and mode of operation as that embodied in Defendants' loose nailer, and in my opinion embodies substantially the combinations shown and described in patent to Louis Goddu No. 383,455, dated May 29, 1888, and referred to in claims 7 and 8 thereof, and also embodies substantially the combination shown and described in

patent to Louis Goddu No. 385,802, dated July 10, 1888, and referred to in claim 7 thereof, for the reasons given by me in discussing the clutch mechanism of Defendants' Loose Nailer.

DEFENDANTS' EXHIBIT 104.

[Put in Evidence, page 2090.]

CIRCUIT COURT OF THE UNITED STATES,
DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 985.

JAMES W. BROOKS ET AL.
v.
GODDU SONS METAL FASTENING COMPANY ET AL.

BILL OF COMPLAINT.
(Filed Feb. 2, 1898.)

To the Honorable the Judges of the Circuit Court of the United States for the District of Massachusetts:

James W. Brooks of Petersham in the County of Worcester and Commonwealth of Massachusetts, and Frank F. Stanley of Boston in the County of Suffolk and Commonwealth aforesaid, Plaintiffs, bring this their Bill of Complaint against Goddu Sons Metal Fastening Company, a corporation duly organized under the laws of the State of Maine, and having its principal place of business at said Boston, Louis Goddu, Louis H. Goddu, William Goddu, Napoleon Goddu, Elmer Goddu, and George Goddu, all of Winchester in the County of Middlesex and Commonwealth aforesaid, and Albert Van Wagenen of Newton in the County of Middlesex and Commonwealth aforesaid, Defendants.

And thereupon the plaintiffs complain and say as follows:

First. The plaintiffs are trustees of a voluntary association known as the McKay Metallic Fastening Association, under a declaration of trust hereinafter referred to and are engaged as such trustees in carrying on the business of manufacturing and leasing machines for inserting metallic fastenings in boots and shoes. The machines used by the plaintiffs include so-called standard screw

machines, by which screw-threaded wire is inserted in boots and shoes to fasten the soles together and to fasten the uppers to the soles; so-called tacking machines by which various kinds of metallic fastenings are inserted in the soles of boots and shoes; loose nailing machines so-called, by which headed nails fed into the machine are driven into the soles of boots and shoes; and so-called slugging machines, by which metallic fastenings are driven into the soles and heels of boots and shoes for the purpose of ornament or to increase the durability of the wearing surface. The standard screw machines, some variety of the tacking machines, loose nailing machines and slugging machines above referred to make a set used frequently in conjunction upon the same shoe, and manufacturers who desire to use metallic fastenings in the soles of boots and shoes or to insert so called slugs in the soles or heels, often require machines for all these kinds.

Second. About or prior to the year 1875 the defendant Louis Goddu invented a screw machine, or the essential parts thereof, of the general character of the standard screw machine above referred to and designed for the same purpose, and also invented a tacking machine. One Albert Van Wagenen and others had also invented appliances for use in connection with and less important parts of said standard screw machine and tacking machine. None of the other machines above referred to had at this time been invented. Said Louis Goddu and said Albert Van Wagenen prior to 1877 transferred their said inventions to a corporation known as the American Cable Screw Wire Company, and in 1877 said corporation held patents for said inventions. On or about June 9, 1877 one Gordon McKay and the plaintiff James W. Brooks acquired all said patents from said American Cable Screw Wire Company and also acquired other patents relating to metallic fastenings from other persons, in order to hold the same as principal trustee and associate trustee respectively under said declaration of trust for the benefit of said voluntary association known as the McKay Metallic Fastening Association, which was then first organized, and to engage in and carry on the business above described for the benefit of such association; and said McKay and Brooks upon the transfer to them

of said letters patent executed a declaration of trust; the same hereinbefore referred to, for the benefit of said voluntary association. A copy of said declaration of trust is hereto annexed and marked Exhibit A and is hereby made a part of this bill.

Third: Said McKay and said Brooks, as trustees as aforesaid, deemed it important to secure the services of said Louis Goddu as being the principal inventor of said standard screw machine and said tacking machine in order to get the benefit of his ingenuity and inventive skill in improving and perfecting said machines and in devising and inventing other machines and appliances, and said McKay and Brooks as such trustees accordingly entered into a contract with said Louis Goddu on or about June 9th, 1877, for this purpose, whereby for seventeen years they should enjoy the exclusive right and benefit of all inventions thereafter made by him relating to fastening together the soles and uppers of boots and shoes with metallic fastenings.

Fourth: Thereafter, to wit, on or about January 1, 1880, said McKay and said Brooks, being respectively the principal trustee and associate trustee of said Association, as trustees as aforesaid in order more effectually to secure the services of said Louis Goddu and the exclusive benefit of his ingenuity and inventive skill and of all inventions thereafter made by him relating to the use of metallic fastenings as aforesaid, entered into a contract in writing and under seal with said Louis Goddu, in substitution for said contract dated June 9, 1877. Said contract so made on or about January 1, 1880, recited that said trustees were desirous of obtaining and securing for said McKay Metallic Fastening Association, further results and benefits from the ingenuity and inventive skill of said Goddu, in the origination and contrivance of other inventions and improvements, relating to metallic fastenings for boots and shoes, or the insertion of metal in soles for any purpose, except for the purpose of lasting boots and shoes. By said contract said Louis Goddu for the considerations therein set forth covenanted and agreed with said trustees that they and the survivor of them as joint tenants and not as tenants in common, the successor or successors to their trust and his or their legal representatives or assigns,

should at all times exercise and enjoy the entire and exclusive right, title and interest, in and to any and all inventions and improvements, not already assigned, which the said Goddu has made or might thereafter make, contrive or originate in the construction or mode of operation of any machine, mechanism, mechanical appliance or instrumentality, relating to metallic fastenings for soles of boots and shoes, or to the insertion of metal in soles for any purpose, except for lasting boots and shoes, to the fullest extent to which the said Goddu, as the inventor or discoverer thereof, would have been entitled to possess, exercise and enjoy the same, within and for the United States and all other countries. And said Louis Goddu thereby for the considerations therein set forth further covenanted and agreed that in order to secure to the said trustees the entire and exclusive benefit and advantage to be derived from said inventions and improvements, he would at their request, and without charge to them but at their expense, make, sign and execute any and all proper documents and written instruments requisite and proper to apply for and obtain the grant, reissue or extension of letters patent in the United States, and such other countries as said Trustees might elect, and to protect therein the exclusive rights to any of said inventions and improvements, and would also make, sign, execute and deliver any and all assignments, transfers and conveyances necessary or proper to vest in said trustees, their successors, legal representatives and assigns, the entire and exclusive right, title and interest in and to each and all of such letters patent, reissues and extensions when granted, as fully as he could exercise and enjoy the same. A copy of said contract is hereto annexed and marked "Exhibit B" and is hereby made a part of this bill.

Fifth. Thereafter, to wit on or about July 30, 1884, said Gordon McKay resigned as such principal trustee and ceased to be a trustee under said declaration of trust, and on said date said Brooks was duly chosen and appointed principal trustee, and the plaintiff Stanley was duly chosen and appointed associate trustee of said McKay Metallic Fastening Association, pursuant to the provisions of said declaration of trust. And said McKay and said Brooks

duly assigned all the patents, contracts, choses in action and other property then held by them as such trustees to said Brooks and Stanley as trustees as aforesaid, pursuant to the terms of said declaration of trust. And said Brooks and Stanley thereupon became and were and since then continuously have been and now are, the principal trustee and associate trustee respectively of said Association, and said Brooks and Stanley as such trustees as aforesaid became and were and now are the owners of all patents and patent rights and inventions and all interests therein and all contracts and choses in action and other property then held or owned for the benefit of said Association under said declaration of trust, and entitled to the benefit of and to enforce as such trustees and for the benefit of said Association pursuant to said declaration of trust, all rights, contracts and agreements and choses in action theretofore acquired or held by the former trustees under said declaration of trust, and became and were and are entitled to the benefit of and to enforce as such trustees said contract with said Louis Goddu dated January 1, 1880 as aforesaid.

Sixth. Subsequent to January 1, 1880 and prior to June 10, 1889 said Louis Goddu made divers inventions not relating to inserting metallic fastenings in the soles of boots and shoes, and assigned the same to a corporation organized by him and by said Albert Van Wagenen, known as the Goddu Improvement Company. Said Brooks and said Stanley being respectively the principal trustee and associate trustee under said declaration of trust as aforesaid and being desirous to secure the entire and undivided services of said Louis Goddu as an inventor for the benefit of said Association, on or about June 10, 1889 entered into a further contract in writing and under seal with said Louis Goddu, whereby they agreed to pay and thereafter they did pay to said Louis Goddu and to said Van Wagenen large sums of money for the stock owned by them respectively in said Goddu Improvement Company, to wit, to said Louis Goddu the sum of seven thousand five hundred (7,500) dollars, and agreed to pay said Louis Goddu fourteen (14) per cent. of all net profits derived from the inventions owned by said Goddu Improvement Company. And said

Louis Goddu thereby, among other things covenanted and agreed that said Brooks as such principal trustee and said Stanley as such associate trustee, their successors and assigns, should at all times have, exercise and enjoy the entire and exclusive right, title and interest in and to any and all inventions, improvements and discoveries which he the said Louis Goddu had made, contrived or originated, and had not already assigned, and which during the term or terms of any patent or patents theretofore assigned by him to the Goddu Improvement Company or thereafter to be assigned by him to the Trustees of the said McKay Metallic Fastening Association under this present agreement, he, the said Louis Goddu might thereafter make, contrive or originate in any industrial art, machine, manufacture or composition of matter, (excepting only such inventions and improvements as were already the subject of other existing contracts between him, the said Louis Goddu and the trustees of the said McKay Metallic Fastening Association) to the fullest extent which he, as the inventor or discoverer thereof would otherwise have been entitled to possess, exercise and enjoy such entire and exclusive right, title and interest within the United States and all other patent granting countries.

And said Louis Goddu thereby further covenanted and agreed for the considerations therein set forth, with said Brooks and Stanley as trustees as aforesaid, that in order to secure to said trustees the entire and exclusive benefit and advantage to be derived from his said inventions, improvements and discoveries, he would, at the request of such Trustees, or either of them, and without personal charge, but at their expense, make, sign and execute, any and all papers, documents and written instruments requisite and proper to apply for and obtain the grant of letters patent in the United States, and any foreign country, and any reissue or extension thereof, to protect therein, the exclusive privileges of constructing, employing and vending, the said inventions, improvements and discoveries, or either or any of them; and would also make, sign, execute and deliver, any and all assignments, transfers and conveyances necessary or proper to vest in the said James W. Brooks, as Principal Trustee, and the said Frank F.

Stanley as Associate Trustee, of the said McKay Metallic Fastening Association, their successors and assigns, the entire and exclusive right, title and interest, in, to and under, each and all of such letters patent, and any reissue or extension thereof, when granted, and the franchise and privileges secured thereby. And said Louis Goddu by said contract further for the considerations therein set forth sold, assigned and transferred to said Brooks and Stanley as trustees as aforesaid, any and all patterns, models and drawings, which he might then or thereafter own, embody, illustrating or representing, either or any of the inventions, improvements or discoveries, which, by the terms of this present agreement, were to belong, or by assignment from the Goddu Improvement Company might belong, to the said trustees of the said Association. A copy of said contract is hereto annexed marked Exhibit C and is made a part of this bill.

Seventh. After the organization of said voluntary Association in 1877, and during the period from then until the present time, the business so conducted by said trustees has largely developed and increased, and through the exertions of said trustees and by the ingenuity and inventive skill of said Louis Goddu, the machines used have been improved and other machines have been devised and invented, and letters patent of the United States issued which are the property of said trustees. About 1884 said Louis Goddu invented and developed a loose nailing machine, for which, together with improvements subsequently devised therein by said Louis Goddu divers letters patent of the United States were duly issued which are the property of said trustees. About 1895 said Louis Goddu invented a slugging machine for which letters patent of the United States were duly issued which are the property of said trustees.

Improvements in all of said machines, herein and in paragraph second referred to, have from time to time heretofore during said period since 1880 been invented by said Louis Goddu and divers letters patent of the United States issued therefor which are the property of said trustees, and during said period divers other machines of the kinds referred to in paragraph first above, and im-

provements therein, have been invented by said Louis Goddu for which divers letters patent of the United States have been duly issued, which are the property of said trustees. All of said machines as improved from time to time as aforesaid, and all letters patent of the United States issued therefor, have been and now are the property of said trustees in accordance with said contracts, and all such machines have been and now are largely used by said trustees in carrying on their said business, and all said machines and the improvements therein and the appliances connected therewith are chiefly the result of the ingenuity and inventive skill of said Louis Goddu. Throughout all of said period from 1877 said Louis Goddu has been closely and intimately acquainted with the business done by the plaintiffs and by their predecessors as such trustees, and has filled a position of confidence towards said trustees and has acquired and now has an exact and exhaustive knowledge of the condition of the business carried on by the plaintiffs, so far as relates to the manufacture and operation of the machines and appliances used by said trustees, and as the principal inventor of said machines and improvements therein and appliances, and by reason of his continuous employment by them and by their predecessors in the trust, he has an accurate knowledge of the merits and the defects of the plaintiffs' said machines and appliances. Said McKay and Brooks as trustees entered into said contract dated January 1, 1880, with said Louis Goddu, and said plaintiffs as trustees entered into said contract dated June 10, 1889 with said Louis Goddu, because of the great importance of maintaining the high quality and standard of their said machines, and in order to secure the exclusive services of said Louis Goddu as an expert inventor for that purpose, and in order to prevent any competitor from securing the services of said Louis Goddu and the benefit of his intimate knowledge of the machines made and used by said trustees. And it is of great importance to said trustees that said Louis Goddu should continue to devote himself to them and that they should have exclusive benefit of his ingenuity and inventive skill, and especially that he should not permit any other person or persons and especially any rival in business of said trustees, to

have the benefit directly or indirectly of his ingenuity and inventive skill or of any conceptions or ideas of his relating to machines or improvements therein or appliances intended for the purposes aforesaid, or any of them, for which the machines now owned by said trustees are used; and that said Louis Goddu should faithfully perform and comply with all the terms and requirements of said contracts dated January 1, 1880 and June 10, 1889, and each of them.

Eighth. Said McKay and said Brooks as long as they were the trustees under said declaration, performed, and said Brooks and said Stanley since they have been such trustees and up to the present time, have performed and are ready and willing for the future to perform all things by said contract dated January 1, 1880, required to be performed by them respectively or by the trustees for the time being of said McKay Metallic Fastening Association; and said Brooks and Stanley as such trustees have since said contract dated June 10, 1889 was made, and up to the present time, performed and are ready and willing for the future to perform all things thereby required to be performed by them. Since 1880 the trustees for the time being under said declaration of trust have in each and every year paid to said Louis Goddu according to the terms of said contract dated January 1, 1880; and since June 10, 1889, said trustees have paid to said Louis Goddu in each and every year in accordance with the terms of said contract dated June 10, 1889, very large sums of money as compensation for his services and for his said inventions, as provided in said contracts respectively, and throughout the entire period from 1877 to the present time the trustees of said Association for the time being have paid to said Louis Goddu in each year a further sum of four thousand (4,000) dollars together with a percentage of the net earnings of said Association, as salary for the services of said Louis Goddu as inventor and master mechanic. The aggregate of the sums so paid to said Louis Goddu during said period by said trustees amounts to more than two hundred thousand (200,000) dollars.

Ninth. Said Brooks and said Stanley upon their appointment as principal trustee and associate trustee respectively, became and

were and since then continuously have been and now are entitled by virtue of said contract dated January 1, 1880, to the sole and exclusive benefit of all inventions and improvements that said Louis Goddu might make, contrive or originate in the construction or mode of operation of any machine, mechanism, mechanical appliance or instrumentality relating to metallic fastenings for soles of boots and shoes or to the insertion of metal in soles for any purpose except for lasting boots and shoes, and since June 10, 1889, by virtue of said contract dated June 10, 1889, to the sole and exclusive benefit of all inventions, improvements and discoveries which said Louis Goddu should make, contrive or originate in any industrial art, machine, manufacture or composition of matter, and to the full benefit of and to all results derived from the ingenuity and inventive skill of said Louis Goddu, and by virtue of each of said contracts to have the ingenuity and inventive skill of said Louis Goddu devoted exclusively to the interests of the trustees for the time being of said McKay Metallic Fastening Association.

Tenth. In the latter part of the year 1895 and early part of the year 1896 said Louis Goddu, notwithstanding the fact that said Brooks and Stanley as trustees as aforesaid had up to that time fully performed and were ready and willing thereafter and for the future to perform all things required to be performed by them under said several contracts and each of them, without just cause and in violation by his covenants and agreements in said several contracts and each of them contained declared his intention to give to said Brooks and Stanley as trustees as aforesaid no further benefit or result of his ingenuity and inventive skill, and since then has wholly neglected and failed and refused to communicate to said trustees or to any one in their behalf, any invention or improvement relating to metallic fastenings for boots and shoes, or in any way to give them any benefit or result of his ingenuity or inventive skill.

Eleventh: From 1877 until October, 1895, said Albert Van Wagenen, who prior to 1877 had made some inventions relating to metallic fastenings for boots and shoes which were acquired by said McKay and Brooks in 1877 as aforesaid, was employed continuously by the trustees for the time being of said McKay Metal-

lic Fastening Association and was paid a large salary. And throughout that time said Van Wagenen had an intimate and confidential knowledge of the business carried on by said trustees and of the patents and inventions used therein and from time to time acquired by said trustees. Prior to September, 1895, there were also employed by said plaintiffs as trustees in said business five sons of said Louis Goddu, to wit, Louis H. Goddu who had been continuously so employed as a machinist for about fourteen years, Elmer Goddu who had been continuously so employed as a machinist and as a pattern maker for about nine years, Napoleon Goddu who had been continuously so employed as a machinist and as a pattern maker for about eight years, William Goddu who had been continuously so employed as a machinist for six years, and George Goddu who had been continuously employed as a machinist for about five years. Said George Goddu left the employ of said trustees on or about September 16, 1895, said Louis H. and Napoleon Goddu left in or about October, 1895, said William Goddu left in or about March, 1896, and said Elmer Goddu left in or about December, 1896. Each of said sons of said Louis Goddu respectively received during the time of his employment by said plaintiffs the wages ordinarily paid machinists and mechanics and no one of them had at any time during such employment devised or invented any new or patentable improvement or invention or given any sign of inventive skill. In or about January 1895 said five sons of Louis Goddu, being then in the employ of said plaintiffs as aforesaid, conspired with said Louis Goddu and with said Albert Van Wagenen, who was also then in the plaintiffs' employ as aforesaid, to produce a set of machines for use in fastening together the parts of boots and shoes with metallic fastenings, comprising a screw nail machine, a loose nailing machine, a slugging machine, tacking machines, and nailing machines for driving string nails so-called, that should be able to perform the same work done by the machines manufactured and leased by said trustees as aforesaid and compete with them successfully; and for this purpose to have said Louis Goddu invent such machines or improvements, which should not infringe the letters patent held by the plaintiffs, and communicate such inventions to

his said sons and instruct them in perfecting and manufacturing machines in conformity therewith, and permit them or some one of them to apply for letters patent upon each of said several machines, and transfer such letters patent when issued to a corporation to be organized for the purpose of manufacturing and leasing said machines.

Twelfth: At some time prior to August 24, 1895, said Louis Goddu conceived the idea of an alleged improvement in the tacking machines, so called, then used by the plaintiffs as aforesaid. Such improved machine was designed and intended to take the place of and do the same work as machines then manufactured by the plaintiffs according to earlier inventions made by said Louis Goddu for the essential parts thereof and improvements therein, for which divers letters patent of the United States had been duly issued which were then owned by the plaintiffs as trustees as aforesaid. Said Louis Goddu, notwithstanding his covenants and agreements contained in said contracts dated January 1, 1880 and June 10, 1889, respectively, did not give to said plaintiffs the benefit and results of his said idea and invention for such alleged improvement, but, disregarding his said obligations and duties under said contracts, pursuant to the conspiracy aforesaid, communicated said idea to his said son William Goddu, and perfected said alleged improvement and completed the invention therein embodied, and instructed and directed said William Goddu and his brothers in relation thereto, and in constructing a machine in accordance therewith and assisted and permitted said William Goddu to apply in the name of said William as the original inventor thereof for letters patent of the United States therefor. And said William, pursuant to said conspiracy, made such application and on or about October 6, 1896, letters patent of the United States numbered 569,152 were issued to said William Goddu upon his said application for said alleged improvement and invention. A copy of the specification forming part of said letters patent is annexed hereto and marked Exhibit D and is hereby made a part of this bill.

Thirteenth. At some time prior to May 20, 1896, said Louis Goddu conceived the idea of an alleged improvement in the ma-

chines for driving screw threaded wire, commonly called screw nail machines, then used by the plaintiffs as aforesaid. Such improved machine was designed and intended to take the place of and do the same work as machines then manufactured by the plaintiffs according to earlier inventions made by said Louis Goddu for the essential parts thereof and improvements therein, for which divers letters patent of the United States had been duly issued which were then owned by the plaintiffs as trustees as aforesaid. Said Louis Goddu, notwithstanding his covenants and agreements contained in said contracts dated January 1, 1880 and June 10, 1889 respectively, did not give to said plaintiffs the benefit and results of his said idea and invention for such alleged improvements, but, disregarding his said obligations and duties under said contracts, pursuant to the conspiracy aforesaid, communicated said idea to his said son Louis H. Goddu, and perfected said alleged improvement and completed the invention therein embodied, and instructed and directed said Louis H. Goddu and his brothers in relation thereto, and in constructing a machine in accordance therewith and assisted and permitted said Louis H. Goddu to apply in the name of said Louis H. as the original inventor thereof for letters patent of the United States therefor. And said Louis H., pursuant to said conspiracy, made such application, and on or about May 25, 1897, letters patent of the United States numbered 583,045 were issued to said Louis H. Goddu upon his said application for said alleged improvement and invention. A copy of the specification forming part of said letters patent is annexed hereto and marked Exhibit E and is hereby made a part of this bill.

Fourteenth. At some time prior to July 6, 1896, said Louis Goddu conceived the idea of an alleged improvement in the slugging machines, so called, then used by the plaintiffs as aforesaid. Such improved machine was designed and intended to take the place of and do the same work as machines then manufactured by the plaintiffs according to earlier inventions made by said Louis Goddu for the essential parts thereof and improvements therein, for which divers letters patent of the United States had been duly issued which were then owned by the plaintiffs as trustees as aforesaid.

Said Louis Goddu, notwithstanding his covenants and agreements contained is said contracts dated January 1, 1880 and June 10, 1889 respectively, did not give to said plaintiffs the benefit and results of his said idea and invention for such alleged improvement, but disregarding his said obligations and duties under said contracts, pursuant to the conspiracy aforesaid, communicated said idea to his said son Louis H. Goddu, and perfected said alleged improvement and completed the invention therein embodied, and instructed and directed said Louis H. Goddu and his brothers in relation thereto, and in constructing a machine in accordance therewith and assisted and permitted said Louis H. Goddu to apply in the name of said Louis H. as the original inventor thereof for letters patent of the United States therefor. And said Louis H., pursuant to said conspiracy, made such application and on or about May 25, 1897, letters patent of the United States numbered 583,-046 were issued to said Louis H. Goddu upon his said application for said alleged improvement and invention. A copy of the specification forming part of said letters patent is annexed hereto and marked Exhibit F and is hereby made a part of this bill.

Fifteenth. At some time prior to August 25, 1896, said Louis Goddu conceived the idea of an alleged improvement in the loose nailing machines, so called, then used by the plaintiff as aforesaid. Such improvement was designed and intended to take the place of and do the same work as machines then manufactured by the plaintiffs according to earlier inventions made by said Louis Goddu for the essential parts thereof and improvements therein, for which divers letters patent of the United States had been duly issued which were then owned by the plaintiffs as trustees as aforesaid. Said Louis Goddu, notwithstanding his covenants and agreements contained in said contracts dated January 1, 1880 and June 10, 1889 respectively, did not give to said plaintiffs the benefit and results of his said idea and invention for such alleged improvement, but, disregarding his said obligations and duties under said contracts, pursuant to the conspiracy aforesaid, communicated said idea to his said son George Goddu, and perfected said alleged improvement and completed the invention therein embodied, and

instructed and directed said George Goddu and his brothers in relation thereto, and in constructing a machine in accordance therewith and assisted and permitted said George Goddu to apply in the name of said George Goddu as the original inventor thereof for letters patent of the United States therefor. And said George pursuant to said conspiracy, made such application, and on or about May 25, 1897, letters patent of the United States numbered 583,044, were issued to said George Goddu upon his said application for said alleged improvement and invention. A copy of the specification forming a part of said letters patent is annexed hereto and marked Exhibit G and is hereby made a part of this bill.

Sixteenth. At some time prior to September 19, 1896, said Louis Goddu conceived the idea of an alleged improvement in the string nail-tacking machines, so called, then used by the plaintiffs as aforesaid. Such improved machine was designed and intended to take the place of and do the same work as machines then manufactured by the plaintiffs according to earlier inventions made by said Louis Goddu for the essential parts thereof and improvements therein, for which divers letters patent of the United States had been duly issued which were then owned by the plaintiffs as trustees as aforesaid. Said Louis Goddu, notwithstanding his covenants and agreements contained in said contracts dated January 1, 1880 and June 10, 1889 respectively, did not give to said plaintiffs the benefit and results of his said idea and invention for such alleged improvement, but disregarding his said obligations and duties under said contracts, pursuant to the conspiracy aforesaid, communicated said idea to his said son William Goddu, and perfected said alleged improvement and completed the invention therein embodied, and instructed and directed said William Goddu and his brothers in relation thereto, and in constructing a machine in accordance therewith and assisted and permitted said William Goddu to apply in the name of said William as the original inventor thereof, for letters patent of the United States therefor. And said William pursuant to said conspiracy, made such application and on or about May 25, 1897, letters patent of the United States numbered 583,048 were issued to said William

Goddu upon his said application for said alleged improvement and invention. A copy of the specification forming part of the said letters patent is annexed hereto and marked Exhibit H and is hereby made a part of this bill.

Seventeenth. At some time prior to January 15, 1897 said Louis Goddu conceived the idea of an alleged improvement in string nail tacking machines so called, then used by the plaintiffs as aforesaid. Such improved machine was designed and intended to take the place of and do the same work as machines then manufactured by the plaintiffs according to earlier inventions made by said Louis Goddu for the essential parts thereof and improvements therein, for which divers letters patent of the United States had been duly issued which were then owned by the plaintiffs as trustees as aforesaid. Said Louis Goddu, notwithstanding his covenants and agreements contained in said contracts dated January 1, 1880 and June 10, 1889, respectively, did not give the said plaintiffs the results of his said idea and invention for such alleged improvement, but disregarding his said obligations and duties under said contracts, pursuant to the conspiracy aforesaid, communicated said idea of his son William Goddu, and perfected said alleged improvement and completed the invention therein embodied and instructed and directed said William Goddu and his brothers in relation thereto, and in constructing a machine in accordance therewith and assisted and permitted said William Goddu to apply in the name of said William as the original inventor thereof for letters patent of the United States therefor. And said William, pursuant to said conspiracy, made such application, and on or about June 15, 1897 letters patent of the United States numbered 584,735 were issued to said William Goddu upon his said application for said alleged improvement and invention. A copy of the specification forming part of said letters patent is annexed hereto and marked Exhibit I and is hereby made a part of this bill.

Eighteenth. Each of the inventions specified in the six preceding paragraphs numbered Twelfth to Seventeenth both inclusive is intended and designed as an improvement on machines now owned and used by said plaintiffs, manufactured under letters patent of

the United States heretofore issued for inventions of said Louis Goddu and now owned by said plaintiffs, pursuant to the terms of said several contracts; and each of the machines embodying said inventions specified in said paragraphs Twelfth to Seventeenth is intended to be used for the same purpose for which the plaintiffs' said machines are used and to be an improvement thereon, and to be used in competition therewith. Said Louis Goddu, in pursuance of the conspiracy aforesaid, aided and assisted his said sons in constructing the machines in said paragraphs numbered Twelfth to Seventeenth referred to, and furnished them for this purpose the use, free of expense, of a machine shop owned by him, and hired and paid a machinist to assist them in the mechanical work to be done by them and furnished and paid for all the supplies to be used in said shop in carrying on said work, and supported his said sons and the families of such of them as had families, after they respectively left the employ of the plaintiffs as aforesaid, and paid all the expenses of applying for and obtaining each of said letters patent, and expended large sums of money for the purposes aforesaid.

Nineteenth. Each of said letters patent so issued, as in paragraphs numbered twelfth to seventeenth both inclusive above set forth, is for an invention of said Louis Goddu. Louis Goddu was and is in fact the first and original inventor of the alleged improvements for which each of said letters patent was granted. Each of said inventions was and is the fruit and result of said Louis Goddu's ingenuity and inventive skill. Said Louis Goddu communicated each of his said conceptions and inventions to his said sons and to each of them, and directed and caused his said sons to construct a machine embodying said invention, and permitted his said sons William, Louis H., and George respectively as above set forth, to apply for and obtain letters patent for said respective machines in order to defeat the right of plaintiffs to the sole benefit of the results of the ingenuity and inventive skill of said Louis Goddu. Each of the said sons of said Louis Goddu was aware of at the time said Louis Goddu so communicated to him each of said conceptions and inventions, and at all times thereafter well knew the duties and obligations of said Louis Goddu to the plaintiffs

under and by virtue of said contracts, and well knew the rights of the plaintiffs to the exclusive benefit of and to the results of the ingenuity and inventive skill of said Louis Goddu; and each of said sons of said Louis Goddu and said Albert Van Wagenen wilfully and fraudulently conspired with said Louis Goddu to defeat the rights of the plaintiffs aforesaid, and for this purpose assisted said Louis Goddu in the development of said improvements; and each of them who applied for letters patent in his own name as above set forth did so well knowing that said Louis Goddu was the true and original inventor of the alleged improvements and inventions for which said patent was sought; and that the plaintiffs as trustees as aforesaid were by virtue of said contracts and of each of them, entitled to the sole and exclusive use and benefit thereof. And each of said alleged improvements and inventions in fact belonged to and in equity was the property of said plaintiffs as soon as made, conceived, or originated by said Louis Goddu, and all the acts done in relation thereto pursuant to said conspiracy as above set forth, were done in wilful violation of and in fraud of the plaintiff's rights.

Twentieth. On or about May 29, 1897, a corporation known as the Goddu Sons Metal Fastening Company was organized under the laws of Maine, with a capital of $500,000 divided into 5000 shares of the par value of $10.00 each. The ostensible purposes for which said corporation was organized as set forth in its certificate of incorporation were the carrying on the business of manufacturing, buying, selling, leasing, and operating machinery, tools, and appliances relating to the manufacture of boots and shoes, obtaining, leasing, operating under and disposing of letters patent, including letters patent relating to the manufacture of boots and shoes, and machinery, tools, and appliances used in such manufacture, and for other purposes. Among the original incorporators and directors of said corporation named in its articles of incorporation were said George Goddu, Louis H. Goddu, and Albert Van Wagenen, and one James H. Churchill, the solicitor of patents employed by said Louis Goddu. The plaintiffs are informed and believe, and therefore charge, that said corporation was organized

pursuant to said conspiracy above set forth, in order that said letters patent issued to said several sons of Louis Goddu respectively as aforesaid might be assigned to and held and used by it; that said Louis Goddu assisted in promoting and advanced all the money for the expenses of organizing said corporation, and has lent money to it; that said Van Wagenen and all said sons of said Louis Goddu were parties to said conspiracy, and joined in the organization of said corporation, well knowing the rights of said plaintiffs to all inventions of said Louis Goddu, and well knowing that the inventions for which said letters patent had issued which were to be assigned to said corporation were inventions made by said Louis Goddu; that said Louis Goddu received and still holds 3000 shares of the capital stock of said corporation; that said Van Wagenen and each of said five sons of said Louis Goddu received and still holds 6,000 shares of said capital stock; that said shares were issued to said Louis Goddu and to said Van Wagenen and to said several sons of said Louis Goddu for no consideration except the part taken by each in forming and carrying out said conspiracy and the assignment pursuant to said conspiracy of said several letters patent specified in paragraphs twelfth to seventeenth both inclusive to said corporation.

Twenty-first. Thereafter said William Goddu, George Goddu and Louis H. Goddu assigned to said Goddu Sons Metal Fastening Company, pursuant to said conspiracy, all said letters patent issued to them respectively as in paragraphs Twelfth to Seventeenth both inclusive above set forth to wit: letters patent numbered 569,152, 583,048 and 584,735 issued to said William Goddu, 583,045 and 583,046 issued to said Louis H. Goddu, and 583,044 issued to said George Goddu, in so far as, in view of the invalidity thereof, the same were capable of assignment; and said corporation has since that date purported and now purports to be, and so far as the same are capable of ownership for the reason aforesaid, now is the owner of said letters patent. At the time each of such purported assignments, and at the time of the payment of any consideration therefor, if any consideration was in fact paid, said corporation well knew that said letters patent and all of them were

granted for inventions originally conceived and made by said Louis Goddu, and that said Louis Goddu was the true and original inventor of the alleged improvements for which said letters patent were respectively granted; that said plaintiffs as trustees as aforesaid were entitled to the sole and exclusive benefit of said invention; and that said William Goddu, Louis H. Goddu and George Goddu respectively, and each of them, well knowing the plaintiffs' said rights, had conspired with said Louis Goddu as above set forth in assisting to develop said inventions and in applying for letters patent therefor, in order to defraud the plaintiffs by depriving them of the benefit of said inventions and results of said Louis Goddu's ingenuity and inventive skill.

Twenty-second. Said Goddu Sons Metal Fastening Company is about to engage in business in competition with the business carried on by the plaintiffs as trustees as aforesaid. Said several inventions for which said letters patent purported to be issued as aforesaid are for alleged improvements in machines of which the plaintiffs in carrying on said business lease large numbers to manufacturers of boots and shoes. The use of any of said inventions by said defendant corporation in competition with said plaintiffs will cause said plaintiffs great and irreparable injury. Said defendant corporation has begun or is preparing to manufacture and to lease to manufacturers of boots and shoes in competition with the plaintiffs, machines manufactured in accordance with said several alleged improvements and inventions as set forth in the specifications forming part of said several letters patent, and as the plaintiffs are informed and believe, threaten to and will unless restrained by the action of this Honorable Court, continue so to do, and will by every means endeavor to induce manufacturers of boots and shoes to hire said machines from from them instead of hiring machines for the same purposes from said plaintiffs, and will seriously injure the plaintiffs' said business, to wit, to an amount greatly exceeding in value, exclusive of interest and costs the sum of two thousand (2,000) dollars.

Wherefore and forasmuch as the plaintiffs have no adequate remedy at law for the matters herein complained of, and to the

end that the defendants may if they can show why your orators should not have the relief hereby prayed, and may make a full disclosure and discovery of all the matters aforesaid, and according to the best and utmost of their knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the matters hereinbefore stated but not under oath, an answer under oath being hereby expressly waived, the plaintiffs pray : —

1. That the defendants and each of them and their respective agents, servants and employees, be perpetually restrained, from making, leasing, selling or using in any way any machine embracing, and from in any way using any of said alleged improvements and inventions or any substantial part thereof, set forth and described in the specifications forming a part of said several letters patent numbered respectively 569,152, 583,044, 583,045, 583,046, 583,048 and 584,735, and that all such machines now in the possession or custody of the defendants or any of them, or their or any of their servants, agents or employees, may be delivered up to the plaintiffs or be destroyed.

2. That the defendants and each of them be ordered to account to the plaintiffs for all profits made by them respectively from the making, leasing, selling or in any way using any machine or machines embracing said alleged improvements and inventions or any of them or any substantial part of any of them or in any way arising or accruing therefrom.

3. That a preliminary injunction issue, restraining the defendants and each of them and their respective agents or employees during the pendency of this suit, from making, leasing, selling or using in any way any machine embracing, and from in any way using any of said alleged improvements and inventions or any substantial part thereof set forth and described in the specifications forming a part of said several letters patent numbered respectively 569,152, 583,044, 583,045, 583,046, 583,048 and 584,735.

4. For such other relief as to this honorable Court shall seem meet.

And it may please your Honors to grant unto the plaintiffs a writ of subpoena ad respondendum directed to said several defend-

ants, The Goddu Sons Metal Fastening Company, Louis Goddu, Louis H. Goddu, William Goddu, Napoleon Goddu, Elmer Goddu, George Goddu and Albert Van Wagenen, and commanding them and each of them to be and appear in this Honorable Court on a day certain therein to be named, to answer this bill of complaint, and to abide by and perform such order or decree as may be made therein.

And the plaintiffs, as in duty bound, will ever pray.

JAMES W. BROOKS,
FRANK F. STANLEY,
By their Solicitors,
Brandeis, Dunbar & Nutter.

LOUIS D. BRANDEIS,
of Counsel.

(Exhibit A, referred to herein, is here inserted in the original Bill of Complaint.)

EXHIBIT B.

This agreement made the first day of January, 1880, by and between Gordon McKay and James W. Brooks, both of Cambridge, Massachusetts, as they are trustees of the McKay Metallic Fastening Association, said McKay being Principal Trustee and said Brooks Associate Trustee, parties of the first part; and Louis Goddu, of Winchester, Massachusetts, party of the second part: Witnesseth:

Whereas, said Trustees are the owners of certain patents of the United States granted for the inventions of said Goddu relating to metallic fastenings for boots and shoes, and are desirous of obtaining and securing for said McKay Metallic Fastening Association, further results and benefits from the ingenuity and inventive skill of said Goddu, in the origination and continuance of other inventions and improvements, relating to metallic fastenings for boots and shoes, or the insertion of metal in soles for any purpose, except for the purpose of lasting boots and shoes.

Now, in consideration of the promises and stipulations on the part of the said Trustees, hereinafter recited and contained, the

said Goddu does hereby covenant and agree that the said Trustees, and the survivor of them, as joint tenants, and not as tenants in common, the successor or successors to their trust, and his or their legal representatives or assigns, shall at all times exercise and enjoy the entire and exclusive right, title, and interest, in and to any and all inventions and improvements not already assigned which the said Goddu has made or may hereafter make, contrive, or originate in the construction or mode of operation of any machine, mechanism, mechanical appliance, or instrumentality relating to metallic fastenings for soles of boots and shoes or to the insertion of metal in soles for any purpose, except for lasting boots and shoes, to the fullest extent to which the said Goddu as the inventor or discoverer thereof, would have been entitled to possess, exercise, and enjoy the same within and for the United States and all other countries.

And the said Goddu hereby further agrees that in order to secure to the said trustees the entire and exclusive benefit and advantage to be derived from said inventions and improvements, he will at their request, and without charge to them, but at their expense, make, sign, and execute, any and all proper documents, and written instruments, requisite and proper to apply for and obtain the grant, reissue, or extension of Letters Patent in the United States, and such other countries as said trustees may elect, and to protect therein the exclusive rights to any of said inventions and improvements and will also make, sign, execute, and deliver any and all assignments, transfers, and conveyances necessary or proper to vest in said trustees, their successors, legal representatives, and assigns, the entire and exclusive right, title and interest, in and to each and all of such Letters Patent, reissues and extensions when granted, as fully as he could exercise and enjoy the same.

And in consideration of the premises, the said trustees for the McKay Metallic Fastening Association, for themselves, their successors, legal representatives, and assigns, agree that they will pay to said Goddu, his executors, administrators, or assigns, in successive payments, a sum equal to two and one half per cent (2½%) of all dividends declared and paid out of profits derived from the

use by them of any of his inventions in the United States, and twenty per cent. (20%) of all dividends declared and paid out of profits derived from the use of any such inventions in any other country, such percentages to continue so long as the patents or extensions thereof for said inventions run; such percentages to be paid to said Goddu when and as often as said dividends shall be paid.

And the said trustees hereby covenant and agree for themselves, the survivor of them and the successors to their trust, that in case they shall ever sell and assign either or any of the said Letters Patent for the inventions of said Goddu whether now or hereafter vested in them to any person or corporation free and discharged of their trust, and of the obligation to pay a percentage as aforesaid; they will within ten days after such sale and assignment pay to said Goddu, his executors, administrators, or assigns, the above percentages of two and one half per cent. (2½%) for the United States patent, and twenty per cent. (20%) for the foreign patents, of the entire consideration whether of money or other equivalents of value received by them for such sale and assignment.

It is, however, expressly understood and agreed that neither of said trustees nor any of their successors in the trust, nor any member of said association, shall be answerable hereunder out of his or their individual and private estates, but only out of and to the extent of the trust estate.

This agreement is made in lieu of and as a substitute for the agreement made between the same parties June 9, 1877, which is hereby terminated at the date of this agreement.

In witness whereof the said parties have hereunto set their hands and seals at Boston, Massachusetts, United States of America.

(Executed in duplicate)

GORDON MCKAY AND J. W. BROOKS, Trustees,
by Gordon McKay, Principal Trustee. [SEAL.]
LOUIS GODDU. [SEAL.]

EXHIBIT C.

This agreement made by and between Louis Goddu of Winchester, Massachusetts, party of the first part, and James W. Brooks, as Principal Trustee, and Frank F. Stanley, as Associate Trustee, of the McKay Metallic Fastening Association, parties of the second part, Witnesseth:

That whereas the said Louis Goddu owns twelve hundred and fifty shares, more or less, of the capital stock of the Goddu Improvement Company, a corporation established under the laws of the State of Maine:

And whereas the said Goddu Improvement Company has sold, assigned, and transferred, all its patents and inventions unto the said trustee of the said association;

Now, therefore, in consideration of seven thousand five hundred dollars, by the said James W. Brooks, as Principal Trustee, and the said Frank F. Stanley, as Associate Trustee, of the said McKay Metallic Fastening Association, paid to the said Louis Goddu, the receipt whereof he acknowledges, and in further consideration of the stipulations and covenants of the said James W. Brooks, as Principal Trustee, and the said Frank F. Stanley, as Associate Trustee, of the said McKay Metallic Fastening Association, hereinafter recited and contained, and of the payments from time to time hereafter to be made to him by them, their successors and assigns, as hereinafter specified, the said Louis Goddu makes the following sale and assignment, and promises, covenants, and agrees as follows:

The said Louis Goddu hereby sells, assigns, and transfers unto the said James W. Brooks as Principal Trustee and the said Frank F. Stanley as Associate Trustee, of the said McKay Metallic Fastening Association all shares in the capital stock of the said Goddu Improvement Company now owned by him, the said Louis Goddu, and all his right, title and interest whatsoever in the business and property of the said Goddu Improvement Company, including such patents for inventions as he has been under obligations to assign to it, but may not as yet have assigned.

And the said Louis Goddu hereby promises, covenants, and agrees that the said James W. Brooks as Principal Trustee and the said Frank F. Stanley as Associate Trustee of the said McKay Metallic Fastening Association, their successors and assigns, shall at all times have, exercise, and enjoy the entire and exclusive right, title and interest in and to any and all inventions, improvements, and discoveries, which he the said Louis Goddu, has made, contrived, or originated, and has not already assigned, and which during the term or terms of any patent or patents heretofore assigned by him to the Trustee of the said McKay Metallic Fastening Association under this present agreement, he the said Louis Goddu may hereafter make, contrive, or originate in any industrial art, machine, manufacture, or composition of matter (excepting only such inventions and improvements as are already the subject of other existing contracts between him the said Louis Goddu, and the Trustees of the said McKay Metallic Fastening Association, to the fullest extent to which he, as the inventor or discoverer thereof, would otherwise have been entitled to possess, exercise, and enjoy such entire and exclusive right, title and interest, within the United States, and all other patent granting countries.

And the said Louis Goddu hereby further promises and agrees that in order to secure to the trustees of the said McKay Metallic Fastening Association the entire and exclusive benefit and advantage to be devived from his said inventions, improvements, and discoveries, he will at the request of such trustees, or either of them, and without personal charge, but at their expense, make, sign, and execute, any and all papers, documents, and written instruments requisite and proper to apply for and obtain the grant of Letters Patent in the United States, and any foreign country, and any reissue or extension thereof, to protect therein, the exclusive privileges of constructing, employing, and vending the said inventions, improvements, and discoveries, or either or any of them, and will also make, sign, execute, and deliver any and all assignments, transfers, and conveyances necessary or proper to vest in the said James W. Brooks, as Principal Trustee, and the said Frank F. Stanley as Associate Trustee of the said McKay

Metallic Fastening Association, their successors and assigns, the entire and exclusive right, title, and interest in, to, and under, each and all of such Letters Patent, and any reissue or extension thereof, when granted, and the franchise and privileges secured thereby.

And the said Louis Goddu hereby sells, assigns, and transfers unto the said James W. Brooks as Principal Trustee and the said Frank F. Stanley as Associate Trustee of the said McKay Metallic Fastening Association, any and all patterns, models, and drawings which he may now or hereafter own, embodying, illustrating, or representing, either or any of the inventions, improvements, or discoveries, which by the terms of this present agreement are to belong, or by assignment from the said Goddu Improvement Company may belong, to the said Trustees of the said association.

And in consideration of the premises, the said James W. Brooks as Principal Trustee, and the said Frank F. Stanley as Associate Trustee, of the said McKay Metallic Fastening Association, for themselves, their successors, and assigns, hereby promise, covenant, and agree that they will pay to the said Louis Goddu, fourteen per centum of all dividends which shall be declared, from time to time, of the net profits arising or accruing from the practice or employment of the inventions, improvements, or discoveries, or either or any of them, claimed and secured in and by the patents granted, or to be granted, which have been assigned to the said trustees of the said association, by the said Goddu Improvement Company, and in and by such other patents hereafter to be granted, as are to become the property of the said trustees of the said association by virtue of this present agreement; and also of the net profits arising or accruing from the manufacture and sale of things embracing and embodying the said inventions, improvements, or discoveries, so patented, or either or any of them; and also of the net profits arising or accruing from the sale of the said patents or either or any of them, or from the grant of any right, license, or privilege thereunder.

And the said James W. Brooks, as Principal Trustee, and the said Frank F. Stanley as Associate Trustee, of the said McKay

Metallic Fastening Association, for themselves, their successors and assigns, hereby further promise, covenant, and agree that they will keep all the transactions and business done and carried on under and in respect to the patents and inventions derived by assignment from the said Goddu Improvement Company, and by virtue hereof from the said Louis Goddu, as aforesaid, and all accounts in relation thereto, separate and distinct from other transactions and business done and carried on and other accounts kept by the said trustee of the said association; that such expenses and disbursements as shall be incurred and made incidentally or unavoidably in connection with the entire business carried on by the said trustees of the said association, as for instance, salaries, rent, office expenditure, and so forth, shall be apportioned between the business provided for by this present agreement, and the remaining business done by the said trustees of the said association in direct ratio to the net earnings of each; and that dividends shall be declared and paid as often as once in every six months of the net profits which shall have arisen or accrued from the business provided for and contemplated in and by this present agreement.

And the said James W. Brooks as Principal Trustee, and the said Frank F. Stanley as Associate Trustee, of the said McKay Metallic Fastening Association, for themselves, their successors, and assigns, hereby further promise, covenant, and agree that if the net profits arising or accruing from the business provided for and contemplated in and by this present agreement shall during any fiscal year amount to more than seventy five thousand dollars, then, and in that event, they the said trustees of the said association will pay to the said Louis Goddu, in addition to the fourteen per centum of all dividends which shall be declared of the said net profits five per centum more upon all excess of the aggregate of such dividends for that year, over and above the said sum of seventy five thousand dollars.

And the said James W. Brooks as Principal Trustee, and the said Frank F. Stanley as Associate Trustee, of the said McKay Metallic Fastening Association, for themselves, their successors, and assigns, hereby further promise, covenant, and agree that they

will at all times keep and cause to be kept, regular books of account in which shall be entered any and all financial transactions belonging to or connected with the business provided for and contemplated in and by this present agreement, and which shall at all reasonable times be open to the inspection and examination of the said Louis Goddu or of his legal representatives.

And it is hereby expressly stipulated, agreed, and understood by and between the said parties hereto that if hereafter at any time while this present agreement continues in force, the said Louis Goddu shall make any invention which the said trustees of the said association, their successors, or assigns shall refuse to patent, upon tender of the same to them in writing for that purpose, then the said Louis Goddu upon such refusal may, at his own expense, patent the invention so refused, and may thereafter have, exercise, and enjoy the full and exclusive right, title, and interest in and to the same.

And it is also hereby stipulated, agreed, and understood by and between the said parties hereto that if the said trustees of the said association, their successors or assigns, shall at any time wilfully neglect, or refuse, to keep or perform any of their promises, covenants, or agreements herein recited and contained, then the said Louis Goddu shall thenceforth be released from further obligation in respect to any invention which he may make thereafter, but shall, nevertheless, be entitled to receive, recover, and collect, any and all dividends which shall be declared, of the net profits arising or accruing from the business done under such patents and inventions as have been derived by assignment from the said Goddu Improvement Company, and as shall theretofore have been derived from the said Louis Goddu, by virtue of this present agreement.

In testimony whereof the said Louis Goddu and the said James W. Brooks, as Principal Trustee, and the said Frank F. Stanley as Associate Trustee, of the said McKay Metallic Fastening Association, have hereunto set their respective hands and seals this tenth day of June, in the year eighteen hundred and eighty nine.

LOUIS GODDU

JAMES W. BROOKS as Principal Trustee of the McKay Metallic Fastening Association.

The word "twelve" being erased in two places and the word "fourteen" substituted therefor in each case, and the word "four" being erased and the word "five" being substituted therefor before signing, in the presence of

GEO. L. ROBERTS.

DEFENDANTS' EXHIBIT 105.

[Put in Evidence, page 2112.]

[MEMO. This exhibit comprising list of patents on inventions embodied in machines, inquired of by counsel for the United States, between February, 1899, and the present time, is not here printed as it is already printed on pages 2113 to 2125, inclusive, of the evidence before the Examiner.]

DEFENDANTS' EXHIBIT 126.

[Put in Evidence, page 2350.]

Old Davey Pegging Machine equipped with horn of patent No. 555,434, February 25, 1896.

DEFENDANTS' EXHIBIT 127.

[Put in Evidence, page 2350.]

Old Davey Pegging Machine equipped with No. 8 Jack of patent No. 919,424, April 27, 1909.

DEFENDANTS' EXHIBIT 128.

[Put in Evidence, page 2351.]

Commercial Davey Pegging Machine shown on page 76 of United Company's Catalog of 1902.

DEFENDANTS' EXHIBIT 204.

[Put in Evidence, page 3888.]

UNITED SHOE MACHINERY CO.

B

Commonwealth S & L Co.

OPERATOR'S DAILY REPORT FOR

WELTED OR TURNED WORK

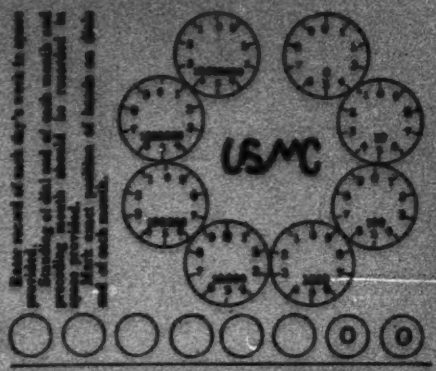
July, 1911

DO NOT ENTER ON THIS SLIP ANY WORK EXCEPT THAT DONE ON

GOODYEAR WELT AND TURN SHOE MACHINE

NO. 2217 L. P.

SIZES	From No.	To No.
Children's	1	10½ inclusive
Misses'	11	3 "
Women's	2½	and over
Youths'	9	13½ inclusive
Boys'	1	5 "
Men's	5½	and over



Dial end of month 24818623

Previous Record 23758142

Increase 555481

TO BE stitched allowance on Goodyear Machine

Size	Children's	Misses' and Youths'	Women's and Boys'	Men's	
1					
2				140	
3				8	
4					
5					
6					
7					
8					
9					
10				8	
11				191	
12				198	
13				251	
14				218	
15				258	
16				222	
17				8	
18				282	
19				306	
20				240	
21				245	
22				188	
23				198	
24				8	
25				202	
26				166	
27				167	
28				194	
29				177	
30				182	

TURNS

Children's	Misses' and Youths'	Women's and Boys'	Men's

Chil
Mus
Wo
You
Boy
Me

Sun
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
Total

WELTED OR TURNED WORK

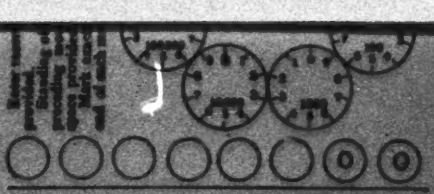
July, 1911

DO NOT CHECK ON THIS SLIP ANY WORK EXCEPT THAT DONE ON

GOODYEAR WELT AND TURN SHOE MACHINE

No. 2217 L. P.

SIZES	From No.	To No.
Children's	1	5 inclusive
Misses'	11	2 "
Women's	2½	and over
Youths'	9	12½ inclusive
Boys'	1	5 "
Men's	6½	and over



Dial end of month 24818628

Previous Record 23788142

Increase 556481

TO BE stitched afterwards on Goodyear Welter

Sole	Children's	Misses' and Youths'	Women's and Boys'	Men's	
1				140	
2				8	
3					
4					
5					
6					
7					
8					
9				8	
10				191	
11				198	
12				221	
13				218	
14				255	
15				228	
16				8	
17				202	
18				206	
19				240	
20				246	
21				188	
22				198	
23				8	
24				202	
25				160	
26				167	
27				194	
28				177	
29				182	
30				8	
31				170	
Total				3974	

TURNS

Children's	Misses' and Youths'	Women's and Boys'	Men's

OPERATOR'S SIGNATURE L. Hamilton A

It is hereby certified that this report is a true and correct account of the number of pairs done daily on this machine.

EMPLOYER'S SIGNATURE Commonwealth Shoe & Leather Co.

DEFENDANTS' EXHIBIT 305.

[Put in Evidence, page 3886.]

UNITED SHOE MACHINERY CO.

B

Commonwealth S & L Co.

OPERATOR'S DAILY REPORT FOR

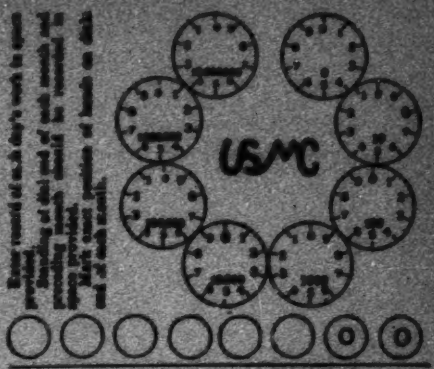
WELTED OR TURNED WORK

April, 1911

DO NOT ENTER ON THIS SLIP ANY WORK REPORT THAT DONE ON

GOODYEAR WELT AND TURN SHOE MACHINE NO. 2217 L. P.

SIZES	From No.	To No.
Children's	1	10½ inclusive
Misses'	11	2 "
Women's	2½	and over
Youths'	9	13½ inclusive
Boys'	1	5 "
Men's	5½	and over



Dial end of month	32198062
Previous Record	31634946
Increase	563,116

TO BE stitched afterwards on Goodyear Machine

Sets	Children's	Misses' and Youths'	Women's and Boys'	Men's	
1				262	
2				8	
3				230	
4				251	
5				268	
6				267	
7				208	
8				215	
9				8	
10				247	
11				228	
12				211	
13				202	
14				220	
15				106	
16				8	
17					
18					
19					
20				190	
21				196	
22				244	
23				8	
24				236	
25				262	
26				220	
27				175	
28				91	
29				105	

TURNS

Children's	Misses' and Youths'	Women's and Boys'	Men's

WELTED OR TURNED WORK

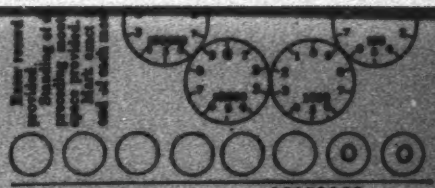
April, 1911

DO NOT ENTER ON THIS SLIP ANY WORK EXCEPT THAT DONE ON

GOODYEAR WELT AND TURN SHOE MACHINE

No. 2217 L. P.

SIZES	From No.	To No.
Children's	1	10½ inclusive
Misses'	11	2 "
Women's	2½	and over
Youths'	9	13½ inclusive
Boys'	1	5 "
Men's	6½	and over



Dial end of month 32190062

Previous Record 31524946

Increase 665,116

TO BE stitched afterwards on Sculptor Machine

Size	Children's	Misses' and Youths'	Women's and Boys'	Men's	
1				262	
2				S	
3				220	
4				251	
5				202	
6				267	
7				262	
8				215	
9				S	
10				247	
11				226	
12				211	
13				202	
14				229	
15				106	
16				S	
17					
18					
19					
20				190	
21				196	
22				244	
23				S	
24				226	
25				242	
26				220	
27				175	
28				91	
29				105	
30				S	
31					
Total				4781	

TURNS

Children's	Misses' and Youths'	Women's and Boys'	Men's

OPERATOR'S SIGNATURE L. Bannister T

It is hereby certified that this report is a true and correct account of the number of pairs done daily on this machine.

The Commonwealth Shoe & Leather Co.,

LESSEE'S SIGNATURE Whitman, Mass.

UNITED SHOE MACHINERY CO.

OPERATOR'S DAILY REPORT FOR

WELTED OR TURNED WORK

DEFENDANTS' EXHIBIT 236.
[Put in Evidence, page 2854.]

UNITED SHOE MACHINERY CO.

B

Commonwealth S & L Co.

OPERATOR'S DAILY REPORT FOR
WELTED OR TURNED WORK

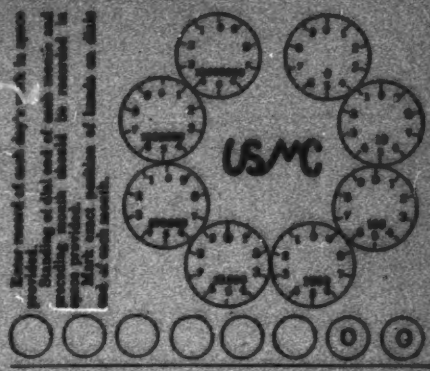
September, 1911

DO NOT ENTER ON THIS SLIP ANY WORK EXCEPT THAT DONE ON

GOODYEAR WELT AND TURN SHOE MACHINE

No. 3217 L. P.

SIZES	From No.	To No.
Children's.....	1	10½ inclusive
Misses'.....	11	2 "
Women's.....	2½	and over
Youths'.....	9	13½ inclusive
Boys'.....	1	5 "
Men's.....	5½	and over



Dial end of month 35710895

Previous Record 35114629

Increase 596266

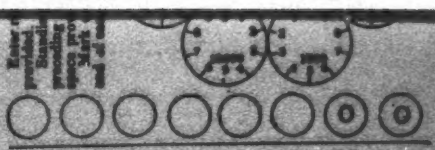
No.	TO BE stitched afterwards on Goodyear Welters					TURNS			
	Children's	Misses' and Youths'	Women's and Boys'	Men's		Children's	Misses' and Youths'	Women's and Boys'	Men's
1				222					
2				155					
3				8					
4									
5				189					
6				188					
7				188					
8				186					
9				155					
10				8					
11				161					
12				170					
13				168					
14				191					
15				172					
16				189					
17				8					
18				150					
19				144					
20				172					
21				169					
22				165					
23				191					
24				8					
25				198					
26				187					
27				189					
28				152					

September, 1911

DO NOT ENTER ON THIS SLIP ANY WORK EXCEPT THAT DONE ON

GOODYEAR WELT AND TURN SOLE MACHINE NO. 2217 L. P.

SIZES	From No.	To No.
Children's	1	10½ inclusive
Misses'	11	2 "
Women's	2½	and over
Youths'	9	13½ inclusive
Boys'	1	6 "
Men's	5½	and over



Dial end of month 35710895

Previous Record 35114629

Increase 596266

TO BE stitched afterwards on Goodyear Machine

Date	Children's	Misses' and Youths'	Women's and Boys'	Men's	
1				222	
2				155	
3				S	
4					
5				159	
6				188	
7				182	
8				186	
9				155	
10				S	
11				161	
12				170	
13				169	
14				191	
15				172	
16				189	
17				S	
18				150	
19				144	
20				172	
21				189	
22				165	
23				191	
24				S	
25				198	
26				187	
27				189	
28				152	
29				200	
30				200	
31					
Total				4339	

TURNS

Children's	Misses' and Youths'	Women's and Boys'	Men's

OPERATOR'S SIGNATURE L. Bannion A

It is hereby certified that this report is a true and correct account of the number of pairs done daily on this machine.

LESSEE'S SIGNATURE Commonwealth Shoe & Lea. Co.

DEFENDANTS' EXHIBIT 397.

[Put in Evidence, page 3884.]

UNITED SHOE MACHINERY CO.

B

Commonwealth S. & L. Co.

OPERATOR'S DAILY REPORT FOR

WELTED OR TURNED WORK

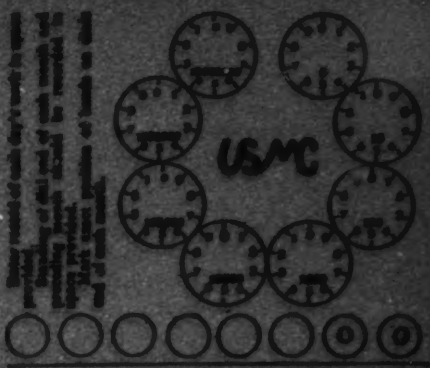
January, 1912

DO NOT ENTER ON THIS SLIP ANY WORK EXCEPT THAT DONE ON

GOODYEAR WELT AND TURN SHOE MACHINE

No. 2217 L. P.

SIZES	From No.	To No.
Children's	1	10½ Inclusive
Misses'	11	2 "
Women's	2½	and over
Youths'	9	13½ Inclusive
Boys'	1	5 "
Men's	5½	and over



Dial end of month _____

Previous Record 45614614

Increase _____

TO BE etched alternate on Goodyear Machine

Size	Children's	Misses' and Youths'	Women's and Boys'	Men's	
1				101	
2				103	
3				312	
4				305	
5				X	
6				181	
7				302	
8				301	
9				180	
10				166	
11				199	
12				X	
13				304	
14				178	
15				164	
16				168	
17				170	
18				198	
19				X	
20				186	
21				190	
22				182	
23				185	
24				304	
25				196	
26				X	
27				307	
28				317	
29				325	

TURNS

Children's	Misses' and Youths'	Women's and Boys'	Men's

DO NOT ENTER ON THIS SLIP ANY WORK EXCEPT THAT DONE ON

HOSIERY WELT AND TUBE SEWING MACHINE

No. 2217 L P

SIZES	From No.	To No.
Children's.....	1	10½ inclusive
Misses'.....	11	3 "
Women's.....	3½	and over
Youths'.....	9	13½ inclusive
Boys'.....	1	5 "
Men's.....	5½	and over

Dial end of month .....

Previous Record 45014014

Increase .....

TO BE added afterwards on Sculptor Machine

TOTAL

Size	Children's	Misses' and Youths'	Women's and Boys'	Men's		Children's	Misses' and Youths'	Women's and Boys'	Men's
1				104					
2				101					
3				212					
4				285					
5				X					
6				181					
7				282					
8				201					
9				188					
10				186					
11				190					
12				X					
13				228					
14				178					
15				184					
16				188					
17				179					
18				168					
19				X					
20				152					
21				189					
22				182					
23				185					
24				204					
25				198					
26				X					
27				227					
28				217					
29				205					
30				188					
31				202					
Total				4004					

OPERATOR'S SIGNATURE L Rennison A

It is hereby certified that the report is a true and correct account of the number of pairs done daily on this machine.

LEADER'S SIGNATURE .....

DEFENDANTS' EXHIBIT 306.

[Put in Evidence, page 3094.]

UNITED SHOE MACHINERY CO.

B

Commonwealth S. & L. Co.

OPERATOR'S DAILY REPORT FOR

WELTED OR TURNED WORK

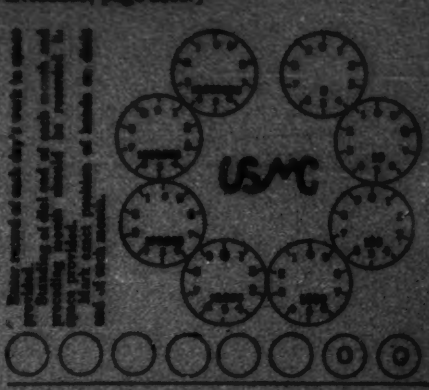
April, 1918

[illegible] ON THIS DAILY REPORT SHOULD CORRECTLY REPORT WORK ON

GOODYEAR WELT AND TURN SHOE MACHINE

NO. 2817 L. P.

SIZES	From No.	To No.
Children's	1	10½ inclusive
Misses'	11	2 "
Women's	2½	and over
Youths'	9	13½ inclusive
Boys'	1	5 "
Men's	5½	and over



Dial end of month _____

Previous Record _____

Increase _____

TO BE [illegible] on Goodyear Section

Size	Children's	Misses' and Youths'	Women's and Boys'	Men's	
1				171	
2				178	
3				178	
4				197	
5				196	
6				X	
7				210	
8				211	
9				206	
10				244	
11				236	
12				161	
13				X	
14				205	
15				222	
16				244	
17				228	
18				169	
19					
20				X	
21					
22					
23					
24				205	
25				191	
26				219	
27				X	
28				184	

TURNS

Children's	Misses' and Youths'	Women's and Boys'	Men's

DO NOT REFUSE ORDERS FOR THESE BELT LEFT HANDED CORSET THAT WORK ON

AMERICAN BELT AND TUBE SIDE SEAMING MC. 2217 L. P.

SIZES	From No.	To No.
Children's.....	1	10½ inclusive
Misses'	11	2 "
Women's...	2½	and over
Youths'	9	13½ inclusive
Boys'	1	6 "
Men's.....	6½	and over

Dial end of month .....

Previous Record .....

Increase .....

TO BE added allowance on Gauges Needles

TUBES

Nos	Children's	Misses' and Youths'	Women's and Boys'	Men's		Children's	Misses' and Youths'	Women's and Boys'	Men's
1				171					
2				178					
3				178					
4				197					
5				195					
6				X					
7				210					
8				211					
9				205					
10				244					
11				226					
12				161					
13				X					
14				205					
15				223					
16				244					
17				209					
18				169					
19									
20				X					
21									
22									
23									
24				206					
25				191					
26				216					
27				X					
28				184					
29				199					
30				189					
31									
Total				4428					

Operator's signature L. Bannion

It is hereby certified that this record is a true and correct account of the number of gales made on this machine.

Mechanic's signature Commonwealth Shoe & Leather Co.

DEFENDANTS' EXHIBIT 560.

[Put in Evidence, page 2084.]

UNITED SHOE MACHINERY CO.

to

Commonwealth S. & L. Co.

OPERATOR'S DAILY REPORT FOR WELTED OR TURNED WORK

April, 1912

NO ENTRY SHOULD BE MADE FOR ANY WORK EXCEPT THAT DONE ON

NEWMAN WELT AND TURN SHOE MACHINE

No. 2217 L. P.

SIZES	From No.	To No.
Children's	1	10½ inclusive
Misses'	11	3 "
Women's	2½	and over
Youths'	9	13½ inclusive
Boys'	1	5 "
Men's	5½	and over

Dial end of month	40808116
Previous Record	40278606
Increase	529510

TO BE stitched (Shoes or Uppers Stitched)

No.	Children's	Misses' and Youths'	Women's and Boys'	Men's	
1				260	
2				209	
3				199	
4				163	
5				147	
6				109	
7				8	
8				135	
9				195	
10				245	
11				256	
12				215	
13				266	
14				6	
15					
16					
17					
18					
19					
20					
21				X	
22				144	
23				230	
24				246	
25				211	
26				215	
27				149	
28					

TURNS

Children's	Misses' and Youths'	Women's and Boys'	Men's

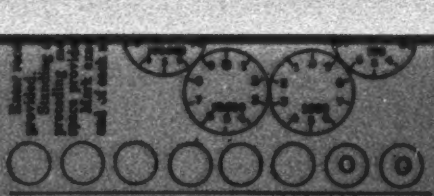
April, 1912

DO NOT LEAVE ON THIS CLOCK ANY WORK EXCEPT THAT DONE ON

[illegible] BELT AND TURN SOLE MACHINE

NO. 2217 L. P.

SIZES	From No.	To No.
Children's	1	10½ inclusive
Misses'	11	2 "
Women's	2½	and over
Youths'	9	13½ inclusive
Boys'	1	5 "
Men's	5½	and over



Dial end of month 40808116

Previous Record 40278606

Increase 529510

TO BE stitched channels on Goodyear Welter

Size	Children's	Misses' and Women's	Youths' and Boys'	Men's
1				260
2				299
3				199
4				198
5				147
6				169
7				8
8				126
9				196
10				245
11				236
12				215
13				208
14				8
15				
16				
17				
18				
19				
20				
21				X
22				144
23				220
24				246
25				211
26				215
27				149
28				
29				90
30				140
31				
Total				3997

TURNS

Children's	Misses' and Women's	Youths' and Boys'	Men's

OPERATOR'S SIGNATURE L. Bennion A

It is hereby certified that this report is a true and correct account of the number of pairs done daily on this machine.

Commonwealth Shoe & Leather Co.

FOREMAN'S SIGNATURE

DEFENDANTS' EXHIBIT 216.

[Put in Evidence, page 2695.]

UNITED SHOE MACHINERY CO.

B

Commonwealth S. & L. Co.

OPERATOR'S DAILY REPORT FOR

WELTED OR TURNED WORK

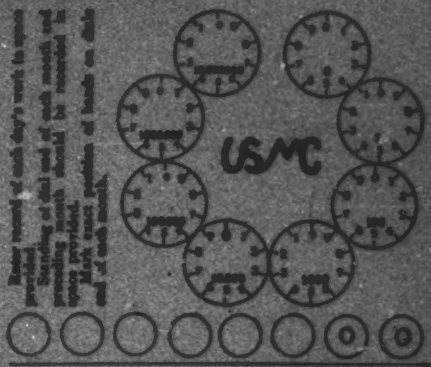
August, 1912

DO NOT ENTER ON THIS SLIP ANY WORK EXCEPT THAT DONE ON

GOODYEAR WELT AND TURN SHOE MACHINE

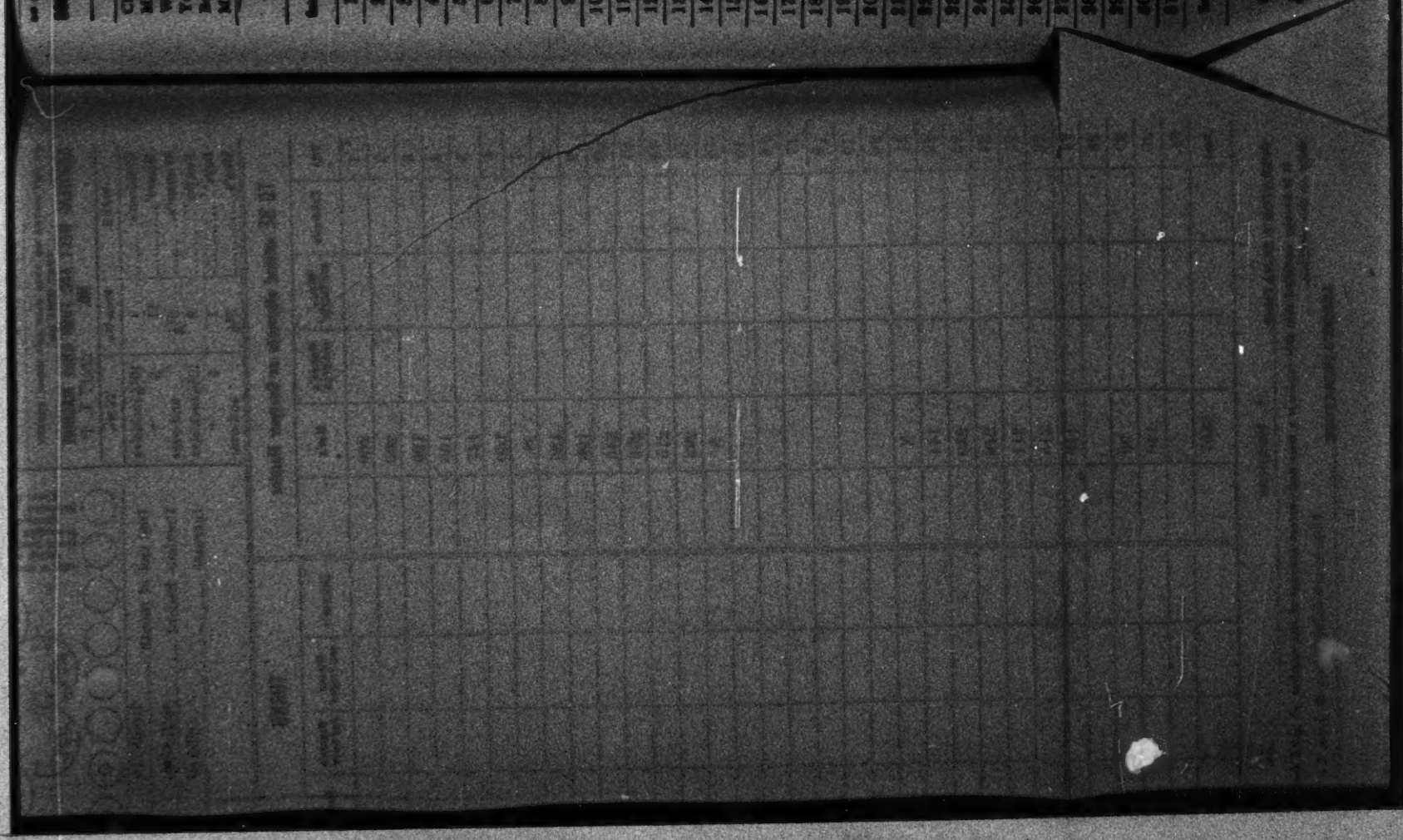
NO. 2217 L. P.

SIZES	From No.	To No.
Children's	1	10½ inclusive
Misses'	11	2 "
Women's	3½	and over
Youths'	9	13½ inclusive
Boys'	1	5 "
Men's	5½	and over



Dial end of month	48809864
Previous Record	48013181
Increase	796,183

TO BE stitched afterwards on Goodyear Machine					TURNS			
Size	Children's	Misses' and Youths'	Women's and Boys'	Men's	Children's	Misses' and Youths'	Women's and Boys'	Men's
1				216				
2				204				
3				222				
4				8				
5				198				
6				200				
7				222				
8				202				
9				251				
10				227				
11				8				
12				204				
13				197				
14				160				
15				194				
16				181				
17				188				
18								
19				211				
20				210				
21				239				
22				250				
23				241				
24				238				
25				X				
26				217				
27				204				
28				224				
29				224				



DO NOT WRITE ON THIS SLIP ANY WORK EXCEPT THAT DONE ON

GOODYEAR WELT AND TURN SOLE MACHINE

NO. 2217 L. P.

SIZES	From No.	To No.
Children's	1	10½ Inclusive
Misses'	11	2 "
Women's	2½	and over
Youths'	9	13½ Inclusive
Boys'	1	5 "
Men's	5½	and over

Dial end of month 42909864

Previous Record 42818181

Increase 796.183

TO BE added afterwards on Budget Machine

Date	Children's	Misses' and Youths'	Women's and Boys'	Men's	
1				215	
2				284	
3				286	
4				8	
5				198	
6				300	
7				298	
8				268	
9				251	
10				287	
11				8	
12				284	
13				197	
14				169	
15				194	
16				181	
17				188	
18					
19				211	
20				210	
21				239	
22				259	
23				241	
24				238	
25				X	
26				217	
27				204	
28				224	
29				224	
30				223	
31				217	
Total				5790	

TOTAL

Children's	Misses' and Youths'	Women's and Boys'	Men's

OPERATOR'S SIGNATURE L. Bennion A

It is hereby certified that this report is a true and correct account of the number of pairs done daily on this machine.

LESSEE'S SIGNATURE Commonwealth Shoe & Lea. Co.

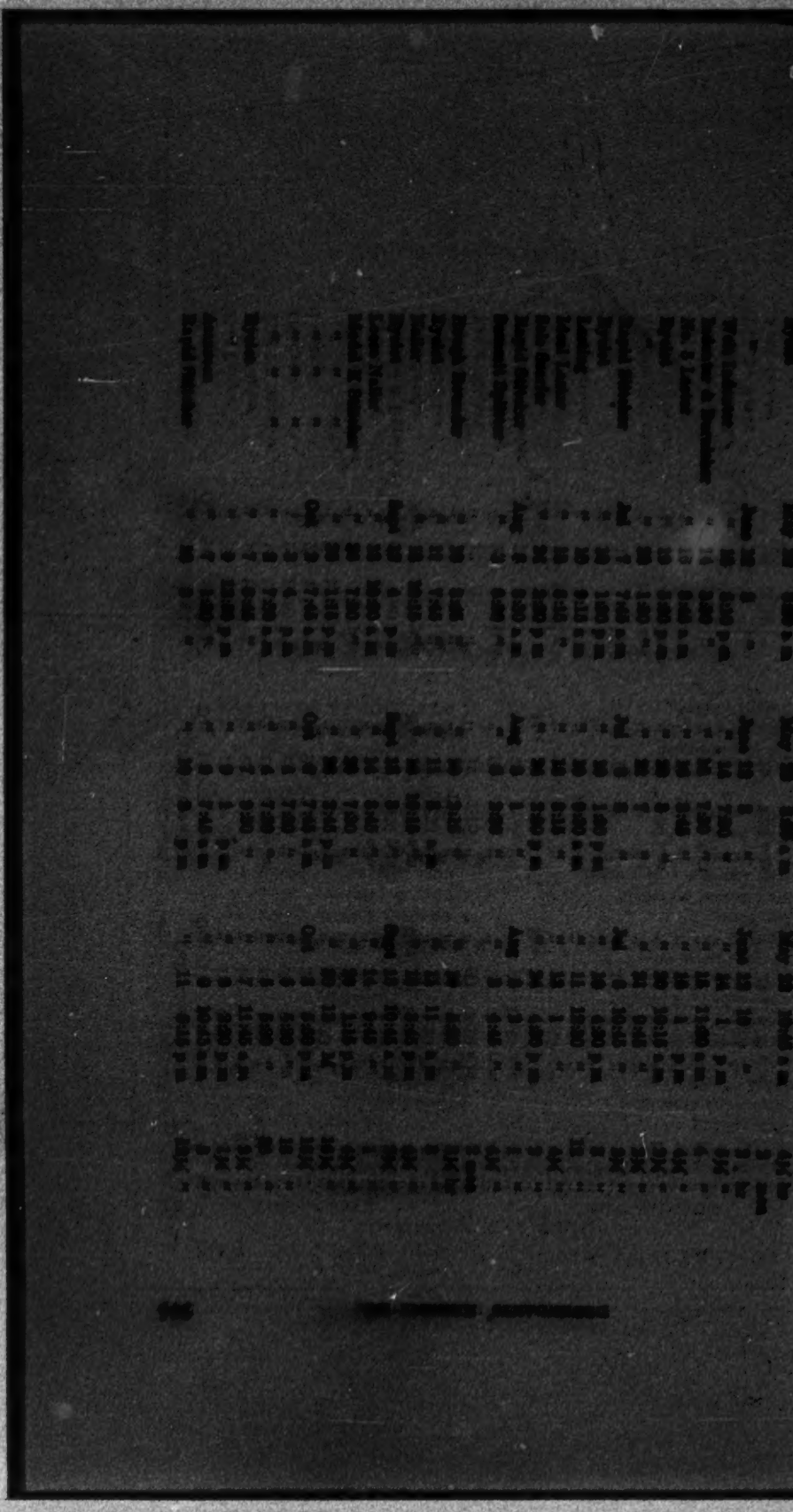
DEFENDANT'S EXHIBIT ON BEHALF OF U.S.

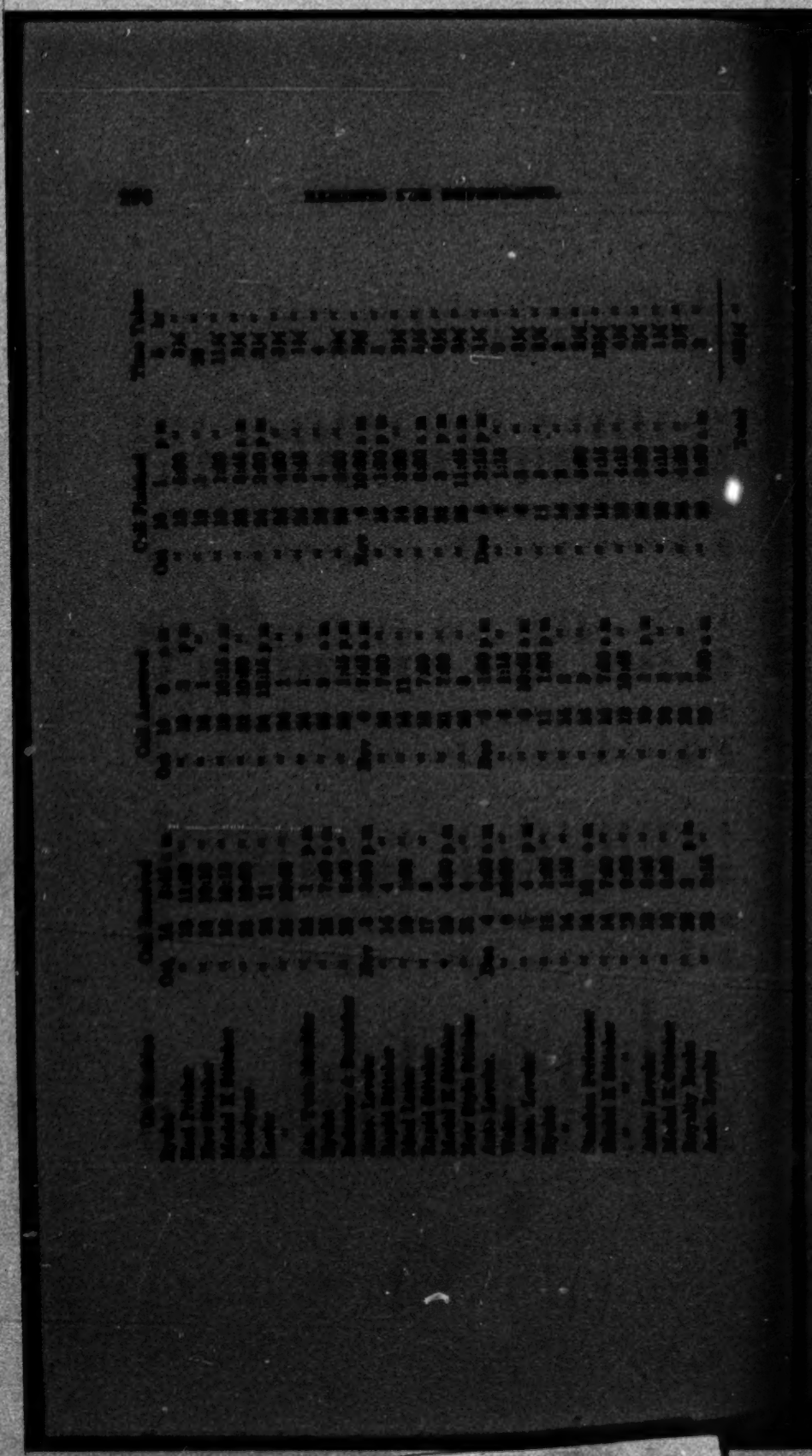
[Put in Evidence, page [illegible].]

EMPLOYED BY UNITED SHOE MACHINERY COMPANY ON OR ABOUT MARCH 1st.

	Boston	Other Traveling Men including Salesmen	Branch Office Managers & Assistants	Total
1899	227	7	18	256
1900	249	7	19	275
1901	269	9	13	291
1902	290	14	13	317
1903	302	22	15	339
1904	305	26	15	346
1905	344	27	16	387
1906	392	33	18	443
1907	444	34	18	496
1908	455	34	19	518
1909	505	30	30	564
1910	538	47	31	607
1911	604	45	25	674
1912	631	55	20	705
1913	689	63	31	783

[redacted]





Machines at Factory of E. W. Burr & Co., Lynn, Mass., Held Under Lease.

Goodyear Dept.

1 Welt Machine — Model
2 Outsole Stitcher — Model K
1 Rubber Welder
1 Welt Splitter
1 Channeling Machine
1 Shank Welt Skiver
1 Universal Welt Skiver
1 Universal Rounder
1 Universal Channel Opener
1 Automatic Sole Leveler
1 Stitch Separator
1 Channel Layer
1 Moulder
1 Lip Turner
1 Welt Beater & Blacker
1 Welt Inserter & Burnisher
1 Power Groover & Beveler
1 Welt Beater
1 Impression Stitch Remover

Miscellaneous Dept.

1 Universal Stayer
1 Lasting Machine
2 Knife Grinders

Finishing Dept.

1 Edge Setting Machine
1 Universal Edge Trimmer

Lasting Dept.

1 Heel Laster
1 No. 5 Laster
2 Lasting Tackers

Sewing Machine Dept.

2 Power Eyeletters
1 Vamp Eyeletter

Cement Dept.

1 American Twin Sole Machine — C
1 Apex Top Skiver — Model A
2 Edge Trimmers — Model A
1 Heel Seat Rough Rounder — Model B
1 Heel Scouring Machine — Model G
1 Heel Breast Scouring Mch — Model H
1 Repeat Stamping Machine — Model C
1 Stitch & Upper Cleaner — Model N
1 Sewing Machine — Model M
1 Twin Edge Setter — Model R
1 Welt Trimmer & Stitch Rubber — R

Sewing Mach at E. W. Burr & Co.— Dunne 1911.

January	3080
February	1838
March	2527
April	2600
May	3128
June	3326
July	3041
August	3264
September	3469
October	3769
November	4492
December	3940
Total	38624 pairs during 1911

Service: 123 pairs per day during 1911
102 calls (talk
456 hours or
87 days

E. W. Burr & Co.—Lynn, Mass. 12 Months Service—1912.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls	Hrs
Geelpwr	2	1	0	1	2	5	1	2	3	11	6	10	46	
	6	1	0	4	15	16	5	4	16	120	21	28		236
Metallic	2	0		0	0	0	0	0	1	0	0		3	
	0	0		0	0	0	0	0	1	0	0			1
Ending	0	0		1	0	0	0	1	0	1	0		3	
	0	0		2	0	0	0	5	0	4	0			11
Lasting	0	0		0	1	1	2	0	0	2	0		6	
	0	0		0	7	4	17	0	0	0	0			28
Pull'Over	0	0		0	0		0	0	0		0		0	
	0	0		0	0		0	0	0		0			0
Eyelet and Quick	0	0	0	1	2	2	2	2	2	0	1	0	20	
	0	25	25	2	12	7	5	6	6	15	1	10		165
													102	465
Calls	4	20	0	5	20	8	6	5	4	27	7	14		
Hours	6	27	25	11	39	23	25	14	25	135	27	38		
									Total Calls				102	
									Total Hours				465	

Add 25 per cent to 465 hours for lost time.

DEFENDANTS' EXHIBIT 815 (CURRENT).

(Put in Evidence, page 6904.)

L. A. CROMETTY, INC.—BROCKTON, MASS.

L. A. Cromwell, Inc.—Calls—July 1, 1911 to January 1, 1912.

L. A. Cromwell, Inc. Christmas Discussion.

July 1, 1911, to Jan. 1, 1912.

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
Stitch Separator	July 10	7:	July 10	8:15	July 10	2:30
Stitcher	" 10	12:	" 11	7:45	" 12	4:15
Stitcher	" 14	8:40	" 14	8:45	" 14	1:
Stitcher	" 15	7:20	" 15	7:45	" 15	1:
Stitcher	" 14	6:25	" 15	7:45	" 15	1:
Welter Stitcher	" 15	7:20	" 15	7:45	" 15	11:45

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
I. Trimmer	July 18	7:20	July 18	8:15	July 18	8:
Stitcher	" 20	9:40	" 20	11:	" 20	4:
Binder	" 20	10:20	" 20	11:	" 20	4:
Web Grover & Border	" 22	7:40	" 22	8:	" 22	2:
Stitch Separator	" 24	11:	" 24	11:10	" 24	4:40
Stitcher	" 26	7:20	" 26	8:	" 26	12:
Stitch Separator	" 26	1:45	" 27	7:45	" 27	12:20
Weber	" 30	7:	" 30	7:45	" 30	2:15
Inserter & Burnisher	" 31	8:40	" 31	1:30	" 31	4:50
Weber	Aug. 2	8:	Aug. 2	8:15	Aug. 2	1:15
Web Border & Binder	" 7	8:15	" 7	1:50	" 7	4:45
Web Binder & Binder	" 8	8:15	" 8	1:15	" 8	2:15
Binder	" 9	8:	" 9	2:45	" 9	1:45
Stitch Separator	" 9	8:	" 10	8:35	" 10	1:15
Weber						
I. Trimmer	" 11	7:	" 11	7:35	" 11	4:30
I. Trimmer	" 16	8:25	" 16	10:20	" 16	2:45
Weber	" 16	7:20	" 16	8:15	" 16	1:45
Inserter & Burnisher	" 18	8:	" 18	8:15	" 18	4:25
I. Trimmer	" 21	8:	" 21	8:	" 21	4:30
Weber						
Binder	" 22	4:20	" 22	7:45	" 22	4:30
Binder						
Weber	" 28	8:	" 28	8:	" 28	4:
Stitcher	" 24	7:20	" 25	7:45	" 24	1:20
Stitch Separator	" 25	7:35	" 25	8:20	" 25	2:20
H. S. Rounder	" 26	7:	" 26	7:45	" 26	2:45
I. Trimmer	" 30	8:	" 30	8:	" 30	2:35
Stitcher	" 31	11:15	" 31	11:15	" 31	2:45
Stitch Separator	Sept. 6	8:	Sept. 6	9:40	Sept. 6	4:45
Weber	" 6	4:35	" 6	7:20	" 6	10:20
I. Trimmer	" 8	9:35	" 8	1:	" 8	4:
Stitcher						
Weber	" 9	11:30	" 11	8:15	" 11	2:
Stitcher	" 12	11:30	" 12	2:	" 12	1:30
I. Trimmer	" 15	7:	" 15	7:45	" 15	12:45
Stitcher	" 12	1:25	" 15	2:	" 15	11:
Stitcher	" 15	11:30	" 16	8:15	" 16	11:15
Stitcher	" 20	7:	" 20	12:15	" 20	4:25
I. Trimmer	" 20	7:35	" 20	8:	" 20	2:45
I. Trimmer	" 20	1:30	" 20	2:15	" 20	11:25
Stitcher						
Weber	Oct. 2	8:	Oct. 2	12:	Oct. 2	2:30
Model H Rounder	" 2	8:	" 2	12:	" 2	11:30
Weber	" 11	7:30	" 11	7:45	" 11	2:25
Weber	" 13	7:30	" 13	7:45	" 13	2:
Stitch Separator No. 2	" 14	8:	" 14	8:15	" 14	4:45

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
Ask Leader	Oct. 14	10:45	Oct. 15	8:15	Oct. 16	2:15
Rounder	" 15	11:	" 15	1:15	" 15	5:
Runaway	" 15	10:	" 15	10:45	" 15	1:45
Ask Leader	" 15	10:	" 15	10:45	" 15	1:15
Walker	" 17	3:30	" 19	8:	" 19	3:45
I. Trimmer	" 20	8:10	" 20	12:45	" 20	4:45
Walker						
Imp. Stitch Rounder No. 2	" 21	8:	" 21	8:15	" 21	4:10
I. Trimmer	" 21	7:	" 21	7:15	" 21	12:
I. Trimmer	" 23	7:	" 23	7:45	" 23	5:15
Gum Lip Turner	" 24	10:	" 24	10:15	" 24	12:15
Stitcher	" 25	1:	" 25	1:15	" 25	4:20
Stitcher	" 27	8:	" 27	8:	" 27	2:20
Walker	" 30	2:20	" 31	8:	" 31	2:
Sole Layer	Nov. 1	8:	Nov. 1	9:45	Nov. 1	2:20
Walker	" 1	8:	" 1	8:	" 1	12:
Stitcher	" 3	8:	" 3	8:15	" 3	4:40
Ask Leader	" 4	7:20	" 6	8:15	" 6	10:20
Sole Layer	" 5	7:	" 6	8:15	" 6	12:15
Stitcher	" 8	8:	" 8	10:15	" 8	2:15
Runaway	" 9	8:	" 9	8:10	" 9	1:45
Sole Layer	" 10	8:45	" 12	8:15	" 12	11:15
I. Trimmer	" 14	7:	" 14	8:15	" 14	4:15
Sole Layer	" 14	7:	" 14	7:45	" 14	11:15
Stitch Squeezer	" 14	9:25	" 16	8:	" 16	10:20
Rounder	" 17	8:	" 17	8:15	" 17	8:15
H. S. Rounder	" 18	11:	" 18	11:20	" 19	3:20
I. Trimmer	" 21	7:	" 21	7:45	" 21	2:45
Stitcher	" 20	11:20	" 21	8:20	" 21	2:
Stitch Squeezer	" 23	8:45	" 23	9:	" 23	2:
Stitcher	" 24	8:45	" 24	8:45	" 24	2:
Walker	" 27	7:	" 27	7:45	" 27	12:45
Runaway Reinforcer	" 27	12:	" 27	12:45	" 27	5:20
Runaway Channeler						
I. Trimmer	" 28	12:25	" 28	12:30	" 28	4:25
Imp. Stitch Rounder No. 2	" 29	8:	" 29	8:15	" 29	2:15
Walker	Dec. 4	8:15	Dec. 5	8:	Dec. 5	5:15
Sole Layer	" 4	2:45	" 5	7:45	" 5	11:45
Walker	" 5	8:10	" 6	8:	" 6	4:
Stitcher						
Model G Welter	" 7	7:	" 7	7:15	" 7	12:40
Welter	" 7	7:	" 7	7:15	" 7	12:
Rounder						
Stitch Squeezer	" 7	9:20	" 7	12:35	" 7	1:15
Welter	" 7	4:20	" 8	7:40	" 8	12:40

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
Ant. Leveler	Dec. 8	10:10	Dec. 8	1:15	Dec. 8	3:15
Welt Beater / Rounder	" 11	8:20	" 11	8:20	" 11	12:20
L Trimmer / Stitcher	" 12	7:	" 12	7:15	" 12	9:45
Universal Channeler	" 13	11:	" 13	12:45	" 13	3:
H. S. Rounder	" 14	8:	" 14	8:	" 14	12:
Stitcher	" 16	8:	" 16	9:20	" 16	4:20
Stitcher	" 16	11:25	" 16	7:45	" 16	1:15
Welter	" 19	5:	" 19	7:15	" 19	1:
Sole Layer	" 20	9:10	" 20	9:45	" 20	1:15
Welt Beater	" 20	5:20	" 21	8:20	" 21	1:15
Stitcher	" 21	11:25	" 21	1:10	" 21	4:20
Stitcher	" 21	11:25	" 22	7:20	" 22	11:40
Welter	" 22	5:	" 22	5:	" 22	5:
L Trimmer	" 23	4:20	" 23	7:20	" 23	12:
L Trimmer	" 26	7:	" 26	7:20	" 26	12:45
Economy Channeler	" 26	2:	" 26	7:15	" 30	1:15
Model G Welter	" 29	9:	" 29	9:	" 29	12:45

L. A. Channeler, Inv. Mitchell Department.
July 1, 1911 to Jan. 1, 1912.

Universal Skiver	Aug. 2	8:45	Aug. 2	10:15	Aug. 2	1:20
" "	" 12	8:45	" 12	10:20	" 12	1:20
N Loose Nailer	" 15	8:20	" 15	7:20	" 15	11:20
Univ Skiver	" 22	8:45 / 2:35	" 22	11:20	" 22	4:20
" "	" 22	7:20	" 23	1:20	" 23	4:20
" "	" 24	2:45	" 25	7:20	" 25	4:20
Staple Fastener	Sept. 5	10:15	Sept. 6	10:20	Sept. 6	3:20
Universal Skiver	" 13	12:20	" 14	7:20	" 14	2:20
N Loose Nailer	" 15	10:20	" 15	9:20	" 15	1:20
Univ Skiver	" 19	1:10	" 19	1:10	" 19	3:20
" "	" 20	3:15	" 20	3:15	" 20	5:20
Staple Fastener	" 25	3:15	" 25	7:20	" 25	10:35
Univ Skiver	Oct. 9	1:20	Oct. 9	7:20	Oct. 9	9:20
" "	" 11	11:20	" 13	7:20	" 13	4:45
N Loose Nailer	" 28	11:20	" 28	11:20	" 28	4:20
" " "	" 30	1:45	" 31	7:20	" 31	2:20
Univ Skiver	Nov. 1	1:20	Nov. 2	11:15	Nov. 2	5:20
Staple Fastener	" 8	8:20	" 8	8:25	" 8	12:20
Univ Skiver	" 13	1:35	" 14	7:20	" 14	3:20
N Loose Nailer	" 13	1:35	" 14	3:20	" 14	5:20
Univ Skiver	" 15	7:20	" 15	7:20	" 15	3:20
" "	" 16	7:20	" 16	7:20	" 16	5:20
" "	" 17	7:20	" 17	7:20	" 17	12:20

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
Univ Shagger	Nov. 29	11:30	Dec. 1	10:20	Dec. 1	1:15
L Nailer & Univ Shagger	Dec. 5	3:15	" 6	7:20	" 6	6:00
N A Nailer & Univ Shagger	" 7	7:20	" 7	7:20	" 7	5:00
" " " " " "	" 8	7:20	" 8	7:20	" 8	12:00
Staple Fastener	" 11	1:15	" 8	1:15	" 11	5:00

L. A. Carpenter, Inv. Hangers Department.
July 1, 1911, to Jan. 1, 1912.

L. Hasher	July 22	7:20	July 23	10:15	July 26	1:45
" "	" 24	1:15	" 24	1:15	" 24	4:00
U. Hasl Trimmer	Aug. 3	7:00	Aug. 3	7:00	Aug. 3	12:40
L. Hasher	" 4	2:15	" 5	7:00	" 5	9:20
" "	" 7	7:55	" 7	7:55	" 7	11:00
" "	" 8	7:00	" 8	7:20	" 8	1:00
" "	" 15	1:40	" 15	1:40	" 15	4:20
" "	" 28	8:00	" 28	9:00	" 28	12:00
" "	" 28	12:05	" 28	1:02	" 28	3:00
" "	" 28	1:00	" 28	3:20	" 28	4:30
" "	" 29	2:30	" 29	7:20	" 30	9:20
L. Hasher & No. 4 Compressor	Sept. 11	9:00	Sept. 12	9:00	Sept. 12	8:45
L. Hasher	" 15	11:45	" 16	7:20	" 16	10:20
" "	" 18	7:20	" 19	7:20	" 19	12:00
" "	" 25	8:20	" 25	8:20	" 25	12:45
L. Hasher	Oct. 5	7:20	Oct. 9	10:20	Oct. 9	1:20
" "	" 19	12:40	" 20	7:15	" 20	8:00
" " & No. 4 Compressor	" 31	7:20	" 31	7:45	" 31	4:20
No. 4 Compressor	Nov. 17	8:20	Nov. 17	8:20	Nov. 17	9:20
L. Hasher	" 28	11:30	Dec. 1	7:20	Dec. 1	10:20
" "	Dec. 4	3:45	" 5	7:20	" 5	10:00
" " & Hasl Finisher	" 6	7:20	" 6	7:20	" 6	10:00
" "	" 7	7:20	" 7	7:20	" 7	9:00
No. 4 Compressor	" 11	7:45	" 11	7:20	" 11	10:20
L. Hasher	" 13	8:20	" 13	11:20	" 13	3:20
" "	" 21	2:20	" 21	7:20	" 21	12:15
" "	" 22	12:00	" 22	1:00	" 22	4:20
" "	" 23	8:45	" 26	3:15	" 26	4:45
" "	" 26	7:20	" 26	3:45	" 26	4:45
" "	" 30	1:20	" 30	7:20	" 30	9:20

L. A. Carpenter, Inv. Hangers Department.
July 1, 1911, to Jan. 1, 1912.

No. 5 Lasher	July 1	1:20	July 1	7:20	July 1	9:00
" "	" 14	7:15	" 14	7:15	" 14	9:15
" "	" 17	7:20	" 17	7:20	" 17	11:00

DEFENDANTS' EXHIBIT 215. 309

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
Chain Lasher	July 19	7:20	July 19	7:45	July 19	10:45
# 5 Lasher	" 20	7:15	" 20	7:15	" 20	12:00
Chain Lasher	" 20	8:20	" 20	9:45	" 20	1:45
# 5 Lasher	" 22	7:20	" 22	7:20	" 22	10:00
" "	" 25	7:20	" 25	7:20	" 25	12:00
" "	" 26	7:20	" 26	7:20	" 26	12:00
" "	" 27	7:20	" 27	7:20	" 27	12:00
# 5 Lasher	Aug. 16	7:15	Aug. 16	7:15	Aug. 16	12:00
Chain Lasher	" 17	9:20	" 17	10:15	" 17	4:15
# 5 Lasher	" 17	7:20	" 17	7:20	" 17	12:00
" "	" 18	7:20	" 18	7:20	" 18	12:00
" "	" 21	7:15	" 21	7:15	" 21	12:00
" "	" 22	7:20	" 22	7:20	" 22	12:00
" "	" 23	7:20	" 23	7:20	" 23	12:00
" "	" 24	7:20	" 24	7:20	" 24	12:00
" "	" 25	7:25	" 25	7:25	" 25	12:00
" "	" 29	9:20	" 29	9:45	" 29	12:00
" "	" 30	7:20	" 30	9:30	" 30	11:30
Chain Lasher	Sept. 5	8:00	Sept. 5	8:45	Sept. 5	11:15
# 5 Lasher	" 5	7:20	" 5	7:45	" 5	12:00
" "	" 6	7:20	" 6	7:20	" 6	12:00
Chain Lasher	" 6	7:20	" 6	7:45	" 6	2:15
# 5 Lasher	" 7	7:20	" 7	7:20	" 7	11:20
" "	" 8	7:20	" 8	8:45	" 8	12:00
" "	" 9	7:20	" 9	7:20	" 9	10:00
" "	" 13	7:20	" 13	8:15	" 13	12:00
Inside Timber	" 13	2:00	" 14	7:45	" 14	10:15
# 5 Lasher	" 18	7:20	" 18	7:20	" 18	12:00
" "	" 20	7:20	" 20	7:20	" 20	12:00
" "	" 21	7:20	" 21	7:20	" 21	12:00
" "	Oct. 2	7:15	Oct. 2	7:15	Oct. 2	12:00
# 5 Lasher	" 16	9:25	" 16	7:45	" 16	11:45
" "	" 17	7:15	" 17	7:15	" 17	10:15
" "	" 19	8:40	" 19	8:45	" 19	10:45
" "	" 15	9:30	" 15	9:30	" 15	10:45
" "	" 20	7:20	" 20	7:20	" 20	10:20
" "	" 21	11:45	" 21	11:45	" 21	2:45
" "	" 23	7:15	" 23	7:15	" 23	9:20
" "	" 24	7:20	" 24	9:20	" 24	2:00
" "	" 25	7:15	" 25	7:15	" 25	2:45
" "	" 26	10:45	" 26	10:45	" 26	2:45
Chain Lasher	" 28	8:20	" 28	9:15	" 28	1:20
" "	" 30	8:30	" 30	9:15	" 30	2:15
# 5 Lasher	Nov. 1	7:20	Nov. 1	7:45	Nov. 1	2:45
Chain Lasher	" 1	11:15	" 1	11:15	" 1	4:15
" "	" 2	8:15	" 2	8:45	" 2	1:45
Inside Timber	" 2	4:20	" 2	9:20	" 2	4:40

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
§5 Looker	Nov. 6	8:20	Nov. 6	8:45	Nov. 6	10:45
" "	" 23	1:20	" 23	1:20	" 23	2:20

L. A. Cheesery, Inc. Looker Department.

§5 Looker	Dec.	1	11:20	Dec.	1	11:20	Dec.	1 1:20
" "	"	8	8:20	"	8	8:45	"	8 5:20
" "	"	9	7:20	"	9	7:20	"	9 12:45
" "	"	11	7:20	"	11	7:20	"	11 5:20
Inside Tinker	"	12	11:15	"	12	1:20	"	12 2:20
§5 Looker	"	12	7:40	"	12	7:45	"	12 5:20
" "	"	13	7:20	"	12	7:45	"	13 5:20
" "	"	20	9:20	"	20	9:20	"	20 11:20
Chees Looker	"	20	11:20	"	20	1:45	"	20 5:20
" "	"	21	8:20	"	21	9:45	"	21 4:15
§5 Looker	"	22	10:25	"	22	1:15	"	22 4:45
Chees Looker	"	26	8:20	"	26	9:45	"	26 2:15
§5 Looker	"	28	7:20	"	28	7:20	"	28 5:20
" "	"	28	8:20	"	28	8:20	"	28 11:20
" "	"	29	7:20	"	29	7:20	"	29 11:20
" "	"	30	8:20	"	30	8:20	"	30 11:20

L. A. Cheesery, Inc. Pulling Oven Department.
July 1, 1911, to Jan. 1, 1912.

Puller Over	July	1	7:20	July	1	8:20	July	1 9:20
" "	"	1	7:20	"	1	7:20	"	1 9:20
" "	"	10	7:20	"	10	7:20	"	10 4:45
" "	"	10	10:20	"	10	10:45	"	10 4:45
" "	"	11	7:20	"	11	7:20	"	11 12:20
" "	"	11	7:20	"	11	7:20	"	11 1:15
" "	"	11	7:20	"	11	7:20	"	11 9:20
" "	"	12	7:20	"	12	7:20	"	12 1:45
" "	"	13	7:20	"	13	7:20	"	13 4:45
" "	"	13	7:20	"	13	7:20	"	13 4:45
" "	"	14	7:15	"	14	9:15	"	14 11:20
" "	"	14	7:20	"	14	7:20	"	14 4:45
" "	"	15	7:20	"	15	7:45	"	15 10:20
" "	"	15	7:20	"	15	7:20	"	15 12:20
" "	"	17	7:20	"	17	12:20	"	17 4:20
" "	"	18	7:20	"	18	7:20	"	18 4:20
" "	"	19	7:20	"	19	7:20	"	19 4:45
" "	"	20	7:15	"	20	1:20	"	20 4:45
" "	"	21	7:20	"	21	7:20	"	21 4:45
" "	"	22	7:20	"	22	10:20	"	22 12:20
" "	"	24	7:20	"	24	7:20	"	24 4:45
" "	"	25	7:20	"	25	7:20	"	25 4:45
" "	"	26	7:20	"	26	1:20	"	26 4:45
" "	"	27	7:20	"	27	10:20	"	27 4:45

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
Poller Over	July 28	7:20	July 28	1:00	July 28	4:45
" "	" 29	7:20	" 29	8:15	" 29	12:45
" "	" 31	7:20	" 31	1:00	" 31	4:45
" "	Aug. 1	7:20	Aug. 1	12:00	Aug. 1	4:45
" "	" 2	7:20	" 2	1:00	" 2	8:20
" "	" 3	7:15	" 3	7:15	" 3	4:45
" "	" 4	7:15	" 4	7:15	" 4	4:45
" "	" 5	7:15	" 5	7:15	" 5	12:15
" "	" 7	7:15	" 7	7:15	" 7	4:45
" "	" 8	7:10	" 8	7:15	" 8	4:45
" "	" 9	7:20	" 9	7:15	" 9	4:45
" "	" 10	7:15	" 10	7:15	" 10	4:45
" "	" 14	7:20	" 14	7:15	" 14	4:45
" "	" 15	7:20	" 15	7:15	" 15	4:45
" "	" 16	7:15	" 16	1:00	" 16	4:45
" "	" 17	7:20	" 17	1:00	" 17	4:45
" "	" 18	7:20	" 18	1:00	" 18	4:45
" "	" 19	7:20	" 19	7:20	" 19	11:20
" "	" 21	7:15	" 21	1:00	" 21	5:20
" "	" 22	7:20	" 22	1:00	" 22	4:45
" "	" 23	7:20	" 23	1:00	" 23	4:45
" "	" 24	7:20	" 24	1:00	" 24	4:45
" "	" 25	7:25	" 25	1:00	" 25	4:45
" "	" 28	7:20	" 28	8:10	" 28	4:45
" "	" 29	8:20	" 29	1:00	" 29	8:20
" "	" 30	7:20	" 30	11:20	" 30	1:20
" "	" 31	7:20	" 31	7:20	" 31	2:20
" "	Sept. 5	7:20	Sept. 5	1:00	Sept. 5	4:45
" "	" 6	7:20	" 6	1:00	" 6	4:45
" "	" 7	7:20	" 7	12:20	" 7	2:20
" "	" 8	7:20	" 8	1:00	" 8	4:45
" "	" 9	7:20	" 9	10:00	" 9	12:20
" "	" 9	8:20	" 11	7:15	" 11	10:20
" "	" 11	4:20	" 12	11:00	" 12	5:15
" "	" 13	7:20	" 13	1:00	" 13	8:45
" "	" 18	7:20	" 18	1:20	" 18	4:45
" "	" 19	7:20	" 19	7:45	" 19	4:45
" "	" 20	7:20	" 20	1:00	" 20	4:45
" "	" 21	7:20	" 21	1:00	" 21	4:45
" "	" 22	7:20	" 22	11:20	" 22	4:45
" "	" 30	8:45	" 30	7:20	" 30	11:45
" "	Oct. 2	7:45	Oct. 2	9:15	Oct. 2	4:45
" "	" 3	7:15	" 3	1:00	" 3	4:20
" "	" 9	7:20	" 9	7:45	" 9	4:45
" "	" 10	10:40	" 10	10:45	" 10	4:45
" "	" 11	7:20	" 11	1:20	" 11	4:45
" "	" 13	9:20	" 13	9:45	" 13	5:45

Station	Date Off Work	Time Off Work	Date On Duty	Time On Duty	Late On Duty	Why Late
Fuller Cross	Oct. 15	1.15	Oct. 15	1.15	Oct. 15	1.30
" "	" 16	7.15	" 16	7.15	" 16	7.30
" "	" 16	9.25	" 16	9.45	" 16	9.55
" "	" 17	7.15	" 17	10.15	" 17	6.45
" "	" 18	8.50	" 18	10.45	" 18	1.30
" "	" 18	9.20	" 18	10.45	" 18	11.00
" "	" 20	7.20	" 20	10.20	" 20	6.45
" "	" 21	11.45	" 21	2.55	" 21	6.45
" "	" 22	7.15	" 22	9.25	" 22	10.00
" "	" 24	7.20	" 24	2.50	" 24	6.45
" "	" 25	7.15	" 25	2.55	" 25	6.45
" "	" 26	10.15	" 26	2.45	" 26	6.45
" "	" 29	7.15	" 29	7.15	" 29	10.00
" "	Nov. 6	9.20	Nov. 6	10.55	Nov. 6	11.05
" "	" 8	9.15	" 8	12.20	" 8	6.45
" "	" 9	7.20	" 9	2.45	" 9	6.45
" "	" 12	7.20	" 12	2.50	" 12	6.45
" "	" 17	1.20	" 17	2.15	" 17	6.45
" "	" 18	1.20	" 18	7.20	" 18	11.00
" "	" 23	11.20	" 23	1.20	" 23	6.45
" "	" 23	1.20	" 23	1.20	" 23	6.45
" "	" 23	1.20	" 23	2.40	" 23	6.45
" "	" 24	2.20	" 24	7.20	" 24	6.45
" "	" 25	8.45	" 25	11.20	" 25	2.30
" "	" 29	10.20	" 29	2.20	" 29	2.30
" "	Dec. 1	11.20	Dec. 1	1.20	Dec. 1	2.30
" "	" 2	1.20	" 2	1.20	" 2	2.30
" "	" 4	1.20	" 4	1.20	" 4	6.45
" "	" 4	1.20	" 4	1.20	" 4	6.45
" "	" 10	8.20	" 10	9.20	" 10	6.45
" "	" 14	1.20	" 14	1.20	" 14	6.45
" "	" 15	1.20	" 15	1.20	" 15	6.45
" "	" 16	10.20	" 16	10.20	" 16	2.30
" "	" 21	11.20	" 21	11.20	" 21	2.30
" "	" 15	1.20	" 15	1.20	" 15	6.45
" "	" 22	9.20	" 22	11.20	" 22	2.30
" "	" 21	7.20	" 21	7.20	" 21	10.00
" "	" 23	1.20	" 23	1.20	" 23	2.30
" "	" 25	8.20	" 25	8.20	" 25	12.00
" "	" 26	9.20	" 26	9.20	" 26	2.30
" "	" 27	7.20	" 27	7.20	" 27	6.45
" "	" 28	8.20	" 28	8.20	" 28	2.30
" "	" 29	7.20	" 29	11.20	" 29	2.30
" "	" 30	8.20	" 30	11.20	" 30	2.30

L. A. Cushman, Inc., Cushman, Nebraska.
July 1, 1911, to Jan. 1, 1912.

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Fin.	Time Fin.
Adder	July 1	7:20	July 1	7:25	July 1	10:45
Big Three Lift Cutter	" 5	1:20	" 10	8:15	" 10	9:55
Roller	" 8	4:40	" 10	7:45	" 10	6:45
Roller	" 11	7:20	" 11	7:35	" 11	1:25
Roller	" 12	6:	" 12	8:15	" 12	4:55
Adder	" 13	7:20	" 13	12:	" 13	4:45
Roller	" 15	7:20	" 15	7:40	" 15	11:55
Power Reel Runner	" 17	1:20	" 17	8:	" 17	1:20
Roller	" 24	7:45	" 24	8:15	" 24	6:55
Roller	" 25	8:	" 25	9:15	" 25	2:45
Adder	Aug. 3	10:20	Aug. 3	10:25	Aug. 3	12:
Ball Edge Setter	" 4	4:20	" 4	12:	" 4	1:
Adder	" 4	12:	" 4	1:20	" 4	2:20
Yoke Edge Setter	" 8	10:20	" 9	8:15	" 9	1:25
Miller	" 10	8:15	" 10	8:15	" 10	10:
20" Corner Splitter	" 14	8:20	" 14	9:45	" 14	8:
Adder	" 15	10:	" 15	12:20	" 15	2:
Round Sharper	" 15	12:	" 15	1:15	" 15	4:40
Corner Splitter	" 16	7:20	" 16	7:35	" 16	2:
Puller	" 17	7:20	" 17	8:15	" 17	11:
Council Machinery	" 21	1:20	" 21	1:20	" 21	2:40
Adder	" 22	4:20	" 22	2:45	" 22	11:
Power Runner	" 23	8:	" 23	11:	" 23	2:
Adder	" 24	7:20	" 24	8:15	" 24	4:20
Power Shoulder	" 27	7:20	" 27	8:15	" 27	2:
Edge Trimmer	" 28	4:	" 28	1:	" 28	2:
Adder	" 29	7:20	" 29	10:15	" 29	4:45
Adder	" 30	7:20	" 30	8:15	" 30	4:40
Big Three Scallops	" 31	7:20	" 31	8:	" 31	12:45
Round Sharper	" 31	11:	" 31	11:20	" 31	2:45
Adder	" 31	2:	" 31	2:40	" 31	4:25
Round Sharper	" 31	10:	" 31	2:	" 31	10:45
Bar Counter	" 31	4:20	" 31	10:25	" 31	1:
Mad Cutter	" 31	1:20	" 31	1:	" 31	2:
Mad Cutter	" 31	7:20	" 31	7:40	" 31	4:20
Goldrick Adder	" 31	7:20	" 31	2:15	" 31	2:
Goldrick Adder	" 31	2:	" 31	7:40	" 31	2:
Mad Cutter	" 31	11:20	" 31	1:	" 31	4:25
Mad Cutter	" 31	2:15	" 31	10:	" 31	2:
Adder	" 31	7:20	" 31	8:45	" 31	4:20
Mad Cutter	" 31	11:25	" 31	1:15	" 31	4:20
Adder	" 31	7:20	" 31	8:15	" 31	2:
Adder	" 31	2:	" 31	10:	" 31	4:45

Stockfish	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
Eagle Upper Stemper	Aug. 30	4:45	Aug. 31	7:45	Aug. 31	11:15
Eagle Upper Stemper	" 31	7:15	" 31	7:15	" 31	11:15
Ideal Clicker	" 30	11:30	" 31	11:15	" 31	4:45
Jobber	Sept. 1	7:30	Sept. 1	8:15	Sept. 1	8:
Ideal Clicker	Aug. 30	11:30	" 1	7:15	" 1	4:45
Jobber	Sept. 2	7:30	" 2	7:45	" 2	1:45
Union Ridge Setter	Aug. 31	4:	" 2	8:	" 2	12:30
Ideal Clicker	" 30	11:30	" 3	7:15	" 3	12:30
Jobber	Sept. 5	7:30	" 5	8:15	" 5	10:
Ideal Clicker	Aug. 30	11:30	Sept. 5	7:15	Sept. 5	4:45
Ideal Clicker	" 30	11:30	" 6	7:15	" 6	4:45
Ideal Clicker	" 30	11:30	" 7	7:15	" 7	4:45
Jobber	Sept. 7	7:30	" 7	8:15	" 7	10:
Ideal Clicker	Aug. 30	11:30	" 8	7:15	" 8	4:45
Pier Counter	Sept. 7	10:	" 8	7:30	" 8	12:
Ideal Clicker	Aug. 30	11:30	" 9	8:15	" 9	4:45
Ideal Clicker	" 30	11:30	" 11	7:15	" 11	4:45
Ideal Clicker	" 30	11:30	" 12	7:15	" 12	4:45
Ideal Clicker	" 30	11:30	" 13	7:15	" 13	4:45
Ideal Clicker	" 30	11:30	" 14	7:15	" 14	4:45
Jobber	Sept. 12	10:15	" 11	8:15	" 11	8:
Jobber	" 14	7:45	" 14	7:45	" 14	8:15
Jobber	" 15	7:30	" 15	8:15	" 15	8:
Ideal Clicker	Aug. 30	11:30	" 15	7:15	" 15	4:45
Ridge Setter	Sept. 14	6:	" 15	7:45	" 15	10:30
Jobber	" 16	6:	" 16	8:45	" 16	2:30
Ideal Clicker	Aug. 30	11:30	" 16	7:45	" 16	12:15
Jobber	Sept. 15	7:30	" 12	8:45	" 13	4:30
Jobber	" 18	7:30	" 19	8:45	" 19	4:30
Jobber	" 21	7:30	" 21	8:15	" 21	4:45
Roller	" 20	9:30	" 20	9:45	" 20	1:45
Roller	Sept. 20	12:	Oct. 3	12:	Oct. 3	4:45
Eagle Upper Stemper	Oct. 9	11:	" 9	11:15	" 9	2:
Gilmore Roller	" 9	9:	" 9	9:15	" 9	2:15
Gilmore Roller	" 12	7:45	" 12	10:30	" 12	3:15
Union Twin Ridge Setter	" 12	8:30	" 17	7:30	" 17	12:
Jobber	" 17	4:30	" 19	7:30	" 19	1:45
Jobber	" 20	7:30	" 20	7:30	" 20	1:45
Pier Channel Counter	" 23	6:	" 23	7:45	" 23	1:45
Jobber	" 24	6:	" 24	8:30	" 24	1:15
Jobber	Nov. 2	2:	Nov. 2	2:45	Nov. 2	4:45
Pier Counter	" 10	1:	" 11	11:45	" 11	2:15
Gilmore Roller	" 12	11:15	" 12	11:15	" 12	2:30
Pier Counter	" 15	11:30	" 15	7:30	" 15	1:45
Ridge Trimmer	" 17	7:30	" 17	7:30	" 17	2:30
Ideal Clicker	" 2	5:	" 23	7:15	" 23	2:45
Jobber	" 21	10:	" 23	7:30	" 23	4:45

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
Buffer	Nov. 23	11:20	Nov. 23	11:20	Nov. 23	2:
Edge Setter	" 23	9:	" 23	7:20	" 23	4:20
Jointer	" 23	7:20	" 23	7:20	" 23	4:45
Jointer	" 24	7:20	" 24	7:20	" 24	4:45
Toe Softener	" 2	1:	" 25	7:20	" 25	9:20
Jointer	" 25	7:20	" 25	7:20	" 25	4:45
Edge Setter	" 27	12:45	" 27	12:45	" 27	2:20
Jointer	" 27	7:20	" 27	7:20	" 27	4:45
Jointer	" 28	7:20	" 28	7:20	" 28	4:45
Jointer	" 29	7:20	" 29	7:20	" 29	4:45
Jointer	Dec. 1	7:20	Dec. 1	7:20	Dec. 1	4:45
Edge Setter	" 2	7:20	" 2	7:20	" 2	3:45
Jointer	" 4	1:	" 4	1:45	" 4	5:45
Jointer	" 5	7:20	" 5	7:20	" 5	9:15
Edge Concaver	" 6	8:	" 6	10:20	" 6	4:15
Buffer	" 8	7:45	" 8	1:15	" 8	3:45
Repeat Stamper	" 8	11:20	" 8	1:45	" 8	3:
Repeat Stamper	" 8	5:	" 8	7:20	" 9	11:15
Repeat Stamper	" 9	11:	" 11	7:20	" 11	11:45
Gimmers Buffer	" 12	11:20	" 12	11:20	" 12	3:45
Edge Setter	" 14	1:	" 14	1:	" 14	4:15
U. R. Buffer	" 18	8:	" 18	8:	" 18	1:20
Heel Choker	" 18	1:20	" 19	2:	" 19	5:
Jointer	" 19	10:20	" 19	11:15	" 19	4:15

Machines at Factory of L. A. Crossett, Inc., Brockton, Mass. Held Under Lease.

Goodyear Dept.

23 Welt Machines	5 Goodyear Jointers
24 Outsole Stitchers	3 Impression Stitch Burnishers
4 Bobbin Winders	1 Rapid Rotary Cementer
3 Welt Grooversr	2 Economy Insole Stitchers
2 Channeling Machines	1 Univ. Rounding Mch.— Model 2
3 Universal Channeling Mchs.	2 Gem Lip Turners
3 Universal Welt Beaters	2 Assrt. Two-Form Sole Layers
10 Universal Rounders	2 Economy Re-inforcing Mchs.
3 Universal Channel Openers	2 Economy Channeling Mchs.
5 Automatic Sole Levelers	177
9 Stitch Separators	
2 Lip Turning Machines	Metallic Dept.
5 Improved Sole Laying Mchs.	2 Rapid Standard Screw Mchs.
4 Welt Beaters & Hammers	3 Universal Slugging Mchs.
7 Welt Indent. & Burnish.	5 Loose Nailers
6 Universal Inseam Trimmers	3 Staple Tackers
2 Heel Seat Rounders	2 Knife Grinders
3 Power Welt Groover & Beveler	15

Heeling Dept.	
3 Lightning Heeling Mch.	
3 No. 4 Heel Compressors	
2 Heel Trimmers — Burnell	
6 Heel Trimmers — Ultima	
1 Pneuter Heel Pricker	
20	

Lasting Dept.	
20 No. 5 Lasting Machines	
3 Inside Tacking Machines	
5 Chain Lasting Machines	
20 Loose Tackers	
7 Chain Tackers	
4 Rasps Loose	
97	

Eyelet Dept.	
2 Duplex Eyeletters	
3 Universal Eyeletters	
3 Perfection Eyeletters	
2 Vulcan Eyeletters	
1 Power Eyeletter	
15	

General Dept.	
26 Ideal Clicking Machines	
1 Apex Reader — Model A	
1 Buffer — Model C	
1 Champion Heel Lift Shver — A	
1 Crest Heel Blacker — Model A	
1 Channel Layer	
26 Edge Trimmers — Model A	
1 Eagle Sole & Upper Stamper — B	
1 Heel Securing Mch — Model R	
2 Heel Breast Securers — Model H	
4 Imperial Heel Breasters — B	
1 Embossing Machine — R	
1 Eagle Upper Stamper — C	
2 New Method Heel Seat Beader — G	
2 Regent Stampers — B	
1 Victor Roller — Model S	
1 Regent Stamper — C	
3 Star Channel Cementers — A	
3 Gummits Splitters — M	
1 Tip Securer — Model G	
2 Twin Edge Setters — R	
2 Twin Edge Setters — Union — S	
1 Top Piece Scalloper	
2 Welt Trimmers & Stitch Rubbers — R	
1 Star Channel Cementer — C	

Pulling-Over Dept.	
8 Rex Pulling-Over Mchs — Model A	
1 Rex Pulling-Over Mchs — Model C	
12 Rex Assembling Mchs — Model R	
21	

Machines Sold to L. A. Crossett, Inc., Brockton, Mass.

General Dept.	
2 Apex Grinders — Model G	
7 Edge Trimmers — Model A	
1 Field Channel Layer	
1 Peerless Bottom Stamper	
5 Edge Setters — Union Twin — Model S	
2 Toe Stiffeners — Model C	
1 Heath Gem-C Wheeling Machine	
5 Amazeen Shivers — No. 7	
2 Amazeen Shivers — old style	
1 Patent Tip Securer	
1 Norris Piece Heel Builder	
1 Bench Emery Grinder	
2 Bench Shafts	
2 Globe Heel Securers	
2 Paragon Vamp Markers — Model B	
2 Paragon Vamp Markers — Model C	
7 72-inch 2-bearing Finishing Shafts	
1 Bench Shaft	

Shoes Made by L. A. Crossett, Inc.,— During 1911.

January	113191
February	109476
March	59612
April	26516

May	84956
June	96121
July	71310
August	102066
September	96328
October	52078
November	101751
December	98706
Total	967835 pairs during 1911

L. A. Cronkhite, Inc.—12 Months Service—1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls	Hrs.
Goodyear	20	17	13	26	26	21	17	13	11	20	21	26	232	
	120	102	72	156	156	126	102	106	66	120	126	144		1368
Metallic	9	6	1	11	5	1	0	10	8	5	9	9	74	
	27	24	4	45	20	4	0	41	32	20	46	46		310
Reading	9	2	4	4	7	16	2	10	5	5	1	11	77	
	36	12	16	16	28	64	8	40	20	20	4	44		308
Lansing	10	24	29	31	34	21	11	11	12	15	7	16	219	
	62	120	181	186	212	131	69	69	75	81	43	100		1368
Pull Over	15	24	27	25	27	25	25	24	14	19	12		236	
	60	96	108	100	108	104	100	96	56	76	48	108		1064
Eyelet & General	26	9	15	30	24	36	10	30	32	11	30	36	291	
	113	36	60	186	156	144	40	186	128	44	60	72		1164
Total	91	82	88	126	123	121	65	112	82	78	71	95	1130	
Total	427	420	441	695	660	573	319	510	378	361	381	514		5620

DEFENDANTS' EXHIBIT 214 (DIRECT).

[Put in Evidence, page 2905.]

TOTAL CALLS AND TIME—1911. TOTAL OPERATORS TAUGHT AND TIME—1911.

Total Calls and Time—1911.

	Calls	Hours
Total Goodyear Calls—1911	44916	321880
Total Metallic Calls—1911	22376	91628
Total Reading Calls—1911	19492	109703
Total Lansing Calls—1911	27653	175626
Total Pulling-Over Calls—1911	20970	126035
Total Eyelet & General Calls—1911	57235	295123
Total Calls	192324	
Total time in hours used on calls		1119995

Operators Taught.

Total Goodyear operators taught	2309	6479
Total Metallic operators taught	958	20659
Total Hosiery operators taught	1009	33202
Total Lasting operators taught	1369	44268
Total Pulling-Over operators taught	956	31162
Total Eyelet & General operators taught	7418	79924
Total operators taught	6999	
Total time in hours teaching same		256791
Grand Total Service	201418	
Grand Total Hours		1282284

Help Attached to Offices during 1911

Agents and Assistants	17	
Department Heads	21	
Accountants	37	
	—	75
Goodyear Readers	149	
Metallic Readers	86	
Hosiery Readers	47	
Lasting Readers	95	
Pulling-Over Readers	61	
Eyelet & General	120	523
Total Help		598

Auburn Office — Calls for Road Service During 1911 by Months and Depts.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	182	200	109	160	152	283	126	200	240	200	181	208	2411
Metallic	80	90	86	89	95	110	95	111	85	91	100	113	1145
Hosiery	73	85	69	89	74	27	50	56	46	62	44	76	772
Lasting	76	120	[illegible]	75	80	167	105	120	147	160	100	146	1323
Pulling	65	115	[illegible]	87	70	103	82	117	100	103	80	93	1040
Eyelet & General	271	322	265	[illegible]	[illegible]	289	320	226	245	202	195	202	3126
Total Calls	727	910	649	720	731	899	790	1030	873	874	698	905	
											Total Calls		10010
											Total Hours		71819

6-7/12	Goodyear	men	—	2411 calls	took	10073 hours	or	6 h. 40 m.	per call
3	Metallic	men	—	1145 "	"	7199 "	"	6 h. 15 m.	" "
2	Hosiery	men	—	772 "	"	4792 "	"	6 h. 10 m.	" "
5-1/12	Lasting	men	—	1323 "	"	12075 "	"	8 h. 30 m.	" "
8-3/12	Pulling	men	—	1040 "	"	8221 "	"	7 h. 45 m.	" "
6-1/12	General	men	—	3126 "	"	22339 "	"	7 h. 15 m.	" "
29	Total	men	—	10010 "	"	71819 "	"	7 h. 0 m.	" "

AUBURN OFFICE—OPERATORS TAUGHT—DURING 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Taught	Man Hrs.
Goodyear	8	10	8	8	8	13	10	15	12	10	9	11	122	8785
Metallic	4	5	4	5	5	6	5	6	4	5	5	6	60	1800
Heeling	4	4	5	4	4	1	3	3	3	3	2	4	40	1200
Lasting	4	6	4	4	4	8	6	10	7	6	4	7	75	2205
Pull-Over	3	5	3	3	4	5	3	6	5	5	4	5	51	1681
Eyelet & General	14	15	15	15	17	17	11	14	12	15	6	13	185	6826
Total Calls	37	45	40	37	37	44	43	54	43	44	31	46		

Total operators taught 504

Total hours to teach same 18042

BROCKTON OFFICE—CALLS FOR ROAD SERVICE DURING 1911 BY MONTHS AND DEPTS.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	476	492	540	449	495	600	575	640	574	565	658	780	6847
Metallic	230	215	253	171	218	255	217	223	226	170	249	249	2715
Heeling	205	225	200	224	227	255	205	241	211	211	252	201	2811
Lasting	370	472	382	360	410	420	380	471	385	371	360	397	4726
Pull-Over	280	280	270	250	270	252	237	252	220	260	303	235	3109
Eyelet & General	676	606	705	583	679	696	645	601	554	653	776	780	7958
Total Calls	2237	2444	2397	2045	2300	2467	2170	2429	2220	2219	2658	2726	

Total Calls 28031

Total Hours 168186

26¼	Goodyear	men	—	6847 calls	took	42751 hours	or	7 h. 45 m. per call
5-1/6	Metallic	men	—	2715 "	"	8112 "	"	3 h. 0 m. " "
4-11/12	Heeling	men	—	2811 "	"	7360 "	"	2 h. 40 m. " "
15¼	Lasting	men	—	4726 "	"	20667 "	"	6 h. 15 m. " "
9-1/12	Puller	men	—	3109 "	"	16209 "	"	4 h. 40 m. " "
21-7/12	General	men	—	7958 "	"	30196 "	"	4 h. 50 m. " "
82-¾	Total	men	—	28031 "	"	168336 "	"	5 h. 30 m. " "

48 hours per week.

BROCKTON OFFICE—OPERATORS TAUGHT—DURING 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Taught	Man Hrs.
Goodyear	24	26	27	22	24	24	27	22	20	28	22	37	363	10633
Metallic	12	11	13	9	11	13	11	13	11	9	12	12	127	4347
Heeling	12	12	13	11	11	12	10	12	11	11	13	13	141	4371
Lasting	19	24	19	20	21	21	19	24	17	19	15	15	233	7459
Pull-Over	12	17	19	13	14	12	11	14	16	12	16	13	178	5518

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Eyelet & General	26	26	26	27	24	24	26	20	26	23	20	20	401	12031
Total Calls	113	124	120	103	113	127	105	125	117	113	123	127		
							Total operators taught						1439	
							Total time to teach same							44609

Chicago Office—Calls for Road Service During 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	222	225	199	200	215	205	200	257	244	247	226	250	2650
Metallic	60	42	39	60	75	55	42	116	45	64	55	44	717
Hosiery	154	155	120	146	182	160	141	89	141	170	127	147	1712
Lasting	95	100	123	123	214	145	144	147	98	126	102	90	1504
Full-Over	75	88	80	105	111	93	90	75	63	84	75	70	1017
Eyelet & General	220	191	176	146	240	225	201	115	130	220	215	201	2536
Total Calls	825	774	737	800	1137	949	938	899	726	860	900	901	10546
									Total Calls					10546
									Total Hours					32150

11 Goodyear	men	—	2650	calls	took	24320	hours	or	9 h. 5 m.	per call
8 Metallic	"	—	717	"	"	6694	"	"	9 h. 15 m.	" "
7 Hosiery	men	—	1712	"	"	15585	"	"	9 h. 0 m.	" "
7 Lasting	men	—	1504	"	"	15005	"	"	10 h. 0 m.	" "
3 Full-Over	men	—	1017	"	"	6342	"	"	6 h. 10 m.	" "
11 Eyelet & General	men	—	2536	"	"	24570	"	"	9 h. 35 m.	" "
43 Total	men	—	10546	"	"	98150	"	"	9 h. 40 m.	" "

Chicago Office—Operators Taught — During 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Taught	Hrs.
Goodyear	11	11	9	13	15	18	13	13	12	12	13	13	162	4535
Metallic	2	2	3	3	4	2	2	0	2	2	3	2	29	1115
Hosiery	6	5	6	6	9	8	7	8	7	6	7	7	86	2295
Lasting	5	5	6	7	8	6	7	7	5	6	5	5	72	2222
Full-Over	3	3	3	5	6	4	4	6	3	4	4	4	47	1407
Eyelet & General	11	10	9	7	11	11	13	6	7	14	16	15	130	4060
Total Calls	41	36	36	41	52	45	46	41	36	46	48	46	515	15634
							Total operators taught						515	
							Total hours to teach same							15634

Cincinnati Office — Calls for Road Service During 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	444	380	357	322	375	282	217	445	280	226	416	302	4146
Metallic	178	147	194	146	111	129	78	143	118	165	149	195	1742
Hosling	176	132	101	70	113	109	100	204	120	125	121	127	1569
Lasting	350	245	294	294	282	211	192	429	251	405	208	267	3740
Pull-Over	155	126	149	190	188	175	144	151	177	191	167	179	1906
Eyelet & General	370	429	227	401	526	415	322	464	427	271	424	378	4703
Total Calls	1670	1539	1442	1445	1401	1273	1054	1929	1405	1594	1575	1580	17833
										Total Calls			17833
										Total Hours			72040

15 Goodyear	men	—	4195 calls	took	22621	hours	or	7 h. 45 m.	per call
3 Metallic	men	—	1742 "	"	5165	"	"	2 h. 55 m.	" "
3 Hosling	men	—	1569 "	"	5220	"	"	3 h. 20 m.	" "
6 Lasting	men	—	3740 "	"	9903	"	"	2 h. 20 m.	" "
3 Pull-Over	men	—	1906 "	"	5902	"	"	3 h. 0 m.	" "
7 General	men	—	4702 "	"	13409	"	"	2 h. 45 m.	" "
37 Total	men	—	17833 "	"	72040	"	"	3 h. 30 m.	" "

Cincinnati Office — Operators Taught — During 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Taught	Hrs.
Goodyear	23	16	18	17	19	12	13	22	14	17	21	13	209	6479
Metallic	9	7	10	7	6	7	4	7	6	8	8	5	84	2604
Hosling	9	7	5	4	0	6	5	13	7	8	6	6	80	2480
Lasting	18	17	16	15	14	11	10	23	13	20	12	18	187	5797
Pull-Over	5	6	7	10	10	9	7	5	9	10	5	9	101	3131
Eyelet & General	10	21	16	20	15	21	14	25	22	19	23	19	235	7285
Total Calls	35	76	72	73	71	66	53	97	71	80	78	73	896	27776
										Total operators taught			896	
										Total hours to teach same				27776

Haverhill Office — Calls for Road Service During 1911 by Months and Depts.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	463	513	590	473	530	633	559	767	608	635	672	702	7272
Metallic	217	224	323	203	213	283	290	304	281	322	440	395	3450
Hosling	255	233	245	264	270	321	260	229	308	283	267	407	3612
Lasting	273	375	360	243	295	535	326	242	245	242	302	254	3691
Pull-Over	207	219	295	247	185	307	263	341	341	327	297	325	3501
Eyelet & General	721	616	653	697	690	781	639	727	726	757	799	677	8683
Total Calls	2136	2180	2467	2127	2220	2460	2087	2710	2616	2614	2677	2760	
										Total Calls			29318
										Total Hours			120779

23 Goodyear	men	—	7273	calls	took	42854	hours	or	6 h.	10 m.	per	call
7 Metallic	men	—	3420	"	"	12956	"	"	3 h.	40 m.	"	"
12 Heeling	men	—	3512	"	"	26051	"	"	7 h.	6 m.	"	"
10 Lasting	men	—	2601	"	"	20269	"	"	5 h.	20 m.	"	"
9 Pull-Over	men	—	2291	"	"	18278	"	"	5 h.	30 m.	"	"
23 Eyelet & General	men	—	3502	"	"	42350	"	"	5 h.	5 m.	"	"
72 Total	men	—	28618	"	"	166679	"	"	6 h.	30 m.	"	"

Haverhill Office — Operators Taught — During 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Goodyear	23	26	20	24	27	23	20	26	20	23	24	40	306	11340
Metallic	11	11	16	10	11	12	16	15	13	16	20	19	172	5332
Heeling	12	12	13	13	14	16	13	17	15	17	17	20	179	5549
Lasting	14	20	16	17	17	17	12	13	12	12	15	11	181	5611
Pull-Over	10	11	15	12	8	10	12	17	17	14	16	16	169	5129
Eyelet & General	36	31	28	29	35	28	34	35	26	36	40	44	431	13361
Total Calls	107	110	132	105	112	126	122	135	124	121	147	160		

Total operators taught 1491
Total hours to teach same 46221

Lynn Office — Calls for Road Service During 1911 by Months and Depts.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	576	562	660	642	652	661	556	715	660	691	649	592	7701
Metallic	334	356	320	321	301	291	294	328	309	314	318	291	3981
Heeling	296	305	408	345	395	427	365	507	423	379	318	422	3985
Lasting	371	323	376	337	334	320	298	402	337	379	301	268	4236
Pull-Over	249	263	277	231	249	288	283	361	420	425	366	420	3868
Eyelet & General	1092	894	971	982	912	907	827	1139	1047	1083	1019	1065	12026
Total Calls	2868	2727	3127	2917	2864	2894	2734	3444	3296	3261	2988	3158	37125

Total Calls 37125
Total Hours 142000

18 Goodyear	men	—	7701	calls	took	42842	hours	or	3 hrs.	15 m.	per	call
6 Metallic	men	—	3461	"	"	10709	"	"	1 h.	55 m.	"	"
11 Heeling	men	—	3985	"	"	21929	"	"	5 h.	35 m.	"	"
8 Lasting	men	—	4236	"	"	17681	"	"	4 h.	15 m.	"	"
12 Pull-Over	men	—	3868	"	"	20088	"	"	5 h.	15 m.	"	"
20 General	men	—	11926	"	"	28753	"	"	2 h.	5 m.	"	"
75 Total	men	—	37125	"	"	142002	"	"	3 h.	50 m.	"	"

Lynn Office—Operators Taught—During 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Goodyear	20	23	25	23	23	24	20	25	24	25	23	20	257	11997
Metallic	17	15	17	16	15	16	13	16	15	20	15	15	195	8736
Heeling	20	20	25	25	25	23	20	25	24	24	26	24	284	8804
Lasting	19	16	19	17	17	16	15	20	15	19	20	20	210	6300
Pull-Over	12	13	14	12	13	14	14	16	22	22	20	20	194	6014
Eyelet & General	38	44	49	47	46	45	45	57	52	53	51	56	587	19007
Total Taught	130	136	149	132	140	139	127	173	165	169	165	169		
								Total operators taught					1964	
								Total hours to teach same						67754

Marlboro Office—Calls for Road Service During 1911 by Months and Depts.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	227	255	310	266	295	181	134	183	249	209	228	244	2981
Metallic	244	184	266	160	225	161	132	161	185	294	242	261	2865
Heeling	130	149	115	130	143	77	126	100	118	129	175	169	1570
Lasting	219	210	227	226	215	127	70	115	135	189	269	194	2174
Pull-Over	123	89	135	125	128	102	77	129	112	130	185	164	1499
Eyelet & General	275	223	282	269	289	266	230	264	215	255	280	275	3267
Total Calls	1327	1089	1336	1146	1270	925	770	1032	1114	1076	1637	1340		
									Total Calls					13776
									Total Hours					68205

12-5/6	Goodyear	men	—	2981 calls	took	21255 hours	or	7 h. 25 m. per call
7-1/6	Metallic	men	—	2865 "	"	18220 "	"	6 h. 30 m. " "
3	Heeling	men	—	1570 "	"	4677 "	"	3 h. 0 m. " "
8	Lasting	men	—	2174 "	"	15757 "	"	7 h. 15 m. " "
5-7/12	Pulling	men	—	1499 "	"	11128 "	"	7 h. 25 m. " "
10	General	men	—	3267 "	"	19091 "	"	5 h. 50 m. " "
62-7/12	Total	men	—	13776 "	"	68205 "	"	6 h. 15 m. " "

46 Hours per week.

Marlboro Office—Operators Taught—During 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Goodyear	12	13	16	13	14	9	7	9	13	10	16	13	145	4495
Metallic	13	8	16	8	11	8	7	8	9	10	12	13	124	3844
Heeling	7	8	6	7	7	4	6	8	8	6	9	6	79	2449
Lasting	11	11	11	11	11	8	4	6	7	9	13	13	109	3270
Pulling-Over	7	4	6	6	6	5	4	6	5	6	9	8	72	2232

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Eyelet & General	9	11	15	13	15	13	11	14	15	13	15	14	159	4220
Total Calls	55	55	73	57	69	45	39	51	55	53	77	62		

Total operators taught 666
Total hours to teach same 21220

NEW ORLEANS OFFICE — CALLS FOR ROAD SERVICE DURING 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear Metallic Lasting Hooking Full-Over Eyelet & General	50	54	48	55	55	60	42	54	55	56	113	60	720

3 men 720 calls took 5917 hours or h. m. per call
3 " " exhibiting 736 "
3 " " teaching 1147 "

Total hours 7800

NEW ORLEANS OFFICE OPERATORS TAUGHT DURING 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Taught	Hrs.
Goodyear Metallic Hooking Lasting Full-Over Eyelet & General	4	2	2	3	3	4	2	2	3	1	6	4	37	1147

Total operators taught 37
Total hours to teach same 1147

NEW YORK OFFICE — CALLS FOR ROAD SERVICE DURING 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	154	143	154	122	201	151	152	145	139	142	126	192	1855
Metallic	49	47	50	75	53	45	46	55	52	49	59	36	613
Hooking	51	52	50	14	60	45	42	51	53	49	55	64	627
Lasting	45	45	53	45	42	40	26	54	49	36	30	46	507
Pulling	24	29	27	31	26	24	31	26	29	26	19	21	337
Eyelet & General	210	220	212	209	190	155	195	205	235	206	205	141	2401
Total Calls	537	536	551	497	551	462	492	542	563	510	503	590	

Total Calls 5490
Total Hours 16647

8	Goodyear	men	—	1955 calls	took	18806 hours	or	9 h. 39 m.	per call
2	Metallic	men	—	613 "	"	3657 "	"	5 h. 55 m.	" "
2	Healing	men	—	627 "	"	3626 "	"	5 h. 49 m.	" "
3¼	Lasting	men	—	867 "	"	6709 "	"	11 h. 45 m.	" "
1	Pull-Over	men	—	337 "	"	2803 "	"	25 h. 5 m.	" "
1"	Eyelet & General	men	—	2491 "	"	15047 "	"	6 h. 25 m.	" "
27¼	Total	men	—	6490 "	"	54647 "	"	10 h. 49 m.	" "

New York Office — Operators Taught — During 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Goodyear	8	7	8	6	10	8	8	7	8	7	7	10	94	2914
Metallic	3	2	3	3	3	2	2	3	3	3	3	3	33	1023
Healing	3	3	3	3	3	2	2	3	3	3	3	3	34	1054
Lasting	3	3	3	2	2	3	3	3	3	2	2	2	29	899
Pull-Over	2	3	3	3	1	1	3	1	3	1	1	1	18	558
Eyelet & General	11	11	11	10	10	9	10	10	11	10	10	11	126	3944
Total Calls	30	29	30	27	29	24	28	27	30	26	26	30		

Total operators taught 333

Total hours to teach same 10330

Philadelphia Office — Calls for Road Service During 1911 by Months and Depts.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	273	203	242	237	285	265	221	270	213	254	224	223	2920
Metallic	97	89	78	81	87	68	81	93	74	89	86	77	1017
Healing	68	72	73	78	62	65	49	51	49	46	85	52	746
Lasting	112	92	97	78	104	125	84	95	121	95	109	93	1205
Pull-Over	60	54	97	73	84	109	75	81	72	76	71	71	925
Eyelet & General	451	341	305	362	394	373	303	323	342	345	331	279	4350
Total Calls	1060	850	892	894	1035	1005	813	913	871	905	876	800	

Total Calls 11325

Total Hours 102577

14¼	Goodyear	men	—	2920 calls	took	23928 hours	or	11 h. 19 m.	per call
3	Metallic	men	—	1017 "	"	7249 "	"	7 h. 10 m.	" "
2¼	Healer	men	—	746 "	"	5415 "	"	7 h. 15 m.	" "
3	Laster	men	—	1205 "	"	10377 "	"	7 h. 50 m.	" "
1	Pull-Over	men	—	925 "	"	12212 "	"	10 h. 0 m.	" "
11¼	General	men	—	4219 "	"	27007 "	"	6 h. 20 m.	" "
55¼	Total	men	—	11325 "	"	102577 "	"	7 h. 25 m.	" "

50 hours per week.

PHILADELPHIA OFFICE — OPERATORS TAUGHT — DURING 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Goodyear	17	15	13	14	16	17	13	12	12	14	12	12	167	5177
Metallic	2	2	1	1	2	2	2	1	1	1	2	1	18	558
Heeling	2	4	1	6	3	2	4	3	2	1	3	1	32	1000
Lasting	11	9	12	12	14	13	8	7	14	12	15	8	135	4185
Pull-Over	7	5	4	6	8	7	8	6	5	7	6	6	77	2387
Tyer & General	6	5	5	4	9	5	6	5	5	5	4	3	68	2108
Total Calls	45	38	36	43	52	46	41	34	39	40	42	31		

Total operators taught 498
Total hours to teach same 15415

ROCHESTER OFFICE — CALLS FOR ROAD SERVICE DURING 1911 BY MONTHS AND DEPTS.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	200	204	205	203	244	215	215	223	192	227	225	209	2617
Metallic	163	168	139	137	146	152	143	214	164	206	178	174	2023
Heeling	111	104	141	114	110	116	101	110	107	105	110	120	1411
Lasting	222	169	210	205	194	161	169	146	215	205	207	244	2354
Pulling	153	152	177	146	171	168	198	145	200	196	222	208	2135
Tyght & General	441	428	410	421	491	486	441	437	436	436	371	410	5208
Total Calls	1290	1225	1282	1226	1365	1298	1267	1274	1274	1375	1313	1367	

Total Calls 15756
Total Hours 94536

10-5/8 Goodyear	men	—	2617 calls	took	15702	hours	or	6 h. 0 m.	per call
4 Metallic	men	—	2023 "	"	8092	"	"	4 h. 0 m.	" "
2-1/2 Heeling	men	—	1411 "	"	5644	"	"	4 h. 0 m.	" "
4-8/4 Lasting	men	—	2354 "	"	9827	"	"	4 h. 25 m.	" "
3-1/4 Pulling	men	—	2135 "	"	7705	"	"	3 h. 36 m.	" "
10-1/2 General	men	—	5208 "	"	25160	"	"	4 h. 48 m.	" "
33-5/8 Total	men	—	17756 "	"	94536	"	"	5 h. 0 m.	" "

33 Hours per week.

ROCHESTER OFFICE — OPERATORS TAUGHT — DURING 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Goodyear	10	10	12	15	5	5	12	6	12	12	7		126	3906
Metallic	2	2	1	2	3	2	1	4	3	2	2	2	30	930
Heeling	1	2	5	2	1	3	6	5	1	5	2	1	36	1116
Lasting	12	12	6	10	11	10	5	3	4	6	3	3	97	3007

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Pull-Over	7	2	9	6	2	2	2	1	1	8	2	2	25	1625
Hyslet & General	20	7	6	21	8	7	9	10	7	3	3	4	285	2282
Total Calls	46	41	36	39	42	22	31	26	26	21	16	20		

Total operators taught 427
Total hours to fourth mens 19287

St. Louis Office — Calls for Road Service During 1911 by Months and Depts.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	160	152	160	171	155	160	172	168	144	157	139	162	2016
Metallic	142	134	114	148	130	131	126	123	120	147	112	132	1610
Reading	80	75	90	96	85	88	82	97	75	67	80	85	904
Lansing	165	150	162	178	140	167	151	140	194	165	153	195	1920
Pulling	110	120	105	145	107	111	132	130	101	142	96	99	1278
Hyslet & General	241	252	209	229	220	214	208	216	276	205	250	229	2745
Total Calls	898	883	851	885	837	869	871	874	910	884	851	907	

Total Calls 10519
Total Hours 68369

20½	Goodyear	men	—	2016 calls	took	22954 hours	or	10 h. 50 m.	per call
4	Metallic	men	—	1610 "	"	6754 "	"	4 h. 25 m.	" "
4	Reading	men	—	904 "	"	3045 "	"	3 h. 22 m.	" "
9½	Lansing	men	—	1920 "	"	19045 "	"	10 h. 26 m.	" "
5	Pull-Over	men	—	1278 "	"	9071 "	"	7 h. 0 m.	" "
32½	General	men	—	2745 "	"	17549 "	"	6 h. 8 m.	" "
815	Total	men	—	10519 "	"	82369 "	"	7 h. 50 m.	" "

48 Hours per week.

St. Louis Office — Operators Taught — During 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Goodyear	9	9	8	9	8	9	9	8	7	9	8	9	102	3162
Metallic	7	6	6	5	7	7	7	6	7	7	6	7	78	2418
Reading	4	4	5	5	4	5	4	5	4	3	5	3	49	1519
Lansing	5	5	5	6	5	7	5	5	20	4	4	2	68	2720
Pull-Over	7	6	5	6	5	5	6	7	5	7	5	5	69	2230
Hyslet & General	15	15	15	13	14	13	15	11	14	13	15	11	164	4774
Total Calls	47	45	45	44	43	46	47	42	47	43	41	37		

Total operators taught 511
Total hours to fourth mens 15771

DEFENDANTS' EXHIBIT 215 (DIRECT).

[Put in Evidence, page 2003.]

NUMBER OF SHOES MADE IN

	1899	1904	1910
Turns	18,272,000	25,960,000	33,966,000
Welts	22,700,000	47,950,000	86,231,000
Hand Welts	197,000	669,000	1,188,000
Stitch Downs			1,510,000
McKay Welts	111,000	56,000	582,000
Fair Stitched	805,000	478,000	1,066,000
Pegged	7,475,000	9,157,000	3,202,000
Standard Screw	25,802,000	21,627,000	19,004,000
Loose Nailed	2,567,000	3,123,000	6,469,000
McKay Sewed	82,457,000	94,606,000	105,698,000
Misc. Shoes & Slippers	12,400,000	15,733,000	20,000,000
	172,786,000	219,363,000	278,916,000

DEFENDANTS' EXHIBIT 216.

[Put in Evidence, page 2074.]

AMOUNTS EXPENDED FOR EXPERIMENTAL ACCOUNT.

During the years

1907	$364,326.41
1908	380,477.45
1909	333,605.75
1910	537,183.78
1911	602,359.31
Total	$2,267,954.70
Average per year	$453,590.94

DEFENDANTS' EXHIBIT 217.

[Put in Evidence, page 3776.]

Beverly, Mass., Nov. 20, 1911.

Mr. S. Winslow, Boston Office.

Dear Sir: The following is the list of experimental machines in the various departments.

The following list was sent to Messrs. King & Fraher:

Order	Name	For the month of October	Previous	Total
K 35791	Automatic Stitcher. Redesign machine. Drawings, patterns and machine work			
	E. E. Winkley	$39.10	$1640.55	$2179.65
K 112127	Goodyear Welt & Turn Sewing Mch. Make & apply to above machine one adjustable channel guide. Drawings, patterns and machine work.			
	E. E. Winkley	105.25	1095.29	1200.54
K 121228	Sole Layer. Changes on Progressive Pressure Principle Machine. Drawings, patterns and machine work.			
	B. F. Mayo	9.74	4934.07	4943.81
K 121244	Goodyear Inseam Trimming Mch. Make one new machine Drawings, patterns and machine work.			
	W. C. Meyer	11.14	5959.01	5970.15
K 123755	Goodyear Imp. Sole Layer. Make & apply to machine Welt Supporting Device. Drawings, patterns and machine work.			
	E. E. Foster	7.34	1272.53	1270.87
K 123843	Goodyear Insole Flexing Mch. Make one machine. Drawings, patterns and machine work.			
	J. B. Hadaway	8.59	3162.96	3171.55

Order	Name	For the month of October	Previous	Total
K 137201	Goodyear Flexible Insole Mch. Make Roll Feed for Feeding Wedge Stock. Drawings, patterns and machine work.			
	J. B. [illegible]way	199.59	1586.17	1785.76
K 123684	Thread Fastening & Tack Pulling Mch. Make machine for Fastening Upper to Insole & Pulling Lasting Tack. Drawings, patterns and machine work.			
	Jas. A. Brogan	284.16	4543.12	4827.28
K 135509	Heel Seat Rounding Machine. Make new design of machine. Drawings, patterns and machine work.			
	Wm. Meyer & W. C. Baxter	196.84	3623.24	3819.18
K 135617	Heel & Forepart Turning Mch. Redesign Gardner Machine. Drawings, patterns and machine work.			
	Eppler & Erickson	105.30	4887.29	4992.59
K 135537	Inseam Trimming Machine. Make Model of an Inseam Trimming machine, also construct one machine. Drawings, patterns and machine work.			
	Andrew Eppler	185.81	2626.27	2812.08
K 146706	Welt & Turn Sewing Machine. Finish work started in June 1909 on Shoe Holder for above machine for supporting, guiding & feeding the shoe. Drawings, patterns and machine work.			
	B. F. Mayo	Cr. 3.41	703.85	700.44

Order	Name	For the month of October	Previous	Total
K 148712	Goodyear Turn Shoe Moulder. Apply to above machine Inking Device. Drawings, patterns and machine work.			
	Ralph Simmons	17.88	594.99	612.87
K 152806	Goodyear Automatic Leveller. Redesign Boot Jack Frame & such other parts as appear weak in construction. Drawings, patterns and machine work.			
	W. C. Baxter	1306.16	6682.20	7988.36
K 160788	Canvas Setting & Feather Moulding Mch. Equip same with Cutting Device.			
	A. E. Johnson	21.37	2275.68	2297.05
K 165015	Goodyear Shank Welt Skiving Mch. Changes to Skive and Rub the welt upon the upper surface. Drawings, patterns and machine work.			
	F. B. Freeman	61.00	246.93	307.93
K 165025	Goodyear Insole Tack Puller. Redesign above machine. Drawings, patterns and machine work.			
	J. B. Hadaway	89.93	740.19	830.12
K 165260	Goodyear Improved Sole Layer. Make Shoe Locating Device for above machine.			
	B. F. Mayo	115.04	838.91	953.95
K 165028	Welt & Turn Sewing "G" Automatic Machine Stopping Mechanism with means for reversing the machine a predetermined amount. Drawings, patterns and machine work.			
	A. Latham	227.62	10659.83	10887.45

Order	Name	For the month of October	Previous	Total
K 165020	Welt & Turn Sewing "G" Apply Welt Cutting & Feeding attachment to Model G. Drawings, patterns and machine work. A. Latham	471.54	5812.33	6283.87
K 165036	Canvas Setting & Feather Edge Moulding. Canvas forming device for above Drawings, patterns and machine work. A. E. Johnson	92.95	267.83	360.78
K 169681	Goodyear Welt & Turn K. Apply Welt Holding & Cutting Device, also Thread Cutting Device, also stop Device. Drawings, patterns and machine work. Wm. C. Meyer	748.94	11538.61	12287.55
K 174607	Goodyear Improved Sole Layer. Apply Wentworth Shank Moulding Principal to above machine. Drawing patterns and machine work. H. H. Eaton	21.47	2345.06	2366.53
K 180255	W. W. Insole Flexer. Changes for adoption. Drawings, patterns and machine work. Thos. Seeley & W. C. Stewart	245.98	3319.88	3565.86
K 180257	W. W. Stitch Indenting & Burnishing. Prepare for adoption. Drawings, patterns and machine work. Stewart & Seeley	24.20	[illegible]	679.72
K 180258	W. W. Welt Slashing Grooving & Bevelling. Changes for adoption. Drawings,			

Order	Name	For the month of October	Previous	Total
	patterns and machine work.			
	Thos. Seeley	320.80	813.16	1134.05
K 180259	W. W. Outsole Flexing. Changes preparatory to adoption. Drawings, patterns and machine work.			
	W. C. Stewart	27.83	1198.14	1225.97
K 180261	Goodyear Stitch Separator. Make a new design of machine. Drawings, patterns and machine work.			
	J. E. Hadaway	.43	394.84	395.27
K 180263	Goodyear Welt Beater & Slasher. Apply the "Littlefield" Hammer to W B. & S. Drawings, patterns and machine work.			
	H. F. Mayo	17.19	606.58	623.77
K 184046	Shoe Filling. Make one complete machine. Drawings, patterns and machine work.			
	F. E. Bertrand	19.19	———	19.19
K 184049	Goodyear Power Moulding Mch. Redesign Machine. Drawings, patterns and machine work.			
	Wm. Meyer	61.29	1362.90	1424.19
K 186841	Goodyear Rapid Outsole Stitcher. Make changes in connection with drawing welt and sole together.			
	F. E. Beckman	7.77	264.64	272.41
K 186847	Goodyear Universal Channeler. Changes for operating the channel knife in the manner recently proposed by Prentel. Draw-			

Order	Name	For the month of October	Previous	Total
	ings, patterns and machine work.			
	F. E. Bertrand	15.94	449.98	465.92
K 187974	Goodyear Sole Laying Mch. 6 — LaChappelle Lining protectors. Drawings, patterns and machine work. Order closed 10/20/11.			
	H. H. Eaton	28.85	175.66	204.51
K 187994	Goodyear Improved Sole Laying Mch. Apply adjustable Toe Piece. Drawings, patterns and machine work.			
	W. C. Baxter	41.02	599.04	640.06
K 187995	Goodyear Jointing Mch. Make one machine with Rotary Cutter.			
	W. C. Stewart	115.81	93.18	208.99
K 190045	Goodyear Grooving & Bevelling. Changes for cutting full length of welt.			
	Thos. Seely	90.74	599.10	689.84
K 193194	Economy Channelling. Make Lip Setting attachment.			
	A. E. Johnson	.09	337.38	337.47
K 193198	Universal Rounding & Channeling "E". New Driving mechanism for pattern roll eliminating the friction except when the correcting device is to be used.			
	F. H. Perry	78.61	358.49	337.10
K 194756	Power Welt Grooving & Bevelling. Welt Winding Reel. X 2992.			
	A. Eppler	31.03	266.05	297.08
K 194762	Economy Channeler. Apply Mechanism for lifting			

Order	Name	For the month of October	Previous	Total
	Knife from stock. X2998. Order closed 10-20-11			
	A. E. Johnson	27.41	178.53	205.94
K 194764	Double "Lip Turner X" Special Table & drive mechanisms. X3000 Order closed 10-20-11			
	W. H. Hooper	.01	184.24	184.25
K 199480	Goodyear Universal Rounding & Channeling Mch. E. Automatic Channelling Knife operating mechanism. X2013			
	F. H. Perry	135.39	243.27	378.66
K 199481	Goodyear Universal Rounding & Channeling E. Make one Channel Knife Block. X2014.			
	Harmon	21.69	340.19	361.88
K 199490	Goodyear Upper Stapling. Redesign Insole Stapling Machine. X3032.			
	Erickson & Cosgrove	1161.08	1339.49	2500.57
K 202301	Insole Tack Pulling Mch. Make one complete machine. X3043			
	W. C. Stewart	255.09	377.50	632.59
K 202302	Goodyear Improved Sole Layer. Improved Treadle Mechanisms. X3045.			
	H. A. Davenport	36.56	——	36.56
K 202303	Goodyear Imp. Sole Layer "B". Apply Shank Moulds to above. X3046. Order closed 10-20-11			
	E. N. Preble	40.40	240.66	281.06
K 202316	Goodyear Turn Sewing Mch. Apply Channel Lip Controlling Finger to keep			

Order	Name	For the month of October	Previous	Total
	down lip when shoe is sewed.			
	F. Chateauneuf	808.62	737.74	1546.36
K 202328	Relasting Machine. Make drawings and construct one machine consisting of pincers to grip & pull the upper drawn on the last while the seat is being pounded, and other improvements. X2076			
	O. Ashton	11.11	81.45	92.56
K 209207	Jointing Machine. Make drawings of new machine with Chopping Knife operating at breast of Heel only. X3100			
	F. H. Perry	172.90	101.52	274.42
K 209221	Staple Side Lasting. Make experiments on Goodyear Upper Stapling for above. X3118.	213.55	—	213.55
K 209226	Goodyear Outsole Rapid Lockstitch. New presser Foot Mechanism. X3123.	662.83	—	662.83
K 209235	Wax Pot. Apply Friction Heat for Heating Wax Pot. X3132.			
	A. Eppler	24.42	—	24.42
K 209245	Goodyear Tack Pulling & Resetting Machine. Improvements in Tack Gearing Device.			
	F. L. McKenzie	29.86	—	29.86
		9675.66	129801.14	139476.77

The following list was sent to Mr. C. H. Bayley:

Order	Name	For the month of October	Previous	Total
		9575.63	123901.14	133476.77
K 189192	Amaseen Skiver. Make one "Courser" Work Guide as per sketch furnished. (Drawing first) Drawings, patterns and machine work.	1.20	64.68	65.88
K 193187	Skiving Machine. Make one new type of Skiving Machine. Davenport & Alexander	158.15	2385.27	2543.42
K 199440	Plume Skiver. Changes to Skive stitch down insoles. X3029. S. J. Wentworth	53.93	21.26	75.19
K 202338	Plume Skiver. Special grooving gage for the above machine. X3089. E. F. Davenport	15.46	18.45	33.91
K 200182	Plume Skiver "D". Strengthen Feed Roll Driving Shaft. Sabin & Warren	286.34	23.62	309.96
		10090.71	126414.42	136505.13

The following list was sent to Mr. H. C. Nickerson

		10090.71	126414.42	136505.13
K 190043	Heel Cutting Off. Make one Heel Cutting Off Machine for repair work. Drawings, patterns and machine work. J. B. Hadaway	15.10	642.58	657.68
K 202322	Shoe Dryer. Shoe & Sole Dryer for Repair Work.			

Order	Name	For the month of October	Previous	Total
	X3070. Order closed 10-20-11			
	Fred Hooper	5.96	60.42	[illegible]30
		10111.77	127126.43	137238.20

The following list was sent to Mr. Walter Shaw:

		10111.77	127126.43	137238.20
K 148720	Grommet & Washer Setting Machine. Redesign machine as shown in B. O. Drawings dated May 1909. Drawings, patterns and machine work.			
	Walter Shaw	867.26	3357.53	4224.79
K 152609	Duplex Eyelette Machine. Drawings of one machine. Order closed Oct. 30, 1911.			
	John Davey	48.04	1840.90	1888.94
K 193185	Cameo Eyelette. Apply Power Attachment to Cameo Eyelette.			
	John Davey	3.58	9.90	13.48
K 193191	Duplex Eyelette. Rearrange Machine for Corset Work			
	Fred Rumney	3.02	507.36	510.38
K 193192	Duplex Eyelette Punch & Set adjustment.			
	John Davey	491.34	536.07	1027.41
K 202234	Heavy Punch Eyeletting. Fit the above with a 2" spacing & change over 2 machines.			
	Walter Shaw	135.76	18.72	154.48
K 202335	Perfection Eyeletting. Change one machine in a manner to set lacing hooks. X3086			
		69.41	42.54	111.95

Order	Name	For the month of October	Previous	Total
K 209184	Duplex Eyelette Mch. Change method of bushing K341A Punch & Set Head.	238.16	36.02	274.18
		11968.24	133475.47	145443.31

The following list was sent to Mr. John Morton:

		11968.24	133475.47	145443.31
K 115341	Shoe Buttoning Machine. Make machine. Drawings, patterns and machine work. Enslein	197.51	5867.43	6064.94
K 202321	Knot Tying Machine. Knot tying Machine for tying the ends of thread, holding Button. X3069. Enslein	34.60	41.91	76.51
		12200.45	139384.81	151585.26

The following list was sent to Mr. Geo. Covell:

		12200.45	139384.81	151585.26
K 105408	Rex Pulling Over Machine. Make & apply to combination Laster & Puller at Victor Shoe, Salem, Automatic Wiring Device, Drawings, patterns and machine work. R. F. McFeeley.	9.29	2812.45	2821.74
K 165014	Rex Assembling Machine. Clamp for holding straight counters & locating back seam sketch dated Oct. 21, 1910, also changes for using Loose Tack. Drawings, patterns and machine work. O. Ashton	115.07	6406.56	6521.63

Order	Name	For the month of October	Previous	Total
K 188000	Shellac & Box Toe Gum Mch. Make one combination machine. Drawings, patterns and machine work. F. M. Furber	244.52	1159.26	1403.80
K 194787	Pulling Over Mch. Pincer Controlling Device to assist the wiper. X2007. O. Ashton.	8.06	138.68	146.76
K 202304	Rex Pulling Over. Improvements on Tip Measuring Device. X3047. Coombs	12.96	——	12.96
K 209230	Pulling Over Machine. Tip Measuring Device. X 3117. E. A. Galloway	97.25	——	97.25
K 209237	Turn Shoe Assembling Mch. Changes in Pincer Mechanism. O. Ashton	40.37	——	40.37
K 209238	Rex Pulling Over "C". Transverse movement of Pincer & Driver Mechanism. See X2135. R. F. McFeeley	114.73	——	114.73
		12842.77	149901.78	162744.55

The following list was sent to Mr. E. L. Keyes:

		12842.77	149901.78	162744.55
K 160793	Bed Lasting Machine. 3 Part Heel Wiper for above machines. Drawings, patterns and machine work Brock.	139.88	1126.59	1266.47
K 165010	# 5 Lasting Machine. Make a Revolving Toe Head for			

Order	Name	For the month of October	Previous	Total
	Right & Left Toes in same head.			
	Brook.	159.53	836.12	995.65
K 186836	Lasting Pincers. Spreading Pincers. (Closed Oct. 31, 1911)			
	Arthur McLeod	37.21	185.08	222.29
K 193188	H. M. Lasting Machine. Rotary Wiper to rotate in both directions.			
	R. F. McFeeley.	.86	1.16	2.02
K 194753	Lasting Machine §5. Mak- special set of wipers. X 2999.			
	Geo. N. Gordon	29.84	22.86	52.72
K 199426	§ 5 Lasting Machine. Apply Toe Rest Segmental Swing & change Toe Sliding Rod (Weinburg Type)			
	Arthur McLeod.	27.91	155.12	183.03
K 202305	Welt Butting Machine. Changes in machine made under X1304.			
	E. L. Keyes	66.25	90.52	167.77
K 202307	§ 5 Lasting Machine. Make one Rocking Sole Presser with two spring arms for Supporting Sole Plate.			
	M. Brook.	49.80	164.80	214.58
K 202325	Consolidated Hand Method Lasting Machine. Apply Mechanism for driving Staples horizontally and clinching on insole rib. X 3073.			
	Stiggins.	23.06	93.71	116.77
K 202216	Gdyr. Insole Heel Seat Trimming Machine. Ap-			

Order	Name	For the month of October	Previous	Total
	ply Rowe Insole Gauge Attachment.			
	L. M. Brown	79.31	37.56	116.87
K 209222	Bed Lasting Machine. Apply Improved Toe Mechanism with new side pressure			
	M. Brock	33.20	——	33.20
K 209224	Bed Lasting Machine. Apply Forms for Moulding Heel Band of a predetermined shape of Belata Gum.			
	M. Brock.	16.02	——	16.02
K 209228	Toe Moulding Machine. Make layout of machine for moulding toes preparatory to the lasting operation. X3125.			
	M. Brock.	60.84	——	60.84
K 209231	Tack Bending Device (Bench) Make one device for bending tacks after side lasting. X3128.			
	L. M. Brown & E. L. Keyes.	22.41	——	22.41
K 209232	Bed Lasting Machine. Apply to 3 part wiper Heel Mechanism a device to shift the Heel Band & Holder Transversly to the center line of the wiper movement. X3129.			
	Brock	76.37	——	76.37
		12667.25	152624.41	166291.66

The following list was sent to Mr. W. R. Sampson:

		12667.25	152624.41	166291.66
K 105417	Ideal Clicking Machine. Experimental work on			

Order	Name	For the month of October	Previous	Total
	cutting base material. Drawings, patterns and machine work.			
	M. B. Kaven.	5.87	2093.23	2099.10
K 108936	Hercules Leveller. Make & apply to above Machine Safety Device. Drawings, patterns and machine work.			
	E. N. Preble.	351.33	1524.46	1875.79
K 112112	Channel Flap Turning Machine. Make one machine for moulded work. Drawings, patterns and machine work.			
	E. N. Preble	49.54	708.10	757.64
K 117071	Hercules Leveller. Make Tests on British Shoe Holding Mechanism. Drawings, patterns and machine work.			
	Mayo & Simmons. Cr.	300.00	1262.41	962.41
K 128858	Upper Cementing Machine. Redesign the Brogan Machine. Drawings, patterns and machine work.			
	M. F. Br[illegible]an.	2.34	1515.88	1518.22
K 135507	Tip Repairing Machine. Make drawings & preliminary Experiments for applying enamel to Patent Leather Tips & make one new machine. Drawings, patterns and machine work.			
	F. M. Furber.	186.06	2889.19	3075.25
K 135521	Improved Edge Setter. Redesign Furber Machine made under X 1471 with a view to manufacturing.			

Order	Name	For the month of October	Previous	Total
	Drawings, patterns and machine work.			
	F. M. Furber.	15.77	2862.53	2878.30
K 148727	Sole Evening Machine. Changes in Sole Evening Machine developed under K 7813 and fitted with Grading Device. Drawings, patterns and machine work.			
	B. F. Mayo.	9.02	479.70	488.72
K 152302	Atlas Leveller. Make pressure Indicating Device. Drawings, patterns and machine work.			
	E. N. Preble.	39.22	1086.81	1126.03
K 154909	Fletcher Ironing Machine. Redesign Fletcher Ironing Machine. Drawings, patterns and machine work.			
	H. H. Eaton.	27.32	946.58	973.91
K 157393	Stitch & Upper Cleaner. Redesign Experimental Machine developed under X 1242. Drawings, patterns and machine work.			
	John Richardson.	82.60	1711.40	1794.00
K 165049	Fletcher Ironing Apply Improved Device for Ironing shoes interposing a paper between the iron and material to prevent soiling of material. Drawings, patterns and machine work.			
	P. J. Wentworth.	5.35	99.42	104.77
K 169680	McKay Sewing. Make one new type of machine to include an Automatic			

Order	Name	For the month of October	Previous	Total
	Stop & Thread Cutting Attachment. Drawings, patterns and machine work.			
	W. C. Meyer	762.79	5358.82	6121.61
K 169683	Planet Sole Rounder. Make new Knife Arm with Safety Block to prevent breaking of Knife. Drawings, patterns and machine work.			
	G. Julian.	13.28	393.62	407.00
K 174692	Imperial Heel Breasting Machine. Apply features of Wonder Worker Machine to U. S. M. Co's. Drawings, patterns and machine work.			
	Ralph Simmons.	448.57	1314.40	1762.97
K 182190	Shoe Cleaning Roll. Make one roll with guard to prevent the end of the Roll from coming in contact with the shoe. Drawings, patterns and machine work.			
	J. A. Brogan.	10.44	396.37	406.81
K 182199	Richardson Sole Sewing Drawings of New Needle Moving Mechanism. (Closed Oct. 20, 1911)			
	John Richardson.	1.01	359.32	360.33
K 186838	Victor Rolling Machine. Stationary Table & New Guard on Victor Rolling Machine. Drawings, patterns and machine work.			
	H. H. Eaton	2.52	91.36	93.88
K 186843	Sole Embossing Machine, (X2900). Make two			

Order	Name	For the month of October	Previous	Total
	machines containing automatic means to determine the thickness of the sole and impart a predetermined indentation. Drawings, patterns and machine work.			
	J. J. Heys.	636.04	2885.30	3521.34
K 186846	Gearless Sole Cutter, 3 ft. Equip machine with adjustable die for cutting to form the heel and shank portion of outsoles, stamping size numbers and trade mark on same ball & heel breast marks.			
		1.24	70.26	71.50
K 187987	Hercules Levelling Machine. Interchangeable Form Holder. (X2921) Drawings, patterns and machine work.			
	John Baer.	10.05	87.43	97.48
K 193181	Toe Softening Re-design Keyes Machine. (X 2943)			
	L. M. Brown	3.83	552.85	556.68
K 194754	Pyrographical Case & Stock Lining Marker. Make one complete machine. Drawing first.			
	H. W. Winter.	210.19	560.90	771.09
K 202314	American Twin Sole Moulding, "C". Device for Moulding Entire Spring Heels — from drawings dated Nov. 24, 1910. X3061.			
	E. N. Preble.	68.16	62.25	130.41

Order	Name	For the month of October	Previous	Total
K 202317	Edge Setting Machine. Apply Electric Heating Device, also device for Heating Spare Irons. Drawings only. M. F. Wallace & E. N. Preble.	52.69	251.74	304.43
K 202331	Heel Breast Scouring Machine. Device for scouring the breast of concave heels. W. R. Mudd.	76.28	15.01	91.29
K 202336	Cement Pot. Make drawings of a Cement Pot for holding cement & build one pot. W. C. Stewart	58.45	107.35	165.80
K 209206	Top Lift Scolloping Grading Attachment.	148.39	51.20	199.59
K 209208	Outsole Shank Flexing Fit up one machine with dies to cut serrations in the shank portion of soles. X3096 F. M. Furber.	129.02	6912.	198.14
K 209210	Heel Breast Lining Up Machine. Redesign above machine (Fletcher Type)	281.82	62.16	343.98
K 209211	Embossing Machine. Make one rotary embossing machine to emboss vamps by means of a wheel. W. A. Smith.	185.32	11.48	196.80
K 209214	Knurling Machine. Universal Jack Post for above X3103	37.74	29.82	67.56
K 209215	Furber Dispensing Can. Changes in above to			

Order	Name	For the month of October	Previous	Total
	conform to Fire Underwriters suggestions. F. M. Furber.	12.07	1.65	13.72
K 209217	Empire Splitting, "C". Change in Knife Carrier to raise Knife Gauge at a predetermined point. F. M. Furber.	55.25	——	55.25
K 209233	Goodyear Jointing Machine. Improvements in Cutting Mechanism. John H. Richardson.	45.61	——	45.61
		17302.54	182536.53	199929.07

The following list was sent to Mr. W. C. Willson.

		17302.54	182536.53	199929.07
K 99078	Block Leather Board Heels. Make experiment on making of above. J. Glidden, Winkley, Pope	38.68	702.37	741.05
K 102254	Davey Pegger. Apply Goddu Nailer Horn Release to Pegging Machine. Drawings, patterns and machine work. Geo. Goddu.	.99	495.86	496.85
K 102258	Zis Slugging Machine. Make Aotumatic Double Feeding Jack for Z. S. Drawings, patterns and machine work. L. A. Casgrain.	118.88	7639.30	7758.18
K 135505	Heel Attaching Machine. Make drawings of one new machine. B. F. Mayo	140.58	2180.40	2320.98
K 148731	Rand Tacking Machine. Make changes on machine]			

Order	Name	For the month of October	Previous	Total
	developed by Mr. Bond under X 1516. Drawings, patterns and machine work.			
	M. F. Brogan.	51.76	3210.29	3262.05
K 157374	Loose Nailer # 2. Make Automatic Jack and apply to above machine. Drawings, patterns and machine work.			
	Geo. Goddu.	1.87	2407.18	2409.05
K 180252	Automatic Heel Loading & Attaching Machine, B. Apply Pricking Attachment. Drawings, patterns and machine work.			
	Lester Glidden	126.80	3393.04	3520.84
K 186327	Xpedite Heel Finishing Machine (X2942) Apply Electric Heat to above.			
	Lee	23.80	225.28	249.08
K 186633	Loose Nailing # 2. Apply new Clutch Tripping and Locking Device. Drawings, patterns and machine work.			
	Geo. Goddu.	161.95	527.07	689.02
K 187996	Automatic Heel Loading & Attaching Mch. (X2928) Change Preliminary Pressure Device. Drawings, patterns and machine work.			
	Thos. Lund	488.48	1344.19	2332.67
K 194751	Nail Distributor. Changes for handling 2 lengths of nails to consist of Double Drum & 2 Sets of raceways.			
	B. F. Mayo	182.06	2064.38	2266.44

Order	Name	For the month of October	Previous	Total
K 194761	4 Compressor. Automatic Top Lift Feeding Mechanism to above. Thos. Lund	283.74	394.43	678.17
K 199482	Loose Nailing Machine # 2. Apply Heel Seat Trimming Attachment (Borden Type) Goddu & McKenzie	403.96	1076.71	1480.67
K 199487	Automatic Heel Loading & Attaching, "B". Changes to handle collar nails. B. F. Mayo.	166.54	451.15	617.69
K 199488	Loose Nailing Change # 8 Jack to make horn adjustable to different heights of Heel — as per sketch June 26 — 11. (X3027) Geo. Goddu.	2.63	50.66	53.29
K 199495	Universal Slugging Machine. Make one Jack as per sketch submitted by William Collette.	4.95	—	4.95
K 202306	McKay Rotary Trimmer. Redesign above to allow use of 4" cutters. John Standish.	11.88	428.07	439.95
K 202328	Monarch Counter Skiver. Side Gauges & Table. E. E. Lane	52.61	163.74	216.35
K 202333	Loose Nailer # 2. Adjustable Horn Yoke for Double Raceway. Geo. Goddu	8.16	157.35	165.51
K 202327	Staple Fastening Mch. "D". Equip one machine with special feed table mechanism. Jas. Brogan.	338.29	118.61	456.90

Order	Name	For the month of October	Previous	Total
K 202329	Velvet Box Toe Buffer. Make special dust guides for the above machine. (Order closed 10-3-11)			
	E. E. Lane.	13.36	102.48	115.84
K 202339	Premier Heel Pricking Construct one device for preventing heels from tipping. (Order closed 10-20-11)			
	Bliss & Lund	5.25	21.22	26.47
K 209202	Loose Nailing Machine. Guard Plate for protecting the soles of shoes.			
	Chas. Miner.	7.87	50.10	57.97
K 209209	Zig Slugger. Wire controlling Device.			
	L. A. Casgrain.	380.42	299.54	679.96
K 209212	Nail Trimming Machine, (Hyslop) Make improvements in the trimming mechanism.			
	Geo. Goddu.	35.20	——	35.20
K 209227	Loose Nailing Machine, # 2. Improved separator slide to be mounted on throat slide and run free from friction of head.			
	McKenzie & Goddu.	53.17	——	53.17
K 209234	Automatic Heel Loading, "B". Pneumatic Stop for Die Bed Spindle.			
	John Standish.	53.00	——	53.00
K 209236	Bresnahan Cam Levelling Machine. Changes for moulding box toes.			
	J. Brogan & T. Lund.	27.87	——	27.87
		20579.29	210567.95	231147.24

MISCELLANEOUS

Order	Name	For the month of October	Previous	Total
		20579.29	210567.95	231147.24
K 84	This order covers work for Patent Dept. consisting of making blueprint on any prints.	27.11	2103.04	2130.15
K 109934	Welt Butting & Tacking chine. Make one Welt Butting Machine fitted with Tacking mechanism & embodying the mechanism disclosed in the Winkley & Keyes Designs. Drawings, patterns and machine work.	774.26	13377.46	14151.72
K 141794	Campbell Cyclone Lock-stitch Mach. Rotary Thread Measuring Device for above machine. Drawing dated March 16, 1910			
	Topham	7.32	890.66	897.98
K 148726	Button Hole Sewing Machine. Make drawings of one machine, and preliminary changes.			
	G. S. Hill	1277.16	10002.13	11279.29
K 157387	Last Pulling Machine. Make one complete machine. Drawings, patterns and machine work.			
	B. F. Mayo	41.47	2813.60	2855.07
K 157389	Belt Shifting Device. Equip all machines with Belt Shifting Device. Drawings, patterns and machine work.			
	H. H. Eaton	80.20	3963.73	4043.93

Order	Name	For the month of October	Previous	Total
K 160782	Corner Counter Moulding Machine. Make drawings of a machine for moulding corners of counters to conform to the insole rib. Order closed Oct. 20, 1911.			
	M. Brock	1.62	282.92	284.54
K 165047	Tip Crimping. Make model of one machine, 1st model started Nov. 2, 1910. Drawings, patterns and machine work.			
	P. J. Wentworth.	136.10	923.84	1059.94
K 169682	Cam Developing. Drawings of one Cam Developing Machine using original Sketch & construct one Device.			
	E. E. Foster	222.67	2089.08	2311.75
K 169695	Automatic Stop Device. Make one complete to be used on various machines. See X2549. Drawings, patterns and machine work. Order closed 6-2-11.			
	L. E. Topham	141.88	12402.93	12544.81
K 174661	Pulling Over Machine. Preliminary Sketches of proposed changes of various parts of U.S.M.Co. P.O. & make assembly of same.			
	W. G. Stewart	17.03	2106.51	2123.54
K 174663	Imperial Heel Breasting. Make one adjustable Last Spindle for P.H.B. for Goodyear Work. Drawings, patterns and machine work.			
	L. A. Casgrain	191.70	379.91	571.70

Order	Name	For the month of October	Previous	Total
K 174678	Measuring. Drawings of 2 machines for measuring Irregular Areas & build one.			
	John J. Heys	480.83	2715.85	3196.68
K 174680	Heel Shaping Machine. Machine for shaping Heel of upper previous to assembling. Drawings, patterns and machine work.			
	M. Brock	200.27	1215.25	1415.52
K 174684	Insole. New method of making Heel Seats of Insoles. Drawings, patterns and machine work.			
	Jas. Brogan	82.91	250.83	333.74
K 174690	Wonder Worker Grinder. Modify present construction to provide for different U.S.M.Co. fixtures. Drawings, patterns and machine work.			
	G. F. Stewart	78.72	1744.49	1823.21
K 180268	Pieced Stay Machine. Make one machine. Drawings, patterns and machine work.			
	Frederick Anderson	174.73	4018.93	4193.66
K 184047	Lasting Machine. Make Toe Lasting Mechanism embodying a 3 part Clamping Device & a movable Jack. Drawings, patterns and machine work. Order closed 10/20/11			
	Eli Brothers	545.38	2081.46	2626.84
K 190041	Lubricating. Work on lubricating of various machines.			
	M. D. Phelan	66.42	1758.58	1825.00

Order	Name	For the month of October	Previous	Total
K 190042	Speed Balancing. Make machine for balancing machines at various speeds.			
	M. D. Phelan	46.70	686.26	732.96
K 193182	Royal Perforator. Changes for Embossing. Order closed 10/3/11.			
	W. A. Smith	113.20	499.54	612.74
K 193183	Shoe Rack. Make one Shoe Rack. Order closed 10/20/11			
	James Roach.	.83	256.43	257.26
K 193195	IVI Trade Marking. Make Improved Device for Marking IVI on D. T. Wire.			
	F. H. Perry	52.28	1586.89	1639.17
K 194750	Hand Pinking Mch. Equip machine with wheel for embossing Vamps. Order closed 10/3/11			
	W. A. Smith	.20	399.57	399.77
K 194765	Ideal Clicking Machine. Work on Cast Iron Die, also 6 sp. Dies for Clicking Mch. same to have converted edge. X3001.			
	Lynch.	101.68	348.41	450.09
K 194772	Button & Button Hole Locating Mch. Drawings of one machine. X3019.			
	Enslin	231.82	714.08	945.90
K 199485	Hand Lasting Pincers. Equip Pincers with Blade to gather the stock as the jaws are closed for Lasting pur-			

Order	Name	For the month of October	Previous	Total
	poses. X3020. Order closed 10-20-11.			
	M. Brock	1.66	61.80	63.46
K 202310	Stanborn Folding Mch. Apply work gage. X3054.			
	Joe Leary	9.88	15.39	25.27
K 202313	Cincinnati Milling Machine. Quick action chuck for holding cutter shank to spindle. X3058.	51.16	116.31	167.47
K 202318	Shoe Rack. Model of a Shoe Rack X3066			
	Jas. Brogan	90.37	39.35	129.72
K 202320	Toe Lasting Machine. Make 2nd design of Toe Lasting. 1st design made on X2869 X3068.			
	Eli Brothers	645.82	442.58	1088.40
K 202337	Alexander Oiler. Make technical tests & devise such means as may be necessary to gain the information sought. X3088.			
	Joe Reid	389.28	215.63	604.91
K 209192	Heel Scouring Machine. Make tests on grinding moulded boxes with Grafer & Emery Wheel.			
	O. Ashton	39.74	——	39.74
K 209219	Slug Cleaning Mch. Make a temporary device for testing the feasibility of making a machine which will properly clean slugs. X3109.			
	H. H. Eaton	9.00	——	9.00

Order	Name	For the month of October	Previous	Total
K 209243	Ultima Heel Trimmer & Cutter Grinder. Grinder for Grinding U. H. T. Cutters.			
	T. Lund & R. Simmons	3.31	——	3.31
		26914.09	281071.39	307985.48

Yours truly

UNITED SHOE MACHINERY COMPANY,

Experimental Department by Jas. Cavanaugh

DEFENDANTS' EXHIBIT 218.

[Put in Evidence, page 2979.]

COMPARISON OF EFFICIENCY OF LASTING DEPARTMENT MACHINES.

Machines under Lease:	Lasting Machines	Auxiliaries
March 1, 1900	4512	4503
March 1, 1911	7276	5499
Increased Percentage of Machines:		
1911 over 1900	61.2	35.6
Average Number of Pairs Operated upon per Machine in Calendar Year of		
1899	24,741	
1910	30,703	
Percentage of Increased Efficiency per Machine in Calendar Year of		
1910 over 1900	24	

COMPARISON OF EFFICIENCY OF HEELING DEPARTMENT MACHINES.

Machines under Lease:	Attaching Machines	Auxiliaries
March 1, 1900	1382	1180
March 1, 1911	2019	3160
Increased Percentage of Machines:		
1911 over 1900	46	167.8

Average Number of Pairs Operated upon per Machine in Calendar Year of	
1899	67,214
1910	109,142
Percentage of Increased Efficiency per Machine in Calendar Year of	
1910 over 1900	62.3

COMPARISON OF EFFICIENCY OF GOODYEAR DEPARTMENT MACHINES OF WELT SYSTEM.

Machines under Lease:	Welt Sewing	Outsole Stitching	Auxiliaries
March 1, 1900	853	1193	5561
March 1, 1911	1943	2676	13001
Increased Percentage of Machines:			
1911 over 1900	127.7	124.3	133.7
Average Number of Pairs Operated upon per Machine in Calendar Year of			
1899	26,612	19,960	
1910	44,380	33,847	
Percentage of Increased Efficiency per Machine in Calendar Year of			
1910 over 1900	66.7	69.5	

COMPARISON OF EFFICIENCY OF GOODYEAR DEPARTMENT MACHINES OF TURN SYSTEM.

Machines under Lease:	Sewing	Auxiliaries
March 1, 1900	485	1050
March 1, 1911	584	2539
Increased Percentage of Machines:		
1911 over 1900	20.4	141.8
Average Number of Pairs Operated upon per Machine in Calendar Year of		
1899	37,674	
1910	58,161	

Percentage of Increased Efficiency per Machine in Calendar Year of
1910 over 1900 54.3

DEFENDANTS' EXHIBIT 219.

[Put in Evidence, page 2006.]

A LIST OF THE VARIOUS STYLES OF MEN'S, WOMEN'S, MISSES', BOYS', YOUTHS', CHILDREN'S, LITTLE GENTS' AND INFANTS' SHOES.

A man's shoe may be manufactured in any one of the following styles:

Button — Whole Vamp or Seamless
" — Straight Fox & Vamps
" — Circular " " "
" — English Back Stay & Vamps
" — Circular Vamps
" — Oxford — Whole Vamps or Seamless
" " — Straight Foxing & Vamps
" " — Circular " " "
" " — " Vamps

Bal — Seamless Vamps
" — Straight Foxing & Vamp
" — Circular " " "
" — English Back Stay & Vamp
" — Circular Vamp

Oxford Lace — Seamless Vamps
" " — Straight Foxing & Vamps
" " — Circular " " "
" " — " Vamps

Blucher — Full Quarter & Vamps
" — Seamless Vamps
" — Straight Foxing & Vamps
" — Circular " " "

Blucher Oxford — Quarter and Vamp
" " — Seamless "
" " — Straight Foxing & Vamp
" " — Circular " " "

Congress — Seamless Vamps
" — Foxed Vamps
Creole — One Piece
" — Back & Front
Slipper — Vamp & Quarter
Pumps — One Piece
Boot — Front & Back (Long legged
Brogan — Vamp & Quarter
Outing Shoe — (Laced to tip of shoe)
Bare Foot Sandal
Bootee — Low Cut Boot
Napoleon — Boot
Cavalry — "
Cow Boy — "
Opera — "
Hunting Boot — (High Cut Blucher, Bellows tongue)
Marshall Congress
Romeo
Running Shoe
Golf Shoe
Skating Shoe

A woman's shoe may be manufactured in any one of the following styles:

Women's Ankle Ties — 2 Strap, 3 Strap } Quarters & Vamps
Women's Pumps — Full Seamless
Women's Oxford Lace Shoe — Seamless Vamp
Straight Foxing & Vamp
Circular Vamp
Women's Button Shoes — Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "
Circular Vamp
Women's Blucher Shoe — Full Quarter & Vamp
Seamless Vamp

¾ Seamless Vamp
Straight Foxing & Vamp
Circular " " "

Women's Polish Shoe — Full Quarters & Vamps
Sandals — 1 to 12 Straps made to button High Cut
Felt Juliets
Felt Slippers
Knitted Top House Slippers
Buskins
Cloth Top Congress
Cavalier
Button Oxfords — Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "
Circular Vamp

A misses' shoe may be manufactured in any one of the following styles:

Misses' Ankle Ties — 2 Strap — Quarters & Vamps
3 " — " " "
" Pumps — Full Seamless
" Oxford Button Shoe — Seamless Vamp
Straight Foxing & Vamp
Circular Vamp
¾ Seamless Vamp
" Oxford Lace Shoe — Seamless Vamp
Straight Foxing & Vamp
Circular " " "
" Blucher Shoe — Full Quarter & Vamp
Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "
" Button Shoe — Seamless Vamp
¾ " "
Straight Foxing & Vamp

Circular Straight Foxing & Vamp
Circular Vamp
Sandals with 1 to 12 Straps made to button High Cut
Felt Juliets
Felt Slippers
Knitted Top House Slippers
Buskins
Cloth Top Congress
Cavalier

A boy's shoe may be manufactured in any one of the following styles:

Boy's Bal Shoe — Seamless Vamp
Straight Foxing & Vamp
Circular " " "
" Vamp
English Back Stay & Vamp

Boy's Button Shoe — Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "
English Back Stay & Vamp
Circular Vamp

Boy's Blucher Shoe — Full Quarter & Vamp
Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "

Boy's High Cut Blucher Shoe — Full Quarter & Vamp
Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "

Boy's Lace Oxford Shoe — Seamless Vamp
Straight Foxing & Vamp
Circular " " "

Boy's Blu. Oxford Shoe — Quarters & Vamps

Outing Shoe — Laces to Tip of Shoe
Bare Foot Sandals — Full Vamp
Boys' & Youths' — Congress Shoe
Pump
Protection Cong. Buckle Fastening
Marshall Congress
Romeo
Bicycle Shoe
Running "
Golf "
Skating "
Long-Legged Boots (Copper toes)

A youth's shoe may be manufactured in any one of the following styles:

Bal — Seamless Vamp
Straight Foxing & Vamp
Circular " " "
Circular Vamp
English Back Stay & Vamp

Button — Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "
English Back Stay & Vamp
Circular Vamp

Blucher — Full Qrtrs. & Vamps
Seamless Vamp
¾ Seamless Vamp
Straight Foxing & Vamp
Circular " " "

Lace Oxford — Seamless Vamp
Straight Foxing & Vamp
Circular " " "

Blucher Oxford — Qrtrs. & Vamps

Oxford — Seamless Vamp
Straight Foxing & Vamp

Circular Foxing & Vamp
Circular Vamp

Boy's Button Oxford Shoe — Seamless Vamp
Straight Foxing & Vamp
Circular " " "
" Vamp

Boy's Outing Shoe — Laces to tip of shoe
Boy's Bare-Foot Sandals — Full Vamp
Boys' & Youths' — Congress Shoe
Pump
Protection Cong., Buckle Fastening.
Marshall Congress
Romeo
Bicycle Shoe
Running "
Golf "
Skating "
Long-Legged Boot (Copper Toes)

Children's shoes may be manufactured in any one of the following styles:

Children's Polish Shoe — Full Quarter & Vamp
" Button Shoe — Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "
Circular Vamp
" Blucher Shoe — Full Quarter & Vamp
Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "
" Tie — 2 Strap } Full Qtr. & Vamp
3 Strap }

Children's Tie — 1 Strap Tie, Full Vamp
" Sandal — Bare Foot Sandals

Little gents' shoes may be manufactured in any one of the following styles:

Polish Shoe — Full Quarter & Vamp
Button " — Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "
Circular Vamp
Blucher " Full Quarter & Vamp
Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " "
Tie 2 Strap, 3 Strap } Full Qtr. & Vamp
" 1 Strap Tie, Full Vamp
Sandal Bare Foot Sandal

An infant's shoe may be manufactured in any one of the following styles:

Lace — Seamless Vamp
" — Three-quarters Seamless Vamp
" — Straight Foxing & Vamp
" — Circular " " "
" — " Vamp
Button — Seamless Vamp
" — Three-quarters Seamless Vamp
" — Straight Fox & Vamp
" — Curved " " "
" — Circular Vamp

Ties
1-strap, 2- " , 3- " } Seamless Vamp Quarters & Vamp " " "

DEFENDANTS' EXHIBIT 220.

[Put in Evidence, page 2994.]

MEN'S SHOES ARE MADE:

Goodyear single sole and welt with
- Outsole stitched aloft all around.
- Outsole stitched aloft on forepart-channeled shank.
- Outsole stitched aloft on forepart and outside shank — inside shank channeled.
- Outsole channeled heel to heel.

Goodyear one-half double sole and welt with
- Outsole stitched aloft all around.
- Outsole stitched aloft on forepart — channeled shank.
- Outsole stitched aloft on forepart and outside shank — inside shank channeled.
- Outsole channeled heel to heel.

Goodyear full double sole and welt with
- Outsole stitched aloft all around.
- Outsole stitched aloft on forepart — channeled shank.
- Outsole stitched aloft on forepart and outside shank — inside shank channeled.
- Outsole channeled heel to heel.

McKay sewed with
- One-half double sole.
- One-half double sole Fairstitched.
- Full double sole.
- Full double sole Fairstitched.
- Single sole.
- (All of above sometimes made pegged heel seats.)

McKay or mock welt with
- Single sole and welt — channeled outsole.
- Double sole and welt — channeled outsole.
- Single sole and welt — stitched aloft.
- Double sole and welt — stitched aloft.
- (All of above sometimes made pegged heel seats.)

Standard Screw
  Surface nailed.
  Channel nailed.
  Channel nailed — Fairstitched.
  (All of above sometimes made pegged heel seats.)
Pegged with
  2 and 3 — rows pegging.
  One-half double and full double sole.
Staple lasted stitchdown with
  Nailed heel seats.
  Sewed heel seats.
Stitchdown with
  Nailed heel seat.
  Sewed heel seat.
Turned with
  Nailed heel seat.
  Sewed heel seat.
Loose-nailed with
  Surface nailed.
  Channel nailed.
  Channel nailed — Fairstitched.

BOYS' SHOES ARE MADE:

Goodyear single sole and welt with
  Outsole stitched aloft all around.
  Outsole stitched aloft on forepart — channeled shank.
  Outsole stitched aloft on forepart and outside shank — inside shank channeled.
  Outsole channeled heel to heel.
Goodyear one-half double sole and welt with
  Outsole stitched aloft all around.
  Outsole stitched aloft on forepart — channeled shank.
  Outsole stitched aloft on forepart and outside shank — inside shank channeled.
  Outsole channeled heel to heel.

Goodyear full double sole and welt with
- Outsole stitched aloft all around.
- Outsole stitched aloft on forepart — channeled shank.
- Outsole stitched aloft on forepart and outside shank — inside shank channeled.
- Outsole channeled heel to heel.

McKay sewed with
- One-half double sole.
- One-half double sole Fairstitched.
- Full double sole.
- Full double sole Fairstitched.
- Single sole.
- (All of above sometimes made pegged heel seats.)

McKay or mock welt with
- Single sole and welt — channeled outsole.
- Double sole and welt — channeled outsole.
- Single sole and welt — stitched aloft.
- Double sole and welt — stitched aloft.
- (All of above sometimes made pegged heel seats.)

Standard Screw
- Surface nailed.
- Channel nailed.
- Channel nailed — Fairstitched.
- (All of above sometimes made pegged heel seats.)

Pegged with
- 2 and 3-rows pegging.
- One-half double and full double sole.

Staple lasted stitchdown with
- Nailed heel seat.
- Sewed heel seat.

Stitchdown with
- Nailed heel seat.
- Sewed heel seat.

Turned with
- Nailed heel seat.
- Sewed heel seat.

Loose-nailed with
Surface nailed.
Channel nailed.
Channel nailed — Fairstitched.

YOUTHS' SHOES ARE MADE:

Goodyear single sole and welt with
Outsole stitched aloft all around.
Outsole stitched aloft on forepart — channeled shank.
Outsole stitched aloft on forepart and outside shank — inside shank channeled.
Outsole channeled heel to heel.
Goodyear one-half double sole and welt with
Outsole stitched aloft all around.
Outsole stitched aloft on forepart — channeled shank.
Outsole stitched aloft on forepart and outside shank — inside shank channeled.
Outsole channeled heel to heel.
Goodyear full double sole and welt with
Outsole stitched aloft all around.
Outsole stitched aloft on forepart — channeled shank.
Outsole stitched aloft on forepart and outside shank — inside shank channeled.
Outsole channeled heel to heel.
McKay sewed with
One-half double sole.
One-half double sole Fairstitched.
Full double sole.
Full double sole Fairstiched.
Single sole.
(All of above sometimes pegged heel seats.)
McKay or mock welt with
Single sole and welt — channeled outsole.
Double sole and welt — channeled outsole.
Double sole and welt — channeled outsole.
Single sole and welt — stitched aloft.

Double sole and welt — stitched aloft.
(All of above sometimes pegged heel seats.)
Standard Screw
Surface nailed.
Channel nailed.
Channel nailed — Fairstitched.
(All of above sometimes pegged heel seats.)
Pegged with
2- and 3- rows pegging.
One-half double and full double sole.
Staple lasted stitchdown with
Nailed heel seat.
Sewed heel seat.
Stitchdown with
Nailed heel seat.
Sewed heel seat.
Turned with
Nailed heel seat.
Sewed heel seat.
Loose-nailed with
Surface nailed.
Channel nailed.
Channel nailed — Fairstitched.

WOMEN'S SHOES ARE MADE:

Goodyear Single sole and welt with
Outsole stitched aloft all around.
Outsole stitched aloft on forepart — channeled shank.
Outsole stitched aloft on forepart and outside shank — inside shank channeled.
Outsole channeled heel to heel.
Goodyear one-half double sole and welt with
Outsole stitched aloft all around.
Outsole stitched aloft on forepart — channeled shank.
Outsole stitched aloft on forepart and outside shank — inside shank channeled.

Outsole channeled heel to heel.
Goodyear full double sole and welt with
Outsole stitched aloft all around.
Outsole stitched aloft on forepart — channeled shank.
Outsole stitched aloft on forepart and outside shank — inside shank channeled.
Outsole channeled heel to heel.
McKay sewed with
One-half double sole.
One-half double sole Fairstitched.
Full double sole.
Full double sole Fairstitched.
Single sole.
McKay or mock welt with
Single sole and welt — channeled outsole.
Double sole and welt — channeled outsole.
Single sole and welt — stitched aloft.
Double sole and welt — stitched aloft.
Standard screw
Surface nailed.
Channel nailed.
Channel nailed — Fairstitched.
Pegged with
2- and 3-rows pegging.
One-half double and full double sole.
Turned with
Full edge.
Thin edge.
Nailed seat.
Sewed seat.
Wood heels.
Stitchdown with
Nailed heel seat.
Sewed heel seat.

MISSES' SHOES ARE MADE:

Goodyear single sole and welt with
- Outsole stitched aloft all around.
- Outsole stitched aloft on forepart — channeled shank.
- Outsole stitched aloft on forepart and outside shank — inside shank channeled.
- Outsole channeled heel to heel.

Goodyear one-half double sole and welt with
- Outsole stitched aloft all around.
- Outsole stitched aloft on forepart — channeled shank.
- Outsole stitched aloft on forepart and outside shank — inside shank channeled.
- Outsole channeled heel to heel.

Goodyear full double sole and welt with
- Outsole stitched aloft all around.
- Outsole stitched aloft on forepart — channeled shank.
- Outsole stitched aloft on forepart and outside shank — inside shank channeled.
- Outsole channeled heel to heel.

McKay sewed with
- One-half double sole.
- One-half double sole Fairstitched.
- Full double sole.
- Full double sole Fairstitched.
- Single sole.

McKay or mock welt with
- Single sole and welt — channeled outsole.
- Double sole and welt — channeled outsole.
- Single sole and welt — stitched aloft.
- Double sole and welt — stitched aloft.

Standard screw
- Surface nailed.
- Channel nailed.
- Channel nailed — Fairstitched.

Pegged with

2- and 3-rows pegging.
One-half double and full double sole.
Turned with
Full edge.
Thin edge.
Nailed seat.
Sewed seat.
Wood heels.
Stitchdown with
Nailed heel seat.
Sewed heel seat.

CHILDREN'S SHOES ARE MADE:

Goodyear single sole and welt with
Spring heel — channel stitched.
Outside heel — aloft stitched.
McKay sewed with
One-half double sole.
Double sole — Fairstitched.
Turned with
Spring Heel.
Extension edge.
Underwedge.
Stitchdown with
Nailed heel seat.
Sewed heel seat.

DEFENDANTS' EXHIBIT 221.

[Put in Evidence, page 2996.]

MACHINERY, FINDINGS, AND SUPPLY DEALERS, ADVERTISING IN TRADE PAPERS, YEARS 1899, 1900, 1901 AND 1902 WHICH WE DID NOT PURCHASE.

American Electrical Heater Company, Detroit, Michigan — Tools
Arabol Manufacturing Company, New York — Cement Paste
Arnold, Wm. B., No. Abington, Mass.— Lasts
Atlas Tack Company, Taunton, Mass.— Findings
Baeder Adamson & Company, New York & Boston

Bartlett, Edwin E., Boston — Shoe Machinery
Beaudry, J. T., Marlboro, Mass.— Dies
Behrens, C., Alfeld a. d. Leine, Germany — Lasts
Belcher, Geo. E., Stoughton, Mass.— Lasts
Blake Pattern Company, Haverhill —
Brockton Folding Machine Company — Shoe Machinery
Brockton Last Company, Brockton —
Brockton Mallet Company, Brockton —
Buckley, Wm. C., New York — Goodyear Welting Manufacturers
Buzzell, & Company, J. G., Boston — Shoe Machinery
Carborundum Company, The, Niagara Falls, Boston — Carborundum
Dancel, C., New York — Shoe Machinery
Dow, F. Irving, Boston — Shoe Machinery
Dunbar & Company, W. L., Brockton — Patterns
Fallon, W. J., Boston — Findings
Farnsworth, Hoyt & Company, Boston — Eyelets
Flagg Mfg. Company, Boston — Shoe Machinery
Gale Bros., Quebec, Canada — Findings
Gardner, Thos. W., Lynn — Lasts
Gayner, I. P., Brockton, Mass.—Folded Leather Seam Stay, Piping and Binding
Globe Buffer Company, Boston — Shoe Machinery
Golbert, R. L., Worcester, Mass.— Lasts
Grey & Earle, Brockton, Mass.— Shoe Patterns
Haverhill Last Company — Lasts, Dies & Patterns
Hauthaway & Sons, C. L., Boston — Paste Cement
Hawkins, J. B., Boston, Mass.— Shoe Machinery
Holmes, Benj. E., Swampscott, Mass.— Knives
Holt & Co., J. S., Boston — Rebuilt Shoe Machinery
Ideal Flexible Insole Company, Boston —
Jones, Benj. R., Lynn — Needles
Kent & Smyth, Lynn — Dressings & Blackings
Knight & Co., Geo., Brockton, Mass.— Shoe Machinery
Libby, Justin P., Lynn, Mass.— Dressings & Blackings
Libby & Estes, Lynn, Mass.— Dressings & Blackings

Livingston & Doughty, Leicester, England — Shoe Machinery & Findings
Lockett Crimping Machine Company, Brockton
Loring Coes & Co., Worcester, Mass.— Splitting & Skiving Knives
Lufkin, R. H., Boston, Mass.— Shoe Machinery
Lynn Blacking Company, Lynn —
Magic Stain Company, Boston —
Mawhinney Last Company, Brockton, Mass.—
McCarter, J. G., Boston — Welting
Merriam, M. H., Boston — Welting
Merrick Sewing Machine Company, Boston —
Miller Company, Frank — New York — Dressing
Montgomery Last Company, The, Newark, N. J.
Morley Button Sewing Machine Company, Boston, Philadelphia & New York
National Shoe Finishing Company, Lynn, Mass.—
New England Blacking Company, Boston —
Paul's Sons, P. P., Philadelphia, Rochester, N. Y.— Shoe Patterns and Lasts
Peckham & Co., J. E., Boston — Wax
Peerless Laster Company, Boston, Mass.— Shoe Machinery
Peerless Machine Company, Boston, Mass.— Shoe Machinery
Perkins, Charles S., Brockton — Amazeen Knives
Pierce, C. S., Brockton —
Pope & Co., Arthur W., Boston, Findings
Puritan Mfg. Company, Boston — Shoe Machinery
Reece Buttonhole Machine Co., Boston —
Roarty, J. A., Boston & E. Weymouth — Findings
Rockland, Welting Company Rockland, Mass.— Welting
Sewing Machine Supplies Co., Boston —"Baby" Checking Crayons
Shoe Mfgrs' Supplies Company, New York — Shoe Covers
Smith & Dove Mfg. Co., Andover, Mass.— Findings
Standard Shoe Machinery Company, Boston —
Standard Shoe Tying Machine Company, Boston —
Stewart Bros., Lynn — Shoe Machinery
Stewart, W. C., Lynn — Shoe Machinery

Stevens, & Company, F. M., Boston — Blades, Cutters, etc.
Tackless Shoe Machinery Co., Boston, Mass.
Thurber & Wade, Brockton, Mass.— Dressing, Inks
Tripp Giant Leveler Company, Lynn — Shoe Machinery
Union Edge Setter Company, Boston, Mass.— Shoe Machinery
Union Special Sewing Machine, Chicago, New York, Boston & Philadelphia
Western Stain & Dressing Co., Elgin, Ill.— Dressings & Blackings
Wheeler & Cummings, Boston — Shoe Patterns
Wheeler & Wilson Mfg. Co., Bridgeport, Ct.— Shoe Machinery
Whitcher & Company, Frank W., Boston — Laces, Hooks, Eyelets
Worcester Pattern Company, Worcester, Mass.
Young & Sons, John D., Boston — Shoe Mfrs. Goods
Young, W. J., Lynn, Mass.— Shoe Machinery

DEFENDANTS' EXHIBIT 222.

[Put in Evidence, page 2998]

"A" VOLUME — EXPERIMENTAL.

Mr. S. W. Winslow:

IDEAS, SUGGESTIONS AND INVENTIONS SUBMITTED TO THE EXPERIMENTAL DEPARTMENT OF THE UNITED SHOE MACHINERY COMPANY FROM JUNE 23, 1904, TO DECEMBER 12, 1911, BY PERSONS OTHER THAN THOSE EMPLOYED BY THE UNITED COMPANY AS INVENTORS, WHICH IDEAS, SUGGESTIONS AND INVENTIONS HAVE NOT BEEN PURCHASED OR ACQUIRED BY THE UNITED COMPANY.

From June 23, 1904, to December 12, 1911, there was submitted to the Experimental Department of the United Shoe Machinery Company by persons other than inventors employed by the United Company, 493 suggestions and inventions which were not purchased or acquired by the United Company. Of the 493 cases 378 were submitted by persons not employed by the Company in any capacity; 115 were submitted by persons in the employ of the United Company, but not employed as inventors.

These ideas, suggestions and inventions have been submitted to us without solicitation on our part. They cover a very wide range

DEFENDANTS' EXHIBIT 221 A.

[Put in Evidence, page .]

MACHINERY, FINDINGS AND SUPPLY DEALERS, ADVERTISING IN TRADE PAPERS, YEARS 1899, 1900, 1901 AND 1902 WHICH WE DID NOT PURCHASE.

American Electrical Heater Company, Detroit, Michigan — Tools (in business)

Arabol Manufacturing Company, New York — Cement Paste (in business)

Arnold, Wm. B., No. Abington, Mass.— Lasts (in business)

Atlas Tack Company, Taunton, Mass.— Findings

Baeder, Adamson & Company, New York and Boston

Bartlett, Edwin E., Boston — Shoe Machinery (not in business)

Beaudry, J. T., Marlboro, Mass.— Dies (in business)

Behrens, C., Alfeld a.d. Leine, Germany — Lasts (in business)

Belcher, Geo. E., Stoughton, Mass.— Lasts (in business)

Blake Pattern Company, Haverhill (not in business)

Brockton Folding Machine Company — Shoe Machinery (not in business)

Brockton Last Company, Brockton (in business)

Brockton Mallet Company, Brockton (in business)

Buckley, Wm. C., New York — Goodyear Welting Manufacturers (in business)

Buzzell & Company, J. G., Boston — Shoe Machinery

Carborundum Company, The, Niagara Falls, Boston — Carborundum

Dancel, C., New York — Shoe Machinery (not in business)

Dow, F. Irving, Boston — Shoe Machinery (not in business)

Dunbar & Company, W. L., Brockton — Patterns (in business)

Fallon, W. J., Boston — Findings (in business)

Farnsworth, Hoyt & Company, Boston — Eyelets (in business)

Flagg Mfg. Company, Boston — Shoe Machinery

Gale Bros., Quebec, Canada — Findings (in business)

Gardner, Thos. W., Lynn — Lasts (in business)

Gayner, I. P., Brockton, Mass.— Folded Leather Seam Stay, Piping and Binding (not in business)

Globe Buffer Company, Boston — Shoe Machinery

Golbert, R. L., Worcester, Mass.— Lasts (in business as Golbert Last Co.)

Grey & Earle, Brockton, Mass.— Shoe Patterns (in business as Earle Pat. Co.)

Haverhill Last Company — Lasts, Dies & Patterns (not in business)

Hauthaway & Sons, C. L., Boston — Paste Cement

Hawkins, J. B., Boston, Mass.— Shoe Machinery (not in business)

Holmes, Benj. E., Swampscott, Mass.— Knives (in business)

Holt & Co., J. S., Boston — Rebuilt Shoe Machinery (in business)

Ideal Flexible Insole Company, Boston — (not in business)

Jones, Benj. R., Lynn — Needles (not in business)

Kent & Smyth, Lynn — Dressings & Blackings (in business)

Knight & Co., Geo., Brockton, Mass.— Shoe Machinery

Libby, Justin P., Lynn, Mass.— Dressings & Blackings (not in business)

Libby & Estes, Lynn, Mass.— Dressings & Blackings (not in business)

Livingston & Doughty, Leicester, England — Shoe Machinery & Findings (in business)

Lockett Crimping Machine Company, Brockton

Loring Coes & Co., Worcester, Mass.— Splitting & Skiving Knives (in business)

Lufkin, R. H., Boston, Mass.— Shoe Machinery (in business)

Lynn Blacking Company, Lynn (in business)

Magic Stain Company, Boston (not in business)

Mawhinney Last Company, Brockton, Mass.— (in business)

McCarter, J. G., Boston — Welting (in business)

Merriam, M. H., Boston — Welting (in business)

Merrick Sewing Machine Company — Boston

Miller Company, Frank, New York — Dressing (in business)

Montgomery Last Company, The, Newark, N. J. (not in business)

Morley Button Sewing Machine Company, Boston, Philadelphia & New York

National Shoe Finishing Company, Lynn, Mass. (in business)

New England Blacking Company, Boston (in business)

Paul's Sons, P. P., Philadelphia, Rochester, N. Y.— Shoe Patterns and Lasts (in business)

Peckham & Co., J. E., Boston — Wax (in business)
Peerless Laster Company, Boston, Mass.— Shoe Machinery (not in business)
Peerless Machine Company, Boston, Mass.— Shoe Machinery
Perkins, Charles S., Brockton — Amazeen Knives (in business)
Pierce, C. S., Brockton (in business)
Pope & Co., Arthur W., Boston — Findings (in bankruptcy)
Puritan Mfg. Co., Boston — Shoe Machinery
Reece Buttonhole Machine Co., Boston
Roarty, J. A., Boston & E. Weymouth — Findings (in business)
Rockland Welting Company, Rockland, Mass.— Welting (in business)
Sewing Machine Supplies Company, Boston —"Baby" Checking Crayons (in business)
Shoe Mfrs. Supplies Company, New York — Shoe Covers (in business)
Smith & Dove Mfg. Co., Andover, Mass.— Findings (in business)
Standard Shoe Machinery Company, Boston (not in business)
Standard Shoe Tying Machine Co., Boston (in business)
Stewart Bros., Lynn — Shoe Machinery (in business)
Stewart, W. C., Lynn — Shoe Machinery (not in business)
Stevens & Co., F. M., Boston — Blades, Cutters, etc. (not in business)
Tackless Shoe Machinery Company, Boston, Mass. (not in business)
Thurber & Wade, Brockton, Mass.— Dressings, Inks (in business)
Tripp Giant Leveler Company, Lynn — Shoe Machinery
Union Edge Setter Company, Boston, Mass.— Shoe Machinery
Union Special Sewing Machine, Chicago, New York, Boston & Philadelphia (in business)
Western Stain & Dressing Co., Elgin, Ill.— Dressings & Blackings (in business)
Wheeler & Cummings, Boston — Shoe Patterns (in business)
Wheeler & Wilson Mfg. Co., Bridgeport, Ct.— Shoe Machinery
Whitcher & Company, Frank W., Boston — Laces, Hooks, Eyelets (in business)
Worcester Pattern Company, Worcester, Mass. (not in business)
Young & Sons, John D., Boston — Shoe Mfrs. Goods (in business)
Young, W. J., Lynn, Mass.— Shoe Machinery

from the simplest device to intricate and complex mechanisms of automatic machinery. They have been submitted in the shape of verbal suggestions, sketches, models, and in some cases completed machines. Each case has had careful investigation by the Experimental Department. A very large percentage of the ideas have been submitted to the Patent Department of the United Shoe Machinery Company for their opinion, and very many have been gone over in conference by the Experimental Department, the Patent Department, and the Commercial Department which each particular idea, suggestion or invention would affect.

EXPERIMENTAL DEPARTMENT,
By JAS. CAVANAGH.

JC-JM

Name	Address	Date	Device
Gilman, Dan'l	Exeter, N. H.	Apr. 27, 1905	Auto. Heel Trimming & Burnishing Machine
Beadle, G. W.	450 Summer St., W. Lynn, Mass.	Sept. 1, 1905	Elec. Heated Welt and Turn Mach.
Borden, Wm. H.	Winchester, Mass.	Apr. 18, 1905	Springs — for Loose Nailer
Tower Bros.		May 12, 1905	Heel Finishing Mch.
Lindenberg, M. F.	Sweden	Aug. 2, 1904	
Houghtaling, Mr.		Oct. 21, 1904	Friction Clutch Mod.
Delaney, H. J.	22 Cedar St., Nashua, N. H.	Jan. 18, 1905	Lasting Machine
Wilbur, H. J.		Sept. 14, 1905	Spindles on Rapid Standard Screw Mch.
Eldridge, Henry	Rochester	Apr. 21, 1905	Heel Building Mch.
Kenney, Mr.	Brockton Office	July 17, 1905	Twin Sole Moulder
Clark		Sept. 16, 1905	Channeling Rounding & Leveling Machine
Leahy, Mr.	Neptune St., W. Lynn, Mass.	Mar. 16, 1905	Electrical Heating Device for Gdyr. Machine
Whitcomb	Haverhill, Mass.	May 16, 1905	
Welch & Landregan	Lynn	Mar. 17, 1905	Insole
Bond, Mr.		July 27, 1904	Feeding Device
Ball, Mr.	So. Braintree	Jan. 28, 1905	Tripping Device
Hanan, Mr.	Lynnfield	Oct. 17, 1909	Two Thread ?
Jarvis, Mr.	Boston	Aug. 22, 1904	Foot Power Machine to Cut Rands
Kelley, Supt.	Milford S. Fy.	Nov. 17, 1904	Device for Drawing out Tacks, which holds the Insole to Last on Gdyr. Welt Shoes while being sewed.

Name	Address	Date	Device
Siers, Tony	Marsluff S. Co.	Oct. 25, 1904	Thread Fingers for Welt & Turn Machine
Fulcher's, W. H.		Oct. 17, 1904	Clutch
Operator	C. H. Moulton's Fy., Lynnfield, Mass.	Sept. 15, 1904	Device to carry two threads to the Turn Shoe Sewing Mch.
Larket, Mr.		June 23, 1904	
Pease, Mr.		Aug. 24, 1904	Special Self-Adjust Spring Heel Rest
Pope, I. H.	Winchester, Mass.	Jan. 27, 1905	Combination Tap Trimming & Impression Stitch Device
Pinkham, Mr.		Aug. 30, 1905	Bench Turning Mach. for Turning Turned Shoes.
C. K. Fox's Fcty.	Haverhill, Mass.	Oct. 17, 1904	Heeling Machine
Tapley, R. P.	Haverhill, Mass.	Sept. 23, 1905	Self-Locking Nut to a Bolt
Frost, Mr.	Lynn, Mass.	Sept. 23, 1905	Condensing of Top Pieces
Williams, Mr.		Sept. 20, 1905	Feed Rolls Skiving Machine
Machinist (Timothy McKinney)	Newport Shoe	Aug. 8, 1905	Gauge to Lay Soles
Perri, A.	10 Myrtle St., Haverhill, Mass.	Dec. 9, 1904	Machine for Heeling and Slugging
Hayden, J. C.	Brockton	July 29, 1905	Heel Building, Pasting, Gouging, Stacking, Distributing and Delivering Mach.
Cavanagh, J., Jr.	Boston, Mass.	May 9, 1907	Pneumatic Buffing Roll
LaChapelle, E.		Nov. 8, 1906	Shoe Repairing Method or Process Relating to the Welt Outsole Stitching Operation, in the Repairing of Boots and Shoes
Brogan, M. F.	Beverly	Apr. 13, 1907	False Welt Attachment for Gdyr. Rapid Stitcher (Docket No. X-1179)
Lamkin, J. A.	Lynn	Oct. 27, 1906	Tack Saving Mach.
Alley, F.	Boston	Sept 21, 1907	Device for Welter
Harlow, Mr.	Hudson	Nov. 9, 1904	Device for Heeling Machine for Getting Nails Quicker
Raymond, Mr.	Brockton, Mass.	May 11, 1905	Lining Cementing Mach.
Howe, Elmer P.	?	Aug. 23, 1904	Cementing Mach.
Gordon, Mr.	Lynn Office	Aug. 23, 1904	Cementing Mach.
?	?	June 23, 1904	Toe Tip Measure
De Varney, H. J.	22 Cedar St.	Jan. 17, 1905	Spring Adjusting Device for the Hand Method Lasting Machine

Name	Address	Date	Device
Sinclair, Mr.	?	Oct. 7, 1904	Gear on the Planet Sole Rounder
Homan, A. B.	Lynnfield, Mass.	Oct. 21, 1904	Two Thread Attachment for Welt Machine
Harlow, Mr.	c/o Knott & Pope Co., Hudson, Mass.	Nov. 2, 1904	Device for Heeling Machine
Eppler, Henry	?	Aug. 4, 1904	Looper for Eppler Welt & Turn Machine
Operator	C. H. Moulton's	Sept. 23, 1904	Two Tension Device
?	?	Oct. 1, 1904	Clutch Mechanism
Bowen, Mr.	?	Nov. 14, 1907	?
Small, C. C.	?	Nov. 3, 1904	Counter Moulding Machine
Howe, Mr.	Auburn, Me.	Oct. 7, 1907	New Hinge Last; also Thimble for same
Esselen, H.	Boston	Dec. 8, 1905	Nail Swaging and Heading Machine
Howe, Henry E.	Auburn	Oct. 30, 1907	Last Hinge & Bushing
William, H. A.	?	Nov. 3, 1904	Machine for Making Steel Balls
Winkley, E. E.		May 10, 1906	Baltimore Edge Attachment for Rapid Stitcher
Crapeau, Mr.	Haverhill	Jan. 23, 1905	Machine for Making Pieced Taps
Bazzoni, L. Z.	Swampscott	Sept. 7, 1907	Heel Rounder
Bond, W. A.	Beverly	Apr. 6, 1906	Shoe Feeding Device
Winchester, J. D. and Greenlaw, C. W.	?	Apr. 2, 1906	Last
Willis, Martin	Geo. E. Keith, Brockton	July 22, 1907	Ground Cork Mixture used for filling the bottom of Goodyear Welt Shoes
Lane, E. E.	?	July 29, 1907	Machine for Nicking Shoulder of Innersoles
?	?	Oct. 13, 1904	Spindle Adjusting and Locking Device for the Hercules Leveler
Prindel, Edw. J.		Sept. 13, 1905	Chain Stitch Sewing Machine
Kourian	?	Nov. 27, 1907	Combination Hand Pincers and Pinking Device
Lane, E. E.	?	Oct. 18, 1907	Improved Form of Sectional Feed Roll for use on Skiving Machine
Lane, E. E.	?	Oct. 18, 1907	Tandem Counter Skiving Machine
Lane, E. E.	?	Oct. 18, 1907	Leather Splitting & Grading Machine

Name	Address	Date	Device
Daniels, Dan		Apr. 29, 1907	Improvements in Leather Skiving Machine
LaChapelle, Mr.		Dec. 17, 1906	Tack Pot for Hand Method Lasting Machine
Wolfe, Geo.		Dec. 7, 1906	Edge Gage for Goodyear Channeler
Beadle		Apr. 25, 1906	Electro-Magnetic Sole Pressing Machine
Small, W. E.	Garside Factory, New York, N. Y.	July 22, 1907	Rounding and Channeling Machine
Smith, F. J.	Brockton	Feb. 9, 1905	Improvements on the No. 4 Compressor
Cavanagh, Mr.	Boston	July 3, 1907	Supporting Slide and Driving Bar Stop Device
Schutx, C. F.	Milwaukee, Wis.	Sept. 15, 1904	Leveling Machines
Brown, A. H.	Lynn	Sept 19, 1907	Hook for Lace Shoes
Lane, E. E.	Stoughton	Nov. 30, 1907	Three Point Outer Sole Splitter
Whitcomb, H. L.	Nashua	May 29, 1907	?
Brewer, A. G.	?	July 19, 1906	Welt Slashing Machine
Gillespie	Boston	Sept. 17, 1909	Ball Twin Direct Pressure Sole Leveler
Gordon, Wm.	Boston	Aug. 22, 1904	Device on Consolidated Lasting Machine
LaChapelle		May 15, 1907	Turn Shoe Leveling Machine
Small, W. E. & R. Campbell	?	Mar. 6, 1907	Shoe Sole Trimming & Channeling Machine
Reilly, John W.	?	Jan. 9, 1907	Inseam Trimming Machine
Riel, Geo.	?	Oct. 16, 1906	Welt Sewing Attachment for the Puritan Sewing Machine
Gillespie	Boston	Sept. 19, 1906	Heel Clamp for the Hercules Leveler
Fish, Mr.	?	June 28, 1906	Improvements in Sewing Machines
Reilly, J. J.	Stoneham	Dec. 27, 1906	Inseam Trimming Machine
Easelen, H. M.	Boston	July 20, 1906	Nail Marking Machine
Beck, Wm.	St. Paul	May 17, 1906	Shoe Construction
Bevinie, D. W.?	New York	Feb. 15, 1906	Machine for Sorting Toplifts
Collyer, Wm. C.	Reading, Mass.	Aug. 29, 1906	Leveling Machine
Morse, Mr.	Cincinnati Office	Nov. 21, 1905	Spring Pins
Dow, J. L.	Haverhill Office	Sept. 14, 1905	Welt Pulling Device
Merrithew, L. A.	Milford, Mass.	Feb. 19, 1906	Feed Wheel for Rand Turning Machine

Name	Address	Date	Device
Murphy, Mr.	c/o John O'Connell & Sons Co., Marlboro, Mass.	Mar. 17, 1906	Device for McKay Sewing Machine
Whiting, J. N.	659 Liberty St., Rockland, Mass.	Oct. 12, 1906	Shank Marking Device
Stewart, Wm.	?	June 16, 1906	Auto. Counter Moulding Machine
Krohn, Mr.	c/o Krohn, Fechheimer & Co.	June 16, 1906	Several Devices see letter from Mr. W.C.W. to Mr. B.F.M.
Brewer, A. G.	Natick, Mass.	Mar. 2, 1906	Welt Slasher
Stewart	Lancaster	June 7, 1906	Moulding Machine
Shaw, Linus	?	May 15, 1906	Glue
Operator	Regal Shoe Co.	Mar. 17, 1906	Pasting Device
Hooker	Cincinnati	Mar. 21, 1906	?
Haverhill Office		Feb. 9, 1906	Improvement in the Cover for the Wax Pot upon the Goodyear Bobbin Winder
Pinkham	Haverhill	July 27, 1905	Turning Iron
Parkin ,James	?	Oct. 31, 1905	Sole Cutting Machine
Ashton	Boston Office	Apr. 13, 1909	Clicking Press
Adams, W. E.	14 Hardy St., Salem, Mass.	Jan. 29, 1910	Direct Pressure Leveler
Adams, George H.	19 Broad St. Pl., Lynn, Mass.	Dec. 31, 1910	Device to Punch out Paste and Fold Composition Heels
Ashman, Walter	#3 Sampson St., Spencer, Mass.	Feb. 21, 1911	Planing Device for Clicking Press Block
Adams, Geo. H.	19 Broad St. Pl., Lynn, Mass.	Apr. 19, 1911	Mach. to Form Heels from Leatherboard Stock
Bobstetter, H. A.	Portsmouth, O.	Feb. 14, 1908	Edge Setting Iron
Brogan, James	Boston Office	June 23, 1908	Automatic Swing of Arm
Barton	c/o Marston & Brooks, Danvers, Mass.	July 28, 1908	Tack Stopping Device — C.H.M. Laster
Bond	Beverly Office	Sept. 4, 1908	Stitched-Down Laster
Bond, Mr.	Beverly Office	Oct. 10, 1908	Continuous Welt
Brogan, James	Boston Office	Oct. 10, 1908	Device on Welter to Support Insole Shoulder
Baldwin, W. E.	Chicago, Ill.	Nov. 16, 1908	Shoe Creasing Machine
Beckman, F. E.	Haverhill, Mass.	Mar. 16, 1909	Welt Beater and Inseam Trimmer
Brogan, M. F.	Boston Office	Dec. 29, 1908	Tag Holder Clicking Pres
Burns, Robert	Brockton Office	Dec. 30, 1908	Scraper for Ideal Clicking Machine Block
Beckman, Frank		Mar. 19, 1909	Channel Guide Lever
Bergstron		Apr. 5, 1909	Pulling back the Welt in the Gdyr. Welter

Name	Address	Date	Device
Brogan, M. F.	20 Avon St., Lawrence, Mass.	Oct. 16, 1909	Horn Release
Bassett, Chas. E.	Wethersfield, Ct.	May 24, 1910	Means for Holding Insole Tacks
Bush, Charles		June 15, 1910	Cement Receptacle
Buchanan, B. G.	Ashland, Wis.	Oct. 20, 1910	Device for Shoe Laces
Batterson, Arthur B.	87 E. 18th St., Portsmouth, O.	Oct. 27, 1910	Clicking Press Planing Device
Brogan, M. F.	Boston, Mass.	Dec. 20, 1910	Clamp for Temporarily Holding Wood Heels
Brumett, H. H.	14 Maple St., Natick, Mass.	Jan. 10, 1911	No-Slip Pulley Cement
Barton,	c/o Packard, Marston & Brooks, Danvers, Mass.	Mar. 13, 1911	Stopping Device for Consolidated Lasting
Bowe, D. W.	Van Wirt, O.	Mar. 11, 1911	Lacing Device
Boynton, Jos. J.	Bartow, Fla.	Mar. 23, 1911	Shoe Fastener
Boswell, F. G.	Boston, Mass.	Apr. 12, 1911	Waxing Device for Sewing Machines
Cheesman, G. R.	Auburn, N. Y.	Feb. 12, 1908	Welt Machine
Champine, F. L.		June 23, 1908	Edge Trimming Machine
Corrow, Thomas	Lynn, Mass.	Aug. 28, 1908	Feeding Mechanism for Rounder & Channeler
Clark, J. H.	No. Marshfield, Mass.	Oct. 5, 1908	Heeling Machine
Condon, Mr.	Brockton, Mass.	Mar. 3, 1909	Goodyear Insole
Canty, Michael		Sept. 14, 1909	Counter Skiving Machine
Clark, Geo. H.	Allston, Mass.	Jan. 11, 1910	Stitchdown Shoe
Charpentier, Philip	Auburn, Me.	Jan. 15, 1910	Heel Scouring Machine
Curry, C. I.	Lock Box 834, Otsego, Mich.	May 16, 1910	Shoe Lace Device
Clark, J. H.		May 17, 1910	Lacing Stud
Cook, Irving A.	Lancaster, O.	June 20, 1910	Shoe Last
Coudreau, Mr.	France	July 1, 1910	Innersole
Carle,	58 Tree St., Portland, Me.	July 13, 1910	Guard for Rapid Outsole Stitcher
Cloutier, Sam	174 Lincoln St., Auburn, Me.	Aug. 3, 1910	Metallic Lacing Device
Ciccone, R. P.	Lancaster, Pa.	Sept. 12, 1910	Cobblers' Repair Last
Collins, J. E.	298 Cabot St., Beverly, Mass.	Dec. 28, 1910	Oiling Device; also Pneumatic Tire Protection
Clark, H. E.	Accord, Mass.	Jan., 1911	Shoe Upper Spreading Device
Cummings, H. H.	Boston, Mass.	Mar. 6, 1911	Nailing Machine
Collins, A. A.		Mar. 27, 1911	Preparing Spring Heel Soles
Dennison, Wm.	826 Canal St., New Orleans, La.	Dec. 7, 1908	Beveling Shank Machine

Name	Address	Date	Device
Deizile,	P. O. Box 55, Stillwater, Minn.	July 12, 1909	Bed Lasting Machine
Dennison, Wm.	Canal St., New Orleans, La.	Oct. 20, 1909	Tap Scarfing Machine
Durette, Frank	c/o J. B. Reed & Co., Manchester,	June 16, 1910 N. H.	Fudge Knife Attachment
Daggett, James	Wyman St., Stoughton	Oct. 28, 1910	Adhesive for Canvas Coating Material
Dufour, Chas.	25 Washington St., Boston, Mass.	Nov. 27, 1910	Hide Washing Machine
Damon, Walter H.	68 Park Rd., Brockton, Mass.	Jan. 3, 1911	Edge Trimmer
Duncan, Wm. J.	Wardner, Idaho	Mar. 28, 1911	Ventilated Shoe
Dahlhaus, E. A.	c/o A.M. Capen Sons, 60 Pearl St., New York City	Apr. 22, 1911	Shoe Fastening Device
Engelking, Otto C.	Glenrock, Wyo.	Nov. 16, 1909	Steel Heel Plate
Elliot, Hugh		Jan. 29, 1910	Scrap Saving apron
Fletcher, Ira	Brockton, Mass.	June 20, 1908	Jointing Mach.
Fish, Chas. H.	65 Johnson St., Lynn, Mass.	Sept. 30, 1908	Attachment for Channeling Mch.
Frederick, S. B.		Jan. 26, 1909	Needle Clamp, Rapid Outsole Stitcher
Fowle, H. J.	Ferry Rd., Newburyport, Mass.	Mar. 25, 1909	Sole Splitting Machine
Foley & Crowley,		Oct. 12, 1909	Shoe Vamp Protecting Guard
Felix, Robert L.	135 Mechanic St., Marlboro, Mass.	Dec. 19, 1910	Top Trimming & Power Snipping Machine
Ferron, M. L.	Marlboro Office	Feb. 13, 1911	Shuttle Case
Frost, James R.		Mar. 16, 1911	Buttonhole Stay
Gilbert, Chas.	Haverhill, Mass.	Dec. 17, 1907	Attachment on Duplessis Turn Sewing Machine
Goodell, John	114 W. Newton St.	July 10, 1908	Gauge Eyeleting Machine
Gordon, Mr. Wm.		Aug. 11, 1908	Friction Drive Heel Scourer
Gifford, Harry E.	Box 672, Providence, R. I.	Oct. 15, 1908	Block Planing Device
Guyral, B.	Box 386, Rayne, La.	Mar. 25, 1910	Metallic Toe Protector
Gregoire, G.	Southbridge, Mass.	Oct. 6, 1910	Channeling Machine
Gorsuch, George	Rochester, N. Y.	Feb. 5, 1911	Tack Pulling Machine
Henderson, A. F.	Middletown, Mass.	June 9, 1908	Hinged Lasts
Holtze, John L.	Elmira, Ont.	Nov. 27, 1908	Guard for Heel Scouring Wheel
Hutchinson, R.	258 Chestnut Ave., Kingston, Pa.	June 9, 1909	Metallic Tip for Shoes

Name	Address	Date	Device
Hellwig, A. C. H.	24 Hancock St., Boston, Mass.	Aug. 10, 1909	Adjustable Press
Haag,		Jan. 6, 1910	Rubber Heel Cushion
Hanson, W. F.	16 School St., Lynn, Mass.	Feb. 1, 1910	Button Finishing Machine
Haley, J. W.	Milford, Me.	May 3, 1910	Lacing Hook
Hopkins, A. B.	980 Main St., Melrose Hlds., Mass.	May 10, 1910	Forepart Trimming Machine
Hakes, A. W.	Milbury, Mass.	May 17, 1910	Wire Heddle
Harriman, Jr., J. E.		Nov. 18, 1910	Edge Setting & Edge Blocking
Hardesty, J. W.	1565 E. 52nd St., Los Angeles, Cal.	Dec. 19, 1910	Expanding Gusset
Hasbrouck, R. V.	41 Chestnut St., Rochester, N. Y.	Jan. 22, 1911	Clicking Press Block & Planer
Hopkins, A. B.	786 Main St., Melrose Hlds., Mass.	Jan. 23, 1911	Steam Fitter's Vise
Harris, Sam'l B.	Myton, Utah	Mar. 17, 1911	Shoe Fastener
Jones,	Salem, Mass.	Sept. 12, 1908	Upper Leather Cutting Machine
Joynt,	St. Louis, Mo.	Jan.26, 1909	Pneumatic Tacker
Johnson, Albert	Boston, Mass.	July 5, 1910	Economy Channelers with Heating Device
Jordan, J. J.	Lynn, Mass.	Feb. 20, 1911	Lacing Hook
Jackson, James E.	Lynn, Mass.	Mar. 6, 1911	String Puller Channeling Machine
Kirk, B. F.	Lenox Shoe Co., Philadelphia, Pa.	Apr. 24, 1909	Universal Turn Channeling Machine
Kennedy, Chas. T.	Brockton, Mass.	Jan. 18, 1910	Oscillating Motion Ironing Machine
Keefe, J. T.	Bellows Falls, Vt.	Apr. 8, 1910	Imp. on Stitching Machine
Krange, John L.	1884 Farnham St., Omaha, Neb.	Feb. 9, 1911	Staple Making and Setting Machine
Kerns, F. A.	Rochester, N. Y.	Apr. 15, 1911	Groover & Beveler
LaChappelle, E. I.		Jan. 6, 1908	Insole Flexible Machine
LaChappelle, E. I.	45 Roundy St., Beverly, Mass.	Oct. 27, 1908	Automatic Locking Device
Labelle, Phil.	c/o H. H. Gray's Sons, Syracuse, N. Y.	Apr. 10, 1909	Apron to Protect Shank of Shoe — also Fudge Knife
Larouche,		Sept. 27, 1909	Bobbin Case for R. O. S.
Leslie, B. S.		Nov. 16, 1909	Horn Release
Lacourt, Peter		Nov. 10, 1910	Edge Blocker and Trimming Machine
Leechman, J. A.	LaFayette, Ind.	Dec. 16, 1910	Shoe Lacing Device
Lochman, E. R.	St. Paul, Minn.	Feb. 2, 1911	Cutting & Carving Machine

Name	Address	Date	Device
McFarland, W. J.		Jan. 1, 1908	Filling Insoles Reinforced with Canvas
Morrisey, Wm. A.	19 Averill St., Lynn, Mass.	May 27, 1908	Last
McIsaacs,	Weymouth	Dec. 9, 1908	Welt Guide
Musso, C. W.		Jan. 1, 1909	Sole Rounding Machine
McFarland, Mr.	Boston Office	Jan. 28, 1909	Single Face Clicking Press Block
Miller, H. B.	Boston Office	Apr. 30, 1909	Clutch Device
Merrick, C. H.	127 High St., Haverhill, Mass.	Dec. 11, 1909	Hand Pincer Knife Clamping Device
Moore, Wm.	Brooklyn, N. Y.	Jan. 4, 1910	Edge Burnishing Machine
McIntyre, A. A.	816 Broadway, Camden, N. J.	Feb. 9, 1910	Rolling Machine for Soles
Moraney, Jos. M.	2120 Walnut St., St. Josepb, Mo.	Mar. 30, 1910	Insole Wetting Machine
Milliken, Frank	Auburn, N. Y.	June 6, 1910	Marking & Spacing Buttonhole Device
Mills & Scott,		Sept. 23, 1910	Hand Pincers with Tack Driving Devices
Millican, J. A.	21 East St., Stoneham, Mass.	Dec. 5, 1910	Pieced Stay
McGeary, J. L.	415 Alder St., Anaconda, Mont.	Jan. 2, 1911	Welt Innersole
McIntyre, J. A.	923 Fifth St., Camden, N. J.	Jan. 3, 1911	Machines for Shaping Shanks of Shoes
McDonald, Mr.	W. Warren, Mass.	Feb. 7, 1911	Fibre Board for Clicking Press Block
Montague, S. B.	508 Market St., St. Louis, Mo.	Feb. 20, 1911	Reinforcement for Buttonholes
McClure, Robert F.	Hannibal, Mo.	Mar. 22, 1911	Improvement on Hercules Leveler
Mahler, U.	304 Fifth Ave., San Francisco, Cal.	Mar. 25, 1911	Ball Bearing Rotary Section Heel
Moorefield, J. C.	609 San Felipe St., Houston, Tex.	Mar. 30, 1911	Counter Supporting Device
Moore, H. F.	Ventura, Cal.	Apr. 12, 1911	Straight Needle Sewing Machine
Martin Bros.	Athens, Ga.	Apr. 17, 1911	Tools for Cutting off Heels
McP Cook, J.	c/o Thacher & Co., Richmond, Va.	Apr. 20, 1911	Buttonhole Marking Device
Nehring, A. H.	240 Campbell Ave., Revere, Mass.	Nov. 19, 1908	Stay & Lining Cutting Machine
Nugent, C. H.	46 E. Water St., Rockland, Mass.	Apr. 20, 1911	Hold-Down Finger
Newton, A.		Apr. 18, 1911	Slugging Machine
Operator,	c/o J. H. Winchell & Co., Haverhill, Mass.		Tag & Flag Holder

Name	Address	Date	Device
Orr, Edward	Brockton, Mass.	Dec. 15, 1910	Welt Guide
Pettingill,		Jan. 28, 1909	Heeling Machine
Proctor, A. L.	86 E. Broadway, Derry, N. H.	June 25, 1909	Ideal Clicking Press Block Plane
Peer, R. W.	57 Belmont St., Rochester, N. Y.	May 14, 1910	Tackless Method of Lasting
Phillips, Herbert H.	Toronto, Ont.	June 1, 1910	Cement Holder
Park, John W.	82 Lexington St., Lynn, Mass.	Sept. 13, 1910	Detachable Heel
Patterson, S. M.	c/o W. H. McElwain Co.	Nov. 1, 1910	Improvements on Machinery
Pool, J. Eugene	Newport News, Va.	Jan. 6, 1911	Device for Unbuttoning Shoes
Pierce, F. M.	Stratford, N. Y.	Apr. 10, 1911	Imp. on Channeling Machine for McKay Work
Pavelic, F. G.	St. Louis, Mo.	May 22, 1911	Awl Attachment for Cutting Knife
Ruhland, John	c/o John Ebberts S. Co., Buffalo, New York	June 26, 1908	Awl Holding Device
Rodeman,	c/o Isaac Prouty & Co.	Jan. 2, 1909	Tack Saving Device
Reed,		Mar. 2, 1909	Pincer Twist & Ball Connection — C.H.M. Lasting Machine
Russell, A. L.	Patent Dept.	May 26, 1909	Assembling & Heel Seat Lasting Machine
Ruskowsky, Herman	611½ So. Main St., Elkhart, Ind.	Mar. 9, 1910	Edge Trimmer — Also Stitching Machine
Regester, R. A.	602 Saratoga St., Baltimore, Md.	Feb. 15, 1911	Acme Heel & Sole Protectors
Ryan, D. E.	555 Temple Court, Minneapolis, Minn.	Feb. 15, 1911	Channel Cutter
Riddock, Chas. M.	Box 647, Andover, Mass.	Feb. 20, 1911	Imitation Leather
Riddock, Chas. M.	Box 647, Andover, Mass.	Feb. 24, 1911	Leather Heel Substitute
Rowe Calf Co.	Hartford, Conn.	Mar. 27, 1911	Shoe Lacing Hook
Ryan, D. E.	555 Temple Court, Minneapolis, Minn.	Mar. 29, 1911	Channeling & Stitching Device
Roach, James F.	Boston, Mass.	Apr. 17, 1911	Shoe Rack
Rollins, George	Bridgewater, Mass.	Apr. 24, 1911	Innersoles
Regan, Richard	161 Western Ave., Lynn, Mass.	Nov. 21, 1911	Shoe Upper & Cleaning Machine
Stow Mfg. Co.		Aug. 29, 1908	Flexible Shaft
Silver, F. W.	Auburn, Me.	Apr. 13, 1909	Scrap Saving Device
Saclowe, John		Nov. 20, 1909	Heel Seat
Sullivan, E. E.	Plainview, La.	Dec. 13, 1909	Shoe Tree
Shawmut Machine Company	Boston, Mass.	Feb. 23, 1910	Seam Rubbing Machine

Name	Address	Date	Device
Sullivan, E. E.	Plainview, La.	Mar. 28, 1910	Heel Cushion
Stamm, L. B.		Apr. 18, 1910	Lasting Machine
Stein, Peter	Chicago, Ill.	June 15, 1910	Stein Trimming & Stripping Machine
Shawban, J. E.	Kenton, Okla.	Aug. 20, 1910	Shoe Lace Fastener
Shorten, Wm. J.	Marianna, Ark.	Oct. 20, 1910	Shoe Fastener
Stierheim, Julius	443 E. 86th St., New York	Jan. 16, 1911	Detachable Heel
Sussman, Mr.	Rice & Hutchins, So. Braintree, Mass.	Jan. 30, 1911	Turn Shoe Ironing Machine
Steelman, Geo.	Vineland, N. J.	Feb. 11, 1911	Bobbin for Holding Large Quantities of Thread
Sullivan, E. E.	Plainview, La.	Feb. 25, 1911	Leather Measuring Gauge
Sharwood, C. K.	St. Paul, Minn.	Mar. 11, 1911	Two-Piece Last
Stockman, Jos.	c/o Houghton-Warren Co., Somersworth, N. H.	Mar. 13, 1911	Toe Moistening
Sharwood, C. K.	St. Paul, Minn.	Mar. 20, 1911	Last with Detachable Heel Portion.
Schneider, Louis	c/o Union Shoe Co. Natick, Mass.	Mar. 24, 1911	Steel Shoe Tip
Swanson, F. W.	Chicago, Ill.	Apr. 12, 1911	Foot Clamp and Table for Welt and Turn Machine
Sims, H. A.	118 Logan St., Atlanta, Ga.	Apr. 15, 1911	Guide for Royal Perforator.
Seymour, A. F.	167 Perkins Ave., Campello, Mass.	Apr. 25, 1911	Last with Detachable Heel
Seymour, A. F.	167 Perkins Ave., Campello, Mass.	May 15, 1911	Heel Compressing, Gouging & Leveling Machine
Sullivan, M. H.	72 Belmont St., Carbondale, Pa.		Rotary Channel Device
Thibodeau, Leon W.	Boston, Mass.	Dec. 17, 1908	Mechanical Castoff Straight Needle Sewing Machine
Thibodeau, Leon W.	Boston, Mass.	Feb. 16, 1909	Presserfoot, Mod. B Sewing Machine
Thomas, Geo. F.	67 Maple St., Bristol, Conn.	Dec. 16, 1909	Finishing Machine for Repair Work
Taylor, A. D.	807 Princeton Ave., Camden, N. J.	Dec. 31, 1909	Goodyear Stitcher Without Bobbin
Thompson, S.	81 West St., Milford, Mass.	Nov. 8, 1910	Method of Starting Clicking Press
Tenny, Geo. S.	E. Walpole, Mass.	Mar. 24, 1911	Imp. Buffing Machine
Universal Tel. Co.	Baltimore, Md.	Apr. 13, 1911	Shoe Clip Patent
Van Orden,		Mar. 30, 1909	Tension Device for McKay Sewing Machine
Weigand, A. Alfred	311 C. St., C. E. Washington, D. C.	June 30, 1908	Lacing Hook

Name	Address	Date	Device
Ward, Mr.		Mar. 30, 1990	Edge Setting Machine
White,	Haverhill, Mass.	July 12, 1909	Stitch-Down Lasting Machine
White, L. G.		Jan. 6, 1910	Inseam Trimming Machine
Wetter-Up Co.,	Philadelphia, Pa.	Mar. 16, 1910	Channel Guide with Wetting Device
Wheeler, Mr.	c/o Churchill & Alden	Mar. 30, 1910	Upper Leather Cementing Machine
Wilson, Sarah B.	2391 Niagara St., Buffalo, N. Y.	Apr. 1, 1910	Thread Guard
Wentworth, P. J.	Cincinnati, O.	Nov. 7, 1910	Device for Forward Pull
Young, John A.	28 Kneeland St., Boston	Apr. 7, 1911	Improvement on Keighley Inseam Trimming Machine
Young, D. C.	Milwaukee, Wis.	Apr. 10, 1911	Looper Lever
Azzara, Thomas	1247 Willoughby Ave., Brooklyn, N. Y.	May 29, 1911	Mod. G. Sewing Machine
Arnold, Herbert		Sept. 29, 1911	Outsole Indenting Tool — G.U.R. & C.
Adams, Geo. H.	78 Stoughton St., Dorchester, Mass. c/o Mrs. Roper	Oct. 31, 1911	Leatherboard Heel Building Machine
Brothers, Eli		July 22, 1911	Insole with Turned Up Edges, without Channeling.
Boynton, James J.	Bartow, Florida	May 2, 1911	Shoe Lacing Device
Braga, M. J.	c/o E. E. Taylor Co., Campello, Mass.	May 24, 1911	Rapid Outsole Stitcher Looper
Burrier, Charles	c/o Smaltz-Goodwin Co., Philadelphia, Pa.	May 27, 1911	Upper Trimming Machine
Brogan, J. A.		May 29, 1911	Sole & Welt Corrugations
Bazzoni, L. J.		May 29, 1911	Auto. Jack for Welting Machine
Bunker, G. E.	Auburn Office	May 29, 1911	Vamp Moistening Machine
Burrier,	c/o Smaltz-Goodwin Co.	June 12, 1911	Hold Down Attachment
Barton, J. M.	Danvers, Mass.	June 7, 1911	Stop Motion — C.H.M. Laster
Burrier [illegible]as.	c/o Smaltz-Goodwin Co., Philadelphia, Pa.	June 26, 1911	Tip Measuring Machine. P. O. Machine
Basile, Carmine	25 Penn St., Quincy, Mass.	June 20, 1911	Tack Pulling Device
Brennan, W. J.	Beverly Factory	June 15, 1911	Collapsible Shoe Rack
Buchanan-Lawrence Company	Joliet, Ill.	June 29, 1911	Soles
	Brockton Office	June 28, 1911	Shanks

Name	Address	Date	Device
Bliss, Mr.	Haverhill Office	June 28, 1911	Device for Preventing Heels from Tipping over on the Premier Heel Pricking Machine
Brogan, M. F.		July 31, 1911	Method of Making Welt
Bergquist, J. U.	13 Jane St., Manchester, N. H.	Aug. 1, 1911	Vamp Holder
Bolin, Nils	Brockton, Mass.	Aug. 28, 1911	Method of Making Wire Toe Fasteners
Brigham, G. W.	Marlboro Office	Sept. 15, 1911	Atlas Leveler — Part 0-2139
	Brockton Office	Sept. 23, 1911	Box Toe Stiffening Preparation
Berry, Mr.	Brockton Office	Sept. 22, 1911	Ensign Lacing Mch. Part #355
Boyden, William		Sept. 22, 1911	Tack Saving Devices C. H.M. Laster
Borden, Mr.		Oct. 11, 1911	Jack for Nailing or Slugging on the Last.
Brown, Karl		Oct. 10, 1911	Lasting Wire Device
Borden, W. H.		Oct. 30, 1911	Adjustable Jack Last Pin and Holder
Bryant		Nov. 11, 1911	Swing Piece for #4 Compressor
Buteau, Mr.	Beverly Factory	Dec. 11, 1911	Method of Re-Leasing Clicking Press and Dinking Machine Brake
Chamberland, Frank	141 Franklin St., Lynn, Mass.	May 23, 1911	Heel Filling Machine
Cramer, Sam		June 7, 1911	Hammer Block for Pounding Up Machine
Cleveland, Mrs.	c/o Cass & Daley	June 20, 1911	Device for Holding Parts of Shoe Upper together during their manufacture
Clark, H. E.		June 26, 1911	Work Support with Shoe Upper Spreader Device
Collette, W. E.	Marlboro, Mass.	June 20, 1911	Wire Retainer — Rapid Standard Screw Machine
Collette, W. E.	Marlboro, Mass.	June 29, 1911	Jack for Universal Slugging Machine
Corrow, Thomas	Williams & Clark, S. Co., Lynn, Mass.	June 29, 1911	Feed Mechanism for Univ. Rdr. & Chan. E.
Coombs, Mr.	Philadelphia Office	July 13, 1911	Turn Over Fudge Machine
Corey, Mr. George	111 Point St., Providence, R. I.	July 17, 1911	Self Tightening Mandrel for Lathe Heads
Contois, G.	26 Northern Ave., Lynn, Mass.	Aug. 17, 1911	Presser Foot to prevent Needle breaking

Name	Address	Date	Device
Cline, George	Dolgeville, N. Y.	June 27, 1911	Combination Edge Setting Iron
Carpenter, J. P.		July 31, 1911	Combined Heel Breast Scouring, Heel Scouring & Heel Cross Scouring Machine
	Cincinnati Office	Sept. 15, 1911	Welt Indenting Tool & Holder
Coleman, Geo.	33 Averill St.	Sept. 19, 1911	Welt Insole
Cook, J. McP		Oct. 4, 1911	Button Hole Marking Device
Cassanno, M.	Box 260, Brockton, Mass.	Oct. 9, 1911	Toe Spreading Device
Chicago Office,	Chicago, Ill.	May 23, 1911	Welt Guide, Mod. G. Machine
Cantara, Geo. T.	Biddeford, Me.	Aug. 16, 1911	Combination Tool Vise & Sharpening Gage
Dahlhaus, E. A.	New York, N. Y.	Apr. 25, 1911	Method of Lacing Shoes
Dumont, Edward E.	455 Cranston St., Providence, R. I.	May 30, 1911	Sole Wetting Machine
Donlon, John	Boston Office	June 26, 1911	Spraying Device for Spraying Edges of Soles
Donlon, John	Boston Office	June 29, 1911	Curved Needle with Groove for Breaking Strands of Gem Insole Cloth
Donlon, John	Boston Office	June 29, 1911	Heel Finishing Machine
Dow, John	Goodyear Department		Fudge Knife
Dow, John	Goodyear Department	Nov. 8, 1911	Toe Pad, Gdyr. Imp. Sole Laying Machine
Davis, F. E.	46 Warren St., Providence, R. I.	Nov. 26, 1911	Automatic Wire Machine
Emerson, F. L.	c/o Dunn & McCarthy, Auburn, N. Y.	Apr. 11, 1911	Indenting & Burnishing Mch. with Inking Attachment
Ewell, Frank	Brockton Office	June 12, 1911	Lightning Heeler Heel and Toplift Clamps
Eastman, Mr. Foreman	Cohas Fy., W. H. McElwain Co., Manchester, N. H.	Aug. 1, 1911	Device for Oiling Cutters and other Parts on the Gem Insole Reinforcing Machine
Farrell, Mr.		June 28, 1911	Balancing Device for Heel Trimmer
Fisher, Fred W.	Endicott, N. Y.	Aug. 23, 1911	Improvements on Stanbon Perforator
Forth, Charles	Boston, Mass.	Sept. 11, 1911	Shoe Lacing Hook
Frascola, A. D.	El Reno, Okla.	Nov. 11, 1911	Edge Trimming & Burnishing Tool
Fife, James	195 Court St., Brockton, Mass.	Dec. 11, 1911	Gem Trimming Machine

Name	Address	Date	Device
Goldsmith, C. W.	Dingman's Ferry, Pa.	May 17, 1911	Elastic Spring Heel & Copper Sheathed Toe for Shoes
Glynn, Thomas	Auburn Office	June 8, 1911	Hand Lasting Pincers with Toe Measuring Device
Gorsuch, George	Rochester, N. Y.	Apr. 26, 1911	Tack Pulling Mechanism
Gooding, C. S.	Boston, Mass.	June 24, 1911	Counter Skiving Machine
Giroux, C. T.	42 Harbor St., Salem, Mass.	July 12, 1911	Ventilated Collapsible Barrel
Gifford, Mr.	Philadelphia Office	July 17, 1911	Gdyr. Turn Leveler
Giles, C. B.	38 State St., Manchester, N. H.	Aug. 12, 1911	Machine for Covering Rolls
Gordon, Mr.	Brockton Office	Sept. 7, 1911	Velvet Box Toe & Counter Buffer
Gifford, Mr.	Philadelphia Office	Oct. 11, 1911	Stripper Cup, Mod. K. Stitcher
Gifford, Mr.	Philadelphia Office	Oct. 11, 1911	Presserfoot, Universal Insole Channeling Mach.
Goldstone, Max	9 Center St., New Haven, Conn.	Oct. 27, 1911	
Grimes, Harry	St. Louis Office	Nov. 9, 1911	A-1602, Mod. G. Welt & Turn Machine
Guerra, A.		Nov. 8, 1911	Rapid Outsole Stitcher
Gordon, Mr.	Brockton Office	Nov. 21, 1911	Box Toe Wetting Device
Herrick, F. A.	Toledo, O. 625 Oakwood Ave.	Aug., 1910	Shoe Hook
Harris, Dr. S. B.	Myton, Utah	Apr. 28, 1911	Universal Fastener
Harmon, F. L.	Brockton, Mass.	Mar. 24, 1911	Skiving, Cementing & Folding Machine
Hansom, James	107 Elm St., Marlboro, Mass.	Aug. 15, 1911	Quick Threading Shuttle for Rapid Stitcher
Harmon, F. L.		Aug. 14, 1911	Method of Fastening Shoe Buttons
Haupenthal, Jos. R.	186 Riverside Drive, Binghamton, N. Y.	Sept. 6, 1911	Planer for Clicking Press Block
Harmon, F. L.	Beverly, Mass.	Sept. 28, 1911	Method of Fastening Shoe Buttons
Ikomond, Colt E.	411 Elm St., Wallace, Idaho	May 25, 1911	Shoe Lace Protector
Josselyn, J. E.	35 Riverview St., Campello, Mass.	May 24, 1911	Heel Building, Compressing, Gouging and Leveling Machine Model
Johnson, Albin	Middleboro, Mass.	July 24, 1911	Device for Gauging or Truing Tips
Jepperson, Jeppe	421 So. Third St., East, Salt Lake City, Utah	Aug. 31, 1911	Separable Shoe Fastener

Name	Address	Date	Device
Jacobs, Mr.	Haverhill Office	Sept. 15, 1911	Toplist Rest — Ultima Heel Trimming Machine
Jackman, Chas. C. & A. E. West	1017 Oakland Ave., Portsmouth, O.	Oct. 9, 1911	Automatic Shoe or Edge Setter
Jacob, Chas. W. & Allison	18 Cedar St., New York, N. Y.	Oct. 19, 1911	Detachable Heel
Kelly, W. J.	c/o Curtis & Jones Co., Reading, Pa.	May 17, 1911	Welt Table for Rapid Stitcher for Stitchdowns
Kennedy, John L.	St. Louis, Mo.	Oct. 6, 1911	Lift Cutting Machine
Klein, A. H.	c/o Curtis & Jones, Reading, Pa.	Dec. 12, 1911	Sole Rest — Turn P. O. Machine
LaBorde, John & Peter K. Williams	Columbus, O.	July 14, 1911	Buttonhole Marking Machine
LaBate, James		Aug. 5, 1911	Machine for applying Cement to Tape
Lund, Mr.	Auburn Office	Sept. 9, 1911	Jack for #2 Loose Nailing Machine
LaBorde & Williams		Sept. 22, 1911	Shoe Gumming Machine
Lundholm, Chas. G.	Los Angeles, Cal.	Oct. 19, 1911	Locking Set Screw
Leech, L. D.	301 W. Union St., Burlington, N. J.	Dec. 9, 1911	Welt & Turn Sewing Machine
Littlefield, A. F.	Lynn Office	Dec. 2, 1911	Edge Trimming Machine
Locke, E. D.		Dec. 2, 1911	Gauge for Toplift Condensing
McGeary, John Luke	Malden St., Anaconda, Mont.	June 5, 1911	Welt Innersole
Muiato, Longhair I.	Plano, Ida	May 27, 1911	Shoe Polishing Machine
McCarthy, Michael	Brockton, Mass.	June 12, 1911	Brushes
McDonald, C.		May 17, 1911	Power Nurling Machine Jack
Moore, Louis	20 Rock Avenue, Swampscott, Mass.	June 23, 1911	Method of Making Smooth Insole Heel Seat
Mayo, Chas.	278 W. Water St., Milwaukee, Wis.	Aug. 14, 1911	Fibre Pulp Shoe
Cann, Mr.	Marlboro Office	Aug. 28, 1911	Experimental Part #77, Loose Nailing Machine
McElwain Co., W. H.		Aug. 29, 1911	Reinforced Insoles
Miner, Mr.	Brockton Office	Sept. 12, 1911	Loose Nailing Machine, Guard Plate #296
Manning, John E.		Sept. 24, 1911	Clamp for Holding Cloth for Corset Cutting
Mica, John	36 Glenwood St., Binghamton, N. Y.	Sept. 26, 1911	Friction for Cast-off Bar — McKay Sewing Machine
Mangan, J. C.	Lynn, Mass.	Oct. 3, 1911	Heel Breast Scouring Device
McCallum, Chas. J.	Warren, Me.	Oct. 2, 1911	Cutter Grinder

Name	Address	Date	Device
Miller,	Miller Loop & Tying Machine Co.	Oct. 10, 1911	Lacing Hook
McLean,	Brockton, Mass.	Oct. 17, 1911	Heel Scouring Cone
Mills, E. F.	New York, N. Y.	Oct. 20, 1911	Improvements on Mod. G. Welt & Turn Mach.
McElwain Co., W. H.		Nov. 20, 1911	Staple Fastening Machine for Special Work
	Marlboro Office	Nov. 21, 1911	Rapid Rotary Cementing Valve
Murphy, J. E.	Frankfort, Ky.	Dec. 11, 1911	String Puller — McKay Channeler
McNalley, A. H.	110 Johnson St., Brooklyn, N. Y.	Aug. 14, 1911	Heel Breast Scouring Machine
Neubert, Wm. B.	10 Friend St., Lynn, Mass.	July 31, 1911	Wax Pot — McKay Sewing Machine
Norden, C. S.		June 21, 1911	Gauge for Determining Position of Wedge Heels on Shoes
Neal, W. V.	5 Newton St., Brighton, Mass.	Oct. 9, 1911	Bobbin Winder
Noon, W. J.	Lynn, Mass.	Oct. 11, 1911	Counter Guard
Northrop, H. N.	Whitman St., W. Somerville, Mass.	Nov. 20, 1911	Self Locking Heel
Olson, A.		June 2, 1911	Welt Edge Turning Machine
Prenzel, A. H.	Halifax, Pa.	May 23, 1911	Shoe Bows
Pavelic, F. G.	St. Louis, Mo.	May 22, 1911	Awl Attachment for Shoe Cutting Tools
Pellitier,	Marlboro, Mass.	July 31, 1911	Welt Guide for Rapid Outsole Stitcher
Pierce Wrapping Machine Co.	569 Van Buren St., Chicago, Ill.	Aug. 23, 1911	Bull Dog Fastener
Powell, W. H.	2446 No. Carolina Ave., Chicago, Ill.	Nov. 2, 1911	Shoe Fastening
Prime, E. J.		Nov. 17, 1911	Shoe Rack
Parks, Mr.	Brennan Tannery & Shoe Mfg. Co., Upland, Cal.	Oct. 20, 1911	Device for Planing Clicking Press Blocks
Poitras,	Montreal, Can.	Nov. 25, 1911	Bow Attaching Machine
	Phila. Office	Oct. 11, 1911	Presserfoot
Reed, Walter W.	29 Munroe St., Rockland, Mass.	May 20, 1911	Toe Moistening Device
Robinson, R. C.	404 Pine St., Providence, R. I.	May 16, 1911	Shoe Lace Holding Device
Rockwood, C. G.	31 Highland St., So. Framingham, Mass.	July 18, 1911	Lacing Device
Rowe, Atwood	Haverhill, Mass.	Aug. 2, 1911	Guard for Amazeen Skiver
Roche, James		Aug. 8, 1911	Shoe Rack

Name	Address	Date	Device
Rockwood, C. G.	31 Highland St., So. Framingham, Mass.	July 18, 1911	Device for Cutting off Heels for Repair Work
Ranney, Arthur	Auburn Office	Oct. 19, 1911	Drip Pan and Guard for Xpedite Finishing Machine
Regan, Richard	161 Western Ave., Lynn, Mass.	Nov. 21, 1911	Shoe & Upper Cleaning Device
Reed,		Nov. 21, 1911	Buttonhole Sewing Machine
Ryeberg, John	Brockton, Mass.	Nov. 29, 1911	Rolling Toe Rest Model —#5 Lasting Machine
Rainey, J. N.	Mound City Plant Brown Shoe Co., St. Louis, Mo.	Nov. 22, 1911	Cementing Machine
Richardson, J. J.	Marlboro Office	Nov. 21, 1911	Shank Cutting Machine
Ruff, P. W.	Butler, Pa.	Nov. 14, 1911	Nail with Head in Centre and Point on either end
Reutinger, N. C.	Xenia, Ohio	Dec. 11, 1911	Cutter's Knife Handle
Smith, Chas. I.	Oklahoma City, Okla.	Apr. 25, 1911	Shoe Fastening Device
Sims, H. A.		June 7, 1911	Guide for Royal Perforator
Sullivan, E. E.	Plainview, La.	June 1, 1911	Shoe Lacing Stud
Sturtevant, Lloyd E.	Beverly Factory	June 1911	Detachable Handle for Lining Dies
Stockton, G. T.		Aug. 18, 1911	Insole Cutting & Pasting Machine
Sullivan, E. E.	Magnolia, La.	Sept. 1, 1911	Shoe Tree with Vamp Stretcher Device
Sullivan, E. E.	Magnolia, La.	Oct. 12, 1911	Adjustable Wooden Shoe Stretcher
Spurling, R. G.	Cleveland, Tenn.	Oct. 17, 1911	Lacing Device
Shinnock, T. J.	Exeter, N. H.	Oct. 23, 1911	Trimming tool for use with Clicking Press
Shaw, Walter	Eyelet Dept., Boston Office	Nov. 14, 1911	Punch & Sett Hammer Lever, Duplex Eyeletter
Stalker, F. C.	Brockton Office	Nov. 17, 1911	Improved Parts on Rapid Loader & Attaching Machine
Success Jack Mfg. Co.	2941 Cass Ave., St. Louis, Mo.	Nov. 21, 1911	Shoe Repairing Jack
Searle, H. C.	Auburn Office	Dec. 2, 1911	Clicking Press Planing Device
Sullivan, E. E.	c/o Capt. Sanders, Angola, La.	Nov. 26, 1911	Metal Ventilating Shoe Trees
Starratt, W. H.	Haverhill Office	Dec. 8, 1911	Combined Bench Bracket and Presser Cam, Roll Stud Support H.L.A.

Name	Address	Date	Device
Tenney, Geo. S.	E. Walpole, Mass.	Mar. 25, 1911	Buffing Wheel
Turner, Chester	Nashua, N. H.	June 21, 1911	Smoothing Device — Gdyr. Universal Rouning & Channeling
Tweedie, Chas.	Jefferson City, Mo.	July 29, 1911	Tool for use in Lasting Button Shoes
Turner, H. B.	Phila. Office	Sept. 2, 1911	Goodyear Improved Sole Laying Machine
Tirrell, A. R.	Weymouth, Mass.	Nov. 17, 1911	Method of making Reinforced Insoles
Tilton, Mr.	c/o B. F. Reynolds	Nov. 23, 1911	Outsole Heel Seat Moulding
United Shoe Repairing Machine Company	Boston	July 25, 1911	Guard for Model M Impression Stitch Machine
Vogt, Wm.	245 E. 77th St., New York, N.Y.	Aug. 14, 1911	
Wade, G. E.	c/o A. E. Little & Co., Brockton, Mass.	May 17, 1911	Crimping Machine
Woodbury, Mr.	Columbus, O.	May 29, 1911	Reinforced Insole with Toe Portion Sewed
Wiltse, Sarah E.	W. Roxbury, Mass.	June 1, 1911	Dust Moccasin
Wade, Geo. E.	Brockton, Mass.	June 14, 1911	Buttonhole Marking Device
Williams, Peter K. & John Laborde	Columbus, O.	July 14, 1911	Buttonhole Marking Machine
Wald, Frank	Dalmatia, Pa.	Aug. 14, 1911	Universal Rounder & Channeler — Thickness Indicating Device
West, A. E. & Chas. C. Jackman	1710 Oakland Ave., Portsmouth, O.	Oct. 9, 1911	Auto. Shoe or Edge Setter
Warham, R. F.	Pinewood Retreat, Applegate, Cal.	Oct. 23, 1911	Shoe Lace Retainer
Wolfe, Mr. Wm.	St. Louis, Mo.	Oct. 3, 1911	Heel Building Machine
Willis, M.	Geo. E. Keith, Fy. #3	Nov. 17, 1911	Ironing Device
Whitworth, J. H.	The Irving Drew Co., Portsmouth, O.	Nov. 16, 1911	Buttonhole Marking
Weigand, A.	133 Martin St., Milwaukee, Wis.	Dec. 2, 1911	Shoe Lacing Hook
White, J.		Dec. 4, 1911	Tack Pulling Machine

DEFENDANTS' EXHIBIT 223.

[Put in Evidence, page 3023.]

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS FROM MARCH 1, 1900, TO DECEMBER 31, 1911.

	New Firms	New Firms Succeeding Old Firms	Total
1900	70	36	106
1901	97	59	156
1902	55	40	95
1903	55	46	101
1904	54	37	91
1905	47	3	50
1906	44	8	52
1907	60	4	64
1908	51	10	61
1909	68	1	69
1910	72	21	93
1911	73	5	78
	746	270	1016

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1900 AS SHOWN BY OUR RECORDS.

Name	Successor to
Alberts, Henry	
Alburtis Shoe Mfg. Co.	
Alden, Walker & Wilde	
Alter & McCaffrey	Manss, Bruning Shoe Mfg. Co.
American Shoe Mfg. Co.	F. G. Maurer Shoe Co.
Baldwin Mfg. Co.	
Barton Bros.	
Bastian, William S.	Carpenter Bros.
Battles, A. W.	Dart & Smith
Baumgaertel, E.	
Belleville Shoe Mfg. Co.	
Belonga, Geo. W. & Co.	Belonga & Leonard

Name	Successor to
Blake-Allen Company	
Bluff City Shoe Co.	
Bowers & Shaw	Shaw, F. M. & Co.
Brown, Henry	Duerk, John
Bruns, J. B. Shoe Mfg. Co.	
Budd & Blakeney	Electric Shoe Co.
C. & E. Shoe Co.	
Clifford & Clancey	
Cohen, H. & Eldridge	
Colburn, Edw. S.	
Collins, John	
Cook County Shoe Mfg. Co.	
Darling & Stetson	
Dart & Smith	
Deckert & Stough	
Divac, I.	
Donovan, Thos. J.	
Eastport Shoe Co.	
Farmington Shoe Co.	Barre Shoe Co.
Fayter, Henry	
Felch, C. H.	
Field Bros. & Gross	
Fiske & Olde	W. F. Fiske
Franklin Shoe Mfg. Co.	
Freeport Shoe Mfg. Co.	
Fuhrer, Henry	
Glickman, D.	
Goodfellow Shoe Co.	
Grant, F. S. Shoe Co.	Trimby & Brewster Shoe Co.
Green, Dan'l, Felt Shoe Co.	Green, Dan'l, & Co.
Griffin & Cogswell	
Hennessey Shoe Mfg. Co.	
Hall & Moses	Hinkley, J. H. & Co.
Illinois Shoe Mfg. Co.	O'Connell & Co.
Jordan, W. B. & W. G.	Union Shoe & Leather Co.

Name	Successor to
Kalt-Zimmers Mfg. Co.	
Kirkendall & Co., F. P.	
Kenney, Arthur	Peerless Shoe Co.
Lambert, E. T.	Lambert, F. B. & Co.
Law, Henry	American Slipper Co.
Leavitt & Co.	
Leech, Mrs. Sophia	
Leonard & Anglin	Crawford Shoemakers
Leve, Louis	Hahn, Barthold
Lines & Co.	
Loeffer-Guenther Shoe Co.	
Long & Eberling	
Long, R. H. Shoe Mfg. Co.	
Lord, W. E.	
Luddy & Currier	
Marr & Stevens Shoe Co.	Stevens, Herbert J.
Marsh, Zena	Marsh, J. P.
Munster, A.	Watson, Geo. M.
Nelson, Bernard	
Nesmith, W. F. Shoe Co.	Nesmith Co., The
New Freedom Shoe Mfg. Co.	
New Jersey Shoe Mfg. Co.	Hoagland, Woodington & Forster
New Ulm Boot & Shoe Co.	
Nugent Shoe Co.	Nugent, J. C. & Co.
O'Connell & Co.	O'Connell, John
O'Donnell, J. M. & Co.	Lane, C. E.
Ohio Shoe Co.	
Pfeiffer, W. F. & Co.	
Pioneer Shoe Co.	People's Co-op. Shoe Mfg. Co.
Prince-Collins Co.	
Prior, Fred F.	
Ramsey, Jos. P. Shoe Co.	
Reed, H. M. & Co.	
Reid, Peter	
Reimer, Bros. Shoe Co.	Reimer, A. H. & Co.

Name	Successor to
Richardson-Burkenmaier Co.	Burkenmaier Shoe Mfg. Co.
Rae, Alex	
Scheiffele Shoe Mfg. Co	
Sedalia Shoe Co	
Shillaber Shoe Co	
Smaltz-Goodwin Co	Hayss-Partridge Shoe Co.
Sprague, W. D.	
Shaw & Tannant Co.	
Stockton Shoe Mfg. Co.	
Stoenner Shoe Co.	
Stone, E. M. & Co.	
Spinks Shoe Mfg. Co.	
Stover & Bean	J. H. Stover
Tiger Shoe Co.	
Tufts & Friedman	
Tuttle, W. H.	Durgin & Tuttle
Tripp-Lincoln Shoe Co.	
Van Eaton, Fogg & Co.	Tacoma Shoe & Leather Co.
Walsh-Decker Shoe Co.	
Witchell Sons & Co., Ltd.	Witchell Sons & Gibson, Ltd.
Witham, Walter S.	
Woodbury Shoe Co.	
Wrensch, B. F.	
Weinbrenner & Co., A. H.	

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1901 AS SHOWN BY OUR RECORDS.

Name	Successor to
Andrews, Joseph	
Adamson & Newhall	
Ashland Boot & Shoe Co.	
Abbott & West	Leavitt & Co.
Auburn Shoe Mfg. Co.	Maine Custom Shoe Co.
Blucher Bros.	
Brandhurst, E. T. & Co.	
Budd, Reilly & Co.	Budd & Blakeney

Name	Successor to
Buckeye Shoe Co.	
Bainsville Shoe Co.	
Beck, Rasbe & Asher	F. S. Stein
Bastian Shoe Mfg. Co.	W. S. Bastian & Firth, Ltd.
Bailey Shoe Co.	
Buck, E. A. & Co.	
Blum Shoe Co.	
Bartlett Bros.	Albion Bartlett
Bay State Shoe & Leather Co.	Old Colony Boot & Shoe Co.
Bent & Evans	
Crown Shoe Co.	
Co-operative Shoe Co.	
C. & C. Shoe Mfg. Co.	Cowen-Eldridge & Cohen
Colmary, A. H. & Co.	Clark, Colmary & Co.
Century Shoe Mfg. Co.	
Cook, J. A. & Co.	Cook & Hart
Cross, John H.	Cross & Tucker
Caunt, Jos. & Co.	
Cushman & Cushman	Howe, Cushman & Stocker
Collyer & Woodman	
Clark, W. J.	Richard Bessom
Case, Chas. Shoe Co.	Walker & Brown
Calkins, Clarence L.	
Chase, Chamberlain & Co.	
Craddock Terry Co.	
Deckert, W. H. & Co.	Deckert & Stough
Dreyer, J. H. & Co.	Allnutt, Moody & Co.
Duling Shoe Co.	Duling & Stack Shoe Co.
Drehr Shoe Co.	
Davis, H. E. Co.	
Demeritt & Smith	E. A. Jennings Co.
Ennis, John	
Edwards-Stanwood Shoe Co.	Dearborn Shoe Co.
Ell & See Shoe Co.	Luddy & Currier
Eisenhuth & Co., T. H.	

Name	Successor to
Fort Smith Shoe Mfg. Co.	
Fairfield Shoe Co.	Denton Shoe Co.
Feuss & Prather	Magruder, Feuss & Co.
Fonda, Kellogg & Snow	Fonda, Kelly & Snow, Inc.
Ford, H. R. & Co.	
Fletcher Shoe Co.	Joyce & Fletcher Co.
Fitzpatrick Shoe Co.	
Finney, Thos. H.	
Flint, E.	H. S. Jacobs & Co.
Finch Shoe Co.	
Giesecke-D'Oench-Hays Shoe Co.	Giesecke Boot & Shoe Co.
Gibson Shoe Mfg. Co.	
Gloyd, Arthur E.	
Godon, F. H.	
Green, C. E. & Co.	
Guthman, Carpenter & Telling	
Hallahan & Sons	P. T. Hallahan
Heer Shoe Co.	
Harding & Sons Co.	Harding, Sons & Johnson
Howe & Stocker	
Hurley Shoe Co.	The Rockland Co.
Hoyt, H. H. Shoe Co.	
Johnson & Watson	
January Shoe Co.	Hufuegel-January Shoe Co.
Kentucky Shoe Mfg. Co.	
Kingman & Worbass	
Krause Shoe Co.	
Kueher & Nickel Boot & Shoe Co.	F. Kueher Boot & Shoe Co.
Keighley-Mullen Co.	
Keystone Boot & Shoe Co.	
Kenney & Fitzpatrick	Arthur Kenney
Kimball, W. & V. O.	
Knights, J. George	
Kearsarge Shoe Co.	
Kimball, Alfred Shoe Co.	Kimball Bros.

Name	Successor to
Kreider Shoe Mfg. Co.	
Lindenberg, H.	Suhren & Lindenberg
London Shoe Mfg. Co.	
Livingston, E. C.	
Lumberton Shoe Co.	
Levis Bros. & Broxholm	Levis & Pifer
Leonard & Hollis	
Lane, William Jr.	Wm. Lane, c/o New York City Shoe Co.
Lang, Edwin F. & Co.	Lang & Roberts
Lang, Edwin F.	Edwin T. Lang & Co.
LaPrelle Williams Shoe Co.	
Metrailer, A.	
Missouri Slipper Co.	
Marietta Shoe Mfg. Co.	
Marks, L. V. & Co.	
Miller Shoe Mfg. Co.	
Miller, Hess & Co., Ltd.	
Moloney, E. D. & Bro. Co.	Maher & O'Connor
Morris-Caunt Shoe Co.	Baby Shoe Co.
Morrison Shoe Co.	
Milton Shoe Co., Inc.	
MacDonald, Hirsch & Co.	H. B. Thoms
McNamara, S. B. & Co.	
Miama Shoe Co.	
McIntosh, J. W.	
Normandy Shoe Co.	
Nesmith-Roarty Shoe Co.	W. F. Nesmith Shoe Co.
North Shore Shoe Co.	
Osner Shoe Mfg. Co.	
Piekenbrock Shoe Mfg. Co., E. B.	
Peteler Shoe Mfg. Co.	Southern Shoe Co.
P. & F. Mfg. Co.	
Posner, A.	
Potapsco Shoe Mfg. Co.	

Name	Successor to
Pilling, John Shoe Co.	
Portia Shoe Mfg. Co.	Louis Leve
Pratt Shoe Co.	
Queen City Shoe Co.	Sedalia Shoe Mfg. Co.
Riley-Barker Shoe Co.	Frank Barker
Reed, Dr. Cushion Shoe Co.	Marr & Stevens Co.
Randolph Shoe Co.	
Rowe & Swett	
Read, H. M.	
St. Pierie Dorn Shoe Co.	
Southern Industrial Inst., Ltd.	Chinchuba Deaf Mute Inst.
Scudder-Lessburg Shoe Co.	
Shaft-Pierce Shoe Co.	R. W. Smith
Stein, F. L.	S. Freehling & Son
Sheppard & Myers Shoe Co.	Chas. Heiser Shoe Co.
Schreider & Fitz	
Schreider, W. H. Co.	Schreider & Fitz
Salom, Chris.	
Schaefer Bros.	
Stevens, E. E.	
Slim, Howard F.	
Southern Shoe Mfg. Co.	
Tennent Shoe Co.	Tennent-Stribling Shoe Co.
Tanner Shoe Mfg. Co.	Richardson-Birkenmaier
Thale & Co.	
Toronto Shoe Co.	
Twohig & Adams	Greenan, Twohig & Adams
Tillett, Thos. Jr.	Tillett & Kramer
Timson, C. O. & Co.	
Tuttle Shoe Co.	W. E. Tuttle
Thompson, F. J.	
Vickery, P. W. & Co.	
Weber, J. H.	
Watson-Plummer Shoe Co.	
Williams & Cox	

Name	Successor to
Walden Shoe Co.	
Weyenberg Shoe Mfg. Co.	
Weiner, Wright & Watkins	Lenox Shoe Co.
Witt, Geo. D. Shoe Co.	
Wood, Lawrence & Neal Co.	
Wright & Aldoes	Cropley Shoe Co.
Webb & Jones	
Weyenberg Shoe Mfg. Co.	
Young, R. T. & Co.	

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1902 AS SHOWN BY OUR RECORDS.

Name	Successor to
Adams & Lawton	
Albert, J.	
Alton Shoe Co.	
Annar Shoe Co.	Preset Shoe Co.
Burke, Erwin A.	
Bell & France	Phoenix Shoe Co.
Badger State Shoe Co.	
Becker, A. G.	
Berkley Boot & Shoe Co.	
Blood, J. C.	
Boston Carpet Slipper Co.	
Bottomley & Co., E.	
Cole, E. M.	Schwab Bros.
Casperson, Edward	
Drew, W. E. & Co.	
Dearborn Bros.	
Daum Shoe Co., Geo. M.	
Eastern Shoe Mfg. Co.	M. Green
Eckhardt & Donovan Shoe Co.	Donovan, T. J.
Eberling, Charles	
Flint Shoe Co.	Flint, E.
Faunce-Jordan Shoe Co.	
Forbush Shoe Co.	Forbush, S. A.

Name	Successor to
Federation Shoe Co.	Pray & Small
Factory Shoe Store	Pacific Shoe Mfg. Co.
Forbush Shoe Mfg. Co.	Geo. J. Winter
Hennessey & Thomson	Hennessey Shoe Mfg. Co.
Hogan Shoe Co.	
Howard Briggs & Pray Co.	
Holmes, E. A. & F. A.	
Hessbery, Felix	
Hoyt, Frank	
Hilliard & Tabor	Wadleigh, P. W.
Ireland-Grafton Co.	J. H. Ireland & Co.
Irving Drew Co.	Star Shoe Co.
Kelly Evans & Co.	Pioneer Shoe Co.
Kellam-Coller Land Co.	
Koeber & Batstone Co.	
Louisiana Shoe Factory	Simon Mozse
Levie Shoe Co.	Levie France Shoe Co.
Lenox Shoe Co.	Weiner, Wright & Watkins
Leonard & Bullock	Leonard & Hollins
Lang & Bertsch	E. T. Lang
Lacey Shoe Co.	
Moloney Shoe Co., John	Moloney, Craven & Oppenheimer
Macdonald & Kiley Co.	Macdonald, Hirsch & Co.
Manistee Shoe Mfg. Co.	
Modern Shoe Co.	
Morning Star Shoe Co.	
Merrill Porter & Co.	
Magnetic Shoe Co.	
Miller & Ricker	
Marcy Bros. Co., The	
Norton, N.	Blucher Bros.
Northwestern Felt Shoe Co.	
Nolan Shoe Factory	J. C. Nolan
Nutt & Co., W. H.	
Oliver Co., Jas. O.	

Name	Successor to
Potter, J. M.	
Price Shoe Co., L.	Price & Wolff
The Pingree Co.	Pingree & Smith
Peaslee, John, Shoe Co.	Roch. Island Shoe Co.
Portland Shoe Mfg. Co.	
Preset Shoe Co.	J. S. Parker & Co.
Parker & Co., J. S.	
Paff Shoe Co., Inc.	Paff & Co.
Perfection Shoe Co.	
Perkins Shoe Co.	E. & L. C. Keith
Rockaway Shoe Mfg. Co.	
Racine Shoe Mfg. Co.	Jones Earl Shoe Co.
Rudy, William B.	
Rubberhide Co.	
Rehfische, Paul	
Straw & Co., L. G.	
Spech, Edmand	Fraher Bros.
Starner Copeland Co.	
Sharood Shoe Co.	Sharood & Crooks
Scates & Euker	
Sunshine Shoe Mfg. Co.	
Snyder & Beilby	
Smith & Watkins Shoe Mfg. Co.	
Seal & Smith Co.	F. W. Moore
Stillman, W. B. M.	Normandy Shoe Co.
Senter, Walter	
Tessier, Peter & Co.	
Taylor, Robert B.	J. H. Webber
Thornton Jordan Shoe Co.	Faunce Jordon Shoe Co.
Travers & Tibbets	Leonard & Bullock
Union Shoe Making Co.	
Worbass Shoe Co.	Kingman & Worbass
Wills, Samuel R.	
Wagener Bros. Shoe Co.	
Webster, Ira	

Name	Successor to
Weill Mfg. Co.	
Zimmerman Shoe Co.	Cheshire Shoe Co.

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1903, AS SHOWN BY OUR RECORDS.

Name	Successor to
Berst, C. H.	Kashner & Berst
Belmont Shoe Co.	Barnesville Shoe Co.
Barker, Brown & Company, Inc.	
Brandau, Adam	
Bohr & Sons, N. C.	Buell & Son
Baby Shoe Co.	
Burrows, J. A.	
Bartlett, J. E.	
Bray, Stanley & Webber	Curtis & Lee
Bragdon, Oren & Son	Kearsarge Shoe Co.
Courtney Shoe Co.	Desnoyers-Courtney Shoe Co.
Carruthers-Jones Shoe Co.	
Crown Shoe Mfg. Co.	
Conrad-Rawls Shoe Co.	Witherspoon Bros. & Co.
Cole-Davis Co.	E. M. Cole
Carroll Shoe Co., J. A.	Feuss & Prather Co.
Coburn-Lewis Shoe Co.	G. M. Coburn & Co.
Cohan & Co., Geo. I.	W. J. Clark
Cummings Co., The	D. Cummings & Co.
Cort, Charles	
Cohen, Frank & Co.	S. Cohen & Brother
Comfort Shoe Co.	
Dolgeville Felt Shoe Co.	
Ellett-Kendall Shoe Co.	Bond Shoe Co.
Eady Shoe Co.	The Flint Shoe Co.
Ellsworth Shoe Co.	
Endicott-Johnson Co.	Lestershire Mfg. Co.
Eckhardt & Son	Eckhardt & Donovan Shoe Co.
Engle Shoe Co.	
Eastman, H. B.	

Name	Successor to
Fiebrich-Fox-Hilker Shoe Co.	Kambach-Fiebrich Shoe Co.
Ford & Co., E. W.	
Frye & Co., C. L.	
Fuller & Co.	
Field Co., F. F.	Field-Hazzard Co.
Forbes, A. H.	H. H. Hoyt Shoe Co.
Gordon Co., Wm.	Watertown Shoe Co.
Guarantee Shoe Mfg. Co.	
Gibbs Shoe Co., O. A.	
Holden, N. B.	
Hirth, Krause & Co.	
Hercules Boot & Shoe Co.	
Ivory Shoe Co.	J. C. Ivory
Jerseyville Shoe Mfg. Co.	
Jordan Shoe Co.	Thornton-Jordan Shoe Co.
Johnson, M.	
Janison, Wm. R.	Highstown Shoe Co.
Jorolemon-Oliver Co.	A. H. Oliver Co.
Krippendorf-O'Neal Co.	Budd-Reilly & Co.
Kashner & Berst	
Kaiser & Son, C.	
Kelley, John A.	
Kenney & Co., L. W.	
Kiley & Co., T. J.	
Knott & Pope Co.	
Knapp, J. A.	Knapp, J. B.
Kavinski, Isreal	
Kreiger-Narath Mfg. Co.	
Logan Shoe Co.	
Lord & Bowers	F. W. Lord
Lester, Whitney Shoe Co.	
Miles & Crone	T. P. Haldy & Co.
Medina Cushion Shoe Co.	D. W. Wright Co.
Middleton Shoe Co.	
Marsters & Co., J. A.	

Name	Successor to
Muller Adams	
Mills, N. A.	
Mortimer Shoe Co.	
McBrown, Rubin A.	
Nicholas & Olson	R. T. Finley
Newhall, B. H.	
O'Brien Shoe Co., J. F.	
Oriental Slipper Mfg. Co.	
Pontiac Shoe Mfg. Co.	John Plaslee Shoe Co.
A. M. Legg Factory	John Plaslee Shoe Co.
Penn Shoe Mfg. Co.	P. & F. Mfg. Co.
Pine State Shoe Co.	E. E. Millett & Co.
Pincus, Julius	
Pepperell Bldg. & Mfg. Assoc.	
Riverside Shoe Mfg. Co.	
Richardson-Joyce Shoe Co.	
Richardson, E. B.	Richardson & Newcomb
Regal Shoe Co.	L. C. Bliss & Co.
Rogers, A. G. Shoe Co.	
Shodwell Shoe Co.	
Shively, F. J.	
Schreier, Jos. A.	Snyder & Beilby
Sterling Slipper Co.	Pierce & Sibley
Sprague & Hathaway Shoe Co.	
Stanton, John	
Thale-Kues & Co.	Thale & Company
Tilt-Kenney Shoe Co.	
Todd Co., F. S.	Todd-Bancroft & Co.
Travers & Co., T. F.	Travers & Tibbets
Union Shoe Works	
Vogel Brothers Shoe Co.	
Wolfe Bros. Shoe Co.	The Annex Shoe Co.
Western Shoe Co.	Kuelen-Nickle Shoe Co.
Worthley, M. J.	C. W. Varney & Co.
Worcester Slipper Co.	

Name	Successor to
White-Dunham Shoe Co.	E. T. White Co.
York Shoe Mfg. Co.	Chas. Heiser Shoe Mfg. Co.

FIRMS STARTING IN THE SHOE BUSINESS IN THE YEAR 1904, AS SHOWN BY OUR RECORDS.

Name	Successor to
Atlanta Leather Co.	
Alley, A. S. Co.	
Austin, Frank E.	
Abraham Shoe Mfg. Co.	
Brandt, J. G. Shoe Co.	
Bering Shoe Co.	Bering & Company
Briggs, Thos. Shoe Co.	
Buek & Ebers	Buek & Co.
Bartlett, Albion	Bartlett Bros.
Brown, C. A. & Co.	
Barton Shoe Co.	
Boynton Shoe Co.	
Bennett & Taylor	
Cresent City Shoe Co.	
Conrad Shoe Co.	Conrad Rawls Shoe Co.
Clark, W. J.	Cohan & Co., Geo. J.
Cobb, Chas. H.	Sterling Slipper Co.
Cohen & Frank	Cohen, Frank & Co.
Comfort Slipper Co.	
Cox, Edw. M. Co.	
Clark, F. D.	
Dovennuehle & Son, H. F. C.	Scowden & Blanchard
Dolge, Alfred Mfg. Co.	
Daniels, Geo. F. Co.	
Eby Shoe Co.	
Engel Cone Shoe Co.	Eagle Shoe Co.
Essex County Shoe Co.	D. Brady
Emery, Chas. P.	Forbes & Colbath
Freiberg, A. M. J. & A.	Freiberg B. & S. Co.
Fargo Shoe Mfg. Co.	Cook County Shoe Mfg. Co.

Name	Successor to
Force, Chas. P.	
Finn, Austin (Filbert St.)	Burnet & Hager
Forbes & Colbath	Forbes, A. H.
Gregory-Shootman Shoe Co.	Shootman, John
Glover, Daniel & Co.	
Griffin White Shoe Co.	B. Cohen & Son
Garden City Shoe Co.	
Germandson, J. F.	
Harrisburg Shoe Mfg. Co.	Harrisburg B. & S. Co. Ltd.
Hammonton Shoe Co.	Osgood & Co., C. F.
Hodsdon Mfg. Co.	
Hall, Loring B. Co.	
Jarchow, N. F. Co.	
Kreider, A. S. Shoe Co.	W. S. Kreider
Krens-Leesberg Shoe Co.	Scudder-Leesberg Shoe Co.
Long-Wilson Co.	
Levin Tanning Co.	Rosenthal-Feder & Co.
Lititz Shoe Co.	
Lynn Shoe Co.	Smith Shoe Co., F. S.
Ludekins, Emil	Ludekins & Thomson
Marion Shoe Mfg. Co.	
Meyer Shoe Co.	
Merrill, Geo. D. Shoe Co.	
Mason, M.	
McLaren & Musson Shoe Co.	Harshman Shoe Mfg. Co.
Normandy Co., The	Normandy Shoe Mfg. Co.
Nyack Shoe Coop. Corp.	Tuttle Shoe Co.
Olson & Swedburg	Nickolas & Olson
Oriental Shoe Mfg. Co.	
Palma Shoe Co.	Ackerman, R.
Putnam & Cross	Putnam, A. S.
Pilgrim Shoe Co.	
Regent Shoe Mfg. Co.	Richardson, Geo.
Ramsfelder-Erlick Co.	Gerstle & Co.
Rodgers Bros.	

Name	Successor to
Robinson Bros. Co.	
Reid & Hertsche Co.	Reid Buenke Shoe Co.
Roth, A.	
Rose Shoe Mfg. Co.	Whitman Co., M. J.
Rieker, Eugene T.	Gloyd S. Co., A. E.
Stilson-Kellog Shoe Co.	
Soule Shoe School & Upper Co.	
Stockton Shoe Mfg. Co.	
Slein, Samuel	Shodwell Shoe Co.
Trimble Bros. & Co.	
Taft & Baker	
Thurell, Batchelder & Co.	
Theriault, Woodus & Burnham	
Uttenweiler-Kohler Co.	
United Workingman's B. & S. Co.	
Waters, E. H. Co.	
Wieck, Ferdinand & Co.	
Wentworth Shoe & Leather Co.	
Warsetz, F. & Co.	
Wood & Neel Co.	Wood, Lawerence & Neel Co.
Winchester Shoe Co.	
Walsh, W. E.	
Watson Shoe Co.	
Wright, W. H.	
Willis, F. E.	
Welch & Atwood Co.	

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1905, AS SHOWN BY OUR RECORDS.

Name	Successor to
Adams, Fred B. & Co.	
Belleville Shoe Company	
Barker, Frank & Co.	
Baker Shoe Company	
Bennett Shoe Company	
Bennett, C. W. & Co., Inc.	Bennett Shoe Company

Name	Successor to
Burton Shoe Company	
Belonga, G. W. & Co.	
Beardsley, Warren	
Connolly Shoe Co.	
Davis Shoe Co.	
Effar Shoe Co.	
Emerson Shoe Co.	Simmons & Hall Shoe Co.
Emerson Bros.	
Grosz Bros.	
Good Shoe Co.	
Griffin, Chas. D., Shoe Co.	
Garfield Shoe Co.	
Goodhue-Jones Co.	
Green, Harry L.	
Hodous, J. S.	
Hawkes, G. A. Co.	
Harney Brothers	
Holmes, F. B.	
Hilgert Curative Foot Gear Institution	
John & Beck Shoe Co.	
Killian & Kreps	
Kelley, Martin Co.	Martin Kelley & Co.
Lloyd-Adams Co.	
Lynch & Sherman	
Libbey, E. D.	
Lewis Shoe Co.	
Levine Brothers	
Leach Shoe Co.	
Monarch Shoe Co.	
Milton Shoe Co.	
Melanson, J. I.	
Marston, C. S., Jr.	
Nicholson, R. A. & Co.	
Obear, J. L.	
Orne Shoe Co.	

Name	Successor to
Red Wing Shoe Co.	
Rohrer, John M.	
Reed & Shappell	
Royal Shoe Co.	
Roberts, C. A.	
Reardon, Jeremiah	
Weaver, C. B.	
Watson-Mason Shoe Co.	
Wright Brothers	

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1906, AS SHOWN BY OUR RECORDS.

Name	Successor to
Ackerman, R.	
Allentown Shoe Mfg. Co.	
Auburn Shoe Co.	
Archibald Bros.	
Andrews & Co.	Andrews-Wasgatt Co.
Adams, Fred B.	
Beeman Shoe Co.	
Battreall-Whittinghill Shoe Co.	
Bradford Shoe Co., The	
Bailey, A. F.	
Burnham, C. A.	
Barber, Frank Co.	
Beal, F. A. & Co.	
Bates, C. S.	
Clifford & Lutz	
Crescent Shoe Co.	
Denver Shoe Co.	
Economy Shoe Co., Inc., The	
Fontins Shoe Co.	
Fargo & Phelps Shoe Co.	
Federal Shoe Co.	H. H. Mawhinney Co.
Fleming & Towers	
Greeman Clark Shoe Co.	Greeman, C. E.

Name	Successor to
Harsh & Smith	
Heinsins, J.	
Hunkins, W. O. & Co.	
Indiana Reformatory	
Kreiger Shoe Co.	Kreiger & Narath Mfg. Co.
Learned, G. A. Co.	
Marion Shoe Co.	
Merrill, Geo. D. Shoe Co.	Merall & Cooper
Morrison, E. G. Shoe Co.	
Morris Bros. Shoe Co.	
Novick Bros.	
Ordway, A. A.	
Plainwell Shoe Co.	
Poor, C. H.	
Purrington, J. W.	
Richardson Bros. Shoe Co.	
Robertson & Sons	
Schultz-Ruck-Delfs Shoe Co.	
Sterling Shoe Co.	
Snow-Hazzard Co.	
Shinbourn, P. & Son	
Sherry Shoe Co.	P. P. Sherry
Supple Shoe Co.	Dearborn Bros.
Sullivan, E. E.	
Thayer, N. B. & Co., Inc.	
Union Shoe Mfg. Co.	Alexandria Shoe Mfg. Co.
Whitney, J. H.	
Wolnicar & Fusfield	
Winslow Shoe Co.	

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1907, AS SHOWN BY OUR RECORDS.

Name	Successor to
Arkansas Shoe Mfg. Co.	
Adams, Besse Company	
Beatty Felting Co.	

Name	Successor to
Bentley & Olmsted Co.	
Bultman Brothers	
Bellaire Shoe Co.	
Brown, Edward	
Borchardt, S. & Co.	
Brockton Ideal Shoe Co.	
Burke, J. F.	
Callahan & Myers	Wm. C. Callahan
Charter Oak Shoe Co.	
Crotty, James A.	
Curtis, S. R.	
Currier & Doucette	
D. C. Clark Shoe Co.	Greenman-Clark Shoe Co.
Dodge, Arthur F.	
Derby, Silas W.	
Elwell Shoe Co.	
Eldridge, Wm. Z.	
French, Finch & Henry	
Ferndale Shoe Co.	
Friend Shoe Mfg. Co.	
Finnigan Shoe Co., Inc.	
Foster, Moulton Shoe Co.	
Graham, Bumgarner Co.	
Greenberg, I. & Co., Inc.	
Industrial Shoe Co.	
Jenkins Bros. Shoe Co.	
Joel-Stern Co.	
Kelly, James S.	
Lord, A. & Co.	
Leavitt, Geo. B.	
Lovenstein, Gust.	
Mayer-Bannister Shoe Co.	
Manier, Dunbar & Co.	
Marietta Shoe Co.	
Mishawaka Woolen Mfg. Co.	

Name	Successor to
Mullen, J. D. & Son	
Marston, A. F. Co.	
Millar & Wolfer	
Morgan Shoe Co.	
Morrison & Goodwin	
Merrill, A. J.	
New York Shoe Mfg. Co.	
Orr, J. K. Shoe Co.	
Packard, H. M. & Co.	
Paine Shoe Company	Orne & Paine
Parke, John H.	
Plaistow Shoe Co.	
Rickard, Gregory Shoe Co.	
Smith-Briscoe Shoe Co., Inc.	
Sawyer Boot & Shoe Co.	
Stevens, W. H.	
Strout & Stritter	
Stonebach, C. H.	
Timson & Company	
Venice Shoe Co.	
Williams Shoe Co., The	
Wayne Shoe Mfg. Co.	
Werner Shoe Co.	Reed & Shr ppell
Wolf, J. L. Shoe Co.	
Woodburn & Currier	
Wiswell, Alvah L.	

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1908, AS SHOWN BY OUR RECORDS.

Name	Successor to
Anatomik Footwear Co.	
B. & E. Shoe Co.	
Baker, Sanford A.	
Belwood Shoe Co.	
Brackett, W. D. Co.	W. D. Brackett & Co.

Name	Successor to
Colby & Bushway	
Conlin, F. J. & Co.	Acme Shoe Mfg. Co.
Continental Shoe Co.	
Currier, T. J.	
Dodge, Nathan D. Shoe Co.	
Dougherty-Meara Shoe Co.	
Eastman Shoe Co.	
Feldner, P. Shoe Co.	
Feman, Morris	
Fitzpatrick, Frank A.	
Friend-Nunnally Shoe Mfg. Co.	Friend Shoe Mfg. Co., Inc.
Gage & Morse	
Goldberg, S. & Co.	
Goodwin & Gosselin	
Green Shoe Co.	
Greenberg-Miller Co.	Twentieth Century Legging Co.
Griffin, N. C.	
Hand Made Shoe Co.	
Hammer & Hungerford	
Harbor Grace Boot & Shoe Mfg. Co.	
Hendrick, L. M. & Co.	
Hillsdale Shoe Co.	Dovenmuehle, F. C. & Sons Co.
Holters-Cravin Co.	
How, George C.	
Johanson-Huxley Shoe Co.	
Kentucky Shoe Mfg. Co.	
Lefkowitz, Jacob	Lefkowitz & Knopping
Logan, Thomas H. Co.	
Lowery, O. E. Co.	
Miller & Day	
Moody, V. H. Shoe Co.	Pillsbury, W. S. & R. W.
Morr Shoe Mfg. Co.	
Mortimer, Dyer	Merrill, George D. Shoe Co.
Murray, Elmer	
Newberry Shoe Co.	

Name	Successor to
Newton Shoe Co.	
Orne, W. P. & Co.	E. B. Richardson
Quimby, Hiram P.	
Reider-Fisher Shoe Co., Ltd.	
Richardson, B. F.	
Rosenwasser Bros.	
Saunders Shoe Co.	
Smallwood, Fred	
Springvale Shoe Co.	
Sterling Shoe Mfg. Co.	
Strickler & Brehm Shoe Mfg. Co.	Hummelstown Shoe Co.
Thompson & Scott	
United Iowa Shoe Co.	
Walker, Arthur W.	
Weill, J. C.	
Well-Worth Shoe Co.	
Williams, A. A. Shoe Co.	
Wolf & Wolfson	
Woodburn & Jaquer	
Wright Co., The	
Yost, C. E. & Bro.	

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1909, AS SHOWN BY OUR RECORDS.

Name	Successor to
Athletic Shoe Co.	
Brockton National Shoe Co.	
Benson & Holden	
Barry Shoe Co., W. J.	
Beaumont & Traub	
Chippewa Shoe Mfg. Co.	
Davis Brothers	
Dovell & Son, Wm. H.	
Dooley Shoe Mfg. Co., M. J.	
Davis, Luther A.	

Name	Successor to
Dessner & Co., J.	
Emerson Shoe Co., C. S.	
Foot Ease Shoe Co.	
Franco-American Shoe Mfg. Co.	
Goodwin, W. C.	
Gosselin, F.	
Greeley & Towle	
Hayden & Collins	
Harlow & Keene	
Hurley Shoe Mfg. Co.	
Haskins Shoe Mfg. Co.	
Honesdale Footwear Co.	
Herrmann, Jandorf & Oxberry Co.	
Imperial Shoe Mfg. Co.	
Kreider Shoe Co.	
Kreider & Sons Mfg. Co., W. L.	
Kenmore Shoe Co.	
Kaufman Dryfoot Co.	
Lucas & Lee Co.	
Luddy Shoe Co., James	Luddy & Currier
Leibowitz & Son, A.	
Luscomb & Kadel Co.	
L. W. Shoe Co.	
Montgomery & Company	
Mason Shoe Mfg. Co.	
Milton Shoe Co.	
Marston Shoe Co.	
Marvel Shoe Co.	
Mutual Shoemakers #1	
Marlboro Shoe Co.	
McNaghten, S. D.	
McBrearty, John	
New England Shoe Mfg. Co.	
O'Donnell Shoe Co.	
Olive Branch Shoe Corp.	

Name	Successor to
Pecker & Co., Everett W.	
Plaut Butler Company	
Pittsfield Shoe Co.	
Parker & Munroe	
Queen Shoe Co.	
Reynolds & Stetson Co.	
Randall, Perley H.	
Red Star Shoe Co.	
Star Shoe Co.	
Sheboygan Shoe Co.	
Stern Co., Arthur C.	
Sweet, F. F.	
Simons & Sons, Geo.	
Sheridan Brothers	
Senter & Gordon	
Swain & Bellows Shoe Co.	
Scott, Randall M.	
Smith & Son, M. A.	
Sprague Shoe Co.	
Troy Shoe Co.	
Three K Shoe Co.	
Wear Well Shoe & Repair Co.	
Warranty Shoe Mfg. Co.	
West Lynn Shoe Mfg. Co.	

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1910, AS SHOWN BY OUR RECORDS.

Name	Successor to
Albert, J. & Son	
American Specialty Shoe Co.	
Arnold, R. O.	
Ashby Shoe Co.	
Asher, L.	
Bangor Shoe Co.	
Battles, A. W.	

Name	Successor to
Bell Bros. Co.	
Birgman Shoe Mfg. Co., The	
Bonin, M.	
Clark, D. C.	
Clark, D. C. Shoe Co.	D. C. Clark
Clifford, Chas. L.	Quimby, Hiram P.
Columbia Shoe Co.	
Currier, C. D.	Currier, W.
Cushion Heel Shoe Co.	
Derry Shoe Co.	
Desmond-Hayden Shoe Co.	
Devine & Yungel Shoe Mfg. Co.	Devine & Yungel
Dodd, Jos. M.	
Dowd, C. & T.	Dowd, Edward
Eagle Wood Heel Co.	
Everwear Shoe Co.	
Fenerty, Cossaboom & Mays	
Field-Holmes Co.	
Filsinger-Boette Shoe Co.	
Flexo Shoe Co.	
Foot, S. B. & Co.	
Fuller, Chandler & Patton	
Gage & Russ	Gage & Morse
Gerber, F. C. Shoe Co.	
Goodyear Shoe Co., Inc., The	
Green, F. L. W.	
Gregory, F. E. Co.	Pecker, Everett W. & Co.
Greilich, Wm.	
Harding Custom Shoe Co.	
Harney, Peter J. & Sons	
Hazzard, R. P. Co.	Snow-Hazzard Co.
Hedlund Shoe Co.	
Hennessey, Maxwell & Harrigan S. Co.	
Honesdale Union Stamp Shoe Co.	
Jacobs & Burrows	Burrows, J. A. & Co.

Name	Successor to
Kimball-Knight Shoe Co.	Adams-Besse Shoe Co.
Koerner-Marsh Shoe Co.	
Krieger & Co.	
Lange & Janke Mfg. Co.	
Larson, C. P. Shoe Co.	
Leavitt, F. E. & Co.	
Leger, W. A.	Goodwin, John F.
McNamara, L. F. & Co.	
Martin Slipper Co.	
Merrill, A. J. & Co.	Merrill, A. J.
Minor-Pullen Co.	Felter Bros. Co.
Moody-Emerson Shoe Co.	
M. S. & P. Shoe Co.	
Newbury Shoe Co.	
Niagara Shoe Co.	Venor & Co.
Northland Shoe Co.	
North Star Shoe Co., The	Heffelfinger Shoe Mfg. Co.
O'Keefe, C. J. & Co.	
Perfect Shoe Mfg. Co.	
Perry-Malcolm Co.	
Pincus & Tobias	Pincus, J.
Redman Shoe Co., The	
Rench & Haslach	
Rice-Hurlbert Shoe Co.	
Rood, D. C. Shoe Mfg. Co.	
Rowe & Connor	Murray, Elmer
Salem Shoe Mfg. Co.	
San Diego Shoe Mfg. Co.	
Santa Rosa Shoe Mfg. Co.	
Scott, R. M.	Scott & Quiner
Scott & Quiner	Scott, R. M.
Simonds & Webster	
Smart, H. A.	
Solomon, J. Co.	
Speigelman & Gluckman	

Name	Successor to
Stanley Shoe Co.	
Sterner, Harry S.	
Straw, L. G. & Dunham	Straw, L. G. Shoe Co.
Strong & Co.	
Stahler, C. F. Shoe Co.	
Teitzel, J. C.	
Trevett & Berry	
Turner, H. B. & Co.	
Twig, Otto L.	
Unique Shoe Mfg. Co.	
Webster-Webber Shoe Co.	
Wildowsky, M.	
Winona Shoe Mfg. Co.	
Witherell & Dobbins	
Woodbury, Edwin S. Co.	Lefavour D. D. Co.
Wright & McAdams	

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1911, AS SHOWN BY OUR RECORDS.

Name	Successor to
Beaver Shoe Co.	
Burkley Shoe Co.	J. F. Foster & Sons
Brockton People's Shoe Co.	
Bickley Shoe Mfg. Co.	
Butcher, W. A.	
Borek, John	
Bedford-Pittman Co.	
Burrier & Farra	
Bentley, Mrs. B.	
Bohr Bros. Co.	Bohr Shoe Co.
Bender Shoe Co.	
Belovsky Bros.	
Brooklyn Shoe Mfg. Co.	
Beacon Falls Rubber Co.	
Columbia Shoe Mfg. Co.	Hennessey Shoe Mfg. Co.

Name	Successor to
Chicago Theatrical Shoe Co.	
Carleton, Geo. F. & Co.	
Collins, H. S.	
Collins, T. P. F. & Co.	
Consolidated Shoe Co.	
Doherty Bros.	
Day-Emerson Shoe Co.	
Danebrook, Ernst	
Dudley, Mears & Stevens, Inc.	
Essex Shoe Mfg. Co.	
Frolicher Helmers Co., The	
Gray & Snyder	
Gordon Shoe Co.	
Grand Shoe Co.	
Goldberg Co. I. Inc.	
Grasso, Salvatore	
Hoar, W. J. Shoe Mfg. Co.	
Hubler & Earnshaw Co.	
Hagerstown Legging Co.	
Hitchcock-Stockbridge Co.	
Heath, Fred B.	
Hoskins, R. H. Co.	
Ideal Shoe Mfg. Co.	
Ideal Baby Shoe Co.	A. H. Putnam & Co.
Jacobs & Thatcher Co.	
Kirk-Dunning Co.	
Kyng B Shoe Co.	
Knights-Allen Co.	
Kelley, James S.	
Kaufman, Emil Co.	
Lay-Waterson Shoe Co.	
Luedke-Schaefer-Buttles Co.	
McGregor, W. R.	
Marston & Brooks Co.	
Myron, W. H. Shoe Co.	

Name	Successor to
Majestic Shoe Co.	
Miller, I.	
Mears, Feely & Adams	
Powers & Dundas	Sawyer & Murdock
Patterson Co., The	
Pitman Shoe Co.	
Quinn, Gilbert F. Co.	
Red Bud Shoe Co.	
Russell, W. C. Moccasin Co.	
Rhodes-Dooin Co.	
Robinson & Farrell Shoe Co.	
Ruddock Shoe Co.	
Rickard Shoe Co., The	
Richardson, Charles H.	
Raines, L. H. & Co.	
Rogers, Forrest L. Co.	
Schroeder Shoe Co.	
Superior Shoe Mfg. Co.	
Sargent & Kelliher	
Usher-Stoughton Shoe Co.	
Valley Shoe Co.	
Wisconsin Shoe Co.	
Welch & Kelly	
Welch Shoe Co.	
Whitney, H. T.	
Whittridge Bag Co., Inc.	
Yeager, R. E. Shoe Co.	
York Shoe Mfg. Co.	

DEFENDANTS' EXHIBIT 224.

[Put in Evidence, page 3026.]

CLASSIFIED PRODUCTION AT FACTORY OF JOHN STROOTMAN SHOE COMPANY, BUFFALO, N.Y., YEAR ENDING DECEMBER 31, 1911.

1911	Women's Stitched (2 Mchs.)	Misses' Stitched	Children's Stitched	Women's & Misses' Turns (1 Mach.)	Children's Turns
Jan.	3643	12	24	1795	744
Feb.	3454	42	35	1615	717
Mar.	3845	0	0	1202	875
Apr.	2234	135	69	687	424
May	749	0	0	224	29
June	3601	0	0	1204	526
July	4164	0	100	962	1043
Aug.	4964	55	78	914	1049
Sept.	5492	12	23	1036	883
Oct.	2031	0	0	695	642
Nov.	3414	120	72	873	262
Dec.	4380	226	3	1002	412
	41971	602	404	12209	7606
Capacity	210000			172500	
%Use to Capacity	19.9%			11.4%	

1911	Turn Toe Lasting (1 Mach.) (8 Mos.)	H.M. 5/12c (4 Mchs.)	McKay 1/2c (4 Mchs.)	H.M. 1/2c (2 Mchs.) (8 Mos.)	Welt 5/8c (2 Mchs.) (8 Mos.)	No. 5 Lasting (1 Mch. (8 Mos.)
Jan.		2845	7596	49	5467	
Feb.		2585	6388	86	5055	
Mar.		1428	6927	21	4882	
Apr.		378	2626	230	2779	
May	224	137	1882	0	0	830
June	1155	2152	6715	0	0	3698
July	962	3223	6516	41	4174	4215
Aug.	914	3700	8913	0	0	5225
Sept.	1036	3090	7197	0	0	5338

Oct.	695	831	5599	0	0	2143
Nov.	873	2233	5565	0	0	3651
Dec.	1002	3488	7058	0	0	4738
	6861	26090	72982	427	22357	29838
Capacity	120000	300000		40000	50000	
% Use to Capacity	5.7%	33%		56.9%	59.7%	

1911	No. Machs.	Ensign Lacer	Pulling O. Welt	Pulling O. McKay (1 Mach)	McKay Pounding (1 Mach)	Heeling (2 Machs)
Jan.	2	7015		10535	10578	17045
Feb.	2	6849		8574	8862	13278
Mar.	2	5847		8693	8683	14357
Apr.	2	3373		2683	3002	7023
May	2	3700	195	2156	2187	252
June	3	12967	578	9001	9043	14440
July	3	15157	0	9550	9962	15622
Aug.	3	15435	3016	12435	12624	17235
Sept.	3	16102	4576	10359	10187	17501
Oct.	3	6020	2042	6370	6575	10113
Nov.	3	8974	3261	7758	6534	11590
Dec.	3	9441	4722	10623	10527	16062
		110880	18390	98737	98764	154518
Capacity		1395000	90000	135000	270000	
% Use to Capacity		7.9%	20.4%	73.1%	36.5%	

SUMMARY

Process	Number Pairs
Welting & Stitching	42,977
Turn Sewing	19,815
Pulling Over	117,127
Heeling	154,518
Lacing	110,880
Lasting	158,555

DEFENDANTS' EXHIBIT 225.

[Put in Evidence, page 3044.]

LIST OF PRINCIPAL AND AUXILIARY MACHINES OF THE GOODYEAR METALLIC HEELING AND LASTING DEPARTMENTS OUT JANUARY 1, 1905, ON UNTIED LEASES.

	Principal Machines	Auxiliary Machines	Total
Welt & Turn Sewing Machines Outsole Stitching Machines	1,798 1,817	9,078	12,693
Metallic Fastening Machines	603		603
Heel Attaching Machines	1,500	1,950	3,450
Lasting Machines	1,956		1,956
	7,674	11,028	18,702

MACHINES OF THE GOODYEAR, METALLIC, HEELING & LASTING DEPARTMENTS OUT MARCH 1, 1911, ON UNTIED LEASES.

Goodyear — Principal Machines	5,203
" — Auxiliary Machines	15,540
Metallic — Principal Machines	225
Heeling — Attaching Machines	415
" — Auxiliary Machines	514
Lasting	1,506
	23,403

DEFENDANTS' EXHIBIT 226.
[Put in Evidence, page 3044.]

LEASED MACHINERY AS OF RECORD MARCH 1 OF EACH YEAR FOLLOWING:

	1900	1901	1902	1903	1904	1905	1906	1907	1908	1909	1910	1911	1912	1913
Goodyear Department.														
Welts & Turns	1338	1387	1513	1650	1724	1851	2011	2157	2268	2338	2471	2527	2599	2613
Stitchers	1193	1279	1473	1601	1690	1871	2159	2366	2597	2468	2604	2676	2855	2973
Metallic Department.														
Standard Screw Machines	826	778	744	683	658	629	628	639	671	613	580	440	406	379
Slugging Machines	1723	1793	1869	1862	1866	1870	1871	1913	1983	1894	1933	1878	1845	1838
Tacking Machines	3752	3700	3772	3600	3606	3383	3394	3461	3528	3317	3214	3065	2956	2852
Loose Nailing Machines	860	944	1078	1129	1191	1247	1313	1414	1561	1615	1753	1835	1913	1967
Heeling Department.														
Attaching Machines	1382	1447	1535	1545	1597	1652	1727	1847	1964	1964	2030	2019	2102	2111
Lasting Department.														
Hand Method Machines	2036	2303	2669	2861	2971	3153	3392	3696	3881	3886	3936	3854	3865	3782
Bed Lasters:														
Chase, Copeland, McKay-Copeland & Ideal	2171	2153	2087	2094	2122	2136	1881	1993	2123	2129	1952	1562	837	744
No. 5										196	1040	2080	3274	3716
Pulling-Over Department.														
Pulling Over Machines				20	106	268	566	887	1011	1162	1394	1635	1960	2211
Auxiliaries, General Department, Eyelet Department and Miscellaneous Machines	8862	9821	11703	17060	19944	24079	29958	37404	43922	48771	57827	66705	72469	73330
Grand Total	24143	25605	28443	34105	37475	42138	48900	57777	65509	70353	80734	90276	97081	98516

DEFENDANTS' EXHIBIT 227.

[Put in Evidence, page 3048.]

LIST OF GENERAL DEPARTMENT MACHINES SOLD OR LEASED BY THE UNITED COMPANY DECEMBER, 1911.

Beading Machine: Columbia
Beading Machine: N. M. Heel Seat — Model G.
Beveling Machine: Champion Strip — Model B.
Blacking Machine: Crest Heel — Model B.
Breasting Machine: Imperial Heel — Model B.
Breasting Machine: Heel — Model R.
Breasting Machine: Heel — Model W.
Buffing Machine — Model G.
Building Machine: Heel — Model R.
Building Machine: Pyramid Heel — Model D.
Carburetter and Pump: Improved — Model C.
Cementing Machine: Star Channel — Model C.
Cementing Machine: Star Channel — Model D.
Cementing Machine: Hub Lining — Model F.
Cementing Machine: Rapid Rotary — Model J.
Channeling Machine: Apex — Model B.
Channeling Machine — Model G.
Cleaning Machine: Booth Shaping &
Cleaning Machine: Stitch & Upper — Model M.
Cleaning Machine: Upper — Model R.
Creasing Machine: Improved Vamp
Cutting Machine: Eclipse Welt — Model G.
Cutting Machine: Eclipse Welt — Model H.
Cutting Machine: Heel Wedge — Model A.
Cutting Machine: Improved Baby Sole — Model P.
Cutting Machine: Improved Geared Sole — Model CC.
Cutting Machine: Imp. Gearless Sole — Model A.
Cutting Machine: Imp. Gearless Sole — Model B.
Cutting Machine: Imp. Gearless Sole — Model C.
Cutting Machine: Imp. Gearless Sole — Model E.
Cutting Machine: Imp. Gearless Sole — Model F.

Cutting Machine: Imp. Gearless Sole — Model H.
Cutting Machine: Imp. Gearless Sole — Model J.
Cutting Machine: Imp. Gearless Sole — Model K.
Cutting Machine: Imp. Gearless Sole — Model M.
Cutting Machine: Tap — Model S.
Cutting Machine: Welt — Model F.
Cutting Machine: Welt — Model N.
Cutting & Scoring Machine — Model D: Insole Lip.
Cutting & Scoring Machine — Model E: Insole Lip.
Dividing Machine: Carver Counter.
Edge Machine: Apex Thin — Model A.
Embossing Machine: Royal — Model A.
Embossing Machine — Model B.
Embossing Machine — Model R.
Finishing Shaft, High Stand — Model R.
Finishing Shaft, High Stand — Model S.
Finishing Shaft, Climax — Model A.
Finishing Shaft, Climax — Model B.
Finishing Shaft, Climax — Model C.
Finishing Shaft, Climax — Model D.
Finishing Shaft, Climax Sectional — Model K.
Fleshing or Randing Machine: Apex — Model A.
Fleshing or Randing Machine: Apex — Model B.
Flexing Machine: Insole — Model R.
Gauging Machine: Sole — Model R.
Gauging Machine: Sole — Model T.
Gouging Machine: Crescent Toe — Model C.
Grinding Machine: Apex — Model G.
Grinding Machine: Apex Knife — Model A.
Grinding Machine: American Slug — Model P.
Grinding Machine: Imperial — Model H.
Grinding Machine: Planet — Model A.
Hammer, New Power — Model B.
Laying Mch.: Channel — Model W.
Laying Mch.: Apex Welt — Model A.
Leveling Mch.: Acme.

Leveling Mch.: New Giant.
Leveling & Flexing Mch.: Shin — Model N.
Leveling Mch.: Atlas — Model A.
Leveling Mch.: Hercules — Model A.
Leveling Mch.: Hercules — Model B.
Leveling Mch.: Star — Model S.
Marking Mch.: Paragon Vamp — Model C.
Moulding Mch.: American Twin Sole — Model C.
Moulding Mch.: Single Sole — Model S.
Opening Mch.: Apex Channel — Model C.
Perforating Mch.: Royal — Model B.
Pinking Mch.— Model R.
Polishing Mch.: Vamp — Model R.
Press, Heel — Model F.
Press, Heel — Model S.
Press, Handy Heel — Model P.
Press, Welt — Model S.
Press, Booth Upper.
Punching Mch.: Crown Tip — Model P.
Punching Mch.: Tip — Model S.
Punching Mch.: Royal Tip — Model A.
Reducing Mch.: Apex Feather Edge & Shank — Model A.
Reducing Mch.: Apex Feather Edge & Shank — Model B.
Reducing Mch.: Rotary Feather Edge & Shank — Model H.
Reducing Mch.: Feather Edge & Shank — Model M.
Reel, Welt — Model P.
Rolling Mch.— Model F.
Rolling Mch.— Model H.
Rolling Mch.— Model R.
Rolling Mch.: Improved — Model S.
Rolling Mch.: Improved — Model EE
Rolling Mch.: Victor — Model E.
Rounding Mch.: Apex Tap & Sole — Model A.
Rounding Mch.: Heel Seat Rough — Model B.
Rounding Mch.: Planet Sole — Model D.
Rubbing Mch.: Rapid Seam — Model F.

Sanding Mch.: Top Piece — Model G.
Scarfing Mch.: Boss Spring Heel — Model B.
Scarfing Mch.: Lap — Model H.
Scarfing Mch.: Spring Heel — Model S.
Scarfing Mch.: Turn Sole — Model A.
Scolloping Mch.: Button Fly — Model R.
Scolloping Mch.: Button Fly — Model S.
Scolloping Mch.: Top Piece — Model B.
Scouring Mch.: Heel — Model R.
Scouring Mch.: Carver Heel.
Scouring Mch.: Heel Breast — Model H.
Scouring Mch.: Heel Breast — Model N.
Scouring Mch.: Tip — Model G.
Setting Mch.: Rotary Edge — Model K.
Setting Mch.: Single Edge — Model M.
Setting Mch.: Twin Edge — Model R.
Setting Mch.: Union Twin Edge — Model S.
Sewing Mch.: McKay — Sole.
Shears: Improved Pattern — Model R.
Skiving Mch.: Amazeen — Model #7.
Skiving Mch.: Counter — Model W.
Skiving Mch.: Pluma — Model D.
Skiving Mch.: Carver Vamp.
Skiving Mch.: Champion Heel Lift — Model A.
Skiving Mch.: Champion Shank — Model A.
Skiving Mch.: Counter — Model D.
Skiving Mch.: Counter — Model F.
Skiving Mch.: Counter — Model S.
Skiving Mch.: Leatherboard — Model C.
Skiving or Rand Splitting Mch.: Apex Tap — Model C.
Snipping Mch.: Booth Sandal.
Softening Mch.: Toe — Model C.
Softening Mch.: Toe — Model D.
Softening Mch.: Toe — Model E.
Splitting Mch.: Improved Rand — Model S.
Splitting Mch.: Rand — Model T.

Splitting Mch.: Centennial — Model A.
Splitting Mch.: Centennial — Model B.
Splitting Mch.: Centennial — Model D.
Splitting Mch.: Centennial — Model E.
Splitting Mch.: Centennial — Model F.
Splitting Mch.: Centennial — Model G.
Splitting Mch.: Centennial — Model H.
Splitting Mch.: Centennial — Model J.
Splitting Mch.: Summit — Model M.
Splitting Mch.: Summit — Model N.
Splitting Mch.: Summit — Model P.
Splitting Mch.: Empire — Model C.
Splitting Mch.: Cylinder — Model R.
Stamping Mch.: Eagle Sole — Model C.
Stamping Mch.: Eagle Upper — Model C.
Stamping Mch.: Regent — Model C.
Stamping Mch.— Model R.
Stand: Climax Bench.
Sticking Mch.: Shank Piece — Model B.
Stitch Mch.: Impression — Model H.
Stitch Mch.: Waukenphast Imitation — Model T.
Stripping Mch.: Improved — Model F.
Stripping Mch.: Improved — Model S.
Thin Edge Mch.: Apex — Model A.
Trimming & Stitch Rubbing Mch.: Welt — Model R.
Trimming Mch.: Apex Spring Heel — Model A.
Trimming Mch.: Edge — Model A.
Trimming Mch.: Edge — Model B.
Trimming Mch.: Edge — Model E.
Turning & Beading Mch.: Model R.
Turning Mch.: Star Rand — Model S.
Wetting Mch.: Crest Sole — Model A.
Wheeling Mch.: Booth Geared

DEFENDANTS' EXHIBIT 228.

[Put in Evidence, page 3049.]

SUMMARY OF LEASED MACHINES AS OF MARCH 1, 1911.

Heeling Department	5,408
Metallic Department	9,434
Lasting Department	12,775
Pulling-Over Department	3,627
Ensign Lacing Department	633
Eyelet Department — Power Machines	2,435
Eyelet Department — Foot Power & Miscellaneous	2,037
General Department	33,184
Goodyear Department	20,743
Total	90,276

HEELING DEPARTMENT

Bigelow Attaching Machine	14
Wood Heel Attaching	9
Velvet Box Toe Buffing	47
#4 Automatic Heel Compressing	605
Bresnahan Heel Compressing	14
Fisher Heel Compressing	3
Knox Heel Compressing	1
Compressing & Loading	7
McKay Knife Grinding	613
Monarch Skiver Knife Grinder	22
National Heeling	10
American Lightning Nailing	978
McKay Automatic Heel Loading & Attaching	943
" " " " " " "B"	5
Rapid Nailing & Automatic No. 1 and 2	60
Premier Heel Pricking	225
McKay Heel Pricking	24
Eros Rand Making	20
Monarch Counter Skiver & Finisher	58
Smith Heel Trimming	18

Busell Heel Trimming	148
King Heel Trimming	7
Spring Heel Trimming	92
McKay Heel Breast Trimming	6
Ultima Heel Trimming	482
McKay Heel Trimming & Randing	966
Tape Winding	20
Trip Rand Moulding	1
Tap & Sole Sanding	10
Total	5,408

METALLIC DEPARTMENT

Staple Belt Machine	4
Grip Clinch	173
Universal Double Clinch	103
Heel Protector Driving	40
Staple Fastening "A" " " "B" " " "C" " " "D"	887
Nurling	3
Loose Nailing	1,783
Loose Nailing No. 2.	52
Automatic Staple Nailing	1
Davey Pegging	146
Spatter Quilting	44
Ziz Slugging	3
Universal Slugging	1,789
Grip Slugging	69
Simplex Slugging	6
Champion Slugging	11
Rapid Standard Screw	398
Old Standard Screw	42
Power Welt Tacking	251
S. H. Taper Nail Tacking / D. H. Taper Nail Tacking	928

String Nail Tacking	260
Cable Tacking	281
Grip Tacking "A"	454
" " "B"	4
Grip Quilting	1
Knife Grinders	1,701
Total	9,434

LASTING DEPARTMENT

Hand Method McKay Laster	2,646
Turn Heel Seats	62
Hand Method Welt Lasting Side Lasting	1,103
Turn Toe Lasting	43
McKay-Copeland Lasting	300
McKay-Copeland Tackers	335
McKay-Copeland Pinkers	318
McKay-Copeland Peggers	23
Chase Lasting	780
Chase Tackers	1,231
Boston Lasting	226
Copeland Power Lasting — Non Royalty	8
Copeland Foot Power Lasting—Royalty	11
" " " " —Non Royalty	27
Ideal Lasting—Royalty	353
" " —Non Royalty	83
Loose Tacking & Insole Tacking No. 1	3,118
Beacon Heel Seat Beating	28
U. S. M. C. Lasting No. 5.	2,080
Total	12,775

PULLING OVER DEPARTMENT

Wentworth Heel Seat Beading	213
Rex Pulling Over 5-Pincer Swivel McKay 40 Deg Machine 3-Pincer 40 Deg Machine 5-Pincer	1,632

Rex Pulling Over "B"	3
Rex Rotary Pounding	1
Rex Pounding "E"	83
Rex Rotary Pounding & Trimming "A" "B"	556
Rex Toe Trimming	4
Rex Upper Trimming	143
Rex Toe Gumming	9
Rex Tacking	21
Rex Assembling	854
Rex Assembling Spindle	20
Rex Trimmer Grinders	88
Total	3,627

ENSIGN LACING DEPARTMENT.

Ensign Lacing "A" " " "B"	633

EYELET DEPARTMENT — POWER MACHINES.

Duplex Eyeletting	817
Merrick Power Eyeletting	116
Perfection Eyeletting Universal Eyeletting	1,502
Total	2,435

EYELET DEPARTMENT — FOOT POWER AND MISCELLANEOUS MACHINES.

Domino Grommet Setting	1
Cameo Foot Power Eyeletting	11
Merrick Foot Power Eyeletting	1
Vulcan Foot Power Eyeletting	1,939
Vulcan Foot Power Eyeletting (Power Attachment)	76
Wunderhoox	5
Vulcan Punch	3
Vulcan Punch Fitted for Eye.	1
Total	2,037

GENERAL DEPARTMENT.

New Method Heel Seat Beading — Model G	137
Champion Strip Beveling — Model A	1
" " " — Model B	55
Crest Heel Blacking — Model A	132
#1 Heel Seat Beading	3
Plain Heel Seat Beading	1
Buffing Machine — Model G	1,112
" " Model H	1
" " Model D	2
" " Model S	99
Emerson Buffing (Heavy)	7
" " (Plain)	5
Bottom Shank Roll Buffing	1
Webster Buffing	3
Split Roll Buffing (Naum. Att.)	10
Plain Ross Buffing	1
Heel Building — Model R	13
#2 Heel Building — Model R	3
Pyramid Heel Building — Model B	38
Heel Breasting — Model R	76
" " Model W	36
Imperial Heel Breasting — Model B	954
#8 Heel Burnishing	1
Star Channel Cementing — Model A	233
" " " Model C	186
Rapid Rotary Cementing — Model J	125
Vamp & Lining Cementing — Model S	12
Economy Cementing — Model X	74
Hub Lining Cementing — Model E	82
Apex Channeling — Model A " " Model B	658
Hand Power Channeling — Model Z	6
Hand or Power Channeling — Model A	5
Hand Belt Power Channeling — Model Z	4

Norris Rand Chopping	1
Stitch & Upper Cleaning — Model M	267
Upper Cleaning — Model R	4
Ideal Clicking — Model C	3,655
Crimping	1
46" Ex. Heavy Geared Lining Cutting	3
Improved Baby Sole Cutting — Model P	78
Improved Geared Sole Cutting — Model CC	36
Improved Gearless Sole Cutting — Model A	237
" " " " Model B	130
" " " " Model C	655
" " " " Model E	66
" " " " Model F	451
" " " " Model H	18
" " " " Model J	63
" " " " Model K	7
" " " " Model M	10
Tap Cutting — Model S	17
Beam Cutting	1
Bresnahan Rd. Block Dinking	1
Union Twin Edge Setting — Model S	86
Twin Edge Setting — Model R	1,300
Single Edge Setting — Model M	55
Rotary Edge Setting — Model C	133
Beaudry Edge Setting	1
Apex Thin Edge — Model A	122
Embossing — Model R	55
" Model W	12
Puritan Fairstitching	8
Power Fleshing — Model H	1
Apex Fleshing or Ranging — Model A	221
" " " " Model B	28
Insole Flexing — Model R	50
" " Model E	2
Crescent Toe Gouging — Model A	8
" " " Model B	5
" " " Model C	131

American Slug Grinding — Model P	4
Imperial Grinding — Model H	175
Planet Grinding — Model A	20
Fletcher Ironing	9
Apex Welt Laying — Model A	20
Channel Laying — Model W	138
" " (S. & F.)	5
Shin Leveling & Flexing — Model N	55
Last Leveling (Swain & Fuller)	2
Atlas Leveling — Model A	354
Hercules Leveling — Model A	402
" " Model B	89
Star Leveling — Model S	5
Giant Leveling	7
Acme Leveling	54
Bresnahan Cam Leveling	5
American Twin Sole Moulding — Model B	303
" " " " Model C	20
Bresnahan Twin Sole Moulding	2
C. & J. Twin Sole Moulding	1
Single Sole Moulding — Model S	44
Nurling	278
Apex Channel Opening — Model A	18
" " " Model B	39
" " " Model C	544
Vamp Polishing — Model R	6
Handy Heel Press — Model P	122
Improved Veneer Press "E" 8 Section	2
" " " "E" 10 "	14
Crown Tip Punching — Model P	271
Apex Feather Edge & Shank Reducing — Model A	279
" " " " " " Model B	281
Feather Edge & Shank Reducing — Model M (Hand)	2
" " " " " Model M (Power)	5
Rotary Feather Edge & Shank Reducing — Model H	14
Power Shank Reducing	2

Rolling — Model E	304
" (S. & F. Type)	19
" Model F	31
" Model R	16
" Model EE	10
Improved Rolling — Model S	15
Tap & Sole Roughing — Model A (Old & New Styles)	13
Apex Tap & Sole Rounding — Model A (H. P.)	29
" " " " " Model A (H. B. P.)	390
Heel Seat Rough Rounding — Model B	384
Planet Sole Rounding — Model C	444
" " " Model D	623
Improved Sole Rounding — Model H	13
Stanley Rounding — Model S	3
Vrooman Tap Rounding	3
Top Piece Sanding — Model G	46
Boss Spring Heel Scarfing — Model B	21
Hand Spring Heel Scarfing	1
Spring Heel Scarfing — Model S	4
Tap Scarfing — Model N	3
Button Fly Scalloping — Model R	5
" " " Model S	12
Top Piece Scalloping — Model B	185
Carver Heel Scouring	28
Heel Scouring — Model E	4
Heel Scouring — Models R & T	997
Heel Scouring — Model G	28
Heel Breast Scouring — Model H	373
" " " Model N	137
Tip Scouring — Model E	4
" " Model G	327
Improved Tip Scouring	2
McKay Sewing — Model S	251
" " Model B	551
Richardson Sole Sewing	96
Improved Pattern Shears — Model R	20

Hartford Pattern Shears — Model H	1
#7 Amazeen Skiving	1
Counter Skiving — Model D	7
" " Model S	53
" " Model F	5
Champion Heel Lift Skiving — Model A	119
Power Shank Skiving	1
Champion Shank Skiving — Model A	16
Apex Tap Skiving or Rand Splitting — Model A " " " " " " Model B	267
" " " " " " Model C	292
Centennial Splitting — Model A	190
" " Model B	80
" " Model C	4
" " Model D	3
" " Model E	8
" " Model F	1
" " Model G	5
" " Model J	2
Improved Rand Splitting — Model S	20
Rand Splitting — Model T	1
Summit Splitting — Model L	157
" " Model M	782
" " Model N	126
" " Model P	245
Empire Splitting — Model C	70
Cylinder Splitting — Model R	8
" " Model SS	4
Stamping — Model R	74
Regent Stamping — Model A	2
" " Model B	112
" " Model C	503
Eagle Sole & Upper Stamping — Model A	6
" " " " " Model B	21
Eagle Sole Stamping — Model C	14
Eagle Upper Stamping — Model C	66

Impression Stitch — Model H	20
Waukenphast Imitation Stitch — Model T	20
Improved Stripping — Model F	17
" " Model S	61
Miller Tables	1,630
Miller Legs	3,621
Welt Trimmer & Stitch Rubbing — Model R	156
Apex Spring Heel Trimming — Model A	116
Edge Trimming — Model A \	
" " Model B /	3,064
" " Model D	10
" " Model H	1
Turning & Beading — Model R	2
Star Rand Turning — Model S	51
McKay Channel Turning	1
Crest Sole Wetting — Model A	169
Bench — 12 Foot	1
Total	33,184

GOODYEAR DEPARTMENT.

Welt & Turn Shoe Regular	1,605
Welt & Turn Shoe — Model G	709
Welt & Turn Shoe — Type E	180
Eppler Welt & Turn Shoe	6
McKay Turn	14
Outsole Rapid Lockstitch, Regular	2,573
Outsole Rapid Lockstitch — Model K	86
Campbell Stitching	16
Universal Inseam Sewing or Lockstitch Welting	7
Eppler & Adams Sewing	6
Universal Welt Beating	181
Goodyear Welt Beating	107
Rapid & Universal Bobbin Winding	348
Welt Beating & Slashing	673
Welt Indenting & Burnishing	1,239
Impression Stitch Burnishing #2	375

Universal Rounding & Channeling	1,191
Universal Rounding & Channeling "E"	14
Welt & Turn Channeling	1,603
Outsole Channeling	126
Arnold Channeling	2
Outsole Channel Shank Reducing	52
Channel Laying	389
Channel Opening	611
Eppler Stitching	1
Gem Flexible Insole	390
Hand Flexible Insole	21
Power Flexible Insole	89
Ziegler Flexible Insole — Model A	46
Ziegler Flexible Insole — Model B	25
Fudge Edge Machine	127
Power Welt Grooving & Beveling	371
Welt Grooving & Beveling	563
Insole Tack Pulling	93
Goodyear Lip Turning (N. S.)	600
O. S. Lip Turning (Howland)	54
Welt & Turn Leveling	152
Automatic Sole Leveling	685
Automatic Sole Leveling — Model B	2
Moulding	674
Power Moulding	64
Relasting	10
Heel Seat Rounding	28
Outsole Stitch Rubbing	14
Improved Sole Laying — Model B	1
Rotary Sole Laying	62
Improved Single Sole Laying	193
Improved Double Sole Laying	507
American 2-Form Sole Laying	39
Rebuilt Gem Sole Laying	1
Hadaway Stitch Separating	727
Shank Welt Skiving	156

Welt Splitting	429
Turn Shoe Trimming	247
Universal Inseam Trimming	304
Paneling	1
Forepart Turning	70
Heel Turning	38
Welt Edge Turning	16
Universal Channeling	700
Jointing	21
Tack Pulling & Resetting	3
Underwedge Scarfing	1
Heel Embossing	1
Insole Heel Seat Trimming	11
Briggs Rounding	2
Universal Shank Skiving	2
Gem Lip Turners	317
Gem Cementers	272
Total	20,743

DEFENDANTS' EXHIBIT 229.

[Put in Evidence, page 3054.]

AVERAGE DAILY PRODUCTION OF LESSEES OF UNITED COMPANY.

Average Daily Production	Calendar Year					
	1898	1899	1904	1905	1910	1911
0 — 100	383	411	291	233	262	274
100 — 200	173	180	130	107	74	123
200 — 300	111	113	95	102	90	98
300 — 400	79	66	68	80	64	72
400 — 500	53	58	52	60	69	69
500 — 600	22	46	50	49	46	52
600 — 700	29	30	47	33	46	40
700 — 800	33	37	34	35	43	38
800 — 900	19	19	30	26	29	44
900 — 1000	15	23	24	20	31	34
1000 — 1500	40	58	76	97	95	97

1500 — 2000	32	33	42	42	52	52
2000 — 2500	21	18	34	29	42	43
2500 — 3500	18	17	26	39	36	37
3500 — 5000	7	10	12	12	17	21
5000 — 7500	2	6	11	13	15	14
7500 — 10000	2	1	5	3	3	1
10000 — 15000	0	0	1	2	0	1
Idle & Unknown	40	23	16	65	11	40
	1079	1149	1089	1047	1025	1150
Goodyear Work only	499	391	391	445	528	527
Other Kinds only	379	413	327	323	226	312
Both Kinds	201	345	371	279	271	311
	1079	1149	1089	1047	1025	1150
Number of Firms Producing the Above	1060	1122	1026	1009	933	1033

DEFENDANTS' EXHIBIT 230.

[Put in Evidence, page 3055.]

MEMORANDUM OF THE PULLING OVER, LASTING, HEELING, METALLIC AND GOODYEAR DEPARTMENTS, AND GOODYEAR AUXILIARY MACHINES REQUIRED BY FACTORIES HAVING A

Daily Production in Pairs	Pulling Over	#5 Lasters	Welters	Stitchers	Heelers	Sluggers	Loose Nailers	Auxiliaries	Total Number Such Machines per Factory
100	1	1	1	1	1	1	1	16	23
150	1	2	1	1	1	1	1	16	24
250	1	2	1	1	1	1	1	16	24
350	1	3	1	1	1	1	1	16	25
450	1	4	2	2	1	1	1	16	28

DEFENDANTS' EXHIBIT 230 A.

[Put in Evidence, page .]

LIST OF SIXTEEN GOODYEAR AUXILIARY MACHINES REFERRED TO IN EXHIBIT NO. 230. FURNISHED IN ANSWER TO MR. FOWLER'S REQUEST.

	Annual Rental	or Initial Payment Lease.
Goodyear Universal Channeling Machine	$15.00	$300.00
Goodyear Lip Turning Machine	5.00	75.00
Goodyear Upper Stapling Machine	90.00	500.00
Goodyear Power Welt Grooving & Beveling Machine	5.00	100.00
Goodyear Universal Inseam Trimming Machine	15.00	300.00
Goodyear Welt Beating & Slashing Machine	10.00	200.00
Goodyear Improved Sole Laying Machine	15.00	300.00
Goodyear Universal Rounding & Channeling Machine	15.00	400.00
Goodyear Channel Opening Machine	1.00	35.00
Goodyear Upper Tack Pulling Machine	25.00	250.00
Goodyear Channel Laying Machine	3.00	35.00
Goodyear Heel Seat Rounding Machine	15.00	250.00
Goodyear Automatic Sole Leveling Machine, Model A	35.00	500.00
Goodyear Welt Indenting & Burnishing Machine	3.00	35.00
Goodyear Impression Stitch Burnishing Machine	15.00	35.00
Goodyear Jointing Machine, Model C	25.00	250.00

DEFENDANTS' EXHIBIT 231.

[Put in Evidence, page 3074.]

ACQUISITIONS BY UNITED SHOE MACHINERY COMPANY, 1899–1910.

INDEX.

		Typewritten Page	Printed Page
A			
	American Sole Laying Company	50	475
	American Glue Company	32	464
	Arnold Machine Company	39	469
B			
	Bay State International Shoe Mach. Co.	5	448
	Boot & Shoe Sole Laying Co.	8	449
	Booth Bros. Co.	19	456
	Bresnahan, Timothy A.	25	460
	Boston Shoe Tool Co.	25	460
	Boston Blacking Co.	26	460
	Boston Fast Color Eyelet Co.	27	461
	Breach Mfg. Co.	36	467
	Brewer, A. G.	37	467
	Booth Brothers (1904 contract)	40	469
	Beaudry	40	469
	Brockton Supply Co.	53	476
	Branch Offices	11–12–13–14	452
C			
	Corrugated Wire Fastening Co.	50	474
	Carver Cotton Gin Co.	20	457
	Cross, W. W. Co.	30	463
	Curtis, Joseph P.	39	468
	Corteau, Leopold J.	40	469
	Coupal, Peter A.	45	472
	Classes — definition	1–2	446
D			
E			
	Emerson, George W. Co.	16	455
	Enamel Eyelet Co.	27	461
	Ellis Lacer Co.	34	466
F			
	Felton S. A. & Son Co.	29	462
	Farnham, F. G. Brush Mfg. Co.	31	463
	Freeman, E. T.	36	467
	French, Zachary T.	43	471
	Freeman, George W.	46	472
G			
	Goddu Sons Metal Fastening Co.	3	447
	Globe Sewing Machine Co.	5	448
	Globe Shoe Tool Co.	25	460

		Typewritten Page	Printed Page
	Gordon, William	45	472
	General Dept. Machines — list of competing	22–23–24	458
H			
I			
J			
K			
	Krieg, J. K. Company	11	451
	Kimball & Hadley	32	464
L			
	LaChappelle, Fred	41	470
	Lincoln Sewing Machine Co.	42	470
	Leary, Joseph W.	48	473
M			
	Morley Button Mfg. Co.	28	462
	Marlboro Awl & Needle Co.	29	462
	Metallic Heel & Counter Co.	33	465
	Miller, Oliver A.	52	476
N			
	Norris, T. A. Machine Co.	17	456
O			
P			
	Perry, Fred H.	47	473
	Pearson & Bennion, Ltd.	9	450
Q			
R			
	Ross-Moyer Mfg. Co. (Class 2)	10	451
	Ross-Moyer Mfg .Co. (Class 3)	15	454
	Rhodes, J. C. & Co.	27	461
	Rice, Harry L.	41	470
	Richardson Shoe Machinery Co.	55	478
	Richardson, John H.	48	474
	Ritchie, John	51	475
	Ritchie, The John Co.	51	475
S			
	Seaver Process Lasting Co.	4	447
	Smith, George A. Machinery Co.	10	451
	Swain-Fuller Mfg. Co.	16	454
	Sturtevant, B. F. Co.	35	450, 466
	Stanley Mfg. Co.	9–1/2	450
	Smith Lacing Machine Co.	54	477
T–V			
WU			
	Winkley & Phillips	37	467
	Wentworth Machine Co.	6	449
Y			
	Young, W. J.	38	468

Referring to the statement on page 28 of the Government Petition that:

> "Among the individuals, partnerships, and corporations who were competitors of defendants and whose businesses have been so acquired and absorbed by them are the following:"

we have divided these acquisitions into certain classes showing their relative importance and bearing and the reasons which governed their purchase, as follows:

Class 1. See page 3.

Purchases made after the formation of the United Company in February, 1899, and during the years 1899, 1900, and 1901 for the purpose of settling existing litigation; one in February, 1910, for the same reason; and one to avoid infringement of patents.

Class 2. See page 9.

This class includes the purchase of the whole or a portion of the business conducted by four corporations and one partnership that had acted as agents for one or more of the three companies that went into the original organization.

Class 3. See page 15.

This class includes purchases and contracts which extended the scope of the business to include the manufacture and sale of machines of the class that have been termed "General Department" Machines. None of these machines were in competition with the business of the original organization. See page 15.

Class 4. See page 25.

Purchases which extended the scope of the business to the manufacture of "findings" and "supplies" used by its customers.

Class 5. See page 36.

Patents and Royalty Contracts to manufacture under patents.

Class 6. See page 42.

Payments made to commute obligations existing prior to 1899 under Royalty Contracts for right to manufacture under patents, and to cancel the obligation between the Goodyear Company and the Lincoln Sewing Machine Company.

Class 7. See page 45.

Employment Contracts.

Class 8. See page 50.

Miscellaneous — contracts which do not come strictly under any of the foregoing classes.

Class I.

GODDU SONS METAL FASTENING COMPANY.

At the earnest solicitation of the elder Goddu and his sons, the United Company purchased in 1899 the Goddu Sons Metal Fastening Company and the inventions owned by the Goddus individually, for the sum of $150,000; paying therefor one-half in preferred stock of the United Company at $30 per share and one-half in the common stock of the United Shoe Machinery Company at $35 per share.

This purchase was made in order to settle the long-standing litigation between the Goddus, the Goddu Metal Fastening Company, and the McKay Company.

The officers of the McKay Company claimed, and the management of the United Shoe Machinery Company believed, that such inventions as had been transferred to the Goddu Company and those owned by the Goddus, in reality belonged to the McKay Company.

The Goddu Company had no factory of its own and had done no business, but had had some machines built by outside parties.

SEAVER PROCESS LASTING COMPANY.

Purchased in 1900 at the earnest solicitation of Mr. Seaver for $38,000.

The Seaver Company was making no money and was in debt to Mr. Seaver for more than the above sum.

The principal reason for the purchase was to settle the existing litigation and because the Seaver Company had patents, or applications for patents, which it was believed stood in the way of the development of the Pulling-Over Machine upon which the United Company had been at work for some time.

The Lasting Machines of the Seaver Company infringed patents which had been issued to the Consolidated Lasting Machine Company in 1895 and 1898. Two suits had been brought for infringement of these patents and were pending at the time of the purchase.

The Seaver Company owned no real estate; leased a room at 118

South Street, Boston; had six employees. Company was insolvent at time of purchase — see Exhibit 75.

The amount paid was dependent entirely upon the royalties earned in certain factories.

GLOBE SEWING MACHINE COMPANY.

At the earnest solicitation of Mellen Bray, the United Company purchased in 1901 $599,210 worth (a control) of the issued capital stock; paying therefor $20,000 in preferred stock of the United Company.

Mr. Bray had spent a great deal of money on this enterprise; the Globe Company owed him a large sum of money, and he did not want to continue the business any further.

Suit for infringement of patents had been brought against the Globe Company by the Goodyear Company and a motion for preliminary injunction was pending at the time of the purchase.

Owned no real estate and did no manufacturing. Contracted with outside parties for such machines as it had built.

BAY STATE INTERNATIONAL SHOE MACHINERY COMPANY.

This company was purchased in 1901, at the earnest solicitation of the owners, for $25,000 preferred stock of the United Company.

Purchase was made for the account of the British and French Companies and the Bay State Machines infringed patents owned by the British Company.

The reason for the purchase was that it was believed to be the cheapest way to settle and dispose of the litigation.

The Bay State Company owned no real estate and did no manufacturing. This was a purchase of foreign patents.

As will be seen, the total purchases for the purpose of settling existing litigation prior to 1910 involved the expenditure of only $233,000, as follows:

In 1899	$150,000
In 1900	38,000
In 1901	45,000
	$233,000

For the purpose of settling existing litigation in 1910:

WENTWORTH MACHINE COMPANY.

Purchased February, 1910; amount paid $60,000.

Owned no real estate. Leased floor space in a building in Cincinnati, Ohio, and employed about twelve men.

Substantially the only machine made by the Wentworth Company was a "Heel Seat Forming Machine."

After long litigation in the Patent Office between the United Shoe Machinery Company and the Wentworth Company, and in the Courts between the United Xpedite Company and one of the users of the Wentworth Heel Seat Forming Machine, judgment was rendered in favor of the United Xpedite Company. A second suit was pending between the United Shoe Machinery Company and the Wentworth Company on another patent.

Prior to the decision of the Courts in the litigation above referred to, the Wentworth Company had many times approached the United Company to dispose of their business, and immediately after the decision they asked to open the negotiations with the United Company, which finally resulted in the purchase.

The manufacturing of the machines was removed to the Beverly Factory, from which factory the machines and parts have been supplied by the United Company.

Reason for purchase:

A great many of the machines put out by the Wentworth Company had been leased by manufacturers who were the customers of the United Company, and it was deemed much better to settle all the claims for infringement which would have resulted between the United Company and the customers of the Wentworth Company (who were also customers of the United Company) by acquiring the patents and business of the Wentworth Company, and thereby settle all the pending litigation. To avoid infringement of patents acquired the

BOOT & SHOE SOLE LAYING COMPANY

Purchased in 1899 for $45,000 cash.

This purchase was made to enable the United Company to put out a Sole Laying Machine which would be free from infringement of patents, and to obtain a type of machine that was much better

adapted for small factories than the rotary machine of the Goodyear Company, which was only adapted for large factories.

Owned no real estate. Contracted with outside parties for such machines as it had built.

After the acquisition by the United Company in 1901, the United Company continued to have machines built for it at the same outside factory for three years, since which time the machines have been built at Beverly.

CLASS 2.

This class includes the purchase of the whole or a portion of the business conducted by four corporations and one partnership that had acted as agents for one or more of the three companies that went into the original orgazination.

These purchases were made as follows:

PEARSON & BENNION, LIMITED.

Agreement of June 8, 1899, with Messrs. M. H. Pearson and Charles Bennion, of Leicester, England.

Pearson & Bennion, Limited, of England, had been for many years the agents for the Consolidated McKay Lasting Machine Company. The Shoe machinery business, other than as agents for the Lasting Machine Company, conducted by Pearson & Bennion was not in competition with the business conducted by any of the companies which entered into the original organization, or with the business of the United Company.

The agreement of 1899 with Pearson & Bennion was in reality a consolidation of the foreign business of the United Company in England with Pearson & Bennion's business, and not a purchase.

STANLEY MANUFACTURING COMPANY.

No manufacturing plant was acquired.

The United Company purchased in March, 1900, for $86,500 in preferred stock of the United Company, the store and stock of machines, parts, and supplies on hand at Frankfurt, Germany.

The Stanley Manufacturing Company was really a part of the McKay Shoe Machinery interests, and its principal business was the manufacture and sale of McKay Sewing Machines and Centennial Splitting Machines.

The store in Germany acted as the agent for the McKay Shoe Machinery Company in handling its McKay Heeling and Metallic Machines and parts, and this purchase amounted only to the acquirement of the selling agency for the goods manufactured by the Stanley Company in the United States.

No competition existed between the United Company and the Stanley Company.

The reason for the purchase was that the United Company was establishing its own German Company and the local manager for the Stanley Company's business in Germany was sick, or had just died, and the Stanley Company desired to have the United Company take over its store and stock of goods and act as agents for the Stanley Company, if the United Company was going to do its own business in Germany.

The contract, therefore, amounted simply to an agency contract, and that in itself necessitated the purchasing of the stock that the Stanley Company had in Frankfurt.

ROSS-MOYER COMPANY.

Stores in Chicago and Cincinnati.

Purchased in September, 1900, for $86,580 preferred stock of the United Shoe Machinery Company.

Manufactured General Department Machines — see Class 3.

GEORGE A. SMITH MACHINERY COMPANY.

Store in Philadelphia

Purchased in November, 1902, for $38,790.79 (inventory value).

Owned no real estate and did no manufacturing; employed one man repairing second-hand machinery.

The few special Heel Scarfing Machines sold by them were manufactured in outside machine shops.

J. K. KRIEG COMPANY.

Store in New York.

Purchased from the J. K. Krieg estate in 1903 for $97,056.52 that portion of the business of the J. K. Krieg Company with shoe manufacturers.

No competition existed between Krieg and Smith and Ross-Moyer or the United Shoe Machinery Company.

Owned no real estate. Had small machine shop above their store in New York, where they employed four men and one boy — principally in rebuilding old shoe machinery and repairing machines used in other lines of manufacturing, but when these men were not so employed they were used in building a few new machines.

REASON FOR PURCHASES:

The United Shoe Machinery Company desired to establish its own stores and offices in each one of the shoe manufacturing centers, for the purpose of furnishing a better service in connection with its machines than had heretofore been possible by each of the separate companies, and to carry a proper supply of spare parts and material used in its machines.

In order to understand the reasons governing this action a statement regarding the conditions as they existed at the date of the formation of the United Company follows:

The Goodyear Company (one of the companies forming the original organization) had its own offices and men in each of the following places:

Auburn, Maine.
Lynn, Mass.
Haverhill, Mass.
Brockton, Mass.
Worcester, Mass.
New York, N. Y.
Philadelphia, Pa.
Burlington, N. J.
Cincinnati, Ohio.
Chicago, Ill.
St. Louis, Mo.
New Orleans, La.
Rochester, N. Y.

While the McKay Company and the Lasting Machine Company (two of the three companies of the original organization) had no stores or offices of their own, the Ross-Moyer Manufacturing Company at Chicago and Cincinnati acted as agents for these two companies, carried a stock of spare parts for the Heeling, Metallic, and

Lasting Machines, and the wire used in the Metallic Machines, and such roadmen of the McKay and Lasting Machine Companies as were in these territories called at Ross-Moyer's for their mail.

These same conditions existed with:

George A. Smith Machinery Company in Philadelphia
and J. K. Krieg Company, New York, N. Y.

In Brockton, Heeling and Metallic parts were carried by the Brockton Stay Company and the Lasting Machine parts were carried by the T. A. Norris Machine Company.

In Haverhill, Heeling was with C. P. Bullen, and Metallic and Lasting were with J. W. White.

In Lynn, Heeling and Metallic and Lasting with H. W. Colbath.

None of the business done by either Ross-Moyer, Smith, or Krieg was in competition with the business of the United Shoe Machinery Company, and as the United Company decided to establish its own stores, these concerns would necessarily lose the business which they had done acting as agents for the various companies, and it formed such a large portion of their whole business that they desired to have the United Company take over all their business relating to shoe machinery, or supplies, when the United Company was ready to establish its own offices.

With the purchase of the Ross-Moyer Mfg. Co. the United Company first acquired any interest in so-called "General Department Machines"— see Class 3.

An additional reason for the purchase of Ross-Moyer was to secure the services of Mr. Samuel Ross, who had been long associated with the McKay Company and was an experienced shoe machinery man and well liked by the trade. The United Company desired to secure his services to represent their interests throughout the middle west.

The United Company now have their own stores and offices where they carry spare parts and supplies and maintain a corps of experts to furnish service in connection with their machines, at the following places in the United States:

Auburn, Maine.
Haverhill, Mass.
Manchester, N. H.

Lynn, Mass.
Brockton, Mass.
Marlboro, Mass.
New York, N. Y.
Philadelphia, Pa.
Harrisburg, Pa.
Rochester, N. Y.
Lestershire, N. Y.
Cincinnati, Ohio.
Chicago, Ill.
Milwaukee, Wis.
St. Paul, Minn.
New Orleans, La.
St. Louis, Mo.
San Francisco, Cal.

CLASS 3.

This class includes purchases and contracts which extended the scope of the business to include the manufacture and sale of machines of the class that have been termed "General Department" Machines. None of these machines were in competition with the business of the original organization.

The following list of purchases and contracts belong in this class:

ROSS-MOYER MANUFACTURING COMPANY (see also Class 2).

As stated in Class 2, this company was acquired by the United Company in September, 1900, and, as stated therein, with this purchase the United Company first acquired any interest in so-called "General Department" Machines, consisting of Edge Setters, Edge Trimmers, Heel Scourers, Buffing Machines, Rolling Machines, etc.

Owned no real estate. Leased floor space in Cincinnati, Ohio, where it employed thirty-five men. Business was continued for a number of years and then removed to the factory of the United Company at Beverly.

None of the machines manufactured by this company were in competition with any machines made by the United Company.

SWAIN-FULLER MANUFACTURING COMPANY.

This property was acquired at the solicitation of Mr. Fuller, who

was the principal owner and desired to go out of shoe machinery business.

Purchased in February, 1901, for $13,201.92, of which $2,576.92 was cash and $10,625 preferred stock of the United Shoe Machinery Company.

Owned no real estate. Leased small amount of floor space in Boston; employed less than ten men.

After the purchase the United Company transferred the manufacturing to its own factory and continued the manufacture and marketing of its machines.

By this purchase the United Company secured the "Single Sole Moulding" Machine and the "Star Leveling" Machine. The "Star Leveling" Machine was covered by patents and was a hand controlled machine adapted for leveling welt or turned work, and was especially adapted for use in small factories where the Goodyear Automatic Leveler was too large and expensive.

Neither of these machines was in competition with any machines then being made by the United Company.

GEORGE W. EMERSON COMPANY (Partnership).

This property was acquired at the earnest solicitation of George W. Emerson, who was interested in a trout farm on Cape Cod and desired to retire from the shoe machinery business.

Purchased in December, 1902, for $41,500. This amount was based upon the inventory of the Emerson Company.

The United Company desired to obtain the services of William R. Sampson, who was familiar with the business of manufacturing Leveling Machine forms and moulds. Certain litigation was pending between the Xpedite Company and the Emerson Company for infringement of the Xpedite patents. Under these circumstances the United Company entered into the negotiations which led to the purchase at the suggestion of Mr. Emerson of the Emerson Company.

Owned no real estate. Leased two floors in a factory building in Lynn and employed about thirty-five men.

After the purchase the United Company transferred the manu-

facturing to its own factory and continued the manufacture and marketing of its machines.

The greater part of the business of the Emerson Company consisted in the manufacture of lasts and forms and dealing in second-hand machines, repairing machines, and millwright work.

T. A. NORRIS MACHINE COMPANY.

Owned no real estate but operated a small machine shop employing about ten men, in which it did general machine shop work, repairing shoe machinery, and also built a few minor machines. This machine shop was located in a building at 74 Commercial Street, Brockton, owned by T. A. Norris personally, in which building the United Company then had its Brockton headquarters and repair shop under lease from T. A. Norris.

Purchased in 1902 upon the basis of inventory — $11,526.78 — at solicitation of Mr. Norris, who was heavily interested in real estate. The United Company desired to increase the amount of space leased from Norris and he desired to close out his business, as he had gone quite heavily into real estate and was owing considerable money in connection therewith.

As a matter of fact, this purchase only amounted to the buying of a lot of second-hand machines.

After the purchase the United Company continued to operate the machine shop so long as the United Company continued to have its headquarters in the Norris building.

Later, when the United Company moved its headquarters to its new location in Brockton, the machine shop was moved to the new location and is still operated as a repair shop.

The United Company continued the manufacture of the various small machines which had been made by the Norris Company, although most of the manufacturing of the new machines has been moved to the Beverly Factory.

BOOTH BROTHERS COMPANY.

Partnership composed of Quentin W. Booth and Irving E. Booth.

Owned no real estate. Leased floor space in Rochester, N. Y., and employed twenty-two men.

Purchased in 1907 for $71,284.20.

This business was acquired at the solicitation of Booth Brothers. The reason given by them for soliciting the United Company to purchase their business was that Quentin W. Booth wished to retire from business and Irving E. Booth did not care to attempt to run the business alone, but did not wish to retire.

The Booth Company manufactured the "Victor" and "Columbia Beading" Machines (both patented machines) and the United Company had acted as agents in selling many of them. The two other principal machines made by them were the "Fudge Edge" Machine and "Impression Stitch Burnishing" Machine.

The United Company felt that it could add the manufacture of these machines to its line to advantage, and therefore were persuaded to make this purchase, and a corporation was formed of which Irving E. Booth was made the manager and the manufacture was continued in Rochester, and through the Booth Company the United Company continued to put out all the machines that were previously manufactured by Booth Brothers.

The average number of employees the last three or four years has been about twenty.

CARVER COTTON GIN COMPANY.

Purchased in 1908 for $16,883.79.

The United Company acquired no real estate or manufacturing plant with this purchase, which consisted entirely of patents, stock in trade, patterns, jigs, etc.

This property was acquired at the solicitation of Mr. Hobart, Treasurer of the Carver Cotton Gin Company. The shoe machinery business done by the Carver Cotton Gin Company was a small side line to their regular "Cotton Gin" business, and Mr. Hobart stated that they had been drawn into the manufacture of shoe machinery inadvertently; that their main business was increasing to such an extent that they were getting short of factory room and did not want to add to their factory to take care of it.

The principal machines made by the Carver Cotton Gin Company were the "Gilmore Buffer," "Acme Leveler," and "Cylinder Splitting Machines."

The principal reason on the part of the United Shoe Machinery Company for making the purchase was to obtain the special tools and patterns for manufacturing these machines. The United Company had always been on friendly terms with the Carver Cotton Gin Company and had sold such machines as they made when desired by the trade, and the price paid above the inventory value for the machines on hand was less than it could have duplicated the patterns, tools, etc., which the Carver Cotton Gin Company desired to sell.

The United Company continued the manufacture of the machines acquired from the Carver Cotton Gin Company at its Beverly Factory.

The United Company did not seek to make any of the foregoing purchases in this class. They were all made at the solicitation of the various parties and for the reasons given in each case.

A list of competitive manufacturers of the principal "General Department" Machines is attached hereto, and while there are many machines that perform minor operations in the manufacture of shoes which are included in the "General Department" of the United Company, and many competitive manufacturers, only the list covering the principal "General Department" Machines is given.

THE PRINCIPAL "GENERAL DEPARTMENT" MACHINES.

SOLE CUTTING MACHINE

Parsons Machine Company
Seelye Manufacturing Company
Tower Brothers
Quarmby & Hilliker

SOLE ROUNDING MACHINES

Boylston Manufacturing Company
Rotary Rounder Company
Wellman Machine Company

SOLE MOULDING

Quarmby & Hilliker
Boylston Manufacturing Company
Seelye Manufacturing Company

ROLLING

Quarmby & Hilliker

James Busfield
Seelye Manufacturing Company

SPLITTING

American Worsted Machinery Company
W. J. Young Machinery Company
James Busfield
Turner Tanning Machine Company
American Tool & Machinery Company

LEVELING MACHINE

Boylston Manufacturing Company
C. K. Fox
R. H. Long
Duplessis Machinery Company

HEEL BREASTING

C. K. Fox
T. F. Rowan

EDGE TRIMMING

Donnelly Machine Company
T. F. Rowan
Briggs-Belmer Company
Tower Brothers

HEEL SCOURING

T. F. Rowan
J. G. Buzzell
Boylston Mfg. Co.
Tower Bros.

EDGE SETTING

L. G. Freeman
Boylston Mfg. Co.
Beaudry Machine Co.
Quarmby & Hilliker

BUFFING

Donnelly Machinery Company
Tower Brothers
J. G. Buzzell

T. F. Rowan
Boylston Mfg. Co.
Seelye Mfg. Co.

CLASS 4.

This class includes purchases and contracts which extended the scope of the business to include the manufacture of certain findings and supplies used by its customers. The following list are included therein:

TIMOTHY A. BRESNAHAN
BOSTON SHOE TOOL COMPANY

Purchased in 1899 for $72,019.50. The business was the manufacture of forepart cutters and edge irons. The United Company manufactured none of these tools.

The Boston Shoe Tool Company (which was owned by T. A. Bresnahan) owned its factory, which was located in South Boston, and which employed about ninety men.

The United Company acquired this property and the business was continued at the same plant for a considerable period of time. Subsequently, for convenience and economy of manufacture, the business was transferred to the Beverly Factory, where the United Company has ever since continued and increased the business.

GLOBE SHOE TOOL COMPANY.

Purchased in 1899 for $30,000 cash. Did a business similar to the Boston Shoe Tool Company and was acquired at the earnest solicitation of parties interested and because we desired to obtain the services of Mr. Loomer as the head of the department for manufacturing these goods.

Owned no real estate. Carried on its business in floor space which it leased in Boston; employed about twenty-eight men.

Soon after its acquisition the business was transferred to the factory of the Boston Shoe Tool Company in South Boston.

BOSTON BLACKING COMPANY.

One-half interest purchased in 1900 for $280,000 (preferred stock of the United Company).

The business was the manufacture of stains, blackings and cement. The United Shoe Machinery Company did no business in this line.

The reason for purchase was that the owners of the Boston Blacking Company desired to enlist the cooperation of the United Shoe Machinery Company, and the men that it employed, to help in distributing their goods.

BOSTON FAST COLOR EYELET COMPANY }
ENAMEL EYELET COMPANY }

Purchased in 1900 for $230,000 worth of preferred stock in the United Fast Color Eyelet Company, and $35,000 in cash.

Owned no real estate and did no manufacturing; contracted with outside parties to manufacture its eyelets.

The Boston Fast Color Eyelet Company manufactured celluloid eyelets.

The Enamel Eyelet Company were really doing no business; they had on hand a small amount of eyelets and owned some patents.

The division of the preferred stock, as stated in the Bill filed by the Government, in payment for these two companies was purely an arbitrary one and at the request of the vendors, Messrs. Kempshall, King, and Tolman.

The United Shoe Machinery Company was not interested in the manufacture of eyelets at the time that this purchase was made.

J. C. RHODES & COMPANY.

Purchased in 1901 for $200,000 cash and $575,000 in preferred stock of the United Shoe Machinery Company.

Owned its own real estate and factory at New Bedford, Mass., employing about one hundred and sixteen men.

Since the purchase of the business the United Company has increased the factory facilities by building a large new factory.

This company was an old, established eyelet-making concern and manufactured an enamel eyelet called the "Perfection" eyelet, and a medium grade eyelet.

The Boston Fast Color Eyelet Company and J. C. Rhodes & Company gave the United Company a line of shoe eyelets to supply the various manufacturers who manufacture high-class shoes and medium shoes.

(It should be understood in this connection that there were many other manufacturers of eyelets, including the Atlas Company of

Fairhaven, and that the "Fast Color" eyelets and the "Perfection" eyelets were manufactured under patents.)

THE MORLEY BUTTON MANUFACTURING COMPANY.

The United Company acquired no real estate or manufacturing plant with this purchase.

The purchase price for the eyelet business of the Morley Button Manufacturing Company was $31,000. This purchase was made in 1901 as the best method of settling the litigation then existing between the J. C. Rhodes Company and the Morley Company for infringement of patents owned by the Rhodes Company, and was believed to be a fair and equitable settlement of the existing situation, and by it the Rhodes Company acquired certain patents on eyelets which were valuable to it.

The principal business of the Morley Button Manufacturing Company was the manufacturing of buttons, which business it has continued ever since; the eyelet business was a very small part of its total business.

MARLBORO AWL & NEEDLE COMPANY.

Owned no real estate. Leased floor space in Marlboro, where it employed twelve men.

Purchased in 1902. (Paid $16,300 in preferred stock of the United Awl & Needle Co.)

This company manufactured awls for Pegging Machines, hand awls, McKay needles, and rawhide mallets, none of which articles were manufactured by the United Company. The business was purchased and a small company was formed called "The United Awl & Needle Company," and the business was transferred to a factory owned by the company in West Medway, where the business has been continued ever since and has employed twenty-eight or thirty men.

S. A. FELTON & SON COMPANY.

The United Shoe Machinery Company purchased a half interest in this business in 1902 for $39,000.

At the time of this purchase (of one-half interest in this company) the S. A. Felton & Son Company owned no real estate, but occupied

a factory located at Manchester, N. H., which they leased. Employed at that time about forty men.

Business has been continued at Manchester, N. H., and very much enlarged; at present employs about two hundred and ten men. The Feltons still continue to manage the business.

Prior to the purchase of one-half of the business the United Company had been acting as agents in the sale of the Felton brushes, and the Feltons desired to interest the United Company in the manufacture of the brushes, as well as the sale, and this led to the arrangement stated above.

W. W. CROSS COMPANY.

This company was formed in 1902 as an incorporation of the business of W. W. Cross & Company — a privately owned business of Mr. W. B. Cross, who owned the factory in Brockton, and employed at that time about forty men.

Mr. W. B. Cross, the manager of the W. W. Cross Company, had been manufacturing for many years substantially all of the tacks that were sold by the Consolidated and McKay Lasting Machine Companies and continued to manufacture for the United Company; in fact, although there was no contract between the parties, this business had been considered a part of the United Shoe Machinery Company's business, as the United Company sold practically the entire output of the factories.

The formation in 1902 of the W. W. Cross Company was simply for the purpose of enabling the Cross Company to extend their business and fix permanently the relations between the company and W. B. Cross, the manager of the manufacturing end of the business, and because more capital was needed in the business. The United Company contributed $50,000 new capital at this time.

The new corporation formed took over the real estate and factory, and the business has grown very much since that date; number of employees at the present time being about three hundred and seventeen.

F. G. FARNHAM BRUSH MANUFACTURING COMPANY.

Owned no real estate. Leased floor space in a small factory in Honesdale, Pa.; employed six men.

Purchased in 1904 for $25,915.32.

This company manufactured chiefly a tampico brush for the cut glass trade, but it also put out a few brushes for the shoe trade. The amount of business done by this company was so small — owing apparently to its geographical location — that it desired to dispose of its business. It was the owner of various patents which were believed by the United Company to be valuable in the art of brush making that should enable the owners to manufacture a better brush than the United Company were then furnishing to the trade as manufactured by the Felton Company. Being anxious to obtain the best possible brush for the trade that it supplied, it purchased this business at the earnest solicitation of the officials of the Farnham Company and transferred the property to the Felton Company.

Business was continued at Honesdale for nearly a year and was then removed to the factory of S. A. Felton & Son Company, where the business has been continued.

In this connection it should be understood that the total brush business done by the Felton Company, or the United Company, is very small compared with the total brush business of the United States, although it is true that the Felton Company does manufacture a very large proportion of brushes for the shoe trade.

AMERICAN GLUE COMPANY.

This was merely a contract entered into in 1904 (terminable upon three months' notice by either party) for the exclusive agency of certain products of the American Glue Company. The United Company made no goods of a similar character, but has marketed a large amount of goods for the American Glue Company under this contract.

The United Company has no interest whatever in the American Glue Company.

KIMBALL & HADLEY.

Purchased in 1904 for $4,750.

Owned no real estate. Leased small floor space in a building on Central Avenue, Lynn; employed two men and two boys.

Kimball and Hadley were partners manufacturing principally

Goodyear needles and awls. This purchase was made at the earnest solicitation of Hadley, and its principal value would appear to be to enable the Company to furnish the particular kind of needles, etc., that were made by Kimball & Hadley.

After the purchase the United Company continued to manufacture the goods produced by Kimball & Hadley (and to supply them at the same prices that had been charged by Kimball & Hadley) until the machinery was moved to another factory and the United Company has continued to supply the demand for these goods.

METALLIC HEEL & COUNTER COMPANY.

Manufactured metallic heels and counters.

Owned no real estate. Leased floor space on Purchase Street, Boston; employed about seventy men.

Purchased in 1906 for $52,320.24 cash and $67,500 in the royalties payable on account of the Ensign (Smith) Lacing Machine.

The purchase of the Metallic Heel & Counter Company was made in connection with the purchase of the Smith Lacing Machine Company. The Metallic Heel & Counter Company owned a part of the Smith Lacing Machine Company and it was impossible to purchase the Smith Lacing Machine Company without acquiring this business. There would, however, appear to be no reason why the United Company should not purchase it, as they were not making any articles which were in competition with it.

A very substantial reason for acquiring this company and the Smith Lacing Machine Company was to secure the undivided services of George Warren, J. B. Hadaway, and William Gordon, who were already in the employ of the United Company in other matters. Messrs. Warren and Hadaway are members of the United Company's Experimental Committee.

Business was continued at Purchase Street location about one and a half years after the purchase, and then for economy of manufacture the machinery was moved to the Beverly factory of the United Company, where the company has continued to manufacture all the goods previously manufactured by this company.

ELLIS LACER COMPANY.

Purchased in 1910 for $125,000.

Owned no real estate. Leased floor space at 4 Walnut Street, Haverhill, Mass. ; employed about twenty men.

The Ellis Lacer Company were manufacturing, and had been for many years, wire laces for temporarily securing together the eyeletted edges of the uppers of laced boots while being lasted. The United Company were not making any wire laces at the time this company was acquired, but it had owned the patent issued in 1900, which was infringed by the lacers put out by the Ellis Lacer Company.

The Ellis Company upon being notified that they were infringing patents owned by the United Company, entered into negotiations with the United Company to purchase their business. In view of the fact that the Ellis Company had built up a substantial business, it was deemed fair by the United Company to purchase the business rather than enter into litigation with the Ellis Company.

Some time after the purchase, for convenience and economy in operation, the manufcturing was removed to the Beverly Factory and the manufacture of the goods has continued up to the present time.

B. F. STURTEVANT COMPANY.

Purchased in 1910 for $52,185.94; this price being based upon the inventory.

Owned real estate at Conway, N. H., where it operated a factory for the manufacture of pegwood and wood shanks. Number of men employed about twelve.

Business has been continued by the United Company at the same place and number of men employed remains substantially the same.

The United Shoe Machinery Company was not manufacturing either pegwood or wood shanks at the time it made this purchase, or prior thereto.

Class 5.

This class includes Patents and Royalty Contracts to manufacture under patents.

None of these parties owned real estate; no manufacturing plant

of any kind was acquired from them, and each contract related entirely to patents.

BREACH MANUFACTURING COMPANY.

The United Company entered into the contract with Breach in 1899, paying him $10,000, in the hope that a machine to cut the uppers of shoes could be developed under the patents owned by the Breach Company. In this endeavor the United Company expended about $30,000 and then gave up the attempt.

The United Company had no machine that competed with Breach.

No manufacturing plant of any kind was acquired.

E. T. FREEMAN.

Patents on Slugging Machines purchased in 1899; paid $11,000 and agreed to pay $4,000 in annual payments of $500 each.

The reasons leading to the purchase of these patents were to enable the United Company to improve its Slugging Machine, to avoid infringement of the Freeman patents, and to dispose of the question as to who was the real inventor of the invention claimed under Ser. No. 670,377 (filed February 15, 1898), whether Casgrain (one of the United Shoe Company's inventors) or Freeman.

No manufacturing plant of any kind was acquired.

A. G. BREWER.

Application for patent issued as No. 645,994 — improvement in Power Heel Breasting Machines.

Agreement 1899. Paid $250 cash and royalty of $5 on each machine embodying invention. Total royalties paid to Brewer $3,495.

This patent enabled the United Company to manufacture a commercially successful Power Heel Breasting Machine.

While this patent enabled the United Company to make a successful machine, Brewer could not have put his invention on the market without infringing patents owned by the United Company.

No manufacturing plant of any kind was acquired.

WINKLEY AND PHILLIPS.

By the agreement entered into March, 1900, between the United Company and Winkley and Phillips, the United Company exercised the option which had previously existed between the Goodyear

Company and Winkley and Phillips to take the exclusive right to the use of certain patents which had been transferred by Winkley and Phillips in 1898 to the Goodyear Company.

Winkley and Phillips under certain rights reserved to them for this purpose in 1898, had been embodying these patents in a Leveling Machine, with the full understanding with the Goodyear Company that, if a commercially successful machine was produced, the Goodyear Company were to have the exclusive right to use same upon proper compensations being paid to Winkley and Phillips; the amount of this compensation to be mutually agreed upon if such machine was produced.

The contract of March, 1900, was the result of this arrangement.

The United Company agreed to pay the vendors $20 for each machine put out by the Company.

No manufacturing plant of any kind was acquired.

W. J. YOUNG.

Purchased in 1902, for the British United Company and the German Company, Young's foreign patents and patent rights covering a Heel Compressing Machine.

Prior to the purchase those companies had been acting as agents for Young, but under the German law it was necessary that the machine should be made in Germany, and as the machines made by Young were not well made, customers had complained regarding their quality.

No manufacturing plant of any kind was acquired.

The William J. Young Machinery Company is in active competition in the United States and always has been.

JOSEPH P. CURTIS.

Purchased in 1903 patents covering Vamp and Lining Cementing Machine. Paid $500 cash and a royalty of $10 on each machine embodying the inventions.

The United Company had no machine of the kind at this time.

The United Company built ten or more of the machines, but they were not commercially successful.

The Peerless Machine Company, under patents owned by them,

were able to produce a better machine and have done the larger part of this business.

No manufacturing plant of any kind was acquired.

ARNOLD MACHINE COMPANY.

Patents for a machine for coating innersoles with cement. Purchased in 1904 for $500 and royalties to be paid on machines when put out.

This investment was unprofitable because a prepared canvas, manufactured and supplied by the Clifton Manufacturing Company and others, made the use of such a machine unnecessary.

No manufacturing plant of any kind was acquired.

LEOPOLD J. CORTEAU.

Patent No. 891,912, covering means for cementing lingings to uppers prior to the stitching operation. Agreement in 1904 to pay royalty of 10 per cent of the selling price until $1000 had been paid.

An experimental machine was built, which proved to be unsuccessful and Corteau was unable to make it commercially successful, although his suggestions were all tried out by the Company.

No manufacturing plant of any kind was acquired.

BOOTH BROTHERS (1904 contract)

Purchased in 1904 patents relating to Perforating Machines. Paid $2400 cash and royalty of $15 United States and $10 Canada.

United Company had no machines for doing this work.

No manufacturing plant of any kind was acquired.

BEAUDRY.

Patents relating to Heel Finishing Machines. Purchased in 1906 for $12,500 for account of, and assigned to, the United Xpedite Finishing Machine Company.

Reason for purchase was that it was believed at the time that it would enable the United Xpedite Company to improve its machines very materially. Beaudry had been the original inventor of the machine put out by the Xpedite Company.

As a result of a great many experiments made after the purchase of the patents, this money was wasted.

No manufacturing plant of any kind was acquired.

HARRY L. RICE AND FRED LACHAPPELLE.

Purchased in 1909 for $11,500.

This transaction comprised the purchase from Rice and LaChappelle of inventions embodying means for "working an additional thread into the usual chain stitch" employed in a Welt Sewing Machine, and also the following patents:

Des.	33,014	July 24, 1900	Design for a Welt Strip
	734,819	July 28, 1903	Sole Leather Cutting Machine
	734,820	July 28, 1903	Welt Support
	749,719	Jan. 19, 1904	Machine for Feeding Welts

Reason for purchase:

Mr. Rice made it a condition of the purchase of the Richardson Machine that the United Company should take over his rights in these inventions at a reasonable price because "he wanted to get out of the shoe machinery business entirely."

See Howard's statement, especially in regard to misstatement by Government regarding the covenant of the vendors regarding future inventions and patents.

No manufacturing plant of any kind was acquired.

CLASS 6.

Payments made to commute obligations existing prior to 1899 under Royalty Contracts for right to manufacture under patents and to cancel the obligation between the Goodyear Company and the Lincoln Sewing Machine Company.

LINCOLN SEWING MACHINE COMPANY.

Owned no real estate and no manufacturing plant of any kind was acquired.

Under date of April 6, 1900, the United Company paid to the Lincoln Sewing Machine Company $2,450 and 1225 shares of Common Stock in cancelation of all rights to payments of any sort or kind under the terms of an agreement entered into between the Goodyear Company and the Lincoln Company, under date of November, 1897.

This contract required the Goodyear Company, and therefore the United Company, to pay a sum of money to the Lincoln Com-

pany, which amount varied from 3% to a possible 7% per annum for forty-nine years, on $60,000.

Payment based upon the amount of dividends paid, or to be paid, by the Goodyear Company.

Reason for cancelation was to avoid the necessity for maintaining the Goodyear Company as a separate organization and to transfer the Goodyear Company's property to the United Company.

The United Company acquired no business whatever from the Lincoln Company. It simply paid for the cancelation of a contract existing between it and the Goodyear Company.

Note: This is entirely contrary to the statement in the Government Petition.

ZACHARY T. FRENCH.

Owned no real estate and no manufacturing plant was acquired in connection with this contract.

By contract dated January 1, 1904, (executed June, 1904) the United Company agreed to pay French $15,000, payable in ten annual payments of $1500 each, in full payment of royalties due him under royalty agreements, dated December 19, 1893, December 19, 1895, and January 2, 1899, between said French and the Goodyear Company.

French had no business of his own, but had been for thirty years in the employ of the Goodyear Company, or its predecessors. At the time this contract was made French was in the employ of the United Company as superintendent of its Goodyear Department Factory, Albany Street, Boston.

Reason for agreement to assign future inventions and not to compete with the United Company for ten years, was because French desired to leave the Company's employ and to have his royalty contracts (which were entirely dependent upon the number of machines that might be put out) placed upon a definite basis of annual payment.

Reason for French's leaving the Company's employ was because he did not care to leave Boston and go to the new factory at Beverly.

Class 7.

Employment Contracts.

PETER A. COUPAL AND WILLIAM GORDON.

In August, 1899, the United Company purchased the business of Gordon, Coupal and Company (a partnership), paying therefor the sum of $10,799.25, the value of their inventory — see Government Exhibit No. 66.

The business of the partnership was "repairing and building machinery and jobbing."

Owned no real estate, but leased floor space at 19 Columbia Street, Boston, and employed about twenty men.

Soon after the purchase the machinery was removed to one of the United Company's factories and the business was continued in conjunction with the other business of the company.

Reason for the purchase:

Both Gordon and Coupal were in the employ of the Goodyear Company prior to, and at the time of, the organization of the United Company and the United Company desired to obtain all their time free from outside matters.

Gordon remained in the Company's service until his death, February 16, 1912.

Coupal only remained in the Company's service a few months

The payment above referred to was for the equipment of the machine shop and for certain patents. (See Howard's statement.)

GEORGE W. FREEMAN.

Owned no real estate, did no manufacturing, and employed no men.

George W. Freeman is the son of Edwin T. Freeman, from whom certain patents were purchased in October, 1899. As this transaction left the son, George W., without a job, his father asked the Company to take the son into its employ for at least one year at a compensation of $800.

Freeman has remained continuously in the employ of the Company as a roadman and now receives $1200 per year. He has never made or assigned any inventions to the Company.

It was undoubtedly in view of the fact that he had been associated

with his father in experimental work, and on account of the possibility of his setting up some claim to the inventions assigned by his father, that the covenants in regard to competition and future inventions were made a part of the contract for employment of George W. Freeman.

The statement in the Petition of the Government that the United Company acquired any interests relating to shoe machinery, are erroneous.

FRED H. PERRY.

Owned no real estate, did no manufacturing, and employed no men.

Contract January, 1904.

Mr. Perry entered the employ of the United Company in February, 1900, as a machinist.

In July, 1902, Perry was made a foreman of machinists in the Experimental Department.

He resigned this position May 1, 1903, and made application to be employed as an inventor.

He had shown some ability in this direction, and after careful consideration, because of the expense that would be involved in trying out some of his ideas, Mr. Perry was given a chance at $30 a week for the first eighteen months of his employment. July 1, 1905, his salary was advanced to $2,000 per year; January 1, 1906, to $3,000; January 1, 1910, to $3500; and January 1, 1911, to $4,000.

Mr. Perry has developed into a very successful inventor.

Reason for contract:

In view of the many thousands of dollars that are spent annually by the Company on experiments which prove unsuccessful, there would appear to be no occasion for explaining the necessity for a contract with a man employed as an inventor.

JOSEPH W. LEARY.

Owned no real estate, did no manufacturing, and employed no men.

Employment Contract January, 1904.

Joseph W. Leary was carrying on a small sale business, principally in supplies, cements, blackings, stains, and second-hand machinery

used in the Stitching Room, and acted as agent for the Amazeen Skiving Machine which was being sold by the United Company.

Mr. Leary had proved himself to be a first-class salesman and the United Company desired to employ him to give his time especially to the sale of this particular machine, as he was an expert as a Skiving Machine man.

Mr. Leary stated that he would like to enter the employ of the United Company if the Company would buy his stock of cement and second-hand machinery, and the Company paid him $3052 for the small stock that he had on hand.

JOHN H. RICHARDSON.

Owned no real estate, did no manufacturing, and employed no men.

In December, 1908, John H. Richardson entered the employ of the United Shoe Machinery Company for a period of one year at a salary of $2500; is still in its employ.

Mr. Richardson had been the general manager of the Richardson Company and was not satisfied with his position, or the business done by that company, and had been influential in bringing about the sale of that company to the United, for the reason that the business was so small that it would hardly make more than a bare living for him.

He is at present in charge of the General Department of the United Company and his salary has been repeatedly raised.

Reason for making contract was because Richardson was an inventor having executive ability, and it was expected that he would be advanced to a very important position with the Company.

In view of these facts, it seemed proper to safeguard the Company if it expected to gradually promote Mr. Richardson to an important position in its executive forces.

Class 8.

Miscellaneous — Contracts which do not come strictly under any of the foregoing classes.

CORRUGATED WIRE FASTENING COMPANY.

Purchased in 1899 for $12,750.

This company was purchased at the earnest solicitation of the owners; the business of the Company having become unprofitable, and at the price paid it was believed a small profit would result before the business entirely disappeared.

Owned no real estate. Leased a small room on South Street, Boston, where it employed two or three men.

Such small business as it did was transferred to the factory of the United Company.

AMERICAN SOLE LAYING COMPANY.

Purchased in 1902 for $5,200.

This company was purchased at the solicitation of Mr. Fuller, who was the principal owner and desired to spend his time in the South, and because the United Company desired to secure rights under patent #384,893, in order to develop the Atlas Leveling Machine, and also because it was feared that the new pad for the Improved Sole Laying Machine would infringe patent #376,406.

Owned no real estate and did no manufacturing. Contracted with outside parties for such machines as it had built.

JOHN RITCHIE
THE JOHN RITCHIE COMPANY

November, 1899, the United Company acquired from John Ritchie and the John Ritchie Company certain Metallic Fastening Machines and also machines for manufacturing standard screw wire, and then leased back to the Ritchie Company the Metallic Fastening Machines, and John Ritchie and the Ritchie Company contracted with the United Company that they would not manufacture any wire fastening machines, or machines for manufacturing wire fastenings.

The reason for this contract and purchase was to prevent manufacturers who held Metallic Machinery under lease from the United Company (and who had agreed to purchase their metallic fastening material from the United Company), violating their leases and contracts by purchasing material from Ritchie.

Ritchie was not manufacturing, dealing in, or selling Metallic Fastening Machines, or shoe machinery of any kind, but he was assisting certain lessees of the United Company to violate their

leases. No existing competition, or business, was inteferred with by this contract.

The United Company agreed to pay the John Ritchie Company the sum of $750 per annum; being at the rate of 5% upon the principal sum of $15,000, with the right on the part of the United Company to pay the principal sum of $15,000 at any time and cancel the annual payment.

No real estate acquired; only help employed two or three boys.

OLIVER A. MILLER.

Owned factory located in Brockton; employed about sixty-five men.

February, 1902, the United Company purchased from Oliver A. Miller, for $160,000 in cash, his business and patents relating to Treeing Machines, forming the O. A. Miller Treeing Machine Company.

The United Company was not in competition in any manner whatsoever with the Miller Company and the purchase was made entirely for the purpose of extending its business.

Reason for the purchase was that in 1901 Miller became involved in financial difficulties and needed money and he gave an option to one Frank Hannigan, who had managed this business for several years.

Mr. Hannigan was personally acquainted with most of the officers of the United Company and opened negotiations with them with a view to effecting a sale of the business.

Mr. Hannigan has 10% interest in the business and has continued as manager of it.

Factory has been largely extended and at the present time it employs approximately 125 men.

Business is largely the manufacture and sale of tree feet.

BROCKTON SUPPLY COMPANY (Partnership).

Purchased November, 1905, a certain part of the assets and patents of the Brockton Supply Company.

Amount paid $21,724.

Owned no real estate; leased floor space on Franklin Street, Brockton, Mass.; employed about four men.

The business of the Brockton Supply Company consisted largely in millwright work, dealing in second-hand lathes, planers, and other machine tools, leather and various supplies, and the manufacture in a small way of a Tack Pulling machine (under patents issued 1904 and 1905 to one Lyon) and a Vamp Folding Machine.

The United Company had no Tack Pulling Machine, but was endeavoring to develop one. Mr. Hadaway was the principal inventor employed on this work by the United Company.

Business was continued at the same place for a number of years. Reason for purchase:

Some time prior to November, 1905, Mr. Nichols and his partner, Mr. Campbell, had had a serious disagreement and Nichols had suggested that they liquidate their business and separate, and they had sold a portion of their business (the Vamp folding Machine) to the Boston Machine Works. Campbell had suggested to Nichols that he (Nichols) see if they could not sell the rest of their business to the United Company, which Nichols did, and as the United Company had not been able up to that time to produce a Tack Pulling Machine, they were willing to purchase the tangible assets of the firm and the patents that they owned relating to Tack Pulling Machines.

SMITH LACING MACHINE COMPANY.

Owned no real estate and did no manufacturing; contracted with the Metallic Heel & Counter Company to build its machines, but had placed none upon the market.

Purchased in 1906 the entire assets, including patents covering a machine for lacing shoes prior to the lasting operation; paying therefor $50,000 in cash and a royalty of $75 (or $50 if leased in a foreign country) on each machine until $67,500 additional had been paid. This payment was completed within three years.

The United Company owned the application for a patent issued June 4, 1907, which contained broad claims dominating the Smith Machine.

The Smith Company had, however, produced a machine which was believed to be, and proved to be, a commercially successful machine.

Neither the United Company nor the Smith Company had done

any business in Lacing Machines and there was no competition between them; in fact, there was no machine for doing this work upon the market.

There would have been long and expensive litigation between the parties, and in view of this fact the Smith Company desired to sell, and the United Company desired to purchase and furnish to their customers a machine which would do work that had heretofore been done by hand.

The Smith Company had intended to charge an initial payment and royalty for the use of the machine. The United Company furnished these machines to their customers without initial payment and at one-half the royalty that the Smith Company had intended to charge.

After the purchase by the United Company the business was moved to the Beverly Factory and machines have been furnished to the trade ever since.

RICHARDSON SHOE MACHINERY COMPANY.

Purchased December, 1908; amount paid $80,000.

Owned no real estate; operated no factory. Contracted with outside parties to build its machines.

The Richardson Company manufactured an improved McKay Sewing Machine known in the trade as the "Richardson Machine" and owned some twelve or more patents relating to same.

The United Company had been endeavoring for some time to produce a new and improved McKay Sewing Machine and the result of such work was its so-called "Model B" Sewing Machine.

Although the United Company had endeavored to avoid the infringement of all patents owned by the Richardson Company, this machine still infringed broad Claim 16 of Patent No. 710,613.

The largest stockholders of the Richardson Company were William B. Ri and Harry L. Rice, of the firm of Rice & Hutchins, Inc., shoe manufacturers who were large lessees of other machinery manufactured by the United Company. The relations between the parties was of the pleasantest character, and in 1908 Mr. John H. Richardson, the manager of the Richardson Company, approached our General Manager, Mr. C. H. Willson, to see if the British United Company

would not take the agency for England, and perhaps throughout Europe.

After careful examination by our experts, it was decided that the Richardson Machine was a better machine for European work than the United Company's "Model B" Machine. A conclusion was also reached that a better machine than either could be built if the Richardson patents and our own could be combined in a new machine.

Mr. Richardson suggested that the United Company should purchase the Richardson Company, or at least the foreign patents. Mr. Richardson stated that he realized that with only this machine as a business, the Richardson Company would not be able to make much of a success of its business and that he himself would like to come with the United Company.

After the purchase by the United Company the manufacturing of machines was transferred to the Beverly Factory.

The United Company has continued to supply such machines as desired by the trade and has built a new and improved machine embodying the inventions owned by the Richardson Company and the United Company.

Reason for purchase:

In view of the fact that it was believed a better machine than either of the two could be constructed by the use of patents owned by both parties, that the United Company's "Model B" Machine infringed one of the Richardson Company's patents, and the further fact that the Rices were customers and on very friendly relations, the United Company entered into the negotiations, which were finally concluded by the purchase.

The Clicking Machines referred to in the Government Petition were not being manufactured by the Richardson Company. It had a half interest in an experimental machine (and any inventions that might result therefrom) being constructed by the Essex Machine Company.

DEFENDANTS' EXHIBIT 232.

[Put in Evidence, page 3079.]

MACHINE OPERATIONS PERFORMED IN THE MANUFACTURE OF ALL KINDS OF BOOTS AND SHOES AND MACHINES OFFERED BY MACHINERY MANUFACTURERS FOR PERFORMING THOSE OPERATIONS.

Cutting Room	Page	1	Printed Page	480
Stitching Room	"	3	" "	481
Sole Leather Room	"	30	" "	496
Lasting Room	"	54	" "	509
Bottoming Room	"	59	" "	512
Finishing Room	"	79	" "	524
Treeing Room	"	82	" "	526
Packing Room	"	83	" "	526

(Machines offered by United Shoe Machinery Company are designated by "(United)".)

Cutting Room.

Cutting Vamps, Tops, Foxings, Tongues, and Trimmings.

(United) Ideal Clicking Machine
Parsons — Parsons Machinery Company
Seelye — Seelye Manufacturing Company

Splitting Upper Leather.

(United) Cylinder Splitting Machine
(United) Centennial Splitting Machine
Belt Knife — The American Tool & Machine Co.
Vaughn Belt Knife — The Turner Tanning Machinery Co.

Cutting Cloth Linings, Doublings, and Box Toe Material.

(A Doubler is a cloth reinforcement cemented to light parts of Upper.)

(United) Ideal Clicking Machine
(United) Improved Gearless Sole Cutting Machine
(United) Improved Geared Sole Cutting Machine
Eclipse — Parsons Machinery Company
Seelye — Seelye Manufacturing Company

Tower — Tower Brothers
Knox — Quamby & Hilliker

Crimping Vamps.

Lockett — Lockett Crimping Machine Company

Marking Sizes and Case Numbers on Lining.

Power Lining Marking Machine — Markem Machine Co.

Stamping Parts of the Upper for Matching and Sizing.

(United) Eagle Upper Stamping Machine
Upper Leather Marking Machine — Markem Machine Co.
Eureka Match Marking Machine — Boston Machine Works Co.
Eureka Upper Marking Machine — Boston Machine Works Co.
Perfection Size Marking Machine — Coburn & Lawrence Co.

STITCHING ROOM.

Skiving Parts of Uppers.

(Beveling Edges preparatory to Folding.)

(United) Amazeen Skiving Machine
(United) Pluma Skiving Machine
Universal — Peerless Machinery Company
Fortuna — Fortuna Machine Company
Pierce — C. S. Pierce
Amazeen Type — A. Johnson & Sons
Amazeen Type — Donnelly Machine Co.

Snipping, preparatory to Folding.

(United) Booth Sandal Snipping Machine
Hart — Hamel Shoe Machinery Company
Boston — Boston Machine Works Company
(6 Foot Power Types)
Power — Boston Machine Works Company
Snipping & Cementing Machine — Boston Machine Works Company

Cementing Skived Edges of Upper.

Economy Cementing Machine — Peerless Machinery Company
Duplex — " " "

New York — Boston Machine Works Company
Snipping & Cementing Machine — " " " "

Folding Skived Edges of Upper.

New Vamp — Boston Machine Works Company
Foot Power — Boston Machine Works Company
Boston — Boston Machine Works Company
Booth — Boston Machine Works Company
Rapid Hand Method — Perley R. Glass Company
Straight Edge — American Worsted Machinery Company
Lufkin — R. H. Lufkin
New Cylinder — Perley R. Glass Company

Pounding Seams.

(United) New Power Hammer
Shawmut Power Hammer — Shawmut Machinery Co.
Hart — Hamel Shoe Machinery Company
Little Giant — American Worsted Machinery Company

Marking Vamps for Tips and Vamp Centres for Position of Tips.
(These marks enable the operator to place Vamp and Tip in the correct position on Shoe.)

(United) Paragon Vamp Marking Machine
Rogers — Coburn & Lawrence Company

Perforating Tips and Vamps.

(United) Royal Perforating Machine
(United) Stanbon Perforating Machine
Hart #6 — Hamel Shoe Machinery Company
Hart (Model A) — Hamel Shoe Machinery Company
Barber — L. L. Barber & Co.
American — American Worsted Machinery Company
Peerless — Peerless Machinery Company
Punch Feed — Hamel Shoe Machinery Company
Johnson — A. Johnson & Sons

Punching Tips.

(United) Crown Tip Punching Machine
(United) Stanbon Tip Punching Machine

(United) Royal Tip Punching Machine
Stimson — Edwin B. Stimson & Company
Peerless Improved #2 — Peerless Machinery Company
Model E — Geo. Knight & Company
Model F — Geo. Knight & Company
Model G — Geo. Knight & Company
Power — Geo. Knight & Company
Foot Power — Geo. Knight & Company
Hand — Geo. Knight & Company
Barber Power — L. L. Barber & Company
Barber Foot Power — L. L. Barber & Company
Donnelly — Donnelly Machine Company
Hand Tip Press — L. L. Barber & Company

Pasting Tape.

(Applying Paste to Tape which is to be used for backing Perforations.)

Wheeler — Brockton Stay Company.

Pinking Tip.

(United) Pinking Machine
(Hand) — American Worsted Machinery Company
(Geared) — American Worsted Machinery Company
Pinking & Perforating Machine — Edwin B. Stimson & Co.
(Hand Power) — Edwin B. Stimson & Company

Scalloping Button-Fly.

(Largely done by hand; to some extent on clicking machine.)

(United) Button-Fly Scalloping Machine

Cementing Cloth Doubler Lining to Light Uppers.

(A Doubler is a Cloth Reinforcement cemented to light parts of upper.)

(United) Hub Lining Cementing Machine
K. & K.— George Knight & Company
Peerless — Peerless Machinery Company
Mathey — Coburn & Lawrence Company
Weber — J. H. Nangle
Hand Power — Shawmut Machinery Company

Foot Power — Shawmut Machinery Company
Simplex Cloth Backing Machine — Boston Last Company
"Davis" Electric Taping Machine — The Davis Sewing Machine Company

Seaming Linings in Back.
(Joining the two Quarters of the Lining.)

Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Stitching Eyelet Stays to Lining.

Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Pricking Linings for Placing Facings.

Boston Power Lining Pricking Machine — Boston Machine Works Company

Stitching Button Stay to Lining.

Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Wheeler & Wilson — Singer Sewing Machine Company
Davis — The Davis Sewing Machine Company

Stitching Button-Fly Lining to Lining of Shoe.

Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Staying Back Seam of Lining.
(Reinforcing Seam with Tape.)
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Davis — The Davis Sewing Machine Company

Stitching Inside Back Stay to Lining.
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Stitching Top Facing to Lining.
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Stitching Label to Lining.
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company

Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Embossing Top Facings.

(United) Embossing Machine (Power)
(United) Embossing Machine (Foot Power)
Simplex — Boston Last Company
Silver King — Markem Machine Company
Freeman — The Louis G. Freeman Company
Perkins — Perkins Machine Company

Stitching Tongue to Side of Lining.

Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Stitching Counter Lining to Quarter.
(Forming a Pocket for the Counter.)

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Puritan — Puritan Manufacturing Company
Davis — The Davis Sewing Machine Company

Stitching in Counters on an Unlined Shoe.

Puritan — Puritan Manufacturing Company
No. 3 — Union Lockstitch Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company

Seaming Quarters or Tops in Back.
(Joining the two Quarters of the Upper.)

Puritan — Puritan Manufacturing Company
No. 3 — Union Lockstitch Company
Singer — Singer Sewing Machine Company

Wheeler & Wilson — Singer Sewing Machine Company
Union Special — Union Special Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Standard — The Standard Sewing Machine Company
Davis — The Davis Sewing Machine Company

Seaming tops in back Zig-Zag Stitch.

(Jointing the two Tops.)

Singer — Singer Sewing Machine Company
Wheeler — Singer Sewing Machine Company
Union Special — Union Special Sewing Machine Company
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.

Seaming Outside of Button-Fly to Top.

Union Special — Union Special Sewing Machine Co.
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Staying Button-Fly Seam.

(Reinforcing with Tape.)

Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Davis — The Davis Sewing Machine Company

Staying Top Back Seam.

(Reinforcing Seam.)

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Standard — The Standard Sewing Machine Company
Davis — The Davis Sewing Machine Company

Stitching Back Stay and Strap above Vamp.

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company

Stitching Outside Heel Stay

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Union Special — Union Special Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Stitching around Top of Shoe.

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Standard — The Standard Sewing Machine Company
Davis — The Davis Sewing Machine Company

Staying Back Seam of Oxford Quarters.

Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Puritan — Puritan Manufacturing Company
No. 3 — Union Lockstitch Company
Standard — The Standard Sewing Machine Company
Davis — The Davis Sewing Machine Company

Over-Edging Tongue

(Over-Stitching around Edge of Tongue, including its Cloth Lining.)

Singer — Singer Sewing Machine Company
Union Special — Union Special Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.

Stitching Lining to Tongue.

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Stitching Bellows Tongue between Vamp and Vamp Lining.

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Standard — The Standard Sewing Machine Company
Davis — The Davis Sewing Machine Company

Stitching Side Stays and Bellows Tongue to Top.

(Edge of Tongue placed under Eyelet Stays, Stitching through Eyelet Stay, Tongue and Quarter.)

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.

Stitching Strap in Pocket.

(End of Strap drawn over Top of Shoe, inserted in a Slit, and Stitched.)

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Standard — The Standard Sewing Machine Company

Fancy Stitching.

(Stitching various Fancy Designs.)

Union Special — Union Special Sewing Machine Co.
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Bonaz — Lintz & Eckhardt

Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Stitching French Cord on Fancy Upper.
(Ornamental Work.)

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Bonaz — Lintz & Eckhardt
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Binding Top Edge of Pump Slipper.

Singer — Singer Sewing Machine Company
Davis — The Davis Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company

Attaching Bows.

Simplex — C. E. Hardenbrook Company
Elliott — Elliott Manufacturing Company
Tubular Rivet — Tubular Rivet & Stud Company

Punching Holes for Hooks and Eyelets.

(United) Vulcan Foot Power Punch
Automatic Hook Hole — Boston Machine Works Co.
Foot Power Punch — American Worsted Machinery Co.

Seam Rubbing.

(United) Rapid Seam Rubbing Machine
Champion — Coburn & Lawrence Company
Boston — Boston Machine Works Company
Hand Method — Shawmut Machinery Company
Union — Boston Machine Works Company

Hooking with Stay Reinforcement.
(Attacking Hooks to Men's Shoes.)

Tubular Rivet — Tubular Rivet & Stud Company
American — American Lacing & Hook Company

Foot Power — American Worsted Machinery Company
Halkyard — Halkyard Manufacturing Company

Seaming Foxings at Heel.

(Joining Foxings.)

Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Metropolitan — The Metropolitan Sewing Machine Co.
Standard — The Standard Sewing Machine Company
Davis — The Davis Sewing Machine Company

Staying Foxings at Heel.

(Reinforcing Seam with Tape.)

Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Davis — The Davis Sewing Machine Company

Stitching Foxings to Quarters.

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
No. 3 — Union Lockstitch Company
Puritan — Puritan Ma ufacturing Company
Davis — The Davis Sewing Machine Company

Seaming Vamp in Back.

(Joining two ends of Vamp.)

No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company

Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Staying Inside of Vamp Seam.
(Reinforcing with Tape.)

Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Standard — The Standard Sewing Machine Company
Davis — The Davis Sewing Machine Company

Butting Felt Box to Vamp.
(Zig-Zag Stitching Felt Box to Cut-Off Vamp.)

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Union Special — Union Special Sewing Machine Co.
Standard — The Standard Sewing Machine Company

Stitching Tip to Vamp.

Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Standard — The Standard Sewing Machine Company
Davis — The Davis Sewing Machine Company

Stitching Eyelet Row on Quarters or Tops.
(Ornamental Stitching Parallel to Eyelets.)

Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Stitching Linings to Tops, Back to Back.

Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Turning and Beading.

(Upper and Lining seamed back to back, turned, and beaded.)

(United) Columbia Beading Machine
(United) Victor Beading Machine
(United) Turning and Beading Machine
Monarch — Boston Machine Works Company
Hart — Hamel Shoe Machinery Company
Nangle — J. H. Nangle
Boston — Boston Machine Works Company

Stitching Lining to Top and Undertrimming.

(Stitching Lining to Top, including stitching Front Fold and trimming off Surplus Facing.)

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.

Marking for Buttonholes.

Adams — Adams Manufacturing Company
Buttonhole Marking — Shoe Manufacturers' Supply Co.

Making Buttonholes.

(United) Buttonhole Making Machine
Reece — The Reece Buttonhole Machine Company

Finishing Buttonholes.

(Stitching a Cord on under side of Button-Fly for Reinforcement of Worked Buttonhole.)

(United) Buttonhole Finishing Machine
Reece — The Reece Buttonhole Machine Company
Singer — Singer Sewing Machine Company

Cording Buttonholes.

(Stitching a heavy Cord around Buttonhole instead of Working Buttonhole on Machine — On Cheap Work.)

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company

Attaching Buttons.

Morley — Singer Sewing Machine Company
R. & M.— Peerless Machinery Company
Singer — Singer Sewing Machine Company
Universal — Elliott Manufacturing Company
Elliott — Elliott Manufacturing Company
Heaton-Peninsula — Elliott Manufacturing Company
Reece — The Reece Buttonhole Machine Company

Eyeletting.

(United) Duplex Eyeletting Machine
(United) Perfection Eyeletting Machine
(United) Universal Power Eyeletting Machine
(United) Merrick Power Eyeletting Machine
(United) Samson Eyeletting Machine
(United) Power Eyeletting Machine
(United) Cameo Foot Power Eyeletting Machine
(United) Vulcan Foot Power Eyeletting Machine
Power — George Knight & Company
Foot Power Gang — George Knight & Company
Peerless Rapid — Peerless Machinery Company
Pereless Gang — Peerless Machinery Company
"A" Machine — American Worsted Machinery Company
"B" Machine — American Worsted Machinery Company

Monitor — American Worsted Machinery Company
Eureka — American Worsted Machinery Company

Barring.

(Reinforcing Fly to Upper at Bottom of Fly.)

Singer — Singer Sewing Machine Company

Seaming Toe of Lining.

(Joining the two portions of the Lining at the Toe.)

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Seaming Vamp with Welt.

(Joining, with a narrow piece of leather or canvas welting between the two ends of the Vamp.)

No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Union Special — Union Special Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company

Vamping.

(Stitching Vamp to Top of Shoe.)

Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Davis — The Davis Sewing Machine Company

Lacing Uppers.

(Inserting Thread through Eyelet Holes, to temporarily hold Uppers in Place.)

(United) Ensign Lacing Machine
Rochester Lacer — Boston Machine Works Company

Stitching In Counters. Boot Work.

No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company

Siding Boots.

Campbell — Campbell-Bosworth Machinery Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company

Staying Side Seam.

Puritan — Puritan Manufacturing Company
No. 3 — Union Lockstitch Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company

Riveting Outside Counters.

Riveting Machine — Tubular Rivet & Stud Company

SOLE LEATHER ROOM

Cutting Outersole, Innersole, Heel Lifts, Half-Sole, Toplift, Counter, Box Toe, Turn Shank Pieces, Leather and Leather-board, Doublers, and Forepart Fillers.

(United) Improved Gearless Sole Cutting Machines
(United) Improved Baby Sole Cutting Machine — Model P
Eclipse — Parsons Machinery Company
Seelye — Seelye Manufacturing Company
Tower — Tower Bros.
Knox — Quarmby & Hilliker

Preparing Bellies, Shoulders, and Remnants for Cutter. (Rolling, Splitting.)

(United) Summit Splitting Machine
Knox — Quarmby & Hilliker
Hawkins — Seelye Manufacturing Company

Baby — J. S. Wheeler & Company
(United) Victor Rolling Machine
(United) Improved Rolling Machine
Seelye — Seelye Manufacturing Company
Knox — Quarmby & Hilliker
Busfield — James Busfield

Finishing Counter Stock.

(Instead of the leather passing between two rolls under pressure, as in the regular Rolling Operation, a rapidly vibrating brass roll smooths out the wrinkles, and finishes the surface.

Whiting — Gardiner & Beardsell
Holmes — Charles Holmes Leather Working Machinery Company

Stripping and Beveling Stock for Wedge Lifts.

(United) Champion Strip Beveling Machine
Young — W. J. Young Machinery Company

Cutting Wedge Lifts.

(United) Wedge Lift Cutting Machine
Young Wedge Lift Cutting Machine — W. J. Young Machinery Company

Evening Heel Lifts.

(United) Summit Splitting Machine
(United) Centennial Splitting Machine
Hawkins — Seelye Manufacturing Company
Knox — Quarmby & Hilliker
Baby — J. S. Wheeler & Company

Gouging Heel Lifts

(United) Champion Heel Lift Skiving Machine
Young — W. J. Young Machinery Company
Bostock — Thomas Bostock & Sons

Building Heels.

(United) Pyramid Heel Building Machine
(United) Heel Building Machine — Model R
Young Foot Power — W. J. Young Machinery Company

Grover — W. J. Young Machinery Company
White — F. H. White & Company
Bostock — Thomas Bostock & Sons
Bosworth — W. T. Bosworth
Fortuna — Fortuna Machine Company
Knight — George Knight & Co.
Pieced Heel — Parsons Machinery Company

Pressing Heels.

(United) Handy Heel Press
Seelye — Seelye Manufacturing Company

Compressing Heels.

(United) Automatic Heel Compressing Machine #4
(United) Automatic Heel Compressing Machine #5
Heel Compressing Machine — W. J. Young Machinery Company
Heel Compressing Machine — Gimson & Company, Ltd.
Knox Compressing Machine — Quarmby & Hilliker
Heel Compressing Machine — Nolle's Works

Condensing Toplifts.

(United) Automatic Heel Compressing Machine #4

Veneering Insole.

(United) Veneer Press
Busfield — James Busfield

Flexing Insole.

(United) Insole Flexing Machine — Model R (McKay Work Only)
(United) Goodyear Flexible Sole Machine — Model B (Ziegler)
(United) Goodyear Flexible Sole Machine — Model XB
(United) Goodyear Flexible Sole Machine — Power
Wheeler — J. S. Wheeler & Company (McKay Work Only)
Spencer — Edw. E. Spencer, Jr. (McKay Work Only)
Stimson — Edwin B. Stimson Company (McKay Work Only)

Fleshing Insole Stock.

(United) Centennial Splitting Machine

Rounding Insole.

(United) Planet Sole Rounding Machine
Julian — The Boylston Manufacturing Company
Improved Loewer — Consolidated Rotary Rounder Co.
Ross — Consolidated Rotary Rounder Company

Channeling Insole.

(Welt Work Only)

(United) Goodyear Universal Channeling Machine
(Fitted for Gem Insoles, Goodyear Insoles, and Turn Soles)

(United) Goodyear Channeling Machine
(Hand Belt Power)
Channeling Machine — The R. R. Long Machinery Company, Inc.
Haverhill Turn Channeling Machine — Haverhill Shoe Machinery Company
Channeling Machine — Hamel Shoe Machinery Company

Stamping Size on Insole.

(Welt Work Only)

(United) Insole Lip Cutting, Scoring and Sizing Machine
(United) Eagle Sole Stamping Machine
Nichols Grading Machine — Lacene Manufacturing Co.

Stamping Size on Outsole.

(United) Eagle Sole Stamping Machine
Nichols Grading Machine — Lacene Manufacturing Co.

Cutting Lip of Insole and Scoring.

(Welt Work Only)

(United) Insole Lip Cutting, Scoring and Sizing Machine
Flap Slashing Machine — Boston Machine Works Co.

Snipping Lip of Insole at Toe.

(Welt Work Only)

(United) Goodyear Insole Toe Snipping Machine
Insole Snipping and Pinking Machine #7 — Boston Machine Works Company

Turning Lip of Insole.

(Welt Work Only)

(United) Goodyear Lip Turning Machine — Model X

(United) Goodyear Lip Turning Machine

(United) Goodyear Lip Turning and Slashing Machine

American — American Worsted Machinery Company

Knight — George Knight & Company

Duplessis — Hamel Shoe Machinery Company

Haverhill — Haverhill Shoe Machinery Company

Long — The R. H. Long Machinery Company, Inc.

Turning Lip of Gem Insole.

(Welt Work Only)

(United) Gem Lip Turning Machine

(United) Goodyear Lip Turning & Slashing Machine

Lip Turning Machine — Haverhill Shoe Machinery Company

American — American Worsted Machinery Company

Knight — George Knight & Company

Duplessis — Hamel Shoe Machinery Company

Haverhill — Haverhill Shoe Machinery Company

Long — The R. H. Long Machinery Company, Inc.

Cementing Gem Insoles and Gem Canvas.

(Welt Work Only)

(United) Gem Cementing Machine (Cementing Canvas)

(United) Rapid Rotary Cementing Machine (Cementing Gem Insoles)

Haverhill — Universal Supply Company (Cementing Insole)

Hazel-Brown — Hazen-Brown Company (Cementing Insole)

Julian — Boston Machine Works Company (Cementing Insole)

Forming and Trimming Gem Canvas to Shoulder.

(Welt Work Only)

(United) Gem Flexible Insole Machine

Hardening Shoulder.

(Welt Work Only)

Rib Tightening or Hardening Machine — The Plymouth Rubber Company

Rib Tightening or Hardening Machine — Walpole Shoe Supply Company

Wetting Economy Insole.

(Welt Work Only)

(United) Economy Insole Wetting Machine — Model X

(United) Rapid Rotary Cementing Machine — Model J (Water Roll instead of Cement)

Channeling Economy Insole.

(Welt Work Only)

(United) Economy Insole Channeling Machine

Cementing Economy Insole.

(Welt Work Only)

(United) Rapid Rotary Cementing Machine — Model J

Julian — Boston Machine Works Company

Brown — Hazen-Brown Company

Haverhill — Universal Supply Company

Reinforcing Economy Insole.

(Welt Work Only)

(United) Economy Insole Reinforcing Machine

Stripping Outsole Stock.

(United) Improved Stripping Machine — Foot Power

(United) Improved Stripping Machine — Power

Parsons — Parsons Machinery Company

Seelye — Seelye Manufacturing Company

Knox — Quarmby & Hilliker

Tower — Tower Brothers

Blocking Outsole.

Knox Power Blocking Machine — Quarmby & Hilliker (Heavy)

Knox Power Blocking Machine — Quarmby & Hilliker (Light)

Evening Outsole.

(United) Summit Splitting Machine
Hawkins — Seelye Manufacturing Company
Nichols — Lacene Manufacturing Company
Baby — J. S. Wheeler & Company
Knox — Quarmby & Hilliker

Improving Soles.

(Condensing Outsole)

(United) U.S.M.C. Tap and Sole Improving Machine

Rolling Outsole.

(United) Victor Rolling Machine
(United) Improved Rolling Machine
Knox — Quarmby & Hilliker
Busfield — James Busfield
Seelye — Seelye Manufacturing Company

Rounding McKay and Turn Outsole.

(United) Planet Sole Rounding Machine
Improved Loewer — Consolidated Rotary Rounder Co.
Ross — Consolidated Rotary Rounder Company
Julian — The Boylston Manufacturing Company

Grading Outsole.

Nichols Grading Machine — Lacene Manufacturing Co.

Quilting Outsole.

(Driving Wire Slugs to form certain designs on bottom or top of shoe.)

(United) Spatter Quilting Machine
(United) Universal Slugging Machine (With Quilting Attachment)

Flexing Outsole.

(United) Goodyear Flexible Sole Machine (Ziegler) — Model B

Channeling Turn Sole.

(Turn Work Only)

(United) Goodyear Turn and Insole Channeling Machine
(United) Goodyear Universal Channeling Machine (Turn)

Channeling Machine — The R. H. Long Machinery Company, Inc.
Haverhill Turn Channeling Machine — Haverhill Shoe Machinery Company
Channeling Machine — Hamel Shoe Machinery Company
Channeling McKay and Standard Screw Outsole.
(United) Apex Channeling Machine
(United) McKay Channeling Machine — Model Z
McKay — Walter Pearson
McKay — American Worsted Machinery Company
McKay — George Knight & Company

Thin Edging Outsole.
(McKay Work Only)
(United) Apex Thin Edge Machine
Rapid — Theo. Ringenbach

Shank Reducing and Feather Edging Outsole.
(United) Goodyear Turn and Insole Channeling Machine (Turn Work Only)
(United) Goodyear Outsole Channel Shank Reducing Machine (Welt Work Only)
(United) Apex Feather Edge and Shank Reducing Machine
(United) Rotary Feather Edge and Shank Reducing Machine
Knight — George Knight & Company
Rapid — Theo. Ringenbach
American — American Worsted Machinery Company

Fleshing or Randing Outsole or Heel Seat of Outsole.
(United) Apex Fleshing or Randing Machine
(United) Empire Splitting Machine (Fleshing Heel Seats)

Splitting Heel of Turn Sole for Louis Heel.
(Turn Work Only)
(United) Krieg Hand Power
(United) Empire Splitting Machine
Busfield — James Busfield

Moulding Down Edge of Sole.
(Turn Work Only)

(United) Goodyear Moulding Machine
(United) Goodyear Power Moulding Machine
Turn Moulder — Haverhill Shoe Machinery Company
Turn Moulder — Hamel Shoe Machinery Company

Scarfing Turn Sole at Heel.
(Turn Work Only)

(United) Turn Sole Scarfing Machine — Model A

Skiving Shank Piece.
(Turn Work Only)

(United) Champion Shank Skiving Machine
Young — W. J. Young Machinery Company

Roughing Tap and Sole.

(United) Velvet Box Toe and Counter Buffing Machine
Peerless Tap Scouring Machine — Peerless Machinery Company

Cutting Taps for Rights and Lefts.

(United) Tap Cutting Machine — Model S
Bostock — Thomas Bostock & Sons

Skiving Butt of Tap and Skiving Leather and Leatherboard Doublers.

(United) Apex Tap Skiving or Rand Splitting Machine
(United) Counter Skiving Machine — Model W
N.O.S.— American Worsted Machinery Company
Improved Tripp — American Worsted Machinery Co.
Busfield — James Busfield
American — Victor Shoe Machinery Company

Cementing Tap and Outsole.

(United) Rapid Rotary Cementing Machine — Model J
Julian — Boston Machine Works Company
Haverhill — Universal Supply Company
Brown — Hazen-Brown Company

Tacking Tap to Outsole.

(United) Wire Grip Tacking Machine
(United) Staple Fastening Machine

(United) Cable Tacking Machine
(United) Taper Nail Tacking Machine
Universal Sole Clinch Machine — Universal Shoe Machinery Company
Duplessis — Hamel Shoe Machinery Company
Victor — Victor Shoe Machinery Company
Fairstitching Tap or Welt to Outsole.
(United) Goodyear Rapid Stitcher
Puritan — Puritan Manufacturing Company
Union — Union Lockstitch Company
Campbell — Campbell-Bosworth Machinery Company
Landis — Landis Machine Company
Randall — The J. D. Randall Company
O'Flaherty — The John O'Flaherty Company
Simplex — James Clark Leather Company
Leger — C. V. Engstrom & Company

Rounding Tap to Outsole.

(United) Apex Tap and Sole Rounding Machine
Severance — American Worsted Machinery Company

Scarfing Spring Heel.

(United) Boss Spring Heel Scarfing Machine
Young — W. J. Young Machinery Company
Bostock — Thomas Bostock & Sons
Bowden — Thos. J. Bowden & Son

Tacking Spring Heel to Sole.

(United) Grip Tacking Machine
(United) Cable Tacking Machine
(United) String Nail Tacking Machine
(United) Staple Fastening Machine
Duplessis Tacking Machine — Hamel Shoe Machinery Co.
Universal Sole Clinch Machine — Universal Shoe Machinery Company
Victor — Victor Shoe Machinery Company

Trimming Spring Heel.

(United) Apex Spring Heel Trimming Machine — Model A

Tacking on Shank.

(United) Boston Tacking Machine
(United) Wire Grip Tacking Machine
(United) String Nail Tacking Machine
(United) Cable Fastening Machine
(United) Staple Fastening Machine
Freeman Insole Tacker — Louis G. Freeman Co.
Victor — Victor Shoe Machinery Company
Tacking Machine — A. Johnson & Sons
Duplessis Tacking Machine — Hamel Shoe Machinery Company

Doubling shanks of Outsole if light with Leather or Leatherboard.

(United) Rapid Rotary Cementing Machine
Julian — Boston Machine Works Company
Haverhill — Universal Supply Company
Brown — Hazen-Brown Company

Moulding Outsole.

(United) American Twin Sole Moulding Machine
(United) Single Sole Moulding Machine
Knox — Quarmby & Hilliker
C. & J. — The Boylston Manufacturing Company
Hawkins — Seelye Manufacturing Company

Toe Gouging.

(Gouging Forepart of Sole)

(United) Crescent Toe Gouging Machine

Opening McKay and Standard Screw Channel

(United) Apex Channel Opening Machine
Fischer — American Worsted Machinery Company
Fischer — George Knight & Company

Slashing McKay Welts.

(United) Welt Slashing Machine
Knipe — William Knipe
Brewer — A. G. Brewer
Bostock — Thomas Bostock & Sons

Combination Welt Splitting & Slashing Mch.— Jas. Busfield

Cementing McKay Welt.

(United) Rapid Rotary Cementing Machine — Model J
Brown — Hazen-Brown Company
Haverhill — Universal Supply Company
Julian — Boston Machine Works Company

Laying McKay Welt to Outsole.

(United) Apex Welt Laying Machine — Model A
(United) Apex Welt Laying Machine — Model X
Welt Laying Machine — Kimball Brothers & Sprague

Tacking on McKay Welt to Outsole.

(United) Power Welt Tacking Machine (May be fitted for Slashing and Tacking Welt)

(McKay welting is generally attached by cementing or fair stitching)

Attaching Forepart Fillers.

(United) Boston Tacking Machine
(United) Cable Wire Tacking Machine
(United) Wire Grip Tacking Machine
(United) Staple Fastening Machine
Tacking Machine — A. Johnson & Sons
Victor — Victor Shoe Machinery Company
Hamel Tacking Machine — Hamel Shoe Machinery Co.

Splitting Heel Rands.

(United) Apex Tap Skiving or Rand Splitting Machine
(United) Improved Rand Splitting Machine — Model S
Tripp — American Worsted Machinery Company
N.O.S.— " " " "
Busfield — James Busfield
Young — W. J. Young Mchy. Company

Turning Heel Rands.

(United) Star Rand Turning Machine
Bostock — Thomas Bostock & Sons
Busfield — James Busfield
American — American Worsted Machinery Company

Tacking on Heel Rands.

(United) Staple Fastening Machine
(United) String Nail Tacking Machine
(United) Boston Tacking Machine
(United) Wire Grip Tacking Machine
(United) Cable Tacking Machine
(United) Power Welt Tacking Machine
(United) Taper Nail Tacking Machine
Victor — Victor Shoe Machinery Company
Duplessis Tacking Machine — Hamel Shoe Machinery Company

Cutting Off Heel Rands.

(United) Rand Cutting Machine — Model A
Bostock — Thomas Bostock & Sons
Busfield — James Busfield

Wetting Counter.

Stewart — Stewart Brothers

Skiving Edges of Counter.

(United) Monarch Box Toe & Counter Skiving Machine
(United) Counter Skiving Machine — Model W
(United) Counter Skiving Machine — Model S
Stewart — Stewart Brothers
Young — W. J. Young Machinery Company
Hartwell — L. L. Hartwell
Moenus Revolver Skiving Machine — Moenus Machine Works, Frankfurt. Germany

Finishing Ends of Counter.

Thurston — W. J. Young Machinery Company
Stewart — Stewart Brothers
Moenus — Moenus Machine Works

Buffing Counter.

(United) Velvet Box Toe Buffing Machine
Perfection — W. J. Young Machinery Company

Waxing and Rolling Counter.

Stewart — Stewart Brothers
Young — W. J. Young Machinery Company

Moulding Counter.

Young — W. J. Young Machinery Company
Stewart — Stewart Brothers

Skiving Box Toe.

(United) Amazeen Skiving Machine
(United) Pluma Skiving Machine
(United) Monarch Box Toe & Counter Skiving Machine
Young — W. J. Young Machinery Company
Fortuna — Fortuna Company

Buffing Box Toe.

(United) Velvet Box Toe Buffing Machine
Perfection — W. J. Young Machinery Company

LASTING ROOM.

Tacking Insole to Last.

(United) Staple Tacking Machine
(United) U.S.M.C. Insole Tacking Machine #1
Freeman Insole Tacker — The Louis G. Freeman Company

Rounding Heel Seat of Insole.

(Welt Work only)
(United) Goodyear Insole Heel Seat Trimming Machine — Model B

Assembling.

(Inserting Counter Preparing Box Toe Placing Upper on Last and Tacking and Lining-up by Machine)
(United) Rex Assembling Machine

Gumming Box Toe.

(Usually done by hand)
(United) Rex Toe Gumming Machine

Toe Softening.

(Steaming and Softening the Box Toe to facilitate the operation of Pulling-Over and Lasting.)

(United) Toe Softening Machine — Model C
(United) Toe Softening Machine — Model D
Carlson — Carlson Brothers
Bostock — Thomas Bostock & Sons
Beckwith — Beckwith Box Toe Company

Pulling-Over.

(Pulling the upper over the last at the Toe, Tacking with 5 or 7 Tacks.)

(United) Rex Pulling-Over Machine — Model A
(United) Rex Pulling-Over Machine — Model B
(United) Rex Pulling-Over Machine — Model C
Atlas — Atlas-Werke Pohler & Company
Victor — Nolle's Works
Moenus — Moenus Machine Works
Pulling-Over Machine — Ward & Gent

Lasting.

(United) Consolidated Hand Method Lasting Machine (McKay Work)
(United) Consolidated Hand Method Lasting Machine (Welt Work)
(United) Consolidated Hand Method Lasting Machine (Side Lasting)
(United) Consolidated Hand Method Lasting Machine (Turn Heel)
(United) Consolidated Hand Method Lasting Machine (Turn Toe)
(United) U. S. M. C. #5 Lasting Machine (Lasting Heel & Toe) Welts
(United) Ideal Lasting Machine (Lasting Heel & Toe) Welts
(United) Chase Lasting Machine
(United) McKay-Copeland (Heavy Work-McKay) Standard Screw and Pegged
(United) Boston Lasters (Cheap Slippers)
(United) Stitch-Down Staple Lasting Machine
Standard Rotary Rapid Lasting Machine — Standard Rotary Machine Co., Ltd.
Bed Type Lasting Machine — Atlas-Werke Pohler & Co.

Welt & McKay Consolidated Type — The Standard Engineering Company
Welt Lasting Machine — Gimson & Company, Ltd.
Bed Type — Gimson & Company, Ltd.
Bed Type — R. H. Long Machinery Company, Inc.
Victor Lasting Machine — Nolle's Works
Boston Lasting — A. Johnson & Sons
Bed Type — Standard Rotary Machine Company, Ltd.
Freeman Toe — The Louis G. Freeman Company
Freeman Heel Seat — The Louis G. Freeman Company
Lasting Machine — Ward & Gent
Consolidated Type — Atlas-Werke-Pohler & Company
Bed Type — The Boylston Manufacturing Company

Pounding & Trimming.

(McKay Work Only)
(United) Wentworth Heel Seat Beating & Finishing Machine
(United) Rex Rotary Pounding & Trimming Machine

Pounding Heel Seats.

(United) Wentworth Heel Seat Beating & Finishing Machine
(United) Rex Hammer Pounding Machine — Model F
(United) Rex Rotary Pounding & Beating-Up Machine (Turn Work)
(United) Rex Rotary Pounding Machine — Model C

Trimming Uppers.

(Welt work only)
(United) Rex Upper Trimming Machine — Model H

Trim.

(United) Goodyear Turn Shoe Trimming Machine

Turning Shoe.

(Turn Work only. Usually done by hand.)
(United) Goodyear Forepart Turning Machine
(United) Goodyear Heel Turning Machine

Ironing Toe of Uppers.

(Goodyear work only)
(United) Ironing Machine — Model B

Post Ironing Machine — Boston Last Company
Electric Toe Iron — The Louis G. Freeman Company

Laying McKay Soles.

(United) Wire Grip Tacking Machine
(United) Staple Fastening Machine
(United) Taper Nail Tacking Machine
Universal Sole Clinching Mach.— Universal Shoe Machinery Company

Drying Box Toes.

Savoday Rack — Savoday Rack Company
Vulcan Rack — Savoday Rack Company

Bottoming Room.

Upper Stapling.

(Welt Work Only)
(United) Goodyear Upper Stapling Machine

Pulling and Resetting Upper Tacks.

(Welt Work Only)
(United) Goodyear Tack Pulling and Resetting Machine
(United) Goodyear Upper Tack Pulling Machine
(United) Rapid Tack Pulling Machine
Krentler-Pym Tack Puller and Lifter — The L. G. Freeman Company

Grooving and Beveling Welting.

(United) Goodyear Power Welt Grooving and Beveling Machine
Haverhill — Haverhill Shoe Machinery Company
Long — The R H. Long Machinery Company, Inc.
Hamel — Hamel Shoe Machinery Company

Welt Sewing.

(Welt Work Only)
(United) Goodyear Welt and Turn Shoe Machine
(United) Goodyear Welt and Turn Shoe Machine — Model G
(United) Goodyear Welt and Turn Shoe Machine — Model K
(United) Goodyear Universal Machine

Haverhill Turn Sewing and Welting Machine — Haverhill Shoe Machinery Company
Duplessis Welt and Turn Sewing Machine — Hamel Shoe Machinery Company
Universal Welter — Universal Shoe Machinery Company
Welt and Turn Sewing Machine — The R. H. Long Machinery Company, Inc.
Welt and Turn Sewing Machine — A. Johnson & Sons
Welt and Turn Sewing Machine — Ward & Gent
Welt Sewing Machine — The Standard Engineering Co.
Welt Sewing Machine — The Boylston Manufacturing Company

Inseam Trimming.

(Welt Work Only)
(United) Goodyear Universal Inseam Trimming Machine
(United) Inseam Trimming Machine — Model K (Lease)
Keighley Rapid Inseam Trimming Machine — The Keighley Company, Inc. (Sale)
Inseam Trimming Machine — A. Johnson & Sons

Pulling Insole Tacks.

(United) Goodyear Insole Tack Pulling Machine
Combination Insole and Side Tack Pulling Machine — The Louis G. Freeman Company

Beating and Slashing Welt.

(Welt Work Only)
(United) Goodyear Welt Beating and Slashing Machine
(United) Goodyear Universal Welt Beating Machine (Beating Only)
Beating Machine — Standard Rotary Machine Company, Ltd. (Beating Only)
Beating Machine — The R. H. Long Machinery Company, Inc. (Beating Only)
Duplessis Beating Machine — Hamel Shoe Machinery Company
Boylston Machine — Boylston Manufacturing Company
Haverhill — Haverhill Shoe Machinery Company

Reducing Shanks of Welt.

(Welt Work Only)

(United) Goodyear Shank Welt Skiving Machine

Rapid — Theo. Ringenbach

Filling Bottoms.

(Welt Work Only)

Besto Filling Machine — North American Chemical Co.

Attaching Shanks.

(United) Boston Tacking Machine

(United) Taper Nail Tacking Machine — Single Head

(United) Staple Fastening Machine

(United) Shank Piece Sticking Machine

Freeman Insole Tacking Machine — The Louis G. Freeman Company

Tacking Machine — A. Johnson & Sons

Victor Machine — Victor Shoe Machinery Company

Cementing Bottom Filling and Welts.

(Welt Work Only)

(United) Star Channel Cementing Machine —

Union — The Boylston Manufacturing Company

Victor — Nolle's Works

Laying Soles.

(Welt Work Only)

(United) Goodyear Improved Twin Sole Laying Machine

(United) Goodyear Improved Sole Laying Machine — Model C

Atlas (2 types) — Atlas-Werke Pohler & Co.

Long Machine — The R. H. Long Machinery Co.

Gimson — Gimson & Co., Ltd.

Standard Rotary — Standard Rotary Mach. Co., Ltd.

Standard Engineering — The Standard Engineering Co.

Nailing Heel Seats.

(United) Grip Clinch Machine

(United) Loose Nailing Machine

(United) Loose Nailing Machine #2

Long Loose Nailing Machine — The R. H. Long Machinery Company, Inc.

Duplessis Loose Nailing Machine — Hamel Shoe Machinery Co.

Universal Loose Nailing Machine — Universal Shoe Machinery Company

Universal Sole Clinching Machine — Universal Shoe Machinery Company

Victor Machine — Victor Shoe Machinery Company

Rounding Heel Seats.

(Welt Work Only)

(United) Goodyear Heel Seat Rounding Machine

(United) Heel Seat Rough Rounding Machine — Model B

(United) Goodyear Rounding and Randing Machine

Freeman Heel Seat Rounding Machine — The Louis G. Freeman Company

Rough Rounding and Channeling Outsoles.

(Welt Work Only)

(United) Goodyear Universal Rounding & Channeling Machine

(United) Goodyear Universal Rounding & Channeling Machine — Model E

National Automatic Rounder — Standard Rotary Machine Company, Ltd.

National Rough Rounding Machine — The R. H. Long Machinery Company, Inc., (Rounds only)

Victor Rough Rounding and Channeling Machine — Victor Shoe Machinery Company

Rough Rounding & Channeling Machine — Haverhill Shoe Machinery Company

Arnold Channeling Machine (Channeling Only) — The R. H. Long Machinery Company, Inc.

Opening Channels.

(Welt Work Only)

(United) Goodyear Channel Opening Machine

(United) Goodyear Channel Opening Machine — Model X

Channel Opening Machine — Standard Rotary Machine Company, Ltd.

Stitching Sole to Welt.

(Welt Work Only)

(United) Goodyear Outsole Rapid Lockstitch Machine

(United) Goodyear Outsole Rapid Lockstitch Machine — Model K

(United) Goodyear Outsole Rapid Lockstitch Machine — Model M

Waldorf Lockstitch Machine — The R. H. Long Machinery Company, Inc.

Universal Stitching Machine — Universal Shoe Machinery Company

Union High Speed Stitching Machine — Union Lockstitch Company

Standard Lockstitch Machine — Standard Rotary Machine Company, Ltd.

Boylston Lockstitch Machine — The Boylston Manufacturing Co.

Duplessis Lockstitch Machine — Hamel Shoe Machinery Co.

Victor Improved Rapid Stitcher — Victor Shoe Machinery Company

Fleming Machine — Landis Machine Company

Larsen Machine — Larsen Machinery Company

Simplex Machine — James Clark Leather Company

Leger — C. V. Engstrom Company

Atlas — Atlas-Werke Pohler & Company

High Speed — The Standard Engineering Company

Johnson — A. Johnson & Sons

Rubbing Stitches.

(United) Goodyear Outsole Stitch Rubbing Machine

Stitch Rubbing and Welt Trimming.

(United) Welt Trimming and Stitch Rubbing Machine

Sewing Turn Shoes.

(United) Goodyear Welt and Turn Shoe Machine — Model G

(United) Goodyear Welt and Turn Shoe Machine — Model K

(United) McKay Turn Shoe Sewing Machine
Haverhill Turn Sewer and Welter — Haverhill Shoe Machinery Company
Duplessis Welt and Turn Shoe Machine — Hamel Shoe Machinery Company
Universal Welting Machine — Universal Shoe Machinery Company
Welt and Turn Sewing Machine — The R. H. Long Machinery Company, Inc.
Little McKay Straight Needle Turn Sewing Machine — George Hobbs
Welt and Turn Sewing Machine — Ward & Gent
Welt and Turn Sewing Machine — The Boylston Manufacturing Co.
Welt Sewing Machine — The Standard Engineering Co.

Wetting Soles.

(United) Crest Sole Wetting Machine

McKay Sewing.

(United) McKay Sewing Machine — Model S
(United) McKay Sewing Machine — Model B
(United) Richardson Sole Sewing Machine
McKay Machine — Walter Pearson
McKay Machine — American Worsted Machinery Co.
McKay Machine — A. Johnson & Sons
Victor Machine — Nolle's Works

Standard Screwing Sole to Upper.

(United) Rapid Standard Screw Machine

Nailing Sole to Upper.

(United) Loose Nailing Machine #2
Universal Loose Nailer — Universal Shoe Machinery Co.
Long Loose Nailing Machine — The R. H. Long Machinery Company, Inc.
Duplessis Loose Nailing Machine — Hamel Shoe Machinery Company

Universal Sole Clincher — Universal Shoe Machinery Company
Victor Machine — Victor Shoe Machinery Company

Pegging Sole to Upper.

(United) Davey Pegging Machine

Reinforcing Shank.

(United) Loose Nailing Machine
(United) Standard Screw Machine
(United) Universal Double Clinch Machine
(United) Loose Nailing Machine #2
(United) Staple Fastening Machine (Reinforcing Stitchdown Shoes)
Universal Loose Nailer — Universal Shoe Machinery Co.
Long Loose Nailing Machine — The R. H. Long Machinery Co., Inc.
Duplessis Loose Nailing Machine — Hamel Shoe Machinery Co.
Universal Sole Clincher — Universal Shoe Machinery Co.
Victor Machine — Victor Shoe Machinery Company

Hungarian Nailing.

(Inserting Large Conical Head Nails in the Forepart of a Shoe.)
(United) Hungarian Nailing Machine

Channel Shank Reducing.

(Welt Work Only)
(United) Goodyear Outsole Shank-Reducing Machine
Rapid — Theo. Ringenbach

Cementing Channels.

(United) Star Channel Cementing Machine
Union Machine — The Boylston Manufacturing Company

Laying Channels.

(United) Goodyear Channel Laying Machine
(United) Channel Laying Machine — Model W
(United) Channel Laying Machine — Model X
Channel Laying Machine — Standard Rotary Machine Co.

American — American Worsted Machinery Company
Standard — The Standard Engineering Company
Knight — George Knight & Company

Welt Indenting.

(United) Goodyear Welt Indenting & Burnishing Machine—Model X
(United) Booth Geared Wheeling Machine
(United) Goodyear Welt Indenting and Burnishing Machine
American Welt Fudging Machine — Victor Shoe Mchy. Co.
Wheeler — E. L. Wheeler
Holt — J. S. Holt & Company, Inc.
Donnelly — Donnelly Machine Company
Haverhill — Haverhill Shoe Machinery Company
Long (Hand Stitch) — The R. H. Long Machine Company, Inc.

Leveling.

(United) Goodyear Automatic Sole Leveling Machine
(United) Goodyear Welt and Turn Leveling Machine
(United) Hercules Leveling Machine
(United) Atlas Leveling Machine
(United) Acme Leveling Machine
(United) Star Leveling Machine
New Giant — The Boylston Manufacturing Company
Giant — The Boylston Manufacturing Company
C. & J.— The Boylston Manufacturing Company
Automatic Twin Leveling Machine — Standard Rotary Machine Company
Webster Welt & Turn — Haverhill Shoe Machinery Co.
Eclipse — The R. H. Long Machinery Company, Inc.
Leveling Machine — Ward & Gent
Leveling Machine — Hamel Shoe Machinery Company

Separating Stitches.

(United) Hadaway Stitch Separating Machine
Long Stitch Separating Machine — The R. H. Long Machinery Company, Inc.

Standard Rotary Stitch Separating Machine — Standard Rotary Machine Company, Ltd.

Haverhill — Haverhill Shoe Machinery Company

Heeling.

(United) American Lightning Nailing Machine

(United) McKay Automatic Heel Loading and Attaching Machine

(United) McKay Automatic Heel Loading and Attaching Machine— Model B

(United) Premier Heel Pricking Machine (Pricking before Nailing High Heels)

Pettengill Heeling Machine — Pricking Attachment — Haverhill Shoe Machinery Company

Heel Attaching Machine — A. Johnson & Sons

Heel Attaching Machine — Nolle's Works

Heeling Machine — Ward & Gent

National — The R. H. Long Machinery Company, Inc.

Nailing Spring Heels to Sole.

(United) Loose Nailing Machine

(United) Loose Nailing Machine #2

Long Loose Nailing Machine — The R. H. Long Machinery Company, Inc.

Duplessis Loose Nailing Machine — Hamel Shoe Machinery

Universal Loose Nailing Machine — Universal Shoe Machinery Co.

Universal Sole Clinching Machine — Universal Shoe Machinery Co.

Victor — Victor Shoe Machinery Company

Nailing Wood Heels to soles.

(Turn work only)

(United) Alpha Wood Heel Nailing Machine

Slugging Heels.

(United) Universal Slugging Machine

Long Slugging Machine (Rebuilt Duplessis) — The R. H. Long Machinery Company, Inc.
Duplessis Slugging Machine — Hamel Shoe Machinery Co.
Boylston — The Boylston Manufacturing Company

Driving Heel Protectors.

(United) Heel Protector Driving Machine

Trimming and Randing Heels.

(United) McKay Heel Trimming and Randing Machine
(United) Ultima Heel Trimming Machine
(United) Busell Heel Trimming Machine
(United) Spring Heel Trimming Machine
Heel Trimming Machine — Haverhill Shoe Machinery Co.
McDowell Trimming Machine — McDowell Shoe Machinery Co.
Heel Trimming Machine — A. Johnson & Sons
Long Heel Trimming Machine — The R. H. Long Machinery Company, Inc.
Tower Heel Trimming Machine — Tower Brothers

Trimming Wood Heel Toplifts.

Busfield — James Busfield
Haverhill — Beckett & Hammond

Scouring Heels

(United) Heel Scouring Machine — Model X
(United) Heel Scouring Machine — Model R
(United) Heel Scouring Machine — Carver
Rowan — Hamel Shoe Machinery Company
Buzzell — J. G. Buzzell & Company
Globe — The Boylston Manufacturing Company
Tower — Tower Brothers
Heel Scouring Machine — A. Johnson & Sons
Carver Heel Scouring Machine — Donnelly Machine Co.

Breasting Heels.

(United) Heel Breasting Machine — Model R
(United) Heel Breasting Machine — Model W

(United) Imperial Heel Breasting Machine
(United) Louis Heel Breast Trimming Machine
Haverhill — Haverhill Shoe Machinery Company
Rowan — Hamel Shoe Machinery Company
Buzzell Louis Heel — J. G. Buzzell & Company
N. & H. Heel Breasting Machine — Donnelly Machine Co.

Scouring Heel Breasts.

(United) Heel Breast Scouring Machine — Model H
(United) Heel Breast Scouring Machine — Model N
Dougherty — Frank B. Dougherty
Buzzell — J. G. Buzzell & Company
Donnelly — Donnelly Machine Company
Freeman — The Louis G. Freeman Company
Rowan — Hamel Shoe Machinery Company
Bendix — Haverhill Shoe Machinery Company

Sanding Top Piece.

(This operation is usually performed by buffing machine during the operation of Buffing Bottoms — see Finishing Room. A very few manufacturers use the following machine.)
(United) Top Piece Sanding Machine

Scalloping Toplifts.

(United) Top Piece Scalloping Machine
Buzzell — J. G. Buzzell & Company

Trimming Edges.

(United) Edge Trimming Machine — Model A
(United) Edge Trimming Machine — Model B
(United) Edge Trimming Machine — Model E
Donnelly — Donnelly Machine Company
Rowan — Hamel Shoe Machinery Company
Briggs-Belmar — Briggs-Belmar Company
Tower — Tower Brothers
Long — The R. H. Long Machinery Company, Inc.
Haverhill — Haverhill Shoe Machinery Company

Jointing.

(Trimming that portion of the Edge from the Shank to the Line of the Heel Breast which is not reached by the Edge Cutter.)

(United) Goodyear Jointing Machine

Turning Welt Edge.

(Welt Work Only)

(United) Goodyear Welt Edge Turning Machine

Setting Edges.

(United) Rotary Edge Setting Machine — Model C

(United) Rotary Edge Setting Machine — Model K

(United) Twin Edge Setting Machine

(United) Single Edge Setting Machine

Freeman — The Louis G. Freeman Company

Union Single — The Boylston Manufacturing Company

Beaudry — Beaudry Machine Company

Union Twin — The Boylston Manufacturing Company

Vici Edge Setting Machine — Independent Shoe Machinery Company

Rotary — Donnelly Machine Company

Edge Setting Machine — A. Johnson & Sons

Rotary — Tower Brothers

Impression Stitch Finishing.

(United) Goodyear Welt Indenting and Burnishing Machine

(United) Goodyear Impression Stitch Burnishing Machine #2

(United) Goodyear Fudge Edge Machine (Setting and Wheeling Light Edges Only)

American — Victor Shoe Machinery Company

Wheeler — E. L. Wheeler

Holt — J. S. Holt & Company, Inc.

Donnelly — Donnelly Machine Company

Haverhill — Haverhill Shoe Machinery Company

Blacking Heels.

(United) Crest Heel Blacking Machine — Model A

(United) Crest Heel Blacking Machine — Model B

Boylston — The Boylston Manufacturing Company
Star — Worcester Machinery Company

Finishing Heels.

(United) Xpedite Heel Finishing Machine — Leased by United-Xpedite Finishing Company; not put out directly by United Company.
Harlow Heel Finishing Machine — Harlow Shoe Finishing Machine Company
Boylston (or Copeland) — The Boylston Manufacturing Company
Apex — Worcester Machinery Company
Matson — Matson-Hoyt Machine Company
Beckman — Beckman Machine Company
Keyco Universal Finishing Machine — The Keighly Company, Inc.

Beading Heel Seat.

(United) Xpedite Heel Burnishing Machine — leased by United-Xpedite Finishing Company; not put out directly by United Company
(United) New Method Heel Seat Beading Machine — Model G
(United) Heel Seat Beading Machine — Model X
Boylston — The Boylston Manufacturing Company
Apex — Worcester Machinery Company
Harlow — Harlow Shoe Finishing Machine Company
Donnelly — Donnelly Machine Company
Beckman — A. Beckman
McDowell — McDowell Machinery Company

Beading Heel Breast.

Heel Breast Beading Machine — Haverhill Shoe Machinery Company

Finishing Room.

Buffing Bottoms.

(United) Buffing Machine — Model S
(United) Buffing Machine — Model G

Donnelly — Donnelly Machine Company
Tower — Tower Brothers
Buzzell — J. G. Buzzell & Company
Rowan — Hamel Shoe Machinery Company
Giant — The Boylston Manufacturing Company
Webster — The Boylston Manufacturing Company
Hawkins — Seelye Manufacturing Company

Naumkeag Cleaning.

Naumkeag Buffing Machine (Single Head) — Naumkeag Buffing Machine Company
Naumkeag Buffing Machine (Double Head) — Neaumkeag Buffing Machine Company
Pine — J. A. Pine
Naumkeag Buffing Machine (Single Head) — A. Johnson & Sons

Polishing Foreparts, Toplifts, and Shanks.

(United) Climax Finishing Shaft
(United) Climax Polishing Machine — Model X
(United) Climax Finishing Machine — Model X
(United) Climax Finishing and Brush Cleaning Machine—Model X
Finishing Shaft - Johnson & Sons
Finishing Shaft — Progressive Shoe Machinery Company
Finishing Shaft — Champion Shoe Machinery Company
Finishing Shaft — Landis Machine Company
Finishing Shaft — Specialty Shoe Machinery & Tool Co.
Finishing Shaft — The R. H. Long Machinery Company, Inc.
Finishing Shaft — Victor Shoe Machinery Company
Finishing Shaft — Donnelly Machine Company
Finishing Shaft — American Worsted Machinery Company
Finishing Shaft — The Keighley Company, Inc.
Finishing Shaft — The American Tool & Machine Co.
Finishing Shaft — Universal Shoe Machinery Company
Finishing Shaft — The Special Machinery & Tool Co.

Nurling Bottoms.

(United) Nurling Machine
Wheeler — E. L. Wheeler

Cleaning and Shaping Uppers.

(United) Stitch & Upper Cleaning Machine
(United) Booth Shaping & Cleaning Machine
Webster — The Boylston Manufacturing Company
Keighley Rotary Cleaning Machine — The Keighley Company, Inc.
Keighley Rotary Polishing Machine — The Keighley Company, Inc.

Stamping Forepart and Shank.

(United) Stamping Machine — Model E
(United) Regent Stamping Machine
Star — O. D. Wheeler
Ellison — J. Ellison
Holt — J. S. Holt & Company
Tower — Tower Brothers

Treeing Room.

Treeing Uppers.

(United) Miller Treeing Machine — Formerly, but not now, leased (never sold) by United Company
Miller Treeing Machine — Sold by O. A. Miller Treeing Machine Company
Copeland — The Boylston Manufacturing Company
Improved Flexor — Boston Last Company
Improved Flexor (8-arm) — Boston Last Company
Pneumatic Treeing Machine — W. J. Young Machinery Company (German)
Treeing Machine — A. Johnson & Sons
Mobbs & Lewis — Mobbs & Lewis, Ltd.

Packing Room.

Pounding Button Fly Seam.

(United) Power Hammer

Hart Power Hammer — Hamel Shoe Machinery Company
Shawmut — Shawmut Machinery Company

Vamp Creasing.

(United) Improved Vamp Creasing Machine
Power Creasing Machine #3 — O. A. Miller Treeing Machine Company
Knight — George Knight & Company

Scouring Tip.

(United) Tip Scouring Machine
Buzzell — J. G. Buzzell
Hart — Hamel Shoe Machinery Company
Freeman — The Louis G. Freeman Company
Shawmut — Shawmut Machinery Company
Boston — Boston Machine Works Company

Repairing Tip.

(United) Patent Leather Repairing Machine

DEFENDANTS' EXHIBIT 233.

[Put in Evidence, page 3103.]

A PARTIAL LIST OF CONCERNS ENGAGED IN SHOE MACHINERY OR RELATED LINES OF BUSINESS WHICH HAVE BEEN OFFERED, EITHER DIRECTLY OR INDIRECTLY, FOR SALE TO THE UNITED COMPANY BUT NONE OF WHICH HAS BEEN ACQUIRED BY THE UNITED COMPANY.

Acme Heel Protector Manufacturing Company
Alliance Shoe Machinery Company
American Glue Company (Moulded sandpaper)
American Shoe Machinery & Tool Company
Automatic Wetter-up Company
Atlas Tack Company
American Shoe Finding Company
Beach, R. S.
Beaudry, Zotique

Boston Last Company
Britton, H. E.
Brockton Mallet Company
Bresnahan Levelling Machine Company
Boylston Manufacturing Company
Callahan
Campello Shank Company
Canadian Shoe Machinery Company
Champion Shoe Machinery Company
Clark, George H.
Colburn, F. W.
Coldbath, Henry
Cummings, David and W. D. Brackett
Denslinger, A. & Co.
Dunbar, E. L.
Duplessis Shoe Machinery Company
Eaton & Holbrook Heel Burnishing Machine Company
Empire Sole Laying Machine Company
Essex Machine Company
Excelsior Slugger & Tacker Company
Flagg Manufacturing Company
Forsyth, W. R. & Co.
Fox, Charles K.
Frame, William E.
Frechette Pegging Machine Company
Globe Buffer Company
Hargraves Hook Machinery & Eyelet Company
Harlow Heel Finishing Machine Company
Hart, T. F.
Holt, J. S. & Company
Haverhill Shoe Machinery Company
Haverhill Channeling Machine Company
Improved Welt Machine Company
Keith, Irving L.
Krentler-Pym Lasting Machine Company
Keighley Company, Inc.

Lacene Manufacturing Company
Larsen Machine Company
Long, R. H. Machinery Company
McDowell Shoe Machinery Company
Morley Button Sewing Machine Company
McNalley & Dougherty
Merrick Company
North America Chemical Company
Parsons, Henry
Peck Lacing Hook Company
Peckham Manufacturing Company, J. E.
Peterboro Shank Company
Pettingill Heeling Machine Business
Potter Shank Company
Shawmut Machinery Company
Shipman, George
Specialty Shoe Machinery & Tool Company
Standard Button Works
Stevens, George H. Shank Company
Stimpson, Edward B.
Stanley Manufacturing Company
Tenney
Tyler Shank Company
Tripp Giant Levelling Company
Union Shank Company
Vose Machinery Company
Webster, H. A.
Wheeler & Wilson Company
Wheeler, H. A.
Wolfe Heel Building Machines

DEFENDANTS' EXHIBIT 234.

[Put in Evidence, page 3105.]

EYELET MANUFACTURERS IN 1913.

	Shoe Eyelets	Other Eyelets
Hughes Eyelet Co., Taunton	20	
Caseley-Nelmes, Taunton		60
Scoville Manufacturing Co., Taunton	2	80
Atlas Tack Co., Fairhaven	200	
R. N. Bassett & Co., Derby, Conn.		60
Waterbury Brass Co., Waterbury	5	75
Waterbury Manufacturing Co., Waterbury		10
American Ring Co., Waterbury		10
Rome Brass Works, Rome, N. Y.		25
Schwarze & Hahne, Haan, Germany, importers		
	227	320
S. O. & C. Co., Ansonia	200	125
J. C. Rhodes Co., New Bedford	200	20
Rimmon Eyelet Co., Seymour, Conn.	5	60
United Fast Color Eyelet Co.	30	2
	435	207

NOTE.— Output is given in millions per month.

EYELET MANUFACTURERS IN 1901.

	Shoe Eyelets	Other Eyelets
Excelsior Needle Co., Torrington	20	
Scoville Manufacturing Co., Waterbury	10	40
Waterbury Brass Co., Waterbury	10	40
American Ring Co., Waterbury	10	5
Rome Brass Works, Rome, N. Y.		5
Marley Button Co., Portsmouth, N. H.	20	
Rimmon Eyelet Co., Seymour, Conn.	30	30
Southington Eyelet Co., Waterbury		
Brook Co., Waterbury	20	50
Precision Eyelet Co., Bridgewater	5	
	125	170

	Shoe Eylets	Other Eylets
S. O. & C. Co. Ansonia	125	150
J. C. Rhodes	175	15
United Fast Color Eyelet Co.	40	
	340	165

NOTE.— Output is given in millions per month.

DEFENDANTS' EXHIBIT 235.

[Put in Evidence, page 3107.]

OPERATIONS PERFORMED IN TYPICAL FACTORIES IN THE MANUFACTURE OF THE FOLLOWING CLASSES OF SHOES.

SURFACE STANDARD SCREWED
CHANNEL STANDARD SCREWED
MEN'S LOOSE NAILED
MEN'S McKAY SEWED
WOMEN'S McKAY SEWED
MEN'S WELTS
WOMEN'S WELTS
WOMEN'S TURNS

MEN'S SURFACE STANDARD SCREWED WHEELED TOP EDGE, SLIP TAP, GUN METAL BLUCHER CUT-OFF TOE.

Cutting Room

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine	1. Cutting Vamps, Tops, Foxings & Tongues.	Parsons'— Parsons Machinery Co.
	2. Sorting (Hand Work)	Seelye — Seelye Manufacturing Co.
None	2a. Crimping Vamps	Lockett — Lockett Crimping Machine Co.
Improved Gearless Sole Cutting Machine	3. Cutting Doublings for Light Uppers.	Eclipse — Parsons Machinery Co.
		Seelye — Seelye Manufacturing Co.
Ideal Clicking Mch.		Tower — Tower Bros.
Improved Geared Sole Cutting Machine		Knox — Quarmby & Hilliker
Hub Lining Cementing Machine	4. Doubling	K & K — Geo. Knight & Co.
		Peerless — Peerless Machinery Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Mathey — Coburn & Lawrence Co. Weber — J. H. Nangle Foot Power — Shawmut Mchy. Co. Hand Power — Shawmut Mchy. Co. Simplex Cloth Backing Mach.— Boston Last Company. "Davis" Electric Taping Mach.— The Davis Sewing Machine Co.
	5. Casing (Dividing sizes to match Tags) (Hand Work)	
Improved Gearless Sole Cutting Machine Ideal Clicking Mach. Improved Geared Sole Cutting Machine	6. Cutting Cloth Linings and Doublers	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker.
Improved Gearless Sole Cutting Machine—Mods. J & K	7. Cutting Box Toe Material	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine—Mods. J & K	8. Cutting Reinforcement and Water-proof Material for Box Toe	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker.
	9. Assembling Cut Stock for Stitching Room (Hand Work)	
Ideal Clicking Machine	10. Cutting Heel Stays, Facings and Hook Stays	Parsons — Parsons Machinery Co. Seelye — Seelye Manufacturing Co.
	Stitching Room	
	11. Checking work into room (Hand Work)	
	12. Checking Day Sheet and Division of Leather Parts for Skivers (Hand Work)	
Amazeen Skiving Machine Pluma Skiving Machine	13. Skiving Parts of Uppers.	Universal — Peerless Machinery Company Fortuna — Fortuna Machine Co. Pierce — C. S. Pierce. Amazeen Type — A. Johnson & Sons. Amazeen Type — Donnelly Machine Company.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Snipping Machine: Booth Sandal	13a. Snipping Preparatory to Folding	Hart — Hamel Shoe Machinery Co. Boston (6) Foot Power Types — Boston Machine Works Co. Power — Boston Machine Works Co. Snipping & Cementing Machine — Boston Machine Works Co.
None	14. Stitching Eyelet Rows	Singer — Singer Sewing Mach. Co. Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co.
None	14a. Cementing Edges of Uppers	Duplex — Peerless Machinery Co. Economy — " " " New York — Boston Machine Wks. Company. Snipping & Cementing Mch. — Boston Machine Works Co.
None	15. Folding Front Edges of Tops	New Vamp — Boston Machine Works Co. Foot Power — Boston Machine Works Co. Boston — Boston Machine Wks. Co. Booth — " " " " Dunn — " " " " Rapid Hand Method — Perley R. Glass Co. New Cylinder — Perley R. Glass Company. Straight Edge — American Worsted Machinery Co.
None	16. Closing Tops	Lufkin — R. H. Lufkin. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Mch. Co. W. & W. " " " " Union Special — Union Special Sewing Machine Co. #3 — Union Lockstitch Co. Puritan — Puritan Manufacturing Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mch. Co.
Rapid Seam	16a. Seam Rubbing	Hand Method — Shawmut Mchy. Co.

Machines of U. S. M. Co. Rubbing Machine	Operations	Machines of other Dealers
		Champion — Coburn & Lawrence Co. Boston — Boston Mach. Wks. Co. Union — " " " "
None	17. Stitching Outside Stays	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Machine Co. W. & W. " " " " Union Special — Union Special Sewing Machine Co. #3 — Union Lockstitch Co. Puritan — Puritan Manufacturing Company Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Company Davis — The Davis Sewing Machine Company
None	18. Closing Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Machine Company. W. & W. — Singer Sewing Machine Co. Union Special — Union Special Sewing Machine Co. #3 — Union Lockstitch Co. Puritan — Puritan Manufacturing Company. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Co.
None	19. Stitching Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W " " " " #3 — Union Lockstitch Co. Puritan — Puritan Manufacturing Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mch. Co.
None	20. Stamping sizes and Case Number on Cloth Linings	Power Lining Marking Machine — Markem Machine Co. Various Hand Devices.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	21. Stitching Eyelet Stays	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Mach. Company.
None	22. Stitching Heel Stays and Closing Linings	Singer — Singer Sewing Mch. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metaopolitan Sewing Machine Co. Davis — The Davis Sewing Machine Company.
None	23. Stitching Top Facings to Linings	Singer — Singer Sewing Machine Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Machine Company.
Embossing Machine Power Embossing Machine foot Power	23a. Embossing Top Faces	Simplex — Boston Last Co. Universal — Markem Machine Co. Silver King — " " " Freeman — The Louis G. Freeman Company Perkins — Perkins Machine Co.
None	24. Hooking with Stay Reinforcements	Tubular Rivet — Tubular Rivet & Stud Co. American — American Lacing & Hook Company.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Foot Power — American Worsted Machinery Co.
		Halkyard — Halkyard Mfg. Co.
None	25. Closing Linings to Top, Back to Back, holding in Back Straps	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Machine Co.
	26. Cementing Tops (Hand Work)	
Columbia Beading Machine Victor Beading Machine	27. Turning Edges on Beading Machine	Monarch — Boston Machine Wks. Co. Boston — " " " " Hart — Hamel Shoe Machinery Co. Nangle — J. H. Nangle
None	28. Undertrimming, Stitching Around Top from Nose to Nose, Trimming off Surplus Facings, Staying Back Pull Straps at same time	Singer — Singer Sewing Machine Co. W & W — " " " " Metropolitan — The Metropolitan Sewing Machine Co.
None	29. Blacking Front of Tops, if raw edges	Coburn — Coburn & Lawrence Co. Peerless — Peerless Machinery Co.
Duplex Eyeletting Mach. Perfection Eyeletting Mach. Universal Power Eyeletting Mach. Merrick Power Eyeletting Mach. Samcon Eyelet-Machine Power Eyeletting Mach. Cameo Foot Power Eyeletting Mach. Vulcan Foot	30. Eyeletting	Peerless Rapid — Peerless Mchy. Co. Peerless Gang — " " " Power — Geo. Knight & Co. Foot Power Gang — Geo. Knight & Company. A Mach. — Am. Worsted Mchy. Co. B " — " " " " Monitor — " " " " Eureka — " " " "

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	31. Marking Vamps for Box Toes (Hand Work)	
None	32. Stitching Box Toes and Waterproof Material to Vamps	Singer — Singer Sewing Machine Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co.
Royal Perforating Mach. Mod. B Stanbon—Perforating Mod. M	33. Perforating Tips	Hart #6 — Hamel Shoe Mchy. Co. Hart Mod. A — " " " " Barber — L. L. Barber & Co. Johnson — A. Johnson & Sons. American — Am. Worsted Mchy. Co. Peerless — Peerless Machinery Co. Punch Feed — Hamel Shoe Machinery Company.
None	34. Stitching Tips to Vamps	Singer — Singer Sewing Mach. Co. W & W " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Puritan — Puritan Manufacturing Company #3 — Union Lockstitch Co. Davis — The Davis Sewing Machine Company.
None	35. Stitching Tongues between Vamps and Vamp Linings	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company.
None	36. Vamping	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. #3 — Union Lockstitch Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers.
		Puritan — Puritan Manufacturing Co.
		Davis — The Davis Sewing Mch. Co.
None	37. Bracing Tops to Vamps	Singer — Singer Sewing Mach. Co.
Ensign Lacing Machine Ellis Wire Lacer	38. Lacing Uppers	Rochester Lacer — Boston Machine Works Co.
	39. Casing Uppers (Hand Work)	
	40. Inspecting Uppers (Hand Work)	
	Sole Leather Room	
	41. Moistening Sole Leather in Sides (Hand Work)	
Imp. Gearless Sole Cutting Machines	42. Cutting Outersoles, Innersoles, Half Soles and Toplifts	Eclipse — Parsons Machinery Co.
		Seelye — Seelye Manufacturing Co.
		Tower — Tower Bros.
Imp. Baby Sole Cutting Machine		Knox — Quarmby & Hilliker.
Veneer Press	42a. Veneering Insoles	Busfield — Jas. Busfield
Victor Rolling Machine	43. Preparing Bellies, Shoulders, and Remnants for Cutters; (Rolling, Splitting, Flexing.)	Seelye — Seelye Manufacturing Co.
		Knox — Quarmby & Hilliker
Improved Rolling Machine		Busfield — Jas. Busfield
Summit Splitting Machine		Knox — Quarmby & Hilliker
		Hawkins — Seelye Manufacturing Co.
		Baby — J. S. Wheeler & Co.
Improved Gearless Sole Cutting Machines	44. Cutting Heel Lifts	Eclipse — Parsons Machinery Co.
		Seelye — Seelye Manufacturing Co.
		Tower — Tower Bros.
Wedge Lift Cutting Machine		Knox — Quarmby & Hilliker
		Young Wedge Lift Cutting Machine — W. J. Young Machinery Co.
Summit Splitting Machines Mods. M & N.	45. Evening Heel Lifts	Knox — Quarmby & Hilliker
		Hawkins — Seelye Manufacturing Co.
Centennial Splitting Mch.		Baby — J. S. Wheeler & Co.
Champion Heel Lift Skiving Machine	45a. Gouging Heel Lifts	Young — W. J. Young Mchy. Co.
		Bostock — Thos. Bostock & Sons
Pyramid Heel Building Mach.	46. Building Heels	Young (Foot Power) — W. J. Young Machinery Co.
Heel Building Machine Mod. R		Grover — W. J. Young Machinery Co.
		White — F. N. White & Co.
		Bostock — Thos. Bostock & Sons
		Bosworth — W. T. Bosworth

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Fortuna — Fortuna Machine Co. Knight — Geo. Knight & Co. Pieced Heel — Parsons Machinery Company.
Handy Heel Press	46a. Pressing Heels	Seelye — Seelye Manufacturing Co.
Automatic Heel Compressing Machine, Mod. #4	47. Compressing Heels	Heel Compressing Machine — W. J. Young Machinery Co.
Automatic Heel Compressing Machine, Mod. #5		Heel Compressing Machine — Gimson & Co., Ltd. Knox — Quarmby & Hilliker. Heel Compressing Machine — Nolle's Works
	48. Placing Heels in Boxes for use (Hand Work)	
Summit Splitting Machines	49. Evening Outersoles	Knox — Quarmby & Hilliker Hawkins — Seelye Mfg. Co. Baby — J. S. Wheeler & Co. Nichols — Lacene Mfg. Co.
Victor Rolling Machine	50. Rolling Outersoles	Knox — Quarmby & Hilliker
Improved Rolling Machine		Busfield — Jas. Busfield Seelye — Seelye Manufacturing Co.
	51. Sorting Outersoles (Hand Work)	
Apex Tap Skiving or Rand Splitting Mach.	52. Skiving Butts of Taps	N O S — American Worsted Mchy. Co Busfield — Jas. Busfield Imp. Tripp — American Worsted Machinery Co. American — Victor Shoe Mchy. Co.
	53. Matching Cut Stock with Tags (Hand Work)	
Eagle Sole Stamping Mach. Mod. C.	54. Stamping Sizes on Soles	Nichols Grading Machine — Lacene Manufacturing Co. Various Hand Devices
	55. Casing Soles in Sizes and Pairs (Hand Work)	
	56. Stamping Case Numbers on Top Soles (Hand Work)	
	57. Wetting Outersoles (Hand Work)	
	58. Wetting Taps (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers.
Rapid Rotary Cementing Machine	59. Doubling Shanks of Outersoles (if light)	Brown-— Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
Rapid Rotary Cementing Machine	60. Cementing Foreparts of Outersoles	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Mach. Wks. Co.
Rapid Rotary Cementing Machine	61. Cementing Taps	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
Rapid Rotary Cementing Machine	62. Applying Taps to Outersole (Tack & Cement)	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
Taper Nail Tacking Machine Wire Grip Tacking Machine Staple Tacking Machine		Universal Sole Clinch Machine — Universal Shoe Machinery Co. Duplessis — Hamel Shoe Machinery Company Victor — Victor Shoe Machinery Co.
Goodyear Welt Indenting & Burnishing Machine	63. Indenting Top Edges of Foreparts Blacking (Hand Work)	Wheeler — E. L. Wheeler. Holt — J. S. Holt & Co., Inc. Donnelly — Donnelly Machine Co.
Boston Tacking Machine Cable Tacking Machine Staple Fastening Machine Wire Grip Tacking Machine Strip Nail Tacking Machine	64. Tacking on Shanks	Freeman Insole Tacker — The Louis G. Freeman Co. Tacking Machine — A. Johnson & Sons Duplessis Tacker — Hamel Shoe Machinery Co. Victor — Victor Shoe Mchy. Co.
Apex Tap & Sole Rounding Mach., Mod. A	65. Rounding Tap to Outersole	Severence — American Worsted Machinery Co.
American Twin Sole Moulding Machine Single Sole Moulding Machine	65a. Moulding Outersoles	Knox — Quarmby & Hilliker C. & J.— The Boylston Mfg. Co. Hawkins — Seelye Mfg. Co.
Crescent Toe Gouging Mch.	65b. Toe Gouging (if necessary) 66. Tying in Cases (Hand Work) 67. Packing Sole Leather and Counters in boxes ready for Lasters (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	68. Matching Sole Leather with Uppers (Hand Work)	
	Lasting Room.	
	69. Putting up Lasts on Racks (Hand Work)	
	70. Tacking Insole to Last (Hand Work, if done; usually not done.)	
	71. Assembling (Hand Work)	
	72. Pulling over Upper (Hand Work)	
McKay & Copeland Lasting Machine Consolidated Hand Method Lasting Machine (with or without Toe cutter) Chase Lasting Machine	73. Lasting	Victor Con. Type — Nolle's Works. Lasting Machine — Ward & Gent. Consolidated — Atlas Werke Pohler Co. Standard Rotary Rapid Lasting Machine — Standard Rotary Machine Co., Ltd. Consolidated Type — Gimson & Co., Ltd. Consolidated Type — The Standard Engineering Co.
Rex Rotary Pounding & Trimming Machine Wentworth Heel Seat Beating & Finishing Machine	74. Pounding and Trimming	
Goodyear Insole Tack Pulling Machine	74a. Pulling insole Tacks	Freeman Combination Insole & Side Tack Pulling Machine — The Louis G. Freeman Co.
Wire Grip Tacking Machine Taper Nail Tacking Machine Staple Fastening Machine	75. Tacking on Soles	Universal Sole Clinch Machine — Universal Shoe Machinery Co.
	76. Pulling Lasts and Cut or Remove Lacers (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	77. Inspecting Lasting (Hand Work)	
	Bottoming Room	
Rapid Standard Screw Mch.	78. Standard Screw Nailing	
Hercules Leveling Machine	79. Leveling	New Giant — The Boylston Mfg. Co. Giant — The Boylston Mfg. Co.
McKay Automatic Heel Loading and Attaching Machine	80. Heeling	Pettengill Heeling Machine — Haverhill Shoe Mahinery Co. National — The R. H. Long Mchy. Co., Inc.
Universal Slugging Machine	81. Slugging	Long Slugger — The R. H. Long Machinery Co., Inc. Duplessis Slugger — Hamel Shoe Machinery Co.
McKay Heel Trimming & Randing	82. Heel Trimming	Boylston — The Boylston Mfg. Co. Heel Trimming Machine — A. Johnson & Sons. Heel Trimming Machine — McDowell Shoe Machinery Co. Heel Trimming Machine — Haverhill Shoe Machinery Co. Long Heel Trimming Machine — The R. H. Long Mchy. Co., Inc. Tower Heel Trimming Mach.— Tower Bros.
Imperial Heel Breasting Machine, Mod. B. Heel Breasting Machine, Mod. R. & W.	83. Breasting Heels	Haverhill — Haverhill Shoe Mchy. Company. Rowan — Hamel Shoe Mchy. Co. W & H — Donnelly Machine Co.
Edge Trimming Mach. Mod. A Edge Trimming Mach. Mod. B Edge Trimming Mach. Mod. E	84. Trimming Foreparts	Donnelly — Donnelly Machine Co. Rowan — Hamel Shoe Machinery Co. Briggs-Belmar — Briggs-Belmar Co. Tower — Tower Bros. Long — The R. H. Long Machy. Co. Inc. Haverhill — Haverhill Shoe Machy. Company
Heel Scouring Machine Mod. R. Heel Scouring Mach. Mod. X Heel Scouring Mach. Carver	85. Scouring Heels (Heels filled at this point if necessary)	Rowan — Hamel Shoe Machinery Co. Buzzell — J. G. Buzzell & Co. Globe — The Boylston Mfg. Co. Tower — Tower Bros. Johnson — A. Johnson & Sons. Carver — Donnelly Machine Co.
Heel Breast Scouring Machine Mod. H.	86. Scouring Heel Breasts	Buzzell — J. G. Buzzell & Co. Donnelly — Donnelly Machine Co. Freeman — The Louis G. Freeman Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Heel Breast Scouring Machine Mod. N.		Rowan — Hamel Shoe Machinery Co. Dougherty — Frank B. Dougherty
	87. Blacking Edges (Hand Work)	
Rotary Edge Setting Mach. Mod. C. Rotary Edge Setting Mach. Mod. K. Twin Edge Setting Mach. Mod. R. Single Edge Setting Mach. Mod. N.	88. Setting Edges	Freeman — The Louis G. Freeman Co. Union — The Boylston Mfg. Co. Rotary — Tower Bros. Beaudry — Beaudry Machine Co. Union (Single) — The Boylston Mfg. Co. Vici — Independent Shoe Mchy. Co. Rotary — Donnelly Machine Co. Johnson — A. Johnson & Sons
Crest Heel Blacking Machine Mod. A & B	89. Blacking Heel Edges	Boylston — The Boylston Mfg. Company Star — Worcester Machinery Co.
None (Xpedite Finishing Machine put out by United Xpedite Finishing Co.)	90. Heel Burnishing	Harlow Heel Burnishing Machine — Harlow Shoe Finishing Mchy. Co. Boylston (or Copeland) — The Boylston Manufacturing Co. Apex — Worcester Machinery Co. Matson — Matson-Hoyt Machine Co. Beckman — A. Beckman Keyco — The Keighly Co., Inc.
	91. Inspecting and Crowning (Hand Work)	
	Finishing Room	
Buffing Machine Mod. S Buffing Machine Mod. G	92. Buffing Bottoms	Donnelly — Donnelly Machine Co. Tower — Tower Bros. Buzzell — J. G. Buzzell & Co. Rowan — Hamel Shoe Machinery Co. Giant — The Boylston Manufacturing Company. Webster — The Boylston Manufacturing Co. Hawkins — Seelye Mfg. Co.
	93. Staining Forepart and Shank (Hand Work)	
Climax Finishing Shafts Climax Finishing Machine X Climax Polishing Machine Mod. X	94. Polishing Forepart and Shank	Universal — Universal Shoe Mchy. Co. Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Machy. Company. Landis — Landis Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Climax Finishing & Brush Cleaning Machine, Mod. X		Specialty — Specialty Shoe Mchy. & Tool Co. Special — The Special Machy. & Tool Co. Long — The R. H. Long Machinery Company, Inc. Donnelly — Donnelly Machine Co. American — American Worsted Machy Company. American — The American Tool & Machine Company. Victor — Victor Shoe Machinery Co. Johnson — A. Johnson & Sons. Keighley — The Keighly Co., Inc.
Nurling Machine Mod. A.	95. Wheeling Forepart and Shank (Nurling)	Wheeler — E. L. Wheeler
Regent Stamping Machine Mod. C Stamping Machine, Mod. R	96. Stamping Forepart	Star — O. D. Wheeler Ellison — J. Ellison Holt — J. S. Holt & Co., Inc. Tower — Tower Bros.
	Treeing Room	
	97. Inserting Heel Pod (Hand Work)	
Miller Treeing Machine formerly but not now leased by the United Co.	98. Treeing	Copeland — The Boylston Mfg. Co. Improved Flexor — Boston Last Co. Miller — Sold by O. A. Miller Treeing Machine Co. Imp. Flexor (8 arm) — Boston Last Company Pneumatic — W. J. Young Mchy. Co Johnson — A. Johnson & Sons. Mobbs & Lewis — Mobbs & Lewis, Ltd.
	99. Lacing Shoes (Hand Work)	
Climax Finishing Shafts	100. Brushing Edges	Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Machy. Company. Landis — Landis Machine Co. Specialty — Specialty Shoe Machy. & Tool Co. Long — The R. H. Long Machinery Co., Inc. Donnelly — Donnelly Machine Co. American — American Worsted Machinery Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Victor — Victor Shoe Machy. Co. Johnson — A. Johnson & Sons. Keighly — The Keighly Co., Inc. American Tool — The Am. Tool & Machinery Co. Special — The Special Machinery & Tool Company. Universal — Universal Shoe Machy. Company.
	101. Inspecting and Crowning (Hand Work)	
	Packing Room.	
	102. Labeling Cartons (Hand Work)	
None	103. Marking Cartons	Markem — Markem Machine Co.
	104. Matching Cartons, Wood Cases and Shoes (Hand Work)	
	105. Packing Shoes in Cartons (Hand Work)	
	106. Boxing (Hand Work)	
	107. Stenciling Cases (Hand Work)	
	107a. Numbering Cases (Hand Work)	
	108. Nailing Covers to Cases (Hand Work)	

ADDITIONAL OPERATIONS.

If Shoe Manufacturers prepare counters themselves the following operations should be added in the Sole Leather Room.

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
Gearless Sole Cutting Machines	1. Dieing out Counters	Eclipse — Parsons Machy. Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
None	2. Wetting Counters	Stewart — Stewart Bros.
Monarch Box Toe & Counter Skiving Machine	3. Skiving Counters	Young — W. J. Young Mach. Co. Stewart — Stewart Bros.
Counter Skiving Mch. Mod. W		Hartwell — L. L. Hartwell Moenus — Moenus Mch. Works

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Counter Skiving Mch. Mod. S		
None	4. End Finishing Counters	Thurston — W. J. Young Mchy. Co. Stewart — Stewart Bros. Moenus — Moenus Mch. Works
Velvet Box Toe Buffing Machine	5. Buffing Counters	Perfection — W. J. Young Machinery Co.

Channel Standard Screwed Fairstitched Slip Tap, Gun Metal Blucher, Cut-off Toe, March 31, 1913.

Cutting Room.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine	1. Cutting Vamps, Taps, Foxings & Tongues.	Parsons'— Parsons Machinery Co. Seelye — Seelye Manufacturing Co.
	2. Sorting (Hand Work)	
None	2a. Crimping Vamps	Lockett — Lockett Crimping Machine Co.
Ideal Clicking Machine	3. Cutting Doublings for Light Uppers.	Eclipse — Parsons Machinery Co.
Improved Gearless Sole Cutting Machine		Seelye — Seelye Manufacturing Co.
		Tower — Tower Bros.
Imp. Geared Sole Cutting Machine.		Knox — Quarmby & Hilliker.
Hub Lining Cementing Machine	4. Doubling	K & K — Geo. Knight & Co. Peerless — Peerless Mchinery Co. Mathey — Coburn & Lawrence Co. Weber — J. H. Nangle Hand Power — Shawmut Mchy. Co. Simplex Cloth Backing Mach., Boston Last Company "Davis" Electric Taping Mach.— The Davis Sewing Machine Co. Foot Power — Shawmut Mchy. Co.
	5. Casing (Dividing Sizes to match Tags) (Hand Work)	
Ideal Clicking Mach.	6. Cutting Cloth Linings and Doublers.	Eclipse — Parsons Machinery Company
Improved Gearless Sole Cutting Machine		Seelye — Seelye Manufacturing Company.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Improved Geared Sole Cutting Machine		Tower — Tower Bros. Knox — Quarmby & Hilliker.
Improved Gearless Sole Cutting Machine — Mods. J & K	7. Cutting Box Toe Material	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine — Mods. J & K	8. Cutting Reinforcement and Water-proof Material for Box Toe	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
	9. Assembling Cut Stock for Stitching Room (Hand Work)	
Ideal Clicking Machine	10. Cutting Heel Stays, Facings and Hook Stays	Parsons — Parsons Machinery Co. Seelye — Seelye Manufacturing Co.
	Stitching Room	
	11. Checking work into room (Hand Work)	
	12. Checking Day Sheet and Division of Leather Parts for Skivers (Hand Work)	
Amazeen Skiving Machine Pluma Skiving Machine	13. Skiving Parts of Uppers	Universal — Peerless Machinery Co. Fortuna — Fortuna Machine Co. Pierce — C. S. Pierce Amazeen Type — A. Johnson & Sons " " Donnelly Mch. Co.
Snipping Machine: Booth Sandal	13a. Snipping Preparatory to Folding.	Power — Boston Mach. Wks. Co. Hart — Hamel Shoe Machinery Co. Boston — Boston Machine Works Co. (6 Ft. Power Type.) Snipping & Cementing Machine — Boston Machine Works Co.
None	14. Stitching Eyelet Rows	Singer — Singer Sewing Machine Co. Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan —The Metropolitan Sewing Machine Co.
None	14a. Cementing Edges of Uppers	Economy — Peerless Machinery Co. Duplex — " " " New York — Boston Machine Works Co. Snipping & Cementing Machine — Boston Machine Works Co.

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Machines of U. S. M. Co.	Operations	Machines of other Dealers.
None	15. Folding Front Edges of Tops	New Vamp — Boston Machine Works Co. Foot Power — Boston Mch. Wks. Co. Boston — Boston Machine Works Co. Booth — " " " " Dunn — " " " " Rapid Hand Method — Perley R. Glass Co. New Cylinder — Perley R. Glass Co. Straight Edge — American Worsted Machinery Co. Lufkin — R. H. Lufkin.
None	16. Closing tops	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Machine Co. Wheeler & Wilson — Singer Sewing Machine Co. Union Special — Union Special Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Manufacturing Company Met.— Met. Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company.
Rapid Seam Rubbing Machine	16a. Seam Rubbing	Hand Method — Shawmut Machinery Co. Champion — Coburn & Lawrence Co. Boston — Boston Machine Works Co. Union — Boston " " "
None	17. Stitching Outside Stays	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Machine Co. W & W " " " " Union Special — Union Special Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Manufacturing Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Co.
None	18. Closing Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Singer — Singer Sewing Machine Co. W & W " " " " Union Special — Union Special Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Manufacturing Co. Met.— The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Co.
None	19. Stitching Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W " " " " No. 3 — Union Lockstitch Co. Puritan — Puritan Manufacturing Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company.
None	20. Stamping Sizes and case Number on Cloth Linings	Power Lining Marking Machine — Markem Machine Co. Various Hand Devices.
None	21. Stitching Eyelet Stays	Singer — Singer Sewing Machine Co. W & W " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Machine Company.
None	22. Stitching Heel Stays and Closing Linings	Singer — Singer Sewing Mach. Co. W & W " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	23. Stitching top Facings to Linings	Davis — The Davis Sewing Mach. Co. Singer — Singer Sewing Machine Co. W & W " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Mach. Company.
Embossing Machine: Power Embossing Machine: Ft. Power	23a. Embossing top Faces	Simplex— Boston Last Co. Universal — Markem Machine Co. Silver King — " " "
		Freeman — The Louis G. Freeman Co. Perkins — Perkins Machine Co.
None	24. Hooking with Stay Reinforcements.	Tubular Rivet — Tubular Rivet & Stud Co. American — American Lacing & Hook Company. Ft. Power — American Worsted Machinery Co. Halkyard — Halkyard Mfg. Company
None	25. Closing Linings to Top, Back to Back, Holding in Back Straps	Singer — Singer Sewing Machine Co. W & W " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Machine Company.
	26. Cementing Tops. (Hand Work)	
Columbia Beading Machine	27. Turning Edges on Beading Machine	Monarch — Boston Mach. Wks. Co. Boston — " " " " Hart — Hamel Shoe Machy. Co.
Victor Beading Machine		Nangle — J. H. Nangle
None	28. Undertrimming, Stitching Around Top	Singer — Singer Sewing Mach. Co. W & W — " " " "

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	from Nose to Nose, Trimming off surplus facings, Staying Back Pull Straps at same Time	Metropolitan — The Met. Sewing Machine Company.
None	29. Blacking Front of Tops, if raw edges	Coburn — Coburn & Lawrence Co. Peerless — Peerless Machinery Co.
Duplex Eyeletting Machine Perfection Eyeletting Machine Universal Power Eyeletting Machine Merrick Power Eyeletting Machine Samson Eyeletting Machine. Power Eyeletting Machine Cameo Ft. Power Eyeletting Machine Vulcan Ft. Power Eyeletting Machine	30. Eyeletting.	Peerless Rapid — Peerless Machy. Company Power — Geo. Knight & Co. Ft. Power Gang — Geo. Knight & Co. Peerless Gang — Peerless Machy. Co. "A" Machine — American Worsted Machinery Company. "B" Machine — American Worsted Machinery Company. Monitor — American Worsted Machy. Company Eureka — American Worsted Machy. Company
	31. Marking Vamps for Box Toes. (Hand Work)	
None	32. Stitching Box Toes and Waterproof Material to Vamps	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co.
Royal Perforating Machine Modl. B Stanbon Perforating Mch. Mod. M	33. Perforating Tips	Hart #6 — Hamel Shoe Mchy. Co. " Mod. A — " " " " Barber — L. L. Barber & Co. American — American Worsted Machinery Co. Peerless — Peerless Mchy. Co. Punch Feed — Hamel Shoe Machinery Company Johnson — A. Johnson & Sons
None	34. Stitching Tips to Vamps	Singer — Singer Sewing Machine Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Puritan — Puritan Mfg. Co. No. 3 — Union Lockstitch Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Davis — The Davis Sewing Mach. Co.
None	35. Stitching Tongues between Vamps and Vamp Linings	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company.
None	36. Vamping	Singer — Singer Sewing Mach. Co. W & W " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. No. 3 — Union Lockstitch.Co. Puritan — Puritan Manufacturing Co. Davis — The Davis Sewing Mach. Co.
None	37. Bracing Tops to Vamps	Singer — Singer Sewing Machine Co.
Ensign Lacing Machine Ellis Wire Lacer	38. Lacing uppers	Rochester Lacer — Boston Machine Works Co.
	39. Casing Uppers (Hand Work)	
	40. Inspecting Uppers (Hand Work)	
	Sole Leather Room	
	41. Moistening Sole Leather in Sides (Hand Work)	
Imp. Gearless Sole Cutting Machine	42. Cutting Outersoles.	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co.
Imp. Baby Sole Cutting Machine	Innersoles, Half Soles and Toplifts	Tower — Tower Bros. Knox — Quarmby & Hilliker
Veneer Press	42a. Veneering Insoles	Busfield — Jas. Busfield
Victor Rolling Machine	43. Preparing Bellies, Shoulders, and Remnants for Cutters; (Rolling, Splitting, Flexing.)	Seelye — Seelye Manufacturing Co. Knox — Quarmby & Hilliker
Improved Rolling Machine		Busfield — Jas. Busfield
Summit Splitting Machine		Knox — Quarmby & Hilliker Hawkins — Seelye Manufacturing Co. Baby — J. S. Wheeler & Co.
Improved Gearless Sole Cutting Machines	44. Cutting Heel Lifts	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Wedge Lift Cutting Machine		Knox — Quarmby & Hilliker Young Wedge Lift Cutting Machine — W. J. Young Machinery Co.
Centennial Splitting Machine Summit Splitting Machine	45. Evening Heel Lifts	Knox — Quarmby & Hilliker Hawkins — Seelye Manufacturing Co. Baby — J. S. Wheeler & Co.
Champion Heel Lift Skiving Machine	45a. Gouging Heel Lifts	Young — W. J. Young Machinery Co. Bostock — Thos. Bostock & Sons
Pyramid Heel Building Machine Heel Building Machine Mod. R.	46. Building Heels	Young (Foot Power) — W. J. Young Machinery Co. Grover — W. J. Young Machinery Co. White — F. N. White & Co. Bostock — Thos. Bostock & Sons Bosworth — W. T. Bosworth. Fortuna — Fortuna Machine Co. Knight — Geo. Knight & Co. Pieced Heel — Parsons Machinery Company
Handy Heel Press	46a. Pressing Heels	Seelye — Seelye Manufacturing Co.
Automatic Heel Compressing Machine, Mod. #4	47. Compressing Heels	Heel Compressing Machine — W. J. Young Machinery Co.
Automatic Heel Compressing Machine, Mod. #5		Heel Compressing Machine — Gimson & Co., Ltd. Knox — Quarmby & Hilliker Heel Compressing Machine — Nolle's Works
	48 Placing Heels in boxes for use. (Hand Work)	
Summit Splitting Machines	49. Evening Outersoles	Knox — Quarmby & Hilliker Hawkins — Seelye Manufacturing Co. Nichols — Lacene Manufacturing Co. Baby — J. S. Wheeler & Co.
Victor Rolling Machine Improved Rolling Machine	50. Rolling Outersoles	Knox — Quarmby & Hilliker Busfield — Jas. Busfield Seelye — Seelye Manufacturing Co.
	51. Sorting Outersoles (Hand Work)	
Apex Tap Skiving or Hand Splitting Machine	52. Skiving Butt of Taps	N O S — American Worsted Machinery Co. Busfield — Jas. Busfield Impr. Tripp — American Worsted Machinery Co. American — Victor Shoe Mchy. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	53. Matching Cut Stock with tags (Hand Work)	
Eagle Sole Stamping Machine	54. Stamping Sizes on Soles	Nichols Grading Machine — Lacene Manufacturing Co. Various Hand Devices
	55. Casing Soles in Sizes and Pairs (Hand Work)	
	56. Stamping Case Number on Top Soles (Hand Work)	
	57. Wetting Outsoles and Taps (Hand Work)	
Apex Channeling Machine McKay Channeling Machine Mod. Z	58. Channeling Outersoles	McKay — Geo. Knight & Co. McKay — Walter Pearson McKay — American Worsted Machinery Co.
Rapid Rotary Cementing Machine	59. Doubling Shank of Outersoles (if light)	Haverhill — Universal Supply Co. Brown — Hazen-Brown Co. Julian — Boston Machine Wks. Co.
Rapid Rotary Cementing Machine	60. Cementing Forepart of Outersoles	Brown — Hazen-Brown Co. Julian — Boston Machine Wks. Co. Haverhill — Universal Supply Co.
Rapid Rotary Cementing Machine	61. Cementing Taps	Brown — Hazen-Brown Co. Julian — Boston Machine Wks. Co. Haverhill — Universal Supply Co.
Rapid Rotary Cementing Machine	62. Applying Taps to Outersole (Tack and Cementing)	Brown — Hazen-Brown Co. Julian — Boston Machine Wks. Co. Haverhill — Universal Supply Co
Taper Nail Tacking Machine Cable Tacking Machine Wire Grip Tacking Machine Staple Fastening Machine		Universal Sole Clinch Machine — Universal Shoe Machinery Co. Duplessis — Hamel Shoe Mchy. Co. Victor — Victor Shoe Mchy. Co.
Boston Tacking Machine Cable Tacking Machine Staple Fastening Machine Wire Grip Tacking Mach.	63. Tacking on Shanks	Freeman Insole Tacker — The Louis G. Freeman Co. Tacking Machine — A. Johnson & Sons Duplessis Tacker — Hamel Shoe Machinery Co. Victor — Victor Shoe Machy. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
String Nail Tacking Mach.		
Apex Tap & Sole Rounding Machine	63a. Rounding Tap to Outersole	Severance — American Worsted Machinery Co.
American Twin Sole Moulding Machine	64. Moulding Soles	Knox — Quarmby & Hilliker
Single Sole Moulding Machine		C. & J.— The Boylston Mfg. Co.
		Hawkins — Seelye Mfg. Co.
Crescent Toe Gouging Machines	64a. Toe Gouging	
Apex Channel Opening Machine	65. Opening Channels	Fischer — American Worsted Machinery Co.
		Fischer — Geo. Knight & Co.
	66. Tying in Cases (Hand Work)	
	67. Placing Soles and Counters in box ready for Lasters (Hand Work)	
	68. Matching Sole Leather With Uppers (Hand Work)	
	Lasting Room.	
	69. Putting up Lasts on Racks (Hand Work)	
	70. Tacking Innersoles to Lasts. (Hand Work if done; usually not done)	
	71. Assembling (Hand Work)	
	72. Pulling Over Uppers (Hand Work)	
McKay & Copeland Lasting Machine	73. Lasting	Victor Cons. Type — Nolle's Wks.
Consolidated Hand Method Lasting Machine (with or without Toe Cutter)		Lasting Machine — Ward & Gent
		Cons. Atlas Werke Pohler & Co.
		Standard Rotary Rapid Lasting Machine — Standard Rotary Machine Co. Ltd.
Chase Lasting Machine		Consolidated Type — The Standard Engineering Co.
		Consolidated Type — Gimson & Co. Ltd.
Wentworth Heel Seat Beating and Finishing Mach.	74. Pounding and Trimming	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Rex Rotary Pounding & Trimming Machine		
	74a. Pulling Insole Tacks (Chiefly Hand Work)	
Wire Grip Tacking Mach. Taper Nail Tacking Mach. Staple Fastening Mach.	75. Tacking on soles	Universal Sole Clinch Mach. — Universal Shoe Mch. Co.
	76. Pulling Lasts and cutting or removing Lacers (Hand Work)	
	77. Inspecting Lasting (Hand Work)	
	Bottoming Room.	
Rapid Standard Screw Machine	78. Standard Screw Nailing	
Goodyear Rapid Stitcher	79. Fairstitching (Sometimes done in Stock Room)	Campbell — Campbell-Bosworth Mchy. Company Landis — Landis Machine Co. Randall — The J. D. Randall Co. Union — Union Lockstitch Co. Puritan — Puritan Manufacturing Company O'Flaherty — The John O'Flaherty Company Simplex — Jas. Clark Leather Co. Leger — C. V. Engstrom Co.
Grip Clinch Machine Loose Nailing Machine Loose Nailing Machine #2	80. Nailing Heel Seats	Universal Sole Clinch Mach.— Universal Shoe Machinery Co. Universal Loose Nailer — Universal Shoe Machinery Co. Long Loose Nailer — The R. H. Long Machinery Co., Inc. Duplessis Loose Nailer — Hamel Shoe Machinery Co. Victor — Victor Shoe Mchy. Co.
Star Channel Cementing Machine	81. Cementing Channels and Lips	Union — The Boylston Mfg. Co.
Channel Laying Machine — Mod. M.	82. Laying Channels. If Edge is indented, operation is performed at this point	American — American Worsted Machinery Co. Channel Laying Machine — Standard Rotary Mach. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Standard — The Standard Engineering Company.
		Knight — Geo. Knight & Co.
Hercules Leveling Machine	83. Leveling	New Giant — The Boylston Mfg. Co.
		Giant — The Boylston Mfg. Co.
McKay Automatic Heel Loading and Attaching Machine	84. Heeling	Pettingill Heeling Machine — Haverhill Shoe Machinery Co.
		National — The R. H. Long Mchy. Company, Inc.
Universal Slugging Machine	85. Slugging	Long — The R. H. Long Machinery Company, Inc.
		Duplessis — Hamel Shoe Machy. Co.
		Boylston — The Boylston Mfg. Co.
McKay Heel Trimming & Randing Machine	86. Heel Trimming	Heel Trimming Machine — A. Johnson & Sons
		Heel Trimming Machine — McDowell Shoe Machinery Co.
		Heel Trimming Machine — Haverhill Shoe Machinery Co.
		Long Heel Trimming Machine — The R. H. Long Machy. Co., Inc.
		Tower Heel Trimming Machine — Tower Bros.
Imperial Heel Breasting Machine — Mod. B	87. Breasting Heels	Haverhill — Haverhill Shoe Machinery Co.
		W & H — Donnelly Machine Co.
Heel Breasting Machines — Mods. R & W		Rowan — Hamel Shoe Machinery Co.
Edge Trimming Mach. Mod. A	88. Trimming Forepart	Donnelly — Donnelly Machine Co.
		Rowan — Hamel Shoe Machinery Co.
Edge Trimming Mach. Mod. B		Briggs-Belmar — Briggs Belmar Co.
		Tower — Tower Bros.
Edge Trimming Mach. Mod. E		Long — The R. H. Long Mchy. Co., Inc.
		Haverhill — Haverhill Shoe Mchy. Company.
Heel Scouring Machine Mod. R	89. Scouring Heels (Heels Filled at this point if necessary)	Rowan —Hamel Shoe Machinery Company
Heel Sewing Machine Mod. X		Buzzell — J. G. Buzzell & Co.
		Globe — The Boylston Manufacturing Company
Heel Sewing Machine Carver		Tower — Tower Bros.
		Johnson — A. Johnson & Sons
		Carver — Donnelly Mach. Co.
Heel Breast Scouring Machine Mod. H	90. Breast Scouring	Buzzell — J. G. Buzzell & Co.
		Donnelly — Donnelly Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Freeman — The Louis G. Freeman Company
Heel Breast Scouring Machine Mod. N		Rowan — Hamel Shoe Machy. Co.
		Dougherty — Frank B. Dougherty
	91. Blacking Edges (Hand Work)	
Rotary Edge Setting Mach. Mod. C.	92. Setting Edges.	Freeman — The Loius G. Freeman Co.
Rotary Edge Setting Mach. Mod. K.		Union Twin — The Boylston Manufacturing Co.
Twin Edge Setting Mach. Mod. R.		Beaudry — Beaudry Machine Co.
Single Edge Setting Mach. Mod. N.		Union (Single) — The Boylston Manufacturing Co.
		Vici — Independent Shoe Mchy. Co.
		Rotary — Donnelly Mach. Co.
		Johnson — A. Johnson & Sons
		Rotary — Tower Bros.
Crest Heel Blacking Machine Mod. A	93. Blacking Heel Edges	Boylston — The Boylston Mfg. Company
Crest Heel Blacking Machine Mod. B		Star — Worcester Machinery Co.
None (Xpedtie Finishing Machine put out by United Expedite Finishing Co.)	94. Heel Burnishing	Harlow Heel Finishing Machine — Harlow Shoe Finishing Machy. Company
		Boylston (or Copeland) — The Boylston Manufacturing Co.
		Apex — Worcester Machinery Co.
		Matson — Matson-Hoyt Mach. Co.
		Beckman — A. Beckman.
		Keyco — The Keighly Co., Inc.
	95. Inspecting and Crowning (Hand Work)	
	Finishing Room.	
Buffing Machine Mod. S	96. Buffing Bottoms	Donnelly — Donnelly Machine Co.
Buffing Machine Mod. G		Tower — Tower Bros.
		Buzzell — J. G. Buzzell & Co
		Rowan — Hamel Shoe Machinery Co.
		Giant — The Boylston Mfg. Co.
		Webster — The Boylston Mfg. Company
		Hawkins — Seelye Mfg. Co.
None	97. Naumkeaging Shanks (Buffing)	Naumkeag Single Head — Naumkeag Buffing Machine Co.
		Naumkeag Double Head — Naumkeag Buffing Machine Co.
		Pine — J. A. Pine
		Naumkeag (Single Head) — A. Johnson & Sons.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	98. Marking Shanks (Hand Work) 99. Staining Forepart (Hand Work) 100. Blacking Shanks & Toplifts (Hand Work)	
Climax Finishing Shafts Climax Polishing Mach. Mod. X Climax Finishing Mach. Mod. X Climax Finishing & Brush Cleaning Machine, Mod. X	101. Polishing Foreparts	Universal — Universal Shoe Machy. Company Special — The Special Mchy. & Tool Company American Tool — The American Tool and Machine Co. Keighly — The Keighly Co., Inc. Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Company Long — The R. H. Long Machinery Company, Inc. Donnelly — Donnelly Mch. Co. American — American Worsted Machinery Co. Victor — Victor Shoe Mch. Co. Johnson — A. Johnson & Sons
Climax Finishing Shafts Climax Polishing Machine Mod. X Climax Finishing Machine Mod. X Climax Finishing and Brush Cleaning Machine Mod. X	102. Polishing Shanks and Top-Lifts	Universal — Universal Shoe Machy. Company Special — The Special Mchy. & Tool Company American Tool — The American Tool and Machine Co. Keighly — The Keighly Co., Inc. Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Company. Long — The R. H. Long Machinery Company, Inc. Donnelly — Donnelly Mch. Co. American — Am. Worsted Machy. Co. Victor — Victor Shoe Mchy Co. Johnson — A. Johnson & Sons

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	103. Wheeling Shanks (Hand Work)	
Regent Stamping Machine Mod. C Stamping Machine Mod. R	104. Stamping Foreparts	Star — O. D. Wheeler Ellison — J. Ellison Holt — J. S. Holt & Co., Inc. Tower — Tower Bros.
	Treeing Room.	
	105. Placing Sock Linings and Detecting Tacks (Hand Work)	
Miller Treeing Machine formerly but not now leased by United Company	106. Treeing	Copeland — The Boylston Manufacturing Co. Improved Flexor — Boston Last Company Miller — Sold by O. A. Miller Treeing Machine Co. Improved Flexor (8 arm) — Boston Last Co. Pneumatic — W. J. Young Mchy. Co. Johnson — A. Johnson & Sons Hobbs & Lewis — Hobbs & Lewis, Ltd.
	107. Lacing Shoes (Hand Work)	
Climax Finishing Shafts	108. Brush Edges	Universal — Universal Shoe Machy. Company. Special — The Special Mchy. & Tool Company. American Tool — The Americay Tool and Machine Co. Keighly — The Keighly Co. Inc. Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Company. Long — The R. H. Long Mchy. Co., Inc. Donnelly — Donnelly Mch. Co. American — Am. Worsted & Mchy. Co. Victor — Victor Shoe Mchy. Co. Johnson — A. Johnson & Sons
	109. Inspecting and Crowning (Hand Work)	

Packing Room

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	110. Labeling Cartons. (Hand Work)	
None	111. Marking Cartons	Markem — Markem Machine Co.
	112. Matching Cartons, Wood Cases and Shoes (Hand Work)	
	113. Packing Shoes in Cartons (Hand Work)	
	114. Boxing (Hand Work)	
	115. Stenciling Cases (Hand Work)	
	116. Numbering Cases (Hand Work)	
	117. Nailing Covers to Cases (Hand Work)	

ADDITIONAL OPERATIONS.

If Shoe Manufacturers prepare counters themselves the following operations should be added in the Sole Leather Room :

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
Gearless Sole Cutting Machines	1. Dieing out Counters	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros' Knox — Quarmby & Hilliker
None	2. Wetting Counters	Stewart — Stewart Bros.
Monarch Box Toe & Counter Skiving Machine Counter Skiving Mach. Mod. W Counter Skiving Mach. Mod. S	3. Skiving Counters	Stewart — Stewart Bros. Young — W. J. Young Machinery Co. Hartwell — L. L. Hartwell Moenus — Moenus Mach. Wks.
None	4. End Finishing Counters	Thurston — W. J. Young Mchy. Co. Stewart — Stewart Bros. Moenus — Moenus Mach. Wks.
Velvet Box Toe Buffing Machine	5. Buffing Counters	Perfection — W. J. Young Machierny Co.
None	6. Rolling and Waxing Counters	Stewart — Stewart Bros. Young — W. J. Young Machinery Company
None	7. Moulding Counters	Young — W. J. Young Machinery Co. Stewart — Stewart Bros.

MEN'S LOOSE NAILED, WHEELED TOP EDGE, SLIP TAP, GUN METAL, BLUCHER, CUT OFF TOE, MARCH 31, 1913.

Cutting Room.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine	1. Cutting Vamps, Tops, Foxings & Tongues.	Parsons'— Parsons Machinery Co. Seelye — Seelye Mfg. Co.
	2. Sorting (Hand Work)	
None	2a. Crimping Vamps	Lockett — Lockett Crimping Machine Co.
Improved Gearless Sole Cutting Machine Ideal Clicking Machine Imp. Geared Sole Cutting Machine	3. Cutting Doublings for Light Uppers.	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Hub Lining Cementing Machine	4. Doubling	K & K — Geo. Knight & Co. Peerless — Peerless Machinery Co. Mathey — Coburn & Lawrence Co. Weber — J. H. Nangle Foot Power — Shawmut Mchy. Co. Hand " " " " Simplex Cloth Backing Mch.— Boston Last Co. Davis Electric Tape Mch.— The Davis Sewing Mach. Co.
	5. Casing (Dividing Sizes to match Tags) (Hand Work)	
Improved Gearless Sole Cutting Machine Ideal Clicking Machine Imp. Geared Sole Cutting Mch.	6. Cutting Cloth Linings and Doublers	Eclipse — Parsons Mchy. Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine — Mods. J. & K.	7. Cutting Box Toe Material	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine — Mods. J & K	8. Cutting Reinforcement and Water-proof Material for Box Toe	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
	9. Assembling Cut Stock for Stitching Room (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine	10. Cutting Heel Stays, Facings and Hook Stays	Parsons — Parsons Machinery Co. Seelye — Seelye Manufacturing Co.
	Stitching Room	
	11. Checking work into room (Hand Work)	
	12. Checking Day Sheet and Division of Leather Parts for Skivers (Hand Work)	
Amazeen Skiving Machine Pluma Skiving Machine	13. Skiving Parts of Uppers	Universal — Peerless Machinery Co. Fortuna — Fortuna Machine Co. Pierce — C. S. Pierce Amazeen Type — A. Johnson & Sons " " — Donnelly " " Mch. Co.
Snipping Machine: Booth Sandal	13a. Snipping Preparatory to Folding	Snipping & Cementing — Boston Mch. Works Co. Hart — Hamel S. M. Co. Boston (6) Foot Power Types — Boston Machine Works Co. Power — Boston Machine Works Co.
None	14. Stitching Eyelet Rows	Singer — Singer Sewing Mch. Co. Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co.
None	14a. Cementing Edges of Uppers	Duplex — Peerless Machinery Co. Economy — " " " New York — Boston Machine Works Co. Snipping & Cementing Machine — Boston Machine Works Co.
None	15. Folding Front Edges of Tops	New Vamp — Boston Machine Works Co. Foot Power — Boston Machine Works Co. Boston — Boston Machine Works Co. Booth " " " " Dunn " " " " Rapid Hand Method — Perley R. Glass Co. New Cylinder — Perley R. Glass Co. Straight Edge — American Worsted Machinery Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Lufkin — R. H. Lufkin
None	16. Closing Tops	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Machine Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Manufacturing Co.
		Met.— The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Mch. Co.
Rapid Seam Rubbing Mch.	16a.	Hand Method — Shawmut Mchy. Co.
		Champion — Coburn & Lawrence Co.
		Boston — Boston Machine Works Co.
		Union — Boston Machine Works Co.
None	17. Stitching Outside Stays	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Machine Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Manufacturing Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — Davis Sewing Mach. Co.
None	18. Closing Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Mch. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Manufacturing Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Machine Co.
None	19. Stitching Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		W & W — Singer Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Manufacturing Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Mch. Co.
None.	20. Stamping sizes and Case Number on Cloth Linings	Power Lining Marking Mch.— Markem Machine Co.
		Various Hand Devices.
None	21. Stitching Eyelet Stays	Singer — Singer Sewing Machine Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Met.— The Met. Sewing Mch. Co.
		Davis — The Davis " " "
None	22. Stitching Heel Stays and Closing Linings	Singer — Singer Sewing Machine Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Met.— The Met. Sewing Mch. Co.
		Davis — The Davis " " "
None	23. Stitching Top Facings to Linings	Singer — Singer Sewing Machine Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Met.— Met. Sewing Mch. Co.
		Davis — The Davis Sewing Mch. Co.
Embossing Machine Power	23a. Embossing top Faces	Simplex — Boston Last Co.
		Universal — Markem Machine Co.
Embossing Machine Foot Power		Silver King — " " "
		Freeman — The Louis G. Freeman Co.
		Perkins — Perkins Machine Co.
None	24. Hooking with Stay Reinforcements	Tubular Rivet — Tubular Rivet & Stud Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		American — Am. Lacing & Hood Co.
		Foot Power — Am. Worsted Mchy. Co.
		Halkyard — Halkyard Mfg. Co.
None	25. Closing Linings to Top, Back to Back, holding in Back Straps	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Met.— The Metropolitan Sewing Mch. Co. Davis — The Davis Sewing Mch. Co.
	26. Cementing Tops (Hand Work)	
Columbia Beading Machine Victor Beading Machine	27. Turning Edges on Beading Machine	Monarch — Boston Machine Works Co. Boston — Boston Machine Works Co. Hart — Hamel Shoe Mchy. Co. Nangle — J. H. Nangle
None	28. Undertrimming, Stitching around Top from Nose to Nose, Trimming off surplus Facings, Staying Back Pull Straps at same time	Singer — Singer Sewing Mach. Co. W & W — " " " " Metropolitan — The Metropolitan Sewing Mch. Co.
None	29. Blacking Front of Tops, if raw edges	Coburn — Coburn & Lawrence Co. Peerless — Peerless Mchy. Co.
Duplex Eyeletting Machine Perfection Eyeletting Machine Universal Power Eyeletting Machine Merrick Power Eyeletting Mch. Samson Eyeletting Machine Power Eyeletting Machine Cameo Foot Power Eyeletting Machine Vulcan Foot Power Eyeletting Machine	30. Eyeletting	Peerless — Rapid-Peerless Mchy. Co. Peerless Gang " " " Power — George Knight & Co. Foot Power Gand — Geo. Knight & Company A Mch — Am. Worsted Mchy. Co. B " — " " " " Monitor — " " " " Eureka — " " " "
	31. Marking Vamps for Box Toes (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	32. Stitching Box Toes and Water-proof Material to Vamps	Singer — Singer Sewing Machine Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co.
Royal Perforating Machine Mod. B Stanbon Perforating Mch. Mod. M	33. Perforating Tips	Hart #6 — Hamel Shoe Mchy. Co. Hart Mod. A— Hamel Shoe Mchy. Co. Barber — L. L. Barber & Co. Johnson — A. Johnson & Sons American — American Worsted Machinery Co. Peerless — Peerless Machinery Co. Punch Feed — Hamel Shoe Machinery Company.
None	34. Stitching Tips to Vamps	Singer — Singer Sewing Machine Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Puritan — Puritan Manufacturing Co. No. 3 — Union Lockstitch Co. Davis — The Davis Sewing Mach. Co.
None	35. Stitching Tongues between Vamps and Vamp Linings	Singer — Singer Sewing Machine Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Co.
None	36. Vamping	Singer — Singer Sewing Machine Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard— The Standard Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Manufacturing Co. Davis — The Davis Sewing Mch. Co.
None	37. Bracing Tops to Vamps	Singer — Singer Sewing Machine Co.
Ensign Lacing Machine Ellis Wire Lacer	38. Lacing Uppers	Rochester Lacer — Boston Machine Works Co.
	39. Casing Uppers (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	40. Inspecting Uppers (Hand Work)	
	Sole Leather Room	
	41. Moistening Sole Leather in Sides (Hand Work)	
Imp. Gearless Sole Cutting Machines Imp. Baby Sole Cutting Mch.	42. Cutting Outersoles, Innersoles, Half Soles and Toplifts	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Veneer Press	42a. Veneering Insoles	Busfield — Jas. Busfield
Victor Rolling Machine Improved Rolling Machine Summit Splitting Machine	43. Preparing Bellies, Shoulders, and Remnants for Cutters; (Rolling, Splitting, Flexing)	Seelye — Seelye Manufacturing Co. Knox — Quarmby & Hilliker Busfield — Jas. Busfield Knox — Quarmby & Hilliker Hawkins — Seelye Manufacturing Co.
Improved Gearless Sole Cutting Machines Wedge Lift Cutting	44. Cutting Heel Lifts	Baby — J. S. Wheeler & Co. Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker Young Wedge Lift Cutting Machine — W. J. Young Machinery Co.
Summit Splitting Machines Mods. M & N Centennial Splitting Mch.	45. Evening Heel Lifts	Knox — Quarmby & Hilliker Hawkins — Seelye Manufacturing Co. Baby — J. S. Wheeler & Co.
Champion Heel Lift Skiving Machine	45a. Gouging Heel Lifts	Young — W. J. Young Machinery Co. Bostock — Thos. Bostock & Sons
Heel Building Machine Mod. R. Pyramid Heel Building Machine	46. Building Heels	Young Foot Power — W. J. Young Machinery Co. Grover — W. J. Young Machinery Co. White — F. H. White & Co. Bostock — Thos. Bostock & Sons Bosworth — W. T. Bosworth Fortuna — Fortuna Machine Co. Knight — Geo. Knight & Co. Pieced Heel — Parsons Mchy. Co.
Handy Heel Press	46a. Pressing Heels	Seelye — Seelye Manufacturing Co.
Automatic Heel Compressing Machine, Mod. #4 Automatic Heel Compressing Machine #5	47. Compressing Heels	Heel Compressing Machine — W. J. Young Machinery Co. Heel Compressing Machine — Gimson & Co., Ltd. Knox — Quarmby & Hilliker Heel Compressing Mch. — Nolle's Works.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	48. Placing Heels in boxes for use (Hand Work)	
Summit Splitting Machines	49. Evening Outersoles	Knox — Quarmby & Hilliker Hawkins — Seelye Manufacturing Co. Baby — J. S. Wheeler & Co. Nichols — Lacene Mfg. Co.
Victor Rolling Machine Improved Rolling Machine	50. Rolling Outersoles	Knox — Quarmby & Hilliker Busfield — Jas. Busfield Seelye — Seelye Manufacturing Co.
Apex Tap Skiving or Rand Splitting Machine	51. Beveling Butts of Taps	Buffum — American Worsted Mchy. Co. Busfield — Jas. Busfield Imp. Tripp — Am. Worsted Mchy. Co. American — Victor Shoe Mchy. Co.
	52. Sorting Outersoles (Hand Work)	
	53. Matching Cut Stock with Tags (Hand Work)	
Eagle Sole Stamping Machine Mod. C	54. Stamping Sizes on Soles	Nichols Grading Machine — Lacene Mfg. Co.
	54a. Stamping Case Number on Top Sole (Hand Work)	Various Hand Devices
	55. Wetting Taps and Outersoles. (Hand Work)	
Rapid Rotary Cementing Machine	56. Doubling Shanks of Outersoles if light	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Works Co.
Rapid Rotary Cementing Machine	57. Cementing Foreparts of Soles	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Works Co.
Rapid Rotary Cementing Machine	58. Cementing Half Soles	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Works Co.
Rapid Rotary Cementing Mch. Taper Nail Tack. Mch. Wire Grip Tack. Mch. Staple Tack. Mch.	59. Applying Tap to Outersole (Tack & Cement)	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Works Co. Universal Sole Clinch Mch.— Universal Shoe Mchy. Co. Duplessis — Hamel Shoe Mchy. Co. Victor — Victor " " "
Boston Tacking Mch. Cable Tacking Mch.	60. Tacking in Shanks	Freeman Insole Tacker — The Louis G. Freeman Co. The Tacking Mch.—A. Johnson & Sons

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Staple Fastening Mch.		Dupessis Tacker — Hamel Shoe Machinery Co.
Wire Grip Tacking Mch.		Victor — Victor Shoe Machy. Co.
String Nail Tacking Mch.		
Apex Tap & Sole Rounding Machine Mod. A	60a. Rounding Tap to Outersole	Severance — American Worsted Machinery Co.
American Twin Sole Moulding Machine	61. Moulding Outersoles	Knox — Quarmby & Hilliker
Single Sole Moulding Machine		C. & J. — The Boylston Mfg. Co.
		Hawkins — Seelye Mfg. Co.
	61a. Blacking Top Edge (Hand Work)	
Crescent Toe Gouging Machine	61b. Toe Gouging if necessary	
Goodyear Welt Indenting & Burnishing Machine	62. Indenting Top Edge Foreparts	Wheeler — E. L. Wheeler
		Holt — J. S. Holt & Co., Inc.
		Donnelly — Donnelly Machine Co.
	63. Casing Soles in Sizes and Pairs (Hand Work)	
	64. Stamping Case Number on Top Soles (Hand Work)	
	65. Tying in Cases (Hand Work)	
	66. Packing Sole Leather and Counters in boxes ready for Lasters (Hand Work)	
	67. Matching Sole Leather with Uppers (Hand Work)	
	68. Putting up Lasts on Racks (Hand Work)	
	69. Tacking Insoles to Lasts (Hand Work if done; usually not done)	
	70. Assembling (Hand Work on this class of shoes)	
	71. Pulling over Uppers (Hand Work on this class of Shoes)	

Lasting Room.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
McKay & Copeland Lasting Machines Consolidated Hand Method Lasting Machine (with or without Toe cutter) Chase Lasting Machine	72. Lasting	Victor Con. Type — Nolle's Works Lasting Mch.— Ward & Gent Consolidated — Atlas Works, Pohler & Co. Standard Rotary Rapid Lasting Machine — Standard Rotary Mch. Co. Consolidated Type — Gimson & Co., Ltd. Consolidated Type — The Standard Engineering Co.
Rex Rotary Pounding & Trimming Machine Wentworth Heel Seat Beating & Finishing Machine	73. Pounding and Trimming	
Goodyear Insole Tack Pulling Machine	73a. Pulling Insole Tacks	Freeman Combination Insole & Side Tack Pulling Machine — The Louis G. Freeman Co.
Wire Grip Tacking Mch. Taper Nail Tacking Mch. Staple Fastening Mch.	74. Tacking on Soles	Universal Sole Clinch Mch.— Universal Shoe Mchy. Co.
	75. Pulling Lasts and Cutting or removing Lacers (Hand Work) 76. Inspecting Lasting (Hand Work)	

Bottoming Room.

Loose Nailing Machine Loose Nailing Machine No. 2	77. Loose Nailing	Universal Loose Nailer — Universal Shoe Machinery Co. Long Loose Nailer — R. H. Long Machinery Co., Inc. Duplessis Loose Nailer — Hamel Shoe Machinery Co.
Hercules Leveling Machine	78. Leveling	New Giant — The Boylston Mfg. Co. Giant — The Boylston Mfg. Co.
McKay Automatic Heel Loading and Attaching Machine	79. Heeling	Pettengill — Haverhill Shoe Mchy. Co. National — The R. H. Long Mchy. Company, Inc.
Universal Slugging Machine	80. Slugging	Long Slugger — The R. H. Long Machinery Co., Inc. Duplessis Slugger — Hamel Shoe Machinery Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Boylston — The Boylston Mfg. Co.
McKay Heel Trimming & Randing Machine	81. Heel Trimming	Heel Trimming Mch.— A. Johnson & Sons
		Heel Trimming Machine — McDowell Shoe Machinery Co.
		Heel Trimming Machine — Haverhill Shoe Machinery Co.
		Long Heel Trimming Machine — The R. H. Long Mchy. Co., Inc.
		Tower Heel Trimming Mch.— Tower Bros.
Imperial Heel Breasting Machine Mod. B	82. Breasting Heels	Haverhill — Haverhill Shoe Mchy. Co.
Heel Breasting Mchs. Mod. R & W		Rowan — Hamel Shoe Machinery Co.
		W & H — Donnelly Machine Co.
Edge Trimming Mch. Mod. A	83. Trimming Foreparts	Donnelly — Donnelly Machine Co.
Edge Trimming Mch. Mod. B		Rowan — Hamel Shoe Machinery Co.
Edge Trimming Mch. Mod. E		Briggs-Belmar — Briggs Belmar Co.
		Tower — Tower Bros.
		Long — The R. H. Long Mchy. Co., Inc.
		Haverhill — Haverhill Shoe Mchy. Co.
Heel Scouring Mch. Mod. R	84. Scouring Heels	Rowan — Hamel Shoe Machinery Co.
Heel Scouring Mch. Mod. X	(If heels are filled at this point it is a hand operation)	Buzzell — J. G. Buzzell & Co.
Carver Heel Scouring Mch.		Globe — The Boylston Mfg. Co.
		Tower — Tower Bros.
		Johnson — A. Johnson & Sons
		Carver — Donnelly Machine Co.
Heel Breast Scouring Machine Mod. H.	85. Scouring Heel Breasts	Buzzell — J. G. Buzzell & Co.
Heel Breast Scouring Machine Mod. N.		Donnelly — Donnelly Machine Co.
		Freeman — The Louis G. Freeman Co.
		Rowan — Hamel Shoe Machinery Co.
		Dougherty — Frank B. Dougherty
	86. Blacking Forepart Edges (Hand Work)	
Rotary Edge Setting Mch. Mod. C	87. Setting Edges	Freeman — The Louis G. Freeman Co.
Rotary Edge Setting Mch. Mod. R		Union — The Boylston Mfg. Co.
Twin Edge Setting Mch. Mod. K		Rotary — Tower Bros.
		Beaudry — Beaudry Machine Co.
Single Edge Setting Mch. Mod. N.		Union (Single) — The Boylston Manufacturing Co.
		Vici — Independent Shoe Mchy. Co.
		Rotary — Donnelly Machine Co.
		Johnson — A. Johnson & Sons
Crest Heel Blacking	88. Blacking Heel Edges	Boylston — The Boylston Mfg. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Machine Mod. A & B		Star — Worcester Machinery Co.
None	89. Heel Burnishing	Harlow Heel Burnishing Machine — Harlow Shoe Finishing Mchy. Co.
(Xpedite Finishing Machine put out by United-Xpedite Finishing Co.)		Boylston (or Copeland) — The Boylston Manufacturing Co.
		Apex — Worcester Shoe Machinery Co.
		Matson — Matson-Hoyt Machine Co.
		Beckman — A. Beckman.
		Keyco — Keighley Co., Inc.
	90. Inspecting and Crowning (Hand Work)	
	Finishing Room	
Buffing Machine Mod. S	91. Buffing Bottoms	Donnelly — Donnelly Machine Co.
Buffing Machine Mod. G		Tower — Tower Bros.
		Buzzell — J. G. Buzzell & Co.
		Rowan — Hamel Shoe Machinery Co.
		Giant — The Boylston Mfg. Co.
		Webster — The " " "
		Hawkins — Seelye Mfg. Co.
	92. Staining Foreparts and Shanks (Hand Work)	
Climax Finishing Shafts	93. Polishing Foreparts and Shanks	Universal — Universal Shoe Mchy. Company
Climax Polishing Mch. Mod. X		Progressive — Progressive Shoe Machinery Co.
Climax Finishing Mch. Mod. X		Champion — Champion Shoe Mchy. Co.
Climax Finishing and Brush Cleaning Mach. Mod. X		Landis — Landis Machine Co.
		Specialty — Specialty Shoe Mchy. & Tool Company.
		Long — The R. H. Long Machinery Co., Inc.
		Donnelly — Donnelly Machine Co.
		Am.— American Worsted Machinery Co.
		Am.— The American Tool and Mch. Co.
		Special — The Special Mchy. Co.
		Victor — Victor Shoe Machinery Co.
		Johnson — A. Johnson & Sons.
		Keighley — The Keighley Co., Inc.
Nurling Machine Mod. A.	94. Wheeling Foreparts and Shanks	Wheeler — E. L. Wheeler

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Regent Stamping Machine Mod. C Stamping Machine Mod. R	95. Stamping Foreparts	Star — O. D. Wheeler Ellison — J. Ellison Holt — J. S. Holt & Co., Inc. Tower — Tower Bros.
	Treeing Room.	
	96. Inserting Heel Pads (Hand Work)	
Miller Treeing Machine, formerly but not now leased by United Co.	97. Treeing	Copeland — The Boylston Mfg. Co. Improved Flexor — Boston Last Co. Miller — Sold by O. A. Miller Treeing Machine Co. Improved Flexor (8 Arm) — Boston Last Co. Pneumatic — W. J. Young Mchy. Co. Johnson — A. Johnson & Sons. Hobbs & Lewis — Hobbs & Lewis, Ltd.
	98. Lacing Shoes (Hand Work)	
Climax Finishing Shafts	99. Brushing Edges	Progressive — Progressive Shoe Mchy. Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. Tool Co. Long — The R. H. Long Shoe Mchy. Co., Inc. Donnelly — Donnelly Machine Co. Am.— American Worsted Mchy. Co. Victor — Victor Shoe Mchy. Co. Johnson — A. Johnson & Sons Keighley — The Keighley Co., Inc. American — The American Tool & Mchy Co. Special — The Special Mchy. & Tool Co. Universal — Universal Shoe Mchy. Co.
	100. Inspecting and Crowning (Hand Work)	
	Packing Room	
	101. Labeling Cartons (Hand Work)	
None	102. Marking Cartons	Markem — Markem Machine Co.
	103. Matching Cartons, Wood Cases and Shoes (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	104. Packing Shoes in Cartons (Hand Work)	
	105. Boxing (Hand Work)	
	106. Stenciling Cases (Hand Work)	
	107. Numbering Cases (Hand Work)	
	108. Nailing Covers to Cases (Hand Work)	

ADDITIONAL OPERATIONS.

If Shoe Manufacturers prepare counters themselves the following operations should be added in the Sole Leather Room:

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
Gearless Sole Cutting Machines	1. Dieing out Counters	Eclipse — Parsons Mchy. Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
None	2. Wetting Counters	Stewart — Stewart Bros.
Monarch Box Toe & Counter Skiving Machine Counter Skiving Mch. Mod. W Counter Skiving Mch. Mod. S	3. Skiving Counters	Young — W. J. Young Mchy. Co. Stewart — Stewart Bros. Hartwell — L. L. Hartwell Moenus — Moenus Mch. Works
None	4. End Finishing Counters	Thurston — W. J. Young Machinery Co. Stewart — Stewart Bros. Moenus — Moenus Mch. Works
Velvet Box Toe Buffing Machine	5. Buffing Counters	Perfection — W. J. Young Machinery Co.
None	6. Rolling and Waxing Counters	Stewart — Stewart Bros. Young — W. J. Young Mchy. Co.
None	7. Moulding Counters	Young — W. J. Young Mchy. Co. Stewart — Stewart Bros.

MEN'S MCKAY SEWED FAIRSTITCHED SLIP TAP, GUN METAL, FOX BLUCHER, CUT-OFF TOE MARCH 31, 1913.

Cutting Room.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine	1. Cutting Vamps, Tops, Foxings & Tongues	Parsons'— Parsons Machinery Co. Seelye — Seelye Manufacturing Co.
	2. Sorting (Hand Work)	
None	2a. Crimping Vamps	Lockett — Lockett Crimping Machine Company.
Improved Gearless Sole Cutting Machine Imp. Geared Sole Cutting Machine Ideal Clicking Machine	3. Cutting Doublings for Light Uppers	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Hub Lining Cementing Machine	4. Doubling	K & K — Geo. Knight & Co. Peerless — Peerless Machinery Co. Mathey — Coburn & Lawrence Co. Weber — J. H. Nangle Hand Power — Shawmut Machinery Co. Simplex Cloth Backing Machine — Boston Last Co. "Davis" Electric Taping Machine — The Davis Sewing Machine Co. Foot Power — Shawmut Mchy. Co.
	5. Casing (Dividing Sizes to match Tags) (Hand Work)	
Ideal Clicking Machine Improved Gearless Sole Cutting Machine Improved Geared Sole Cutting Machine	6. Cutting Cloth Linings and Doublers	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker.
Improved Gearless Sole Cutting Machine Mods. J & K	7. Cutting Box Toe Material	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine Mods. J & K	8. Cutting Reinforcement and Water-proof Material for Box Toe	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Knox — Quarmby & Hilliker
	9. Assembling Cut Stock for Stitching Room (Hand Work)	
Ideal Clicking Machine	10. Cutting Heel Stays, Facings and Hook Stays	Parsons — Parsons Machinery Co. Seelye — Seelye Manufacturing Co.
	Stitching Room.	
	11. Checking work into room (Hand Work)	
	12. Checking Day Sheet and Division of Leather Parts for Skivers (Hand Work)	
Amazeen Skiving Machine Pluma Skiving Machine	13. Skiving Parts of Uppers	Universal — Peerless Machinery Co. Fortuna — Fortuna Machine Co. Pierce — C. S. Pierce. Amazeen Type — A. Johnson & Sons " " — Donnelly Mach. Co.
Machines of U. S. M. Co.	Operations	Machines of other Dealers
Snipping Machine, Booth Sandal	13a. Snipping Preparatory to Folding	Power — Boston Mach. Wks. Co. Hart — Hamel Shoe Machinery Co. Boston (6 Ft. Power Types) — Boston Machine Works Co. Snipping & Cementing Machine — Boston Machine Works Co.
None	14. Stitching Eyelet Rows	Singer — Singer Sewing Mach. Co. Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co.
None	14a. Cementing Edges of Uppers	Economy — Peerless Machinery Co. Duplex — Peerless " " New York — Boston Machine Works Company Snipping & Cementing Machine — Boston Machine Works Co.
None	15. Folding Front Edges of Tops	New Vamp — Boston Machine Wks. Co. Foot Power — Boston Machine Wks. Co. Boston — Boston Machine Wks. Co. Booth — " " " " Dunn — " " " "

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Rapid Hand Method — Perley R. Glass Company
		New Cylinder — Perley R. Glass Company
		Straight Edge — American Worsted Machinery Co.
		Lufkin — R. H. Lufkin.
None	16. Closing Tops	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Machine Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Met.— The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company
Rapid Seam Rubbing Machine	16a. Seam Rubbing	Hand Method — Shawmut Mchy. Co.
		Champion — Coburn & Lawrence Co.
		Boston — Boston Machine Wks. Co.
		Union — " " " "
None	17. Stitching Outside Stays	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company
None	18. Closing Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Manufacturing Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Machine Co.
None	19. Stitching Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Machine Company
		W & W — Singer Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Machine Co.
None	20. Stamping sizes and Case Number on Cloth Linings	Power Lining Marking Machine — Markem Machine Co.
		Various Hand Devices
None	21. Stitching Eyelet Stays	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Machine Company.
None	22. Stitching Heel Stays and Closing Linings	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company.
None	23. Stitching Top Facings to Linings	Singer — Singer Sewing Mach. Co.
		W & W — " " " "

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company.
Embossing Machine: Power	23a. Embossing Top Faces	Simplex — Boston Last Co.
		Universal — Markem Machine Co.
Embossing Machine: Ft. Power		Silver King — " " "
		Freeman — The Louis G. Freeman Co.
		Perkins — Perkins Machine Co.
None	24. Hooking with Stay Reinforcements	Tubular Rivet — Tubular Rivet & Stud Co.
		American — American Lacing & Hook Co.
		Ft. Power — Am. Worsted Mchy. Co.
		Halkyard — Halkyard Mfg. Co.
None	25. Closing Linings to Top, Back to Back, holding in Back Straps	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Mach. Co.
	26. Cementing Tops (Hand Work)	
Columbia Beading Machine	27. Turning Edges on Beading Machine	Monarch — Boston Machine Wks. Co.
Victor Beading Machine		Boston — " " " "
		Hart — Hamel Shoe Machinery Co.
		Nangle — J. H. Nangle.
None	28. Undertrimming, Stitching around Top from Nose to Nose, Trimming off surplus Facings, Staying Back Pull Straps at same time	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Metropolitan — The Met. Sewing Machine Co.
None	29. Blacking Front of Tops, if raw edges	Coburn — Coburn & Lawrence Co.
		Peerless — Peerless Machinery Co.
Duplex Eyeletting Mach.	30. Eyeletting	Peerless Rapid — Peerless Mchy. Co.
		Peerless Gang — " " "

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Perfection Eyeletting Mach. Universal Power Eyeletting Mach. Merrick Power Eyeletting Mach. Samson Eyeletting Mach. Power Eyeletting Mach. Cameo Ft. Power Eyeletting Mach. Vulcan Power Eyeletting Mach.		Power — Geo. Knight & Co. Ft. " Gang — " " " "A" Machine — American Worsted Machinery Co. "B" Machine — American Worsted Machinery Co. Monitor — American Worsted Mchy. Co. Eureka — " " " Co.
	31. Marking Vamps for Box Toes (Hand Work)	
None	32. Stitching Box Toes and Water-proof Material to Vamps	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co.
Royal Perforating Machine Model B Stanbon Perforating Machine ModelM	33. Perforating Tips	Hart #6 — Hamel Shoe Machy. Co. Hart Mod. A — " " " " Barber — L. L. Barber & Co. American — American Worsted Machinery Co. Peerless — Peerless Machinery Co. Punch Feed — Hamel Shoe Mchy. Co. Johnson — A. Johnson & Sons.
None	34. Stitching Tips to Vamps	Singer — Singer Sewing Mch. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Puritan — Puritan Mfg. Co. No. 3 — Union Lockstitch Co. Davis — The Davis Sewing Mch. Co.
None	35. Stitching Tongues between Vamps and Vamp Linings	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Davis — The Davis Sewing Machine Company
None	36. Vamping	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Machine Company.
None	37. Bracing Tops to Vamps	Singer — Singer Sewing Mach. Co.
Ensign Lacing Machine Ellis Wire Lacer	38. Lacing Uppers	Rochester Lacer — Boston Machine Works Co.
	39. Casing Uppers (Hand Work)	
	40. Inspecting Uppers (Hand Work)	
	Sole Leather Room.	
	41. Moistening Sole Leather in Sides (Hand Work)	
Improved Gearless Sole Cutting Machines Improved Baby Sole Cutting Machine	42. Cutting Outersoles, Innersoles, Half Soles and Toplifts	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Veneer Press	42a. Veneering Insoles	Busfield — Jas. Busfield
Victor Rolling Machine	43. Preparing Bellies, Shoulders, and Remnants for Cutters; (Rolling, Splitting, Flexing)	Seelye — Seelye Manufacturing Co. Knox — Quarmby & Hilliker
Improved Rolling Machine		Busfield — Jas. Busfield
Summit Splitting Machine		Knox — Quarmby & Hilliker Hawkins — Seelye Mfg. Co. Baby — J. S. Wheeler & Co.
Improved Gearless Sole Cutting Machines Wedge Lift Cutting Machine	44. Cutting Heel Lifts	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker Young Wedge Lift Cutting Machine — W. J. Young Machinery Co.
Centennial Splitting Mach. Summit Splitting Mach.	45. Evening Heel Lifts	Knox — Quarmby & Hilliker. Hawkins — Seelye Mfg. Co. Baby — J. S. Wheeler & Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Champion Heel Lifts Skiving Machine	45a. Gouging Heel Lifts	Young — W. J. Young Mchy. Co. Bostock — Thos. Bostock & Sons.
Pyramid Heel Building Machine	46. Building Heels	Young — Foot Power — W. J. Young Machinery Co.
Heel Building Machine Mod. R		Grover — W. J. Young Mchy. Co. White — F. H. White & Co. Bostock — Thos. Bostock & Sons Bosworth — W. T. Bosworth Fortuna — Fortuna Machine Co. Knight — Geo. Knight & Co. Pieced Heel — Parsons Mchy. Co.
Handy Heel Press	46a. Pressing Heels	Seelye — Seelye Manufacturing Co.
Automatic Heel Compressing Machine, Mod. #4	47. Compressing Heels	Heel Compressing Machine — W. J. Young Machinery Co.
Automatic Heel Compressing Machine #5		Heel Compressing Machine — Gimson & Co., Ltd. Knox — Quarmby & Hilliker Heel Compressing Mach. — Nolle's Works
	48. Placing Heels in Boxes for use (Hand Work)	
Summit Splitting Machines	49. Evening Outersoles	Knox — Quarmby & Hilliker Hawkins — Seelye Mfg. Co. Nichols — Lacene Mfg. Co. Baby — J. S. Wheeler & Co.
Victor Rolling Machine	50. Rolling Outersoles	Knox — Quarmby & Hilliker
Improved Rolling Machine		Busfield — Jas. Busfield Seelye — Seelye Mfg. Co.
Apex Tap Skiving or Rand Splitting Machine	51. Beveling Butts of Taps	N O S — American Worsted Mchy. Company. Busfield — Jas. Busfield Imp. Tripp — American Worsted Machinery Co. American — Victor Shoe Mchy. Co.
	52. Sorting Outersoles (Hand Work)	
	53. Matching Cut Stock with Tags (Hand Work)	
Eagle Sole Stamping Machine	54. Stamping Sizes on Soles	Nichols Grading Machine — Lacene Mfg. Co. Various Hand Devices
	54a. Stamping Case Number on Top Sole (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	55. Casing Soles in Sizes and Pairs (Hand Work)	
	56. Stamping Case Number on Top Sole (Hand Work)	
	57. Wetting Outersole and Tap (Hand Work)	
Apex Channelling Machine McKay Channelling Machine Mod. Z	58. Channelling Outersole	McKay — Geo. Knight & Co. McKay — Am. Worsted Mchy. Co. McKay — Walter Pearson
Rapid Rotary Cementing	59. Doubling Shank of Outersoles (if light)	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
Rapid Rotary Cementing Machine	60. Cementing Forepart of Outersole	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
Rapid Rotary Cementing Machine	61. Cementing Tap	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
Rapid Rotary Cementing Machine Taper Nail Tacking Mach. Cable Tacking Mach. Wire Grip Tacking Mach. Staple Fastening Mach.	62. Applying Tap to Outersole (Tack and Cement)	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co. Universal Sole Clinch Mach.— Universal Shoe Mchy. Co. Duplessis — Hamel Shoe Mchy. Co. Victor — Victor Shoe Mchy. Co.
Boston Tacking Machine Cable Tacking Machine Staple Fastening Machine Wire Grip Tacking Machine String Nail Tack-Machine	63. Tacking in Shanks	Freeman Insole Tacker — The Louis G. Freeman Co. Tacking Machine—A. Johnson & Sons Duplessis Tacker — Hamel Shoe Machinery Co. Victor — Victor Shoe Mchy. Co.
Apex Tap & Sole Rounding Machine	63a. Rounding Tap to Outersole	Severance — American Worsted Machinery Company.
American Twin Sole Moulding Machine Single Sole Moulding Machine	64. Moulding Soles	Knox — Quarmby & Hilliker C. & J.— The Boylston Mfg. Company Hawkins — Seelye Mfg. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Crescent Toe Gouging Machine	64a. Toe Gouging (If necessary on Crescent Toe Gouging Machine)	
Apex Channel Opening Machine	65. Opening Channels	Fischer — American Worsted Machinery Co. Fischer — Geo. Knight & Co.
	66. Tying in cases (Hand Work)	
	67. Placing Soles and Counters in box ready for Lasters (Hand Work)	
	68. Matching Sole Leather with Uppers (Hand Work)	
	Lasting Room	
	69. Putting up Lasts on Racks (Hand Work)	
USMC Insole Tacking Machine No. 1 is available for the work. (Most manufacturers do not tack on innersoles)	70. Tacking Innersoles to Lasts	Freeman Innersole Tacker — The Louis C. Freeman Co.
Rex Assembling Machine, Mod. B Many manufacturers still assemble by hand work aided by Crispin Lasting Jack (Sold by USMC and others)	71. Assembling	Crispin Lasting Jack is used by hand workman; is sold by many concerns including F. W. Whitcher & Co., Albany Bldg., Boston.
Rex Pulling-Over Machine, Mod. A	72. Pulling-Over Uppers	Moenus — Moenus Mach. Works Victor — Nolle's Works Ward & Gent — Ward & Gent Pulling-Over Machine — Alex. Stone, U. S. Hotel, Boston, Mass., Agent for Atlas-Werke Pohler & Co., Leipsig
Consolidated Hand Method Lasting McKay Machine Chase Lasting Machine	73. Lasting	Consolidated Type — Standard Rotary Mach. Co., Ltd. Consolidated Type — The Standard Engineering Co. Consolidated Type — Gimson & Co., Ltd.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Consolidated Type — Atlas-Werke Pohler & Co., Leipsig. Victor Consolidated — Nolle's Works Lasting Machine — Ward & Gent
Wentworth Heel Seat Beating and Finishing Machine Rex Rotary Pounding and Trimming Machine	74. Pounding and Trimming	
	74a. Pulling Insole Tacks (Chiefly Hand Work)	
Taper Nail Tacking Machine Wire Grip Tacking Machine Staple Fastening Machine	75. Tacking on Soles	Universal Sole Clincher — Universal Shoe Machinery Co.
	76. Pulling Lasts and Cut or Remove Lacers (Hand Work)	
	77. Inspecting Lasting (Hand Work)	
	Bottoming Room.	
McKay Sewing Mach. Mod. B McKay Sewing Mach. Mod. S Richardson Sole Sewing Machine	78. McKay Sewing (Moisten if Necessary)	McKay — Walter Pearson " — A. Johnson & Sons " — American Worsted Mach. Company Victor — Nolle's Works.
Goodyear Rapid Stitcher.	79. Fairstitching. (Sometimes done in Stock Room)	Randall — The J. D. Randall Co. Puritan — Puritan Mfg. Co. Landis — Landis Machine Co. Union — Union Lockstitch Co. O'Flaherty — The John O'Flaherty Company Simplex — Jas. Clark Leather Co. Campbell — Campbell-Bosworth Machinery Co. Leger — C. V. Engstrom Co.
Loose Nailing Mach. Loose Nailing Mach. No. 2. Grip Clinch Mach.	80. Nailing Heel Seats	Long Loose Nailer — The R. H. Long Machinery Co., Inc. Duplessis Loose Nailer — Hamel Shoe Machinery Co. Victor — Victor Shoe Mchy. Co. Universal Loose Nailing Machine Universal Sole Clincher

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Universal Shoe Machinery Co.
Star Channel Cementing Machine	81. Cementing Channel and Lip	Union — The Boylston Mfg. Co.
Channel Laying Machine — Mod. W	82. Laying Channel. (If Top Edge is indented, operation performed at this point)	American — American Worsted Machinery Co. Channel Laying Machine — Standard Rotary Machine Co. Knight — Geo. Knight & Co. Standard — The Standard Engineering Co.
Hercules Leveling Machine	83. Leveling	New Giant — The Boylston Mfg. Co. Giant — The Boylston Mfg. Co.
McKay Automatic Heel Loading & Attaching Machine	84. Heeling	Pettengill — Heeling Machine — Haverhill Shoe Machinery Co. National — The R. H. Long Machinery Co., Inc.
Universal Slugging Machine	85. Slugging	Long — The R. H. Long Mchy. Co., Inc. Duplessis Slugging Machine — Hamel Shoe Machinery Co. Boylston — The Boylston Mfg. Company
Trimming & Randing Machine McKay Heel	86. Heel Trmiming	Heel Trimming Mach. — Haverhill Shoe Machinery Co. McDowell Heel Trimming Mach. — McDowell Shoe Machinery Co. Johnson — A. Johnson & Sons Long — The R. H. Long Mchy. Co., Inc. Tower — Tower Bros.
Imperial Heel Breasting Machine Mod. B Heel Breasting Machines Mods. R & W	87. Breasting Heels	Haverhill — Haverhill Shoe Machinery Co. Rowan — Hamel Shoe Mchy. Co. W & H — Donnelly Machine Co.
Edge Trimming Machines Mod. A Edge Trimming Machines Mod. B Edge Trimming Machines Mod. E	88. Trimming Forepart	Donnelly — Donnelly Machine Co. Rowan — Hamel Shoe Machinery Co. Briggs-Belmar — Briggs-Belmar Company Tower — Tower Bros. Long — The R. H. Long Machinery Co., Inc. Haverhill — Haverhill Shoe Mchy. Company
Heel Scouring Machine Mod. R Heel Scouring Machine Mod. X	89. Scouring Heels (If heels are filled at this point it is a hand operation)	Rowan — Hamel Shoe Mchy. Co. Buzzell — J. G. Buzzell & Co. Globe — The Boylston Mfg. Co. Tower — Tower Bros.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Heel Scouring Machine Carver		Johnson — A. Johnson & Sons Carver — Donnelly Mach. Co.
Heel Breast Scouring Machine Mod. H Heel Breast Scouring Machine Mod. N.	90. Scouring Heel Breasts	Buzzell — J. G. Buzzell & Co. Donnelly — Donnelly Machine Co. Freeman — The Louis G. Freeman Company Rowan — Hamel Shoe Machinery Company. Dougherty — Frank B. Dougherty.
	91. Blacking Edges (Hand Work)	
Rotary Edge Setting Mach. Mod. C Rotary Edge Setting Mach. Mod. K Twin Edge Setting Machine Mod. R Single Edge Setting Mach. Mod. N	92. Setting Edges	Freeman — The Louis G. Freeman & Co Union (Twin) — The Boylston Mfg. Co. Beaudry — Beaudry Machine Co. Union (Single) — The Boylston Mfg. Co. Vici — Independent Shoe Mchy. Company Rotary — Donnelly Machine Co. Johnson — A. Johnson & Sons. Rotary — Tower Bros.
Crest Heel Blacking Machine Mod. A Crest Heel Blacking Machine Mod. B	93. Blacking Heels	Boylston — The Boylston Mfg. Co. Star — Worcester Mchy. Co.
None (Xpedite Finishing Machine put out by United Xpedite Finishing Co.)	94. Heel Burnishing	Harlow Heel Finishing Machine — Harlow Shoe Finishing Mchy. Co. Boylston (or Copeland) — Boylston Mfg. Co. Apex — Worcester Mchy. Co. Matson — Matson-Hoyt Machine Company Beckman — A. Beckman Keyco — The Keighly Co., Inc.
	95. Inspecting and Crowning (Hand Work)	
	Finishing Room	
Buffing Machine Mod. G Buffing Machine Mod. S	96. Buffing Bottoms	Donnelly — Donnelly Machine Co. Tower — Tower Bros. Buzzell — J. G. Buzzell & Co. Rowan — Hamel Shoe Mchy. Co. Giant — The Boylston Mfg. Co. Webster — The " " " Hawkins — Seelye Mfg. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	97. Naumkeaging Shanks (Buffing)	Naumkeag (Single Head) — Naumkeag Buffing Machine Co. Pine — J. A. Pine Naumkeag Buffing Machine (Double Head) — Naumkeag Buffing Machine Co. Naumkeag (Single Head) — A. Johnson & Sons.
	98. Marking Shanks (Hand Work) 99. Staining Forepart (Hand Work) 100. Blacking Shanks and Toplifts (Hand Work)	
Climax Finishing Shafts Climax Polishing Mach. Mod. X Climax Finishing Mach. Mod. X Climax Finishing & Brush Cleaning Mach. Mod. X	101. Polishing Foreparts	Universal — Universal Shoe Mchy. Co. Special — The Special Mchy. & Tool Co. American — The American Tool & Machine Co. Keighly — The Keighly Co., Inc. Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Co. Long — The R. H. Long Mchy. Co., Inc. Donnelly — Donnelly Machine Co. American — American Worsted Machinery Co. Victor — Victor Shoe Mchy. Co. Johnson — A. Johnson & Sons.
Climax Finishing Shafts Climax Polishing Machine Mod. X Climax Finishing Machine Mod. X Climax Finishing & Brush Cleaning Machine Mod. X	102. Polishing Shanks and Toplifts	Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Co. Long — The R. H. Long Machinery Co Donnelly — Donnelly Machine Co. American — American Worsted Machinery Co. Victor — Victor Shoe Mchy. Co. Universal — Universal Shoe Mchy. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		American — American Tool & Machine Co. Special — Special Machinery & Tool Company Johnson — A. Johnson & Sons. Keighly — The Keighly Co.
	103. Wheeling Shanks (Hand Work)	
Regent Stamping Machine Mod. C Stamping Machine Mod. R	104. Stamping Foreparts	Star — O. D. Wheeler Ellison — J. Ellison Holt — J. S. Holt & Co., Inc. Tower — Tower Bros.
Stitch & Upper Cleaning Machine Booth Shaping & Cleaning Machine	104a. Cleaning Uppers	Webster — The Boylston Mfg. Co. Keighly — The Keighly Co., Inc.
	Treeing Room.	
	105. Placing Sock Linings and Detecting Tacks (Hand Work)	
Miller Treeing Machine formerly but not now leased (never sold) by United Co.	106. Treeing	Miller — Sold by O. A. Miller Treeing Machine Co. Copeland — The Boylston Mfg. Co. Improved Flexor — Boston Last Co. Improved " (8 Arm) — Boston Last Company. Pneumatic (German) — W. J. Young Machinery Co. Johnson — A. Johnson & Sons. Mobbs & Lewis — Mobbs & Lewis, Ltd.
	107. Lacing Shoes (Hand Work)	
Climax Finishing Shafts	108. Brushing Edges	Universal — Universal Shoe Mchy. Company Special — The Special Mchy. & Tool Company American — The American Tool & Machine Co. Keighly — The Keighly Co., Inc. Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Company Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Company

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Long — The R. H. Long Mchy. Co., Inc. Donnelly — Donnelly Machine Co. American — American Worsted Machinery Co. Victor — Victor Shoe Mchy. Co. Johnson — A. Johnson & Sons
	109. Inspecting and Crowning (Hand Work)	
	Packing Room.	
	110. Labelling Cartons (Hand Work)	
None	111. Marking Cartons	Markem — Markem Machinery Co.
	112. Matching Cartons, Wood Cases, and Shoes (Hand Work)	
	113. Packing Shoes in Cartons (Hand Work)	
	114. Boxing (Hand Work)	
	115. Stenciling Cases (Hand Work)	
	116. Numbering Cases (Hand Work)	
	117. Nailing Covers to Cases (Hand Work)	

ADDITIONAL OPERATIONS.

If Shoe Manufacturers prepare counters themselves the following operations should be added in the Sole Leather Room:

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
Gearless Sole Cutting Machines	1. Dieing out Counters	Eclipse — Parsons Mchy. Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
None	2. Wetting Counters	Stewart — Stewart Bros.
Monarch Box Toe & Counter Skiving Machine Counter Skiving Machine Mod. W Counter Skiving Machine Mod. S	3. Skiving Counters	Stewart — Stewart Bros. Young — W. J. Young Mchy. Co. Hartwell — L. L. Hartwell Moenus — Moenus Mach. Wks.
None	4. End Finishing Counters	Thurston — W. J. Young Mchy. Co.

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
		Stewart — Stewart Bros. Moenus — Moenus Machine Works.
Velvet Box Toe Buffing Machine	5. Buffing Counters	Perfection — W. J. Young Mchy. Company
None	6. Rolling and Waxing Counters	Stewart — Stewart Bros. Young — W. J. Young Mchy. Co.
None	7. Moulding Counters	Young — W. J. Young Machinery Company Stewart — Stewart Bros.

For Button Shoes the following operations should be added in the Stitching Room:

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
None	1. Closing outside of Fly to top	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Machine Company. W & W — Singer Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Puritan — Puritan Mfg. Co. No. 3 — Union Lockstitch Co. Davis — The Davis Sewing Machine Company.
Rapid Seam Rubbing Machine	2. Rubbing Button-fly Seam	Champion —Coburn & Lawrence Co. Boston — Boston Machine Wks. Co. Union — " " " " Hand Method — Shawmut Mchy. Co.
None	3. Staying Button-fly Seam	Union Special — Unipn Special Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Davis — Davis Sewing Mach. Company.
None	4. Cementing in Button-fly Stay	Wheeler — Brockton Stay Co.
None	5. Closing Fly Lining to cloth lining	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co.

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
		Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company
None	6. Closing Fly, outside and lining back to back	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company.
Columbia Beading Machine Victor Beading Mach. Turning & Beading Mach.	7. Turning and Beading Button Fly	Monarch — Boston Machine Wks. Co. Boston — " " " " Hart — Hamel Shoe Mchy. Co. Nangle — J. H. Nangle
None	8. Stitching first row around fly	Singer — Singer Sewing Mach. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Co.
None	8a. Marking for Buttonholes	Adams — Adams Manufacturing Co. Button Marking Machine — Shoe Manufacturers' Supply Co.
Buttonhole Making Machine	9. Making Buttonholes	Reece — The Reece Buttonhole Machine Co.
Buttonhole Finishing Machine	10. Finishing Buttonholes.	Reece — The Reece Buttonhole Machine Co. Singer — Singer Sewing Mach. Company
None	11. Barring Button Fly at Bottom 12. Marking Top for Buttons (Hand Work)	Singer — Singer Sewing Machine Company
None	13. Attaching Buttons	Morley — Singer Sewing Mach. Co. R. & M.— Peerless Machinery Co. Singer — Singer Sewing Mach. Co. Universal — Elliott Mfg. Co. Elliott — Elliott Mfg. Co.

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
		Heaton — Peninsular — Elliott Manufacturing Co. Reece — The Reece Buttonhole Machine Company

Women's McKay Sewed and Fairstitched Slip Tap, Gun Metal, Cut-off Toe, Fox Blucher.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine	1. Cutting Vamps, Tops, Foxings & Tongues	Parsons'— Parsons Machinery Co. Seelye — Seelye Mfg. Co.
	2. Sorting (Hand Work)	
None	2a. Crimping Vamps	Lockett — Lockett Crimping Mach. Company
Improved Gearless Sole Cutting Machine Ideal Clicking Machine Improved Geared Sole Cutting Machine	3. Cutting Doublings for Light Uppers	Eclipse — Parsons Machinery Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Hub Lining Cementing Machine	4. Doubling	K & K — Geo. Knight & Co. Peerless — Peerless Machinery Co. Mathey — Coburn & Lawrence Co. Weber — J. H. Nangle Foot Power — Shawmut Machinery Co. Hand Power — Shawmut Machinery Co. Simplex Cloth Backing Machine — Boston Last Company. Davis Electric Taping Machine — The Davis Sewing Machine Co.
	5. Casing (Dividing Sizes to match Tags) (Hand Work)	
Improved Gearless Sole Cutting Machine Ideal Clicking Machine Improved Geared Sole Cutting Machine	6. Cutting Cloth Linings and Doublers	Eclipse — Parsons Machinery Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker

Cutting Room.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Improved Gearless Sole Cutting Machine Mods. J & K	7. Cutting Box Toe Material	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine Mods. J & K	8. Cutting Reinforcement and Water-proof Material for Box Toe	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
	9. Assembling Cut Stock for Stitching Room (Hand Work)	
Ideal Clicking Machine Mod. C.	10. Cutting Heel Stays, Facings and Hook Stays	Parsons — Parsons Machinery Co. Seelye — Seelye Manufacturing Co.

Stitching Room.

	11. Checking Work into room (Hand Work)	
	12. Checking Day Sheet and Division of Leather Parts for Skivers (Hand Work)	
Amazeen Skiving Machine Mod. #7 Pluma Skiving Machine Mod. D	13. Skiving Parts of Uppers	Universal — Peerless Machinery Company. Fortuna — Fortuna Machine Co. Pierce — C. S. Pierce. Amazeen Type — A. Johnson & Sons " " — Donnelly Machine Company.
Snipping Machine: Booth Sandal	13a. Snipping preparatory to Folding	Hart — Hamel Shoe Mchy. Co. Boston (6 Ft. Power Types) — Boston Machine Works Co. Power — Power Machine Wks. Co. Snipping & Cementing Machine — Boston Machine Works Co.
None	14. Stitching Eyelet Rows	Singer — Singer Sewing Mch. Co. Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co.
None	14a. Cementing Edges of Uppers	Duplex — Peerless Machinery Co. Economy — " " " New York — Boston Machine Wks. Company.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Snipping & Cementing Machine — Boston Machine Works.
None	15. Folding Front Edges of Tops	New Vamp — Boston Machine Wks. Co.
		Foot Power — Boston Machine Wks. Co.
		Boston — Boston Machine Wks. Co.
		Booth — " " " "
		Dunn — " " " "
		Rapid Hand Method — Perley R. Glass Co.
		New Cylinder — Perley R. Glass Company.
		Straight Edge — American Worsted Machinery Co.
		Lufkin — R. H. Lufkin.
None	16. Closing Tops	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Machine Company
Rapid Seam Rubbing Mch.	16a. Seam Rubbing	Hand Method — Shawmut Mchy. Co.
		Champion — Coburn & Lawrence Co.
		Boston — Boston Machine Wks. Co.
		Union — " " " "
None	17. Stitching outside stays	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Machine Company

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	18. Closing Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Machine Company W & W — Singer Sewing Machine Co. Union Special — Union Special Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company
None	19. Stitching Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Machine Company Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Singer — Singer Sewing Machine Company W & W — Singer Sewing Machine Co.
None	20. Stamping sizes and case numbers on cloth linings	Power Lining Marking Machine — Markem Machine Company Various Hand Devices
None	21. Stitching Eyelet Stays	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Machine Company
None	22. Stitching Heel Stays and Closing Linings	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Machine Co.
None	23. Stitching Top Facings to Linings	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Machine Company
Embossing Machine Power	23a. Embossing Top Faces	Simplex — Boston Last Co.
		Universal — Markem Machine Co.
Embossing Machine Ft. Power		Silver King — " " "
		Freeman — The Louis G. Freeman Company
		Perkins — Perkins Machinery Co.
None	24. Closing Linings to Top, Back, to Back	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company
	25. Cementing Top (Hand Work)	
Columbia Beading Machine	26. Turning Edge on Beading Machine	Monarch — Boston Mach. Wks. Co.
Victor Beading Machine		Boston — " " " "
		Hart — Hamel Shoe Mchy. Co.
		Nangle — J. H. Nangle.
None	27. Undertrimming, Stitching around Top from Nose to Nose, and	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Metropolitan — The Metropolitan

Machines of U. S. M. Co.	Operations	Machines of other Dealers Sewing Machine Co.
	trimming off Surplus Facings	
Duplex Eyeletting Mach.	28. Eyeletting	Peerless Rapid — Peerless Mchy. Co.
Perfection Eyeletting Mach.		Peerless Gang — " " "
Universal Power Eyeletting Mach.		Power — Geo. Knight & Co.
Merrick Power Eyeletting Mach.		Foot Pwr. Gang — Geo. Knight & Co.
Samson Eyeletting Mach.		A. Mach.— American Worsted Machinery Co.
Power Eyeletting Mach.		B. Mach.— American Worsted Machinery Co.
Cameo Ft. Pwr. Eyeletting Mach.		Monitor — Am. Worsted Mchy. Co.
Vulcan Ft. Pwr. Eyeletting Mach.		Eureka — " " " "
	29. Marking Vamp for Toe Stiffening (Hand Work)	
None	30. Stitching Toe Stiffening and Water-proof Material to Toe of Vamp	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Standard — The Standard Sewing Ma- Machine Co.
Royal Perforating Mach. Mod. B	31. Perforating Tip	Hart #6 — Hamel Shoe Mchy. Co.
Stanbon Perforating Mach. Mod. M		Hart Mod. A—Hamel Shoe Mchy. Co.
		Barber — L. L. Barber & Co.
		Johnson — A. Johnson & Sons
		American — American Worsted Machinery Co.
		Peerless — Peerless Machinery Co.
		Punch Feed — Hamel Shoe Machy. Co.
None	32. Stitching Tip to Vamp	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Puritan — Puritan Mfg. Co.
		No. 3 — Union Lockstitch Co.
		Davis — The Davis Sewing Mach. Co.
None	33. Stitching Tongue between Vamp and Vamp	Singer — Singer Sewing Mach. Co.
		W & W — " " " "

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	Lining	Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company
None	34. Vamping	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Puritan — Puritan Mfg. Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company #3 — Union Lockstitch Co.
None	35. Bracing Corner of Top to Vamp	Singer — Singer Sewing Machine Company
Ensign Lacing Machine Ellis Wire Lacer	36. Lacing Upper	Rochester Lacer — Boston Machine Works Co.
	37. Casing Uppers (Hand Work)	
	38. Inspecting Uppers (Hand Work)	
	Sole Leather Room	
	39. Moistening Sole Leather in Sides (Hand Work)	
Imp. Gearless Sole Cutting Machines Imp. Baby Sole Cutting Machine	40. Cutting Outersoles, Innersoles, Half-Soles and Toplifts	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Veneer Press	40a. Veneering Insoles	Busfield — Jas. Busfield
Victor Rolling Mach. Improved Rolling Mach. Summit Splitting Mach.	41. Preparing Bellies, Shoulders and Remnants for Cutter; (Rolling, Splitting, Flexing)	Seelye — Seelye Mfg. Co. Knox — Quarmby & Hilliker Busfield — Jas. Busfield Knox — Quarmby & Hilliker Baby — J. S. Wheeler & Co. Hawkins — Seelye Mfg. Co.
Improved Gearless Sole Cutting Machines	42. Cutting Heel Lifts	Eclipse — Parsons Mchy. Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Wedge Lift Cutting Machine		Knox — Quarmby & Hilliker Young Wedge Lift Cutting Machine — W. J. Young Machinery Co.
Summit Splitting Machines Centennial Splitting Mach.	43. Evening Heel Lifts	Knox — Quarmby & Hilliker Hawkins — Seelye Mfg. Co. Baby — J. S. Wheeler & Co.
Champion Heel Lift Skiving Machine	43a. Gouging Heel Lifts	Young — W. J. Young Mchy. Co. Bostock — Thos. Bostock & Sons
Pyramid Heel Building Machine Heel Building Machine Mod. R	44. Building Heels	Young (Foot Power) — W. J. Young Machinery Co. Grover — W. J. Young Mchy. Co. White — F. H. White & Co. Bostock — Thos. Bostock & Sons Bosworth — W. T. Bosworth Fortuna — Fortuna Machine Co. Knight — Geo. Knight & Co. Pieced Heel — Parsons Mchy. Co.
Handy Heel Press	44a. Press Heels	Seelye — Seelye Manufacturing Co.
Automatic Heel Compressing Machine Mod. #4 Automatic Heel Compressing Machine 5	45. Compressing Heels	Heel Compressing Machine — W. J. Young Machinery Co. Heel Compressing Machine — Gimson & Co., Ltd. Knox — Quarmby & Hilliker Heel Compressing Machine — Nolle's Works
	46. Placing Heels in Boxes for use (Hand Work)	
Summit Splitting Machines	47. Evening Outersoles	Hawkins — Seelye Mfg. Co. Knox — Quarmby & Hilliker. Nichols — Lacene Manufacturing Company Baby — J. S. Wheeler & Co.
Victor Rolling Mach. Improved Rolling Mach.	48. Rolling Outersoles	Knox — Quarmby & Hilliker. Busfield — Jas. Busfield
Apex Tap Skiving or Rand Splitting Mach.	49. Skiving Butt of Tap	Seelye — Seelye Manufacturing Co. N O S — American Worsted Machinery Co. Busfield — Jas. Busfield Imp. Tripp — American Worsted Machinery Co.
	50. Sorting Outersoles (Hand Work)	American — Victor Shoe Mchy. Co.
	51. Matching Cut Stock with Tags (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Eagle Sole Stamping Machine	52. Stamping Sizes on Soles	Nichols Grading Machine — Lacene Mfg. Co. Various Hand Devices
	53. Casing Soles in Sizes and Pairs (Hand Work)	
	54. Stamping Case Number on Top Sole (Hand Work)	
	55. Wetting Outersoles and Taps (Hand Work)	
Apex Channeling Mach. McKay Channeling Mch. Mod. Z	56. Channeling Outersoles	McKay — Geo. Knight & Co. McKay — American Worsted Mchy Co. McKay — Walter Pearson
Rapid Rotary Cementing Machine	57. Doubling Shanks of Outersoles (if light)	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
Rapid Rotary Cementing Machine	58. Cementing Foreparts of Outersoles	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
Rapid Rotary Cementing Machine	59. Cementing Taps	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
Rapid Rotary Cementing Machine Taper Nail Tacking Machine Cable Tacking Machine Wire Grip Tacking Machine Staple Tacking	60. Applying Taps to Outersole (Tack and Cement)	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Works Co. Universal Sole Clinch Machine — Universal Shoe Machinery Co. Duplessis — Hamel Shoe Machinery Company Victor — Victor Shoe Machinery Co.
Boston Tacking Machine Cable Tacking Machine Staple Fastening Mach. Wire Grip Tacking Mach. String Nail Tacking Mach.	61. Tacking in Shanks (Also Hand Work)	Freeman Insole Tacker — The Louis G. Freeman Co. Tacking Machine — A. Johnson & Sons. Duplessis Tacker — Hamel Shoe Machinery Co. Victor — Victor Shoe Mchy. Co.
Apex Tap & Sole Rounding Machine	61a. Rounding Tap to Outersole	Severance — American Worsted Machinery Co.
American Twin Sole Moulding Machine	62. Moulding Soles	Knox — Quarmby & Hilliker C. & J. — The Boylston Mfg. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Single Sole Moulding Machine		Hawkins — Seelye Mfg. Co.
Crescent Toe Gouging Machine	62a. Toe Gouging if necessary	
Apex Channel Opening Machine	63. Opening Channels	Fischer — American Worsted Machinery Co. Fischer — Geo. Knight & Co.
	64. Tying in Cases (Hand Work)	
	65. Placing Soles and Counters in Boxes ready for Lasters (Hand Work)	
	66. Matching Sole Leather with Uppers (Hand Work)	
	Lasting Room	
	67. Putting up Lasts on Racks (Hand Work)	
USMC Insole Tacking Machine No. 1 is available for this work (Most manufacturers do not tack on innersoles)	68. Tacking Insoles to Lasts	Freeman Innersole Tacker — The Louis G. Freeman Co.
Rex Assembling Machine Mod. E. Many Manufacturers still assemble by hand work aided by Crispin Lasting Jack (Sold by U.S. M. Co. and others)	69. Assembling (Many Manufacturers assemble by hand work)	Crispin Lasting Jack is used by hand workmen. Is sold by many concerns including F. W. Whitcher Co., Albany Building, Boston
Rex Pulling Over Machine Mod. A	70. Pulling over Uppers	Moenus — Moenus Machine Wks. Victor — Nolle's Works Ward & Gent — Ward & Gent "Pulling Over Machine"— Alex. Stone, U. S. Hotel, Boston, Mass., Agent for Atlas-Werke Pohler & Co.
Consolidated Hand Method Lasting Machine (McKay Machine) Chase Lasting Machine.	71. Lasting	Consolidated Type — Standard Rotary Machine Co. Consolidated Type — Atlas-Werke Pohler & Co., Ltd. Consolidated Type — Gimson & Company, Ltd.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		"Consolidated Type Lasting Machine"— The Standard Engineering Co.
		Victor Con. Type — Nolle's Wks.
		Lasting Machine — Ward & Gent.
Rex Rotary Pounding and Trimming Machine Wentworth Heel Seat Beating and Finishing Mach.	72. Pounding and Trimming	
	72a. Pulling Insole Tacks. (Chiefly Hand Work)	
Wire Grip Tacking Mach. Taper Nail Tacking Mach. Staple Fastening Mach.	73. Tacking on Soles	Universal Sole Clinch Machine — Universal Shoe Machinery Co.
	74. Pulling Lasts and Cut or Remove Lacers (Hand Work)	
	75. Inspecting Lasting (Hand Work)	
	Bottoming Room.	
McKay Sewing Machine Mod. B. McKay Sewing Machine Mod. S. Richardson Sole Sewing Machine	76. McKay Sewing (Moisten if necessary)	McKay — American Worsted Mchy. Co. McKay — Walter Pearson " — A. Johnson & Sons Victor — Nolle's Works
Goodyear Rapid Stitcher	77. Fairstitching (Sometimes done in Stock Room)	Randall — The J. D. Randall Co. Puritan — Puritan Mfg. Co. Landis — Landis Machine Co. Union — Union Lockstitch Co. O'Flaherty — The John O'Flaherty Company Leger — James Clark Leather Co. Campbell — Campbell Bosworth Machine Co.
Loose Nailing Machine Loose Nailing Machine No. 2 Grip Clinch Machine	78. Nailing Heel Seats	Long Loose Nailer — The R. H. Long Machinery Co., Inc. Duplessis Loose Nailer — Hamel Shoe Machinery Company Universal Loose Nailing Machine — Universal Shoe Machinery Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Universal Sole Clincher — Universal Shoe Machinery Co. Victor — Victor Shoe Machinery Company
Star Channel Cementing Machine	79. Cementing Channels and Lips	Union — The Boylston Mfg. Co.
Channel Laying Machine Mod. W	80. Laying Channels (If Top Edge is indented, operation performed at this point)	American — American Worsted Machinery Co. Channel Laying Machine — Standard Rotary Machine Co. Knight — Geo. Knight & Co. Standard — The Standard Engineering Company
Atlas Leveling Machine	81. Leveling	C. & J.— The Boylston Mfg. Co.
McKay Automatic Heel Loading and Attaching Machine.	82. Heeling	Pettengill Heeling Machine — Haverhill Shoe Machinery Co. National — The R. H. Long Machinery Co., Inc.
Universal Slugging Machine	83. Slugging	Long — The R. H. Long Machinery Company, Inc. Duplessis Slugging Machine — Hamel Shoe Machinery Co. Boylston — The Boylston Mfg. Co.
Trimming and Randing Machine, McKay Heel	84. Heel Trimming	Heel Trimming Machine — Haverhill Shoe Machinery Co. McDowell Heel Trimming Machine — McDowell S. Machinery Co. Heel Trimming Machine — A. Johnson & Sons. Long Heel Trimming Mach.— The R. H. Long Machinery Co., Inc. Tower Heel Trimming Mach.— Tower Bros.
Imperial Heel Breasting Machine Mod. B. Heel Breasting Machines Mod. R & W	85. Breasting Heels	Haverhill — Haverhill Shoe Machinery Co. Rowan — Hamel Shoe Machinery Company W & H — Donnelly Machine Co.
Edge Trimming Mach. A Edge Trimming Mach. B Edge Trimming Mach. E	86. Trimming Foreparts	Donnelly — Donnelly Machine Co. Rowan — Hamel Shoe Machinery Co. Briggs-Belmar — Briggs-Belmar Company Tower — Tower Bros. Long — The R. H. Long Machinery Company, Inc.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Haverhill — Haverhill Shoe Mchy. Company
Heel Scouring Machine Mod. R	87. Scouring Heels (Heels filled at this point if necessary by hand operation)	Rowan — Hamel Shoe Machinery Co.
		Buzzell — J. G. Buzzell & Co.
Heel Scouring Machine Mod. X		Globe — The Boylston Mfg. Co.
		Tower — Tower Bros.
Heel Scouring Machine Carver		Johnson — A. Johnson & Sons
		Carver — Donnelly Machine Co.
Heel Breast Scouring Machine Mod. H	88. Scouring Heel Breasts	Buzzell — J. G. Buzzell & Co.
		Donnelly — Donnelly Machine Co.
		Freeman — The Louis G. Freeman Co.
Heel Breast Scouring Mach. Mod. N.		Rowan — Hamel Shoe Machinery Co.
		Dougherty — Frank B. Dougherty
	89. Blacking Edges (Hand Work)	
Rotary Edge Setting Machine Mod. C.	90. Setting Edges	Freeman — The Louis G. Freeman Co.
		Union — The Boylston Mfg. Co.
		Rotary — Tower Bros.
Rotary Edge Setting Mach. Mod. K.		Beaudry — Beaudry Machine Co.
Twin Edge Setting Mach. Mod. R.		Union (Single) — The Boylston Mfg. Co.
		Vici — Independent Shoe Mchy. Co.
Single Edge Setting Mach. Mod. N.		Rotary — Donnelly Machine Co.
		Johnson — A. Johnson & Sons.
Crest Heel Blacking Machine Mod. A & B	91. Blacking Heels	Boylston — The Boylston Mfg. Co.
		Star — Worcester Machinery Co.
None (Xpedite Finishing Machine put out by United Xpedite Finishing Co.)	92. Heel Burnishing	Harlow Heel Finishing Machine — Harlow Shoe Finishing Mchy. Co.
		Boylston (or Copeland) — The Boylston Mfg. Co.
		Apex — Worcester Machinery Co.
		Matson — Matson-Hoyt Machine Co.
		Beckman — A. Beckman
		Keyco — The Keighly Co., Inc.
	93. Inspecting and Crowning (Hand Work)	
	Finishing Room.	
Buffing Mach. Mod. S	94. Buffing Bottoms	Donnelly — Donnelly Mach. Co.
		Tower — Tower Bros.
Buffing Mach. Mod. G		Buzzell — J. G. Buzzell & Co.
		Rowan — Hamel Shoe Machinery Co.
		Giant — The Boylston Mfg. Co.
		Webster — " " " "
		Hawkins — Seelye Mfg. Co.
None	95. Naumkeaging Shanks (Buffing)	Naumkeag (Single Head) — Naumkeag Buffing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Pine — J. A. Pine Naumkeag (Double Head) — Naumkeag Buffing Machine Co. Naumkeag (Single Head) — A. Johnson & Sons
	96. Marking Shanks (Hand Work)) 97. Staining Foreparts (Hand Work) 98. Blacking Shanks and Top Lifts (Hand Work)	
Climax Finishing Shafts Climax Polishing Mch. Mod. X Climax Finishing Mch. Mod. X Climax Finishing & Brush Cleaning Machine Mod. X	99. Polishing Foreparts	American — The American Tool & Machine Co. Special — The Special Shoe Mchy. Co. Universal — Universal Shoe Mchy. Co. Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Mch. Co. Specialty — Specialty Shoe Mchy. & Tool Co. Long — The R. H. Long Machinery Company, Inc. Donnelly — Donnelly Machine Co. American — American Worsted Mchy. Company Victor — Victor Shoe Mchy. Co. Johnson — A. Johnson & Sons. Keighly — The Keighly Co., Inc.
Climax Finishing Shafts Climax Polishing Mch. Mod. X Climax Finishing Mch. Mod. X Climax Finishing & Brush Cleaning Machine Mod. X	100. Polishing Shanks and Toplifts	Special — The Special Mchy. & Tool Co. American — The American Tool & Machine Co. Universal — Universal Shoe Mchy. Company Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Co. Long — The R. H. Long Machinery Company, Inc. Donnelly — Donnelly Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		American — American Worsted Machinery Co. Victor — Victor Shoe Machinery Co Johnson — A. Johnson & Sons Keighley — The Keighley Co., Inc.
	101. Wheeling Shanks (Hand Work)	
Regent Stamping Mach. Mod. C Stamping Machine Mod. R.	102 Stamping Foreparts	Star — O. D. Wheeler Ellison — J. Ellison Holt — J. S. Holt & Co., Inc. Tower — Tower Bros.
Stitch and Upper Cleaning Machine Booth Shaping & Cleaning Machine	102a. Cleaning Uppers	Webster — The Boylston Mfg. Co. Keighley — The Keighley Co., Inc.
	Treeing Room.	
	103. Placing Sock Linings and Detecting Tacks (Hand Work)	
Miller Treeing Mach., formerly but not now, leased by United Co.	104. Treeing	Copeland — The Boylston Mfg. Co. Imp. Flexor — Boston Last Co. Miller — Sold by O. A. Miller Treeing Machine Co. Imp. Flexor (8 Arm) — Boston Last Company Pneumatic — W. J. Young Mchy. Co. Johnson — A. Johnson & Sons Mobbs & Lewis — Mobbs & Lewis, Ltd.
	105. Lacing Shoes (Hand Work)	
	106. Inspecting and Crowning (Hand Work)	
	Packing Room	
	107. Labeling Cartons (Hand Work)	
None	108. Marking Cartons	Markem — Markem Machine Co.
	109. Matching Cartons, Wood Cases and Shoes (Hand Work)	
	110. Packing Shoes in Cartons (Hand Work)	
	111. Boxing (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	112. Stenciling Cases (Hand Work)	
	113. Numbering Cases (Hand Work)	
	114. Nailing Covers to Cases (Hand Work)	

ADDITIONAL OPERATIONS.

If Shoe Manufacturers prepare counters themselves the following operations should be added in the Sole Leather Room:

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
Gearless Sole Cutting Machines	1. Dieing out Counters	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
None	2. Wetting Counters	Stewart — Stewart Bros.
Monarch Box Toe & Counter Machine Counter Skiving Mch. Mod. W Counter Skiving Mch. Mod. S	3. Skiving Counters	Young — W. J. Young Machinery Co. Stewart — Stewart Bros. Hartwell — L. L. Hartwell Moenus — Moenus Machine Wks.
None	4. End Finishing Counters	Thurston — W. J. Young Mchy. Co. Stewart — Stewart Bros. Moenus — Moenus Mch. Works
Velvet Box Toe Buffing Machine	5. Buffing Counters	Perfection — W. J. Young Mchy. Company
None	6. Rolling and Waxing Counters	Stewart — Stewart Bros. Young — W. J. Young Machinery Co.
None	7. Moulding Counters	Young — W. J. Young Mchy. Co. Stewart — Stewart Bros.

For Button Shoes the following operations should be added in the Stitching Room:

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
None	1. Closing outside of Fly to Top	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " Metropolitan — The Metropolitan Sewing Machine Co. #3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co.

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
		Davis — The Davis Sewing Machine Company
Rapid Seam Rubbing Mch.	2. Rubbing Button-fly Seam	Champion — Coburn & Lawrence Co. Boston — Boston Machine Wks. Co. Union — " " " " Hand Method — Shawmut Machinery Company
None	3. Staying Button-fly Seam	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Machine Co. W & W — " " " " #3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Machine Company
None	4. Cementing in Button-fly Stay	Wheeler — Brockton Stay Co.
None	5. Closing Fly Lining to cloth lining.	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mch. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mch. Company
None	6. Closing Fly, outside and lining, back to back	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company
Columbia Beading Mach. Victor Beading Mach. Turning & Beading Mach.	7. Turning and Beading Button-fly	Monarch — Boston Machine Wks. Co. Boston — " " " " Hart — Hamel Shoe Machinery Co. Nangle — J. H. Nangle

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
None	8. Stitching first row around Fly	Singer — Singer Sewing Mach. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Co.
None	8a. Marking for Buttonholes	Adams — Adams Mfg. Co. Button Hole Marking Mach.— Shoe Mfgs. Supply Co.
Buttonhole Making Machine	9. Making Buttonholes	Reece — The Reece Buttonhole Machine Co.
Buttonhole Finishing Machine	10. Finishing Buttonholes	Reece — The Reece Buttonhole Machine Co. Singer — Singer Sewing Mach. Company
None	11. Barring Button Fly at bottom 12. Marking Top for Buttons (Hand Work)	Singer — Singer Sewing Mach. Company
None	13. Attaching Buttons	Morley — Singer Sewing Machine Company R. & M.— Peerless Machinery Co. Singer — Singer Sewing Mach. Co. Universal — Elliott Mfg. Co. Elliott — Elliott Mfg. Co. Heaton-Peninsular — Elliott Mfg. Co. Reece — The Reece Buttonhole Machine Co.

Men's Goodyear Welt, Gun Metal, Cut-off Toe, Fox Blucher, March 31, 1913.

Cutting Room

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine	1. Cutting Vamps, Tops, Foxings & Tongues 2. Sorting (Hand Work)	Parsons'— Parsons Machinery Co. Seelye — Seelye Mfg. Co.
None	2a. Crimping Vamps	Lockett — Lockett Crimping Mch. Company
Improved Gearless Sole Cutting Machine	3. Cutting Doublings for Light Uppers	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine Imp. Geared Sole Cutting Machine		Knox — Quarmby & Hilliker.
Hub Lining Cementing Machine	4. Doubling	K & K — Geo. Knight & Co. Peerless — Peerless Machinery Co. Mathey — Coburn & Lawrence Co. Weber — J. H. Nangle Foot Power — Shawmut Mchy. Co. Hand " " " " Simplex Cloth Backing Machine — Boston Last Co. Davis Electric Taping Machine — The Davis Sewing Machine Co.
	5. Casing (Dividing Sizes to Match Tags) (Hand Work)	
Improved Gearless Sole Cutting Machine Ideal Clicking Machine Imp. Geared Sole Cutting Machine	6. Cutting Cloth Linings and Doublers	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine — Mods. J & K	7. Cutting Box Toe Material	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine — Mods. J & K	8. Cutting Reinforcement and Water-proof Material for Box Toe	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
	9. Assembling Cut Stock for Stitching Room (Hand Work)	
Ideal Clicking Machine	10. Cutting Heel Stays, Facings and Hook Stays	Parsons — Parsons Machinery Co. Seelye — Seelye Manufacturing Co.
	Stitching Room.	
	11. Checking work into room (Hand Work)	
	12. Checking Day Sheet and Division of Leather Parts for Skivers (Hand Work)	
Amazeen Skiving Machine	13. Skiving Parts of Uppers	Universal — Peerless Machinery Co. Fortuna — Fortuna Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Pluma Skiving Machine		Pierce — C. S. Pierce
		Amazeen Type — A. Johnson & Sons
		Amazeen Type — Donnelly Mch. Co.
Snipping Machine: Booth Sandal	13a. Snipping Preparatory to Folding	Hart — Hamel Shoe Mchy. Co., Inc.
		Boston (6) Foot Power Types — Boston Machine Works Co.
		Power — " " " "
		Snipping & Cementing Machine — Boston Machine Works Co.
None	14. Stitching Eyelet Rows	Singer — Singer Sewing Mach. Co.
		Union Special — Union Special Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
None	14a. Cementing Edges of Uppers	Duplex — Peerless Machinery Co.
		Economy — " " "
		New York — Boston Mach. Wks. Co.
		Snipping & Cementing Machine — Boston Machine Wks. Co.
None	15. Folding Front Edges of Tops	New Vamp — Boston Machine Works Co.
		Foot Power — Boston Mach. Wks. Company
		Boston — Boston Mach. Wks. Co.
		Booth — " " " "
		Dunn — " " " "
		Rapid Hand Method — Perley R. Glass Co.
		New Cylinder — Perley R. Glass Co.
		Straight Edge — American Worsted Machinery Co.
		Lufkin — R. H. Lufkin Co.
None	16. Closing Tops	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		#3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Metropolitan — Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Davis — The Davis Sewing Machine Company
Rapid Seam Rubbing Machine	16a. Seam Rubbing	Hand Method — Shawmut Machinery Company
		Champion — Coburn & Lawrence Co.
		Boston — Boston Mach. Wks. Co.
		Union — Boston Mach. Wks. Co.
None	17. Stitching Outside Stays	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Mch. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		#3 — Union Lockstitch Co.
		Puritan—Puritan Manufacturing Company
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company
None	18. Closing Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		#3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company
None	19. Stitching Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Machine Co.
		W & W — " " " "
		#3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Machine Company

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	20. Stamping Sizes and Case Number on Cloth Linings	Power Lining Marking Machine — Markem Machine Co. Various Hand Devices
None	21. Stitching Eyelet Stays	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Mach. Co.
None	22. Stitching Heel Stays and Closing Linings	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Mach. Co.
None	23. Stitching Top Facings to Linings	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Mach. Co.
Embossing Machine Model B Embossing Machine Model R	23a. Embossing Top Faces	Simplex — Boston Last Co. Universal — Markem Machine Co. Silver King — " " " Freeman — The Louis C. Freeman Company Perkins — Perkins Machine Co.
None	24. Hooking with Stay Reinforcements	Tubular Rivet — Tubular Rivet & Stud Company American — American Lacing & Hook Company Foot Power — American Worsted Machinery Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Halkyard — Halkyard Mfg. Co.
None	25. Closing Linings to Top, Back to Back, holding in Back Straps	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Company Davis — The Davis Sewing Mach. Co.
	26. Cementing Tops (Hand Work)	
Columbia Beading Machine Victor Beading Mach.	27. Turning Edges on Beading Machine	Monarch — Boston Machine Wks. Co. Boston — " " " " Hart — Hamel Shoe Machinery Co. Nangle — J. H. Nangle
None	28. Undertrimming, Stitching around Top from Nose to Nose, Trimming off surplus Facings, Staying Back Pull Straps at same time	Singer — Singer Sewing Mach. Co. W & W — " " " " Metropolitan — The Metropolitan Sewing Machine Co.
None	29. Blacking Front of Tops, if raw edges	Coburn — Coburn & Lawrence Co. Peerless — The Peerless Mchy. Co.
Duplex Eyeletting Mach. Perfection Eyeletting Mach. Universal Pwr. Eyeletting Mach. Merrick Pwr. Eyeletting Mach. Samson Eyeletting Mach. Power Eyeletting Mach. Cameo Ft. Pwr. Eyeletting Mach. Vulcan Ft. Pwr. Eyeletting Mach.	30. Eyeletting	Peerless Rapid — Peerless Mchy. Company Peerless Gang — Peerless Mchy. Co. Power — Geo. Knight & Co. Ft. Power Gang — Geo. Knight & Co. A. Machine — Am Worsted Mchy. Co. B. " — " " " " Monitor — " " " " Eureka — " " " "
	31. Marking Vamps for Box Toes (Hand Work)	
None	32. Stitching Box Toes and Water-proof Material to Vamps	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Standard — The Standard Sewing Machine Co.
Royal Perforating Machine Model B Stanborn Perforating Machine, Mod. M.	33. Perforating Tips	Hart #6 — Hamel Shoe Machy. Co. Hart Mod. A " " " " Barber — L. L. Barber & Co. Johnson — A. Johnson & Sons American — American Worsted Machinery Co. Peerless — Peerless Machinery Co. Punch Feed — Hamel Shoe Mchy. Co.
None	34. Stitching Tips to Vamps	Singer — Singer Sewing Mch. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Puritan — Puritan Mfg. Co. No. 3 — Union Lockstitch Co. Davis — The Davis Sewing Mach. Company
None	35. Stitching Tongues between Vamps and Vamp Linings	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company
None	36. Vamping	Singer — Singer Sewing Mch. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Mch. Co.
None	37. Bracing	Singer — Singer Sewing Mach. Co.
Ensign Lacing Machine Ellis Wire Lacer	38. Lacing Uppers	Rochester Lacer — Boston Machine Works Co.
	39. Casing Uppers (Hand Work)	
	40. Inspecting Uppers (Hand Work)	

Sole Leather Room

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	41. Moistening Sole Leather in Sides (Hand Work)	
Improved Gearless Sole Cutting Machines Improved Baby Sole Cutting Machine	42. Cutting Outersoles, Innersoles, Half Soles and Toplifts	Eclipse — Parsons Machinery Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker.
Victor Rolling Machine Improved Rolling Machine Summit Splitting Machine	43. Preparing Bellies, Shoulders, and Remnants for Cutters; (Rolling, Splitting, Flexing)	Seelye — Seelye Mfg. Co. Knox — Quarmby & Hilliker Busfield — Jas. Busfield Knox — Quarmby & Hilliker Hawkins — Seelye Mfg. Co. Baby — J. S. Wheeler & Co.
Improved Gearless Sole Cutting Machines Wedge Lift Cutting Machine	44. Cutting Heel Lifts	Eclipse — Parsons Mchy. Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker Young Wedge Lift Cutting Machine — W. J. Young Machinery Co.
Summit Splitting Machines Centennial Splitting chines	45. Evening Heel Lifts	Hawkins — Seelye Mfg. Co. Knox — Quarmby & Hilliker Baby — J. S. Wheeler & Co.
Champion Heel Lift Skiving Machine	45a. Gouging Heel Lifts	Young — W. J. Young Machy. Co. Bostock — Thos. Bostock & Sons.
Heel Buildng Machine Mod. R. Pyramid Heel Building Machine	46. Building Heels	Young (Foot Power) — W. J. Young Machinery Co. Grover — W. J. Young Machy. Co. White — F. H. White & Co. Bostock — Thos. Bostock & Sons. Bosworth — W. T. Bosworth Fortuna — Fortuna Machine Co. Knight — Geo. Knight & Co. Pieced Heel — Parsons Mchy. Co.
Handy Heel Press	46a. Pressing Heels	Seelye — Seelye Manufacturing Co.
Automatic Heel Compressing Machine Mod. #4 Automatic Heel Compressing Machine #5	47. Compressing Heels	Heel Compressing Machine — W. J. Young Machinery Co. Heel Compressing Machine — Gimson & Co. Ltd. Knox — Quarmby & Hilliker Heel Compressing Machine — Nolle's Works
	48. Placing Heels in Boxes for use. (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Summit Splitting Machines	49. Evening Outersoles	Knox — Quarmby & Hilliker Hawkins — Seelye Mfg. Co. Nichols — Lacene Mfg. Co. Baby — J. S. Wheeler & Co.
Victor Rolling Machine	50. Rolling Outersoles	Knox — Quarmby & Hilliker Busfield — Jas. Busfield
Improved Rolling Machine	51. Sorting Outersoles (Hand Work)	Seelye — Seelye Mfg. Co.
	52. Matching Cut Stock with Tags (Hand Work)	
Eagle Sole Stamping Machine	53. Stamping Sizes on Sole	Nichols Grading Machine — Lacene Manufacturing Co. Various Hand Devices
	54. Casing Soles for sizes and pairs (Hand Work)	
	55. Stamping Case Number on Top Soles (Hand Work)	
Goodyear Outsole Channel Shank Reducing Machine Apex Feather Edge & Shank Reducing Machine Rotary Feather Edge & Shank Reducing Machine	56. Reducing Shanks	Rapid — Theo. Ringenbach Knight — Geo. Knight & Co. American — Am. Worsted Mchy. Co.
American Twin Sole Moulding Machine Single Sole Moulding Machine	57. Moulding Outersoles	Knox — Quarmby & Hilliker C. & J.— The Boylston Mfg. Co. Hawkins — Seelye Mfg. Co.
	58. Sorting Innersoles (Hand Work)	
	59. Matching Innersoles with Tag (Hand Work)	
Planet Sole Rounding Machine	60. Rounding Innersoles	Julian — The Boylston Mfg. Co. Improved Lower — Consolidated Rotary Rounder Co. Ross — Consolidated Rotary Rounder Co.
Insole Lip Cutting, Scoring, and Sizing Machine Eagle Sole Stamping Machine	61. Stamping Size on Innersole	Nichols Grading Machine — Lacene Manufacturing Co. Hand Devices

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	62. Casing Innersoles (Hand Work)	
Goodyear Channeling Machine Channeling Machine: Goodyear Universal	63. Channeling Innersoles	Channeling Machine — The R. H. Long Machinery Co., Inc. Haverhill Turn Channeler — Haverhill Shoe Machinery Co. Hamel — Hamel Shoe Machy. Co.
Goodyear Insole Toe Snipping Machine Insole Lip Cutting, Scoring and Sizing Mach.	64. Cutting Channel of Innersole for Turning (largely done by hand)	Flap Slashing Machine — Boston Machine Works Co. Insole Snipping & Pinking Mach.— Boston Machine Works Co.
Goodyear Flexible Sole Mach. (Zeigler) Goodyear Power Flexible Innersole Machine Model XB Goodyear Flexible Sole Machine (Power)	65. Flexing Insoles (if necessary)	
	66. Wetting Insoles (Hand Work)	
Goodyear Lip Turning Mach. Goodyear Lip Turning Mach. Mod. X Goodyear Lip Turning & Slashing Machine	67. Turning Channels	Lip Turning Machine — Haverhill Shoe Machinery Co. American — American Worsted Mchy. Company Knight — Geo. Knight & Co. Duplessis — Hamel Shoe Mchy. Co. Long — The R. H. Long Mchy. Co., Inc.
	68. Finishing Channel Shoulders (Hand Work) 69. Inspecting Channels (Hand Work) 70. Packing Innersoles in Boxes with Counters ready for Laster (Hand Work) 71. Matching Innersoles and Counters with Uppers (Hand Work)	
Goodyear Power Welt Grooving & Beveling Machine	72. Grooving and Beveling Welting	Haverhill — Haverhill Shoe Machinery Co. Long — The R. H. Long Mchy. Co., Inc. Hamel — Hamel Shoe Machinery Company

IF REINFORCED INNERSOLES.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Channeling Mach. Goodyear Universal Channeling Machine (Gem) Economy Innersole Channeling Machine	72a. Channeling Economy & Gem Innersoles.	Various shoe manufacturers, e. g. W. H. McElwain & Co. and A. H. Berry Shoe Co., make special types of reinforced innersoles and have machines of their own for the purpose. Channeling Mach.— The R. H. Long Machinery Co., Inc. (Gem) Haverhill — Haverhill Shoe Mchy. Company (Gem) Hamel — Hamel Shoe Machy. Co. (Gem)
At toe — Goodyear Insole Toe Snipping Machine At shank — Hand Work until recently (but see Operation 72d below) Insole Lip Cutting, Scoring & Sizing Machine	72b. Cutting Flap of Innersoles for Turning	See note above under 72a. Flap Slashing Mach.— Boston Machine Works Co. Insole Snipping & Pinking Machine — Boston Machine Works Company.
Economy Insole Wetting Machine Mod. X	72c. Wetting Insoles (Until recently done by hand)	See note above under 72a.
Gem Lip Turning Machine Goodyear Lip Turning & Slashing Machine. (This machine also cuts the flap — Operations 72 b) Goodyear Lip Turning Mach. Mod. X	72d. Turning Lips of Innersoles	Lip Turner — Haverhill Shoe Machinery Co. American — Am. Worsted Mchy. Co. Knight — Geo. Knight Co. Duplessis — Hamel Shoe Mchy. Co. Long — The R. H. Long Machinery Co., Inc.
None	72e. Heating and Placing Canvas	The various rubber companies which supply coated or prepared canvas, viz: The Clifton Manufacturing Co., the Plymouth Rubber Co., and the Walpole Shoe Supply Co., furnish the machines used for these operations.
Gem Flexible Innersole Machine Economy Reinforcing Machine	72f. Forming and Trimming Canvas to Shoulder of Innersoles	See note above under 72a.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None		Rib Tighteners or Hardeners — Plymouth Rubber Co. Walpole Shoe Supply Co. (These machines complete the reinforcing operation)
	Lasting Room.	
	73. Putting up Lasts on Racks (Hand Work)	
Staple Fastening Mach. USMC Insole Tacking Machine, No. 1	74. Tacking Innersoles to Lasts	Freeman Innersole Tacker — The Louis G. Freeman Co.
Rex Assembling Machine Model E	75. Assembling	
Rex Pulling-Over Mch. Mod. A. Rex Pulling-Over Mch. Mod. C.	76. Pulling-over Uppers	Atlas — Atlas-Werke Pohler & Co. Victor — Nolle's Works. Moenus — Moenus Machine Works. Pulling-Over Machine — Ward & Gent
Consolidated Hand Method Lasting Machine, Welt Side	77. Lasting sides	Welt Lasting Machine — Gimsen & Company, Ltd. Consolidated Type — Standard Engineering Co. Consolidated Type — Atlas-Werke Pohler & Co.
No. 5 USMC Lasting Mach. Consolidated Hand Method Lasting Machine, Welt Ideal Lasting Machine Chase Lasting Machine	78. Lasting	"Standard Rotary Rapid Lasting Machine"— Standard Rotary Machine Co., Ltd. Lasting Machine (Bed Type) — Atlas-Werke Pohler & Co. Lasting Machine (Bed Type) — The R. H. Long Mchy. Co., Inc. Welt & McKay Consolidated Type — The Standard Engineering Co. Welt Lasting Mach.— Gimson & Co. Ltd. Bed Type — Gimson & Co., Ltd. Victor — Nolle's Works. Boston Lasting Machine — A. Johnson & Sons. Bed Type — Standard Rotary Mch. Co., Ltd. Freeman Toe — The Louis G. Freeman Co. Freeman Heel Seat — The Louis G. Freeman Co. Lasting Machine — Ward & Gent Bed Type — The Boylston Mfg. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers Consolidated Type — Atlas-Werke Pohler & Co.
	79. Inspecting and Crowning Lasting (Hand Work)	
Rex Upper Trimming Machine Mod. H.	80. Upper Trimming (Done by hand in many factories)	
	Bottoming Room.	
Goodyear Tack Pulling & Resetting Machine Goodyear Upper Tack Pulling Machine, Pulling only Rapid Tack Pulling Machine Goodyear Upper Tack, Pulling only Rapid Tack Pulling Machine	81. Pulling Tacks and Resetting Tacks	The K. P. (Krentler-Pym) Tack Puller & Lifter — The Louis G. Freeman Co.
Goodyear Welt & Turn Shoe Machine Goodyear Welt & Turn Shoe Machine Mod. G. Goodyear Welt & Turn Shoe Machine Mod. K Goodyear Universal Machine	82. Welting	Haverhill Turn Sewer & Welter — Haverhill Shoe Machinery Co. Welt & Turn Sewer — Hamel Shoe Machinery Co. Universal Welter — Universal Shoe Machinery Co. Welt & Turn Sewer — The R. H. Long Machinery Co., Inc. Welt & Turn Sewing Machine — A. Johnson & Sons Welt & Turn Sewing Machine — Ward & Gent Welt Sewing Machine — The Standard Engineering Co. Welt Sewing Machine — The Boylston Manufacturing Co.
Goodyear Universal Inseam Trimming Machine	83. Inseam Trimming	Keighley Rapid Inseam Trimmer — The Keighley Co. Inc. (Sale)
Rapid Inseam Trimmer (Mod. K lease)		Johnson — A. Johnson & Sons
Keighley Rapid Inseam Trimmer (lease)	84. Trimming and Butting Welt Ends	Keighl y Rapid Inseam Trimmer — The Keighley Co., Inc. (sale)
Goodyear Insole Tack Pulling Machine	85. Pulling Insole Tacks	The Combination Insole & Side Tack Puller — The Louis G. Freman Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Welt Beating & Slashing Machine Goodyear Universal Welt Beating Machine (Beating Only)	86. Beating and Slashing Welts	Beating Machine — Standard Rotary Machine Co., Ltd. (Beating only) Long — The R. H. Long Mchy. Co., Inc. (Beating only) Duplessis — Hamel Shoe Mchy. Co. (Beating only) Boylston — The Boylston Mfg. Co. Haverhill — Haverhill Shoe Mchy. Company
Boston Tacking Machine Taper Nail Tacking Machine (S. H.) Staple Fastening Machine Shank Piece Sticking Machine	87. Tacking in Shanks (Usually hand work)	Freeman Insole Tacker — The Louis C. Freeman Co. Tacking Machine — A. Johnson & Sons Victor — Victor Shoe Mchy. Co.
	88. Filling foreparts	Besto Filling Machine — North American Chemical Co.
Rapid Rotary Cementing Machine	89. Cementing Soles	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Works Company
	90. Wetting Soles (Hand Work)	
Star Channel Cementing Machine (Fitted for Cementing Bottoms)	91. Cementing Welts and Filling	Union — The Boylston Mfg. Co. Victor — Nolle's Works
Goodyear Imp. Twin Sole Laying Machine Goodyear Imp. Twin Sole Laying Machine Mod. C	92. Laying Soles	Sole Layer — Long — The R. H. Long Machinery Co., Inc. Sole Layer — Standard Rotary Machine Co., Ltd. Atlas (2 Types)—Atlas—Werke Pohler & Co. Gimson — Gimson & Co., Ltd. Standard — The Standard Engineering Company
Grip Clinch Mach. Loose Nailing Mach. No. 2 Loose Nailing Mach.	93. Nailing Heel Seats	Long — The R. H. Long Machy. Co. Duplessis Loose Nailer — Hamel Shoe Machinery Co. Universal Loose Nailing Machine — Universal Shoe Machinery Co. Universal Sole Clinching Mach.— Universal Shoe Machinery Co. Victor — Victor Shoe Mchy. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Universal Rounding & Channeling Machine Mod. E Goodyear Universal Rounding & Channeling Machine	94. Rough Rounding and Channeling	"National" Automatic Rounder — Standard Rotary Machine Co., Ltd. Long National (does not channel)— The R. H. Long Mchy. Co., Inc. Victor — Victor Shoe Machy. Co. Haverhill — Haverhill Shoe Mchy. Company Arnold (Channel Only) — The R. H. Long Machinery Co., Inc.
Goodyear Channel Opening Machine Goodyear Channel Opening Machine Mod. X	95. Opening Channels	Opening Machine — Standard Rotary Machine Co., Ltd.
Goodyear Outsole Rapid Lockstitch Machine Goodyear Outsole Rapid Lockstitch Machine Mod. M Goodyear Outsole Rapid Lockstitch Mach. Mod. K.	96. Stitching	"Waldorf"— The R. H. Long Machinery Co., Inc. Universal Stitching Mach.— Universal Shoe Machy. Co. Union High-Speed Stitching Machine — Union Lockstitch Co. Standard — Standard Rotard Machine Co., Ltd. Hamel — Hamel Shoe Mchy. Co. Boylston — The Boylston Mfg. Co. Victor Imp.— Victor Shoe Mchy. Co. Fleming — Landis Machine Co. Larsen — Larsen Machinery Co. Simplex — Jas. Clark Lea. Co. Leger — C. V. Engstrom Co. Atlas — Atlas Werke Pohler & Co. High-Speed — The Standard Engineering Co. Johnson — A. Johnson & Sons
Star Channel Cementing Machine	97. Cementing Channels	Union — The Boylston Mfg. Co.
Goodyear Channel Laying Machine Goodyear Channel Laying Machine Mod. X	97a. Laying Channels	Laying Machine: Channel — Standard Rotary Mach. Co., Ltd. Knight — Geo. Knight & Co. American — American Worsted Mchy. Company Standard — The Standard Engineering Co.
Goodyear Automatic Sole Leveling Machine Goodyear Automatic Sole Leveling Mach. Mod. C	98. Leveling	Automatic Twin Leveler — Standard Rotary Mch. Co., Ltd. Webster Welt & Turn — Haverhill Shoe Machinery Co. Eclipse — The R. H. Long Mchy. Co., Inc.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Welt & Turn Leveling Machine		Ward & Gent — Ward & Gent. Hamel — Hamel Shoe Machinery Company
Welt Trimming & Stitch Rubbing Machine Goodyear Outsole Stitch Rubbing Machine	98a. Welt Trimming and Stitch Rubbing, (if desired)	None
Hadaway Stitch Separating Machine	99. Separating Stitches	Long Stitch Separator — The R. H. Long Machinery Co., Inc. Stitch Separator — Standard Rotary Machine Co., Ltd. Haverhill — Haverhill Shoe Machinery Co.
Goodyear Heel Seat Rounding Machine Heel Seat Rough Rounding Machine Mod. B Goodyear Rounding & Randing Machine	100. Rough Rounding Heel Seats	"Freeman Heel Seat Rounder" (Krentler Heel Seat Machine) — The Louis G. Freeman Co.
McKay Automatic Heel Loading and Attaching Machine Mod. B American Lightning Nailing Machine	101. Heeling	Pettengill Heeling Machine — Haverhill Shoe Machinery Co. Johnson — A. Johnson & Sons Nolle — Nolle's Works Ward & Gent — Ward & Gent National — The R. H. Long Mchy. Company, Inc.
Universal Slugging Mach.	102. Slugging	Long — The R. H. Long Machinery Company, Inc. Duplessis Slugging Machine — Hamel Shoe Machinery Co. Boylston — The Boylston Mfg. Co.
Ultima Heel Trimming Machine Busell Heel Trimming Machine McKay Heel Trimming & Randing Machine	103. Heel Trimming	Heel Trimming Machine — Haverhill Shoe Machinery Co. McDowell Heel Trimming Machine — McDowell Shoe Machinery Co. Johnson — A. Johnson & Sons Long — The R. H. Long Mchy. Co., Inc. Tower — Tower Bros.
Heel Breasting Mach. Mod. R Imperial Heel Breasting Machine Mod. B Heel Breasting Machine Mod. W	104. Breasting Heels	Haverhill — Haverhill Shoe Machinery Co. Rowan — Hamel Shoe Mchy. Co W & H — Donnelly Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Edge Trimming Mach. Mod. A Edge Trimming Mach. Mod. B Edge Trimming Mach. Mod. E	105. Trimming Foreparts	Donnelly — Donnelly Mach. Co. Rowan — Hamel Shoe Machinery Co. Briggs-Belmar — Briggs-Belmar Company Tower — Tower Bros. Long — The R. H. Long Mchy. Co., Inc. Haverhill — Haverhill Shoe Mchy. Co.
Goodyear Jointing Machine	106. Jointing (Heels filled at this point if needed) Some manufacturers prefer to have this operation performed by hand as was done universally until recently	
Heel Scouring Mach. Mod. R Heel Scouring Mach. Mod. K Heel Scouring Mach. Mod. Carver.	107. Scouring Heels (Two Scourings) (If heels are filled at this point it is a hand operation)	Rowan — Hamel Shoe Mchy. Co. Buzzell — J. G Buzzell & Co Globe — The Boylston Mfg. Co. Tower — Tower Bros. Heel-Scouring Mach.— A. Johnson & Sons Carver Heel Scouring Mach.— Donnelly Mach. Co.
Heel Breast Scouring Machine Mod. H Heel Breast Scouring Machine N	108. Scouring Breasts	Buzzell — J. G. Buzzell & Co. Donnelly — Donnelly Machine Co. Freeman — The Louis G. Freeman Co. Rowan — Hamel Shoe Machinery Company
	109. Blacking Forepart Edges (Hand Work)	Dougherty — Frank B. Dougherty Bendix — Geo. Bendix.
Rotary Edge Setting Machine Mod. C Rotary Edge Setting Mach. Mod. K Twin Edge Setting Mach. Mod. R Single Edge Setting Mach. Mod. M	110. Setting Edges (Two Settings)	Freeman — The Louis G. Freeman Co Union — The Boylston Mfg. Co. Beaudry — Beaudry Mach. Co. Union (Single) — The Boylston Manufacturing Co. Vici Edge Setting Machine — Independent Shoe Machinery Co. Rotary Edge Setting Mach.— Donnelly Machine Co. Edge Setting Machine — A. Johnson & Sons Rotary — Tower Bros.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Crest Heel Blacking Machine	111. Blacking Heel Edges	Boylston — The Boylston Mfg. Co. Star — Worcester Machinery Co.
None (Xpedite Finishing Mach. put out by United Xpedite Finishing Co.)	112. Heel Burnishing	Harlow Heel Burnishing Mach.— Harlow Shoe Finishing Mach. Co. Boylston (or Copeland) — The Boylston Mfg. Co. Apex — Worcester Machinery Co. Matson — Matson-Hoyt Machine Co. Beckman — A. Beckman Keyco Universal Finishing Machine — The Keighley Co., Inc.
	113. Inspecting and Crowning (Hand Work)	
	Finishing Room	
Buffing Machine Mod. S Buffing Machine Mod. G	114. Buffing Bottoms	Donnelly — Donnelly Machine Co. Tower — Tower Bros. Buzzell — J. G. Buzzell & Co. Rowan — Hamel Shoe Machinery Co. Giant — The Boylston Mfg. Co. Webster — The Boylston Mfg. Co. Hawkins — Seelye Mfg. Co.
	115. Pulling Lasts and Cutting Lacing (Hand Work)	
	116. Naumkeaging Shanks (Buffing)	Naumkeag (Single Head) — Naumkeag Buffing Machine Co. Naumkeag (Double Head) — Naumkeag Buffing Machine Co. Pine — J. A. Pine Naumkeag (Single Head) — A. Johnson & Sons
	117. Marking Shanks (Hand Work)	
	118. Staining Foreparts (Hand Work)	
	119. Blacking Shanks and Toplifts (Hand Work)	
Climax Finishing Shafts Climax Polishing Mch. Mod. X Climax Finishing Mch. Mod. X Climax Finishing & Brush Cleaning Mch. Mod. X	120. Polishing Foreparts	Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Co. Long — The R. H. Long Mchy. Co., Inc.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Donnelly — Donnelly Machine Co.
		American — American Worsted Machinery Co.
		Special — The Special Mchy. & Tool Co.
		Victor — Victor Shoe Mchy. Co.
		Johnson — A. Johnson & Sons
		Keighley — The Keighley Co., Inc.
		American — The American Tool & Machine Co.
		Universal — Universal Shoe Mchy. Company
Climax Finishing Shafts	121. Polishing Shanks and Toplifts	Progressive — Progressive Shoe Machinery Co.
Climax Finishing Mch. Mod. X		Champion — Champion Shoe Mchy. Co.
Climax Polishing Mch. Mod. X		Landis — Landis Machine Co.
Climax Finishing & Brush Cleaning Mch. Mod. X		Specialty — Specialty Shoe Mchy. & Tool Co.
		Long — The R. H. Long Mchy. Co., Inc.
		Donnelly — Donnelly Machine Co.
		American — American Worsted Machinery Co.
		Special — The Special Machinery & Tool Co.
		Victor — Victor Shoe Mchy. Co.
		Johnson — A. Johnson & Sons
		Keighley — The Keighley Co., Inc.
		American — The American Tool & Machine Co.
		Universal — Universal Shoe Mchy. Co.
	122. Wheeling Shanks (Hand Work)	
Regent Stamping Machine	123. Stamping Foreparts	Star — C. D. Wheeler
Stamping Machine Mod. R		Ellison — J. Ellison
		Holt — J. S. Holt & Co., Inc.
		Tower — Tower Bros.
Stitch & Upper Cleaning Machine	123a. Cleaning Uppers	Webster — The Boylston Mfg. Co.
Booth Shaping & Cleaning Machine		Keighley — The Keighley Co., Inc.
	Treeing Room.	
	124. Placing Heel Pods and Tack Detecting (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Miller Twin Treeing Mach., formerly, but not now, leased by United Co.	125. Treeing	Copeland — The Boylston Mfg. Co. Improved Flexor — Boston Last Co. Improved Flexor 8 Arm —Boston Last Co. Pneumatic — W. J. Young Mach. Co. Treeing Machine — A. Johnson & Sons Hobbs & Lewis — Hobbs & Lewis, Ltd.
	126. Lacing Shoes (Hand Work)	
Climax Finishing Shafts		Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. Co. Long — The R. H Long Mchy. Co., Inc. Donnelly — Donnelly Machine Co. American — American Worsted Machinery Co. Special — The Special Mach. & Tool Co. Victor — Victor Shoe Mchy. Co. Johnson — A. Johnson & Sons Keighley — The Keighley Co., Inc. American — The American Tool & Machine Co. Universal — Universal Shoe Mchy. Company
	129. Inspecting and Crowning (Hand Work)	
	Packing Room.	
	130. Labeling Cartons (Hand Work)	
None	131. Marking Cartons	Markem — Markem Machine Co.
	132. Matching Cartons, Wood Cases and Shoes (Hand Work)	
	133. Packing Shoes in Cartons (Hand Work)	
	134. Boxing (Hand Work)	
	135. Stenciling Cases (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	136. Numbering Cases (Hand Work)	
	137. Nailing Covers to Cases (Hand Work)	

ADDITIONAL OPERATIONS.

If Shoe Manufacturers prepare counters themselves the following operations should be added in the Sole Leather Room:

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
Gearless Sole Cutting Machines	1. Dieing out Counters	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
None	2. Wetting Counters	Stewart — Stewart Bros.
Monarch Box Toe & Counter Skiving Machine Counter Skiving Machine Mod. W & S	3. Skiving Counters	Young — W. J. Young Machy. Co. Hartwell — L. L. Hartwell Stewart — Stewart Bros. Moenus — Moenus Machine Wks.
None	4. End Finishing Counters	Thurston — W. J. Young Machy. Co. Stewart — Stewart Bros. Moenus — Moenus Machine Wks.
Velvet Box Toe Buffing Machine	5. Buffing Counters	Perfection — W. J. Young Mchy. Co.
None	6. Rolling and Waxing Counters	Stewart — Stewart Bros. Young — W. J. Young Mchy. Co.
None	7. Moulding Counters	Young — W. J. Young Machinery Co. Stewart — Stewart Bros.

MEN'S GOODYEAR WELT.

For Button Shoes the following operations should be added in the Stitching Room:

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machine of other Dealers
None	1. Closing Outside of Fly to Top	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " Metropolitan — The Metropolitan Sewing Machine Co. Puritan — Puritan Mfg. Co. #3 — Union Lockstitch Co.

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
		Davis — The Davis Sewing Mach. Company
Rapd Seam Rubbing Machine	2. Rubbing Button-fly Seam	Champion — Coburn & Lawrence Company Boston — Boston Mach. Works Company Union — " " " " Hand Method — Shawmut Machinery Company
None	3. Staying Button-fly Seam	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Company W & W — " " " " #3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Machine Company
None	4. Cementing in Button-fly Stay	Wheeler — Brockton Stay Co.
None	5. Closing Fly Lining to cloth lining	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Company W & W " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company
None	6. Closing Fly outside and lining back to back	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Company W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company

U. S. M. Co. Machines of	Additional Operations for Button Shoes	Machines of other Dealers
Columbia Beading Mach. Victor Beading Mach. Turning & Beading Mach.	7. Turning and Cording Button Fly	Monarch — Boston Machine Wks. Co. Boston — Boston Machine Wks. Co. Hart — Hamel Shoe Machinery Co. Nangle — J. H. Nangle
None	8. Stitching First row around Fly	Singer — Singer Sewing Mach. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mch. Co.
None	8a. Marking for Buttonholes	Adams — Adams Mfg. Co. Button Marking Machine — Shoe Manufacturers Supply Co.
Buttonhole Making Machine	9. Making Buttonholes	Reece — The Reece Buttonhole Machine Co.
Buttonhole Finishing Machine	10. Finishing Buttonholes	Reece — The Reece Buttonhole Machine Co. Singer — Singer Sewing Mach. Co.
None	11. Barring Button Fly at Bottom 12. Marking Top for Buttons (Hand Work)	Singer — Singer Sewing Mach. Co.
None	13. Attaching Buttons	Morley — Singer Sewing Mach. Co. R & M — Peerless Machinery Co. Singer — Singer Sewing Mach. Co. Universal — Elliott Mfg. Co. Elliott — Elliott Mfg. Co. Heaton Peninsular — Elliott Manufacturing Co. Reece — The Reece Buttonhole Machine Co.

Women's Goodyear Welt Gun Metal, Cut-off Toe, Fox Blucher.

Cutting Room.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine	1. Cutting Vamps, Tops, Foxings & Tongues 2. Sorting (Hand Work)	Parsons'— Parsons Mchy. Co. Seelye — Seelye Mfg. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	2a. Crimping Vamps	Lockett — Lockett Crimping Machine Co.
Ideal Clicking Mach. Improved Gearless Sole Cutting Machine Imp. Geared Sole Cutting Machine	3. Cutting Doublings for Light Uppers	Eclipse — Parsons Machinery Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Hub Lining Cementing Machine	4. Doubling	K & K — Geo. Knight & Co. Peerless — Peerless Mchy. Co. Mathey — Coburn & Lawrence Co. Weber — J. H. Nangle Hand Power — Shawmut Mchy. Co. Simplex Cloth Backing Mach.— Boston Last Co. Davis Electric Taping Machine — The Davis Sewing Machine Co. Ft. Power — Shawmut Machinery Co.
	5. Casing (Dividing Sizes to match Tags) (Hand Work)	
Ideal Clicking Machine Improved Gearless Sole Cutting Machine Improved Geared Sole Cutting Machine	6. Cutting Cloth Linings and Doublers	Eclipse — Parsons Machinery Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine Mods. J & K	7. Cutting Box Toe Material	Eclipse — Parsons Machinery Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine Mods. J & K	8. Cutting Reinforcement and Water-proof Material for Box Toe	Eclipse — Parsons Machinery Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
	9. Assembling Cut Stock for Stitching Room (Hand Work)	
Ideal Clicking Machine	10. Cutting Heel Stays, Facings and Hook Stays	Parsons — Parsons Machinery Co. Seelye — Seelye Mfg. Co.
	Stitching Room.	
	11. Checking work into room (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	12. Checking Day Sheet and Division of Leather Parts for Skivers (Hand Work)	
Amazeen Skiving Machine Pluma Skiving Machine	13. Skiving Parts of Uppers	Universal — Peerless Machinery Company Fortuna — Fortuna Machine Co. Pierce — C. S. Pierce Amazeen Type — A. Johnson & Sons " " — Donnelly Machine Company
Snipping Machine: Booth Sandal	13a. Snipping Preparatory to Folding	Power — Boston Machine Wks. Co. Hart — Hamel Shoe Mchy. Co. Boston (6 ft. Power Types) — Boston Machine Works Co. Snipping & Cementing Machine — Boston Machine Works Co.
None	14. Stitching Eyelet Rows	Singer — Singer Sewing Mach. Co. Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co.
None	14a. Cementing Edges of Uppers	Economy — Peerless Mchy. Co. Duplex — Peerless Mchy. Co. New York — Boston Machine Wks. Company Snipping & Cementing Machine — Boston Machine Works Co.
None	15. Folding Front Edges of Tops	New Vamp — Boston Machine Wks. Co. Foot Power — Boston Machine Wks. Co. Boston — Boston Machine Wks. Co. Booth " " " " Dunn — " " " " Rapid Hand Method — Perley R. Glass Co. Straight Edge — American Worsted Machinery Co. Lufkin — R. H. Lufkin New Cylinder — Perley R. Glass Company
None	16. Closing Tops	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " "

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Union Special — Union Special Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company
Rapid Seam Rubbing Machine	16a. Seam Rubbing	Hand Method — Shawmut Mchy. Co. Champion — Coburn & Lawrence Co. Boston — Boston Machine Wks. Co. Union — " " " "
None	17. Stitching Outside Stays	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Metropolitan — The Metropolitan Sewing Machine Company Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company
None	18. Closing Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company
None	19. Stitching Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company
None	20. Stamping sizes and Case Number on Cloth Linings	Power Lining Marking Machine — Markem Machine Co.
		Various Hand Devices
None	21. Stitching Eyelet Stays	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Mch. Co.
None	22. Stitching Heel Stays and Closing Linings	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company
None	23. Stitching Top Facings to Linings	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Machine Company
Embossing Machine Model B	23a. Embossing Top Faces	Simplex — Boston Last Co.
		Universal — Markem Machine Co.
Embossing Machine		Silver King — " " "

Machines of U. S. M. Co. Model R	Operations	Machines of other Dealers
		Freeman — The Louis G. Freeman Company
None	24. Closing Linings to Top, Back to Back	Perkins — Perkins Machinery Co. Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Mach. Company
	25. Cementing Tops (Hand Work)	
Columbia Beading Machine	26. Turning Edge on Beading Machine	Monarch — Boston Mach. Wks. Co. Boston — " " " "
Victor Beading		Hart — Hamel Shoe Mchy. Co.
None	27. Undertrimming, Stitching around Top from Nose to Nose, and Trimming off Surplus Facings	Nangle — J. H. Nangle Singer — Singer Sewing Mach. Co. W & W — " " " " Metropolitan — The Metropolitan Sewing Machine Co.
	27a. Blacking Front of Tops if raw edges	
None		Coburn — Coburn & Lawrence Co. Peerless — Peerless Machinery Co.
Duplex Eyeletting Mach. Perfection Eyeletting Mach. Universal Pwr. Eyeletting Mach. Merrick Pwr. Eyeletting Mach. Samson Pwr. Eyeletting Mach. Power Eyeletting Mach. Cameo Ft. Pwr. Eyeletting Mach. Vulcan Ft. Pwr. Eyeletting Mach.	28. Eyeletting	Peerless Rapid — Peerless Mchy. Company Power — Geo. Knight & Co. Ft. Power Gang — Geo. Knight & Co. Peerless Gang — Peerless Mchy. Co. "A" Machine — Am. Worsted Mchy. Co. "B" Machine — Am. Worsted Mchy. Co. Monitor — Am. Worsted Mchy. Co. Eureka — " " " "
	29. Marking Vamp for Toe Stiffening (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	30. Stitching Toe Stiffening and Water-proof Material to Toe of Vamp	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co.
Royal Perforating Mach. Model B Stanbon Perforating Mach. Model M	31. Perforating Tip	Hart #6 — Hamel Shoe Mchy. Co. Hart Mod. A.—Hamel Shoe Mchy. Co. Barber — L. L. Barber & Co. American — Am. Worsted Mchy. Co. Peerless — Peerless Mchy. Co. Punch Feed — Hamel Shoe Mchy. Co. Johnson — A. Johnson & Sons
None	32. Stitching Tip to Vamp	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Puritan — Puritan Mfg. Co. No. 3 — Union Lockstitch Co. Davis — The Davis Sewing Mch. Co.
None	33. Stitching Tongue between Vamp and Vamp Lining	Singer — Singer Sewing Mch. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company
None	34. Vamping	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Mach. Company
None	35. Bracing Corner of Top to Vamp	Singer — Singer Sewing Mach. Co.
Ensign Lacing Machine Ellis Wire Lacer	36. Lacing Uppers	Rochester Lacer — Boston Machine Works Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	37. Casing Uppers (Hand Work)	
	38. Inspecting Uppers. (Hand Work)	
	Sole Leather Room.	
	39. Moistening Leather in sides (Hand Work)	
Imp. Gearless Sole Cutting Machines	40. Cutting Outersoles, Innersoles, Half Soles, Counters and Toplifts	Eclipse — Parsons Machinery Co.
Imp. Baby Sole Cutting Machine		Seelye — Seelye Mfg. Co.
		Tower — Tower Bros.
		Knox — Quarmby & Hilliker
Victor Rolling Machine	41. Preparing Bellies, Shoulders and Remnants for Cutter; (rolling, splitting and flexing)	Seelye — Seelye Mfg. Co.
Improved Rolling Machine		Knox — Quarmby & Hilliker
		Busfield — Jas. Busfield
Summit Splitting Mach.		Knox — Quarmby & Hilliker
		Hawkins — Seelye Mfg. Co.
		Baby — J. S. Wheeler & Co.
Improved Gearless Sole Cutting Machines	42. Cutting Heel Lifts	Eclipse — Parsons Machy. Co.
		Seelye — Seelye Mfg. Co.
		Tower — Tower Bros.
Wedge Lift Cutting Machine		Knox — Quarmby & Hilliker
		Young Wedge Lift Cutting Machine — W. J. Young Machinery Co.
Centennial Splitting Machines	43. Evening Heel Lifts	Knox — Quarmby & Hilliker
		Hawkins — Seelye Mfg. Co.
Summit Splitting Machines		Baby — J. S. Wheeler & Co.
Champion Heel Lift Skiving Machine	43a. Gouging Heel Lifts	Young — W. J. Young Mchy. Co.
		Bostock — Thos. Bostock & Sons
Pyramid Heel Building Machine	44. Building Heels	Young (Foot Power) — W. J. Young Machinery Co.
Heel Building Mach. Mod. R		Grover — W. J. Young Machy. Co.
		White — F. H. White & Co.
		Bostock — Thos. Bostock & Sons
		Bosworth — W. T. Bosworth
		Fortuna — Fortuna Machine Co.
		Knight — Geo. Knight & Co.
		Pieced Heel — Parsons Mchy. Co.
Handy Heel Press	44a. Pressing Heels	Seelye — Seelye Machy. Co.
Automatic Heel Compressing Machine Mod. #4	45. Compressing Heels	Heel Compressing Machine — W. J. Young Machinery Co.
		Heel Compressing Machine — Gimson & Co., Ltd.
Automatic Heel Compressing Ma-		Knox — Quarmby & Hilliker

Machines of U. S. M. Co. chine Mod. #5	Operations	Machines of other Dealers
		Heel Compressing Mach.— Nolle's Works
	46. Placing Heels in Boxes ready for use (Hand Work)	
Summit Splitting Machs.	47. Evening Outersoles	Knox — Quarmby & Hilliker Hawkins — Seelye Mfg. Co. Nichols — Lacene Mfg. Co. Baby — J. S. Wheeler & Co.
Victor Rolling Machine	48. Rolling Outersoles	Knox — Quarmby & Hilliker
Improved Rolling Machine		Busfield — Jas. Busfield Seelye — Seelye Mfg. Co.
	49. Sorting Outersoles (Hand Work)	
	50. Matching Cut Stock with Tags (Hand Work)	
Eagle Sole Stamping Machine	51. Stamping Sizes on Soles	Nichols Grading Machine — Lacene Manufacturing Co. Various Hand Devices
	52. Casing Soles for Sizes and Pairs (Hand Work)	
	53. Stamping Case Number on Top Soles (Hand Work)	
Apex Feather Edge & Shank Reducing Machine Goodyear Outsole Channel Shank Reducing Machine Rotary Feather Edge & Shank Reducing Machine	54. Reducing Shanks	Rapid — Theo. Ringerbach Knight — Geo. Knight & Co. American — American Worsted Machinery Co.
American Twin Sole Moulding Machine Single Sole Moulding Machine	55. Moulding Outsoles (if desired)	Knox — Quarmby & Hilliker C & J — The Boylston Mfg. Co. Hawkins — Seelye Mfg. Co.
	56. Sorting Innersoles (Hand Work)	
	57. Matching Innersoles with Tags (Hand Work)	
Planet Sole Rounding Machine	58. Rounding Innersoles	Julian — The Boylston Mfg. Co. Improved Loewer — Consolidated Rotary Rounder Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Ross — Consolidated Rotary Rounder Co.
Insole Lip Cutting, Scoring & Sizing Mach. Eagle Sole Stamping Mch.	59. Stamping Sizes on Innersoles	Nichols Grading Machine — Lacene Manufacturing Co.
		Hand Devices
	60. Casing Innersoles (Hand Work)	
Goodyear Channeling Mch. Goodyear Universal Channeling Machines	61. Channeling Innersoles	Channeling Machine (Duplessis) — The R. H. Long Mchy. Co., Inc. Haverhill — Turn Channeler — Haverhill Shoe Mchy. Co. Hamel — Hamel Shoe Mchy. Co.
Goodyear Insole Toe Snipping Machine	62. Cutting Channel of Innersoles for Turning	Flap Slashing Mach.— Boston Machine Works Co.
Insole Lip Cutting, Scoring & Sizing Mach.	(Largely done by hand)	Insole Snipping & Pinking Mach.— Boston Machine Works Co.
Goodyear Flexible Sole Mch. (Zeigler) Goodyear Power Flexible Innersole Mach. Mod. XB Goodyear Flexible Sole Machine (Power)	63. Flexing Innersoles (if Necessary)	
	64. Wetting Innersoles (Hand Work)	
Goodyear Lip Turning Machine Goodyear Lip Turning Machine Mod. X Goodyear Lip Turning & Slashing Machine	65. Turning Channels	Lip Turning Machine — Haverhill Shoe Machinery Co. American — American Worsted Machinery Co. Knight — Geo. Knight & Co. Duplessis — Hamel Shoe Machinery Company Long — The R. H. Long Machinery Company, Inc.
	66. Finishing Channel Shoulders (Hand Work)	
	67. Inspecting Channels (Hand Work)	
	68. Packing Innersoles in Boxes with counters ready for Laster (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	69. Matching Innersoles and Counters with Uppers (Hand Work)	
Goodyear Power Welt Grooving & Beveling Machine	70. Grooving & Beveling Welting	Haverhill — Haverhill Shoe Machinery Co. Long — The R. H. Long Mchy. Co., Inc. Hamel — Hamel Shoe Machinery Company

IF REINFORCED INNERSOLES.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Channeling Mach. Goodyear Universal Channeling Machine (Gem) Economy Insole Channeling Machine	70a. Channeling Economy & Gem Innersole	Various shoe manufacturers, e. g., W. H. McElwain & Co. and A. H. Berry Shoe Co., make special types of reinforced innersoles and have machine of their own for the purpose Channeling Machine — The R. H. Long Mchy. Co., Inc. (Gem) Haverhill — Haverhill Shoe Mchy. Co. (Gem) Hamel — Hamel Shoe Machy. Co. (Gem)
At toe — Goodyear Insole Toe Snipping Machine At shank — Hand work until recently (But see Operation 70d below) Insole Lip Cutting, Scoring, Sizing Mach	70b. Cutting Flap of Gem Innersole for Turning	See Note above under 70a. Flap Slashing Mach.— Boston Mch. Works Co. Insole Snipping & Pinking Mach.— Boston Machine Wks. Co.
Economy Insole Wetting Machine Mod. X	70c. Wetting Innersole (Until recently done by hand)	See note above under 70a.
Gem Lip Turning Mach. Goodyear Lip Turning & Slashing Machine (This machine also cuts the flap — Operation 70b) Goodyear Lip Turning Mch. Mod. X	70d. Turning Lip of Innersole	Lip Turner — Haverhill Shoe Machinery Co. American — Am. Worsted Mchy. Co., Knight — Geo. Knight & Co. Duplessis — Hamel Shoe Mchy. Co. Duplessis — Hamel Shoe Mchy. Co. Long — The R. H. Long Mchy. Co. Inc.

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Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	70e. Heating and Placing Gem Canvas	The various rubber companies which supply coated or prepared canvas, viz, The Clifton Manufacturing Co., The Plymouth Rubber Co., and the Walpole Shoe Supply Co., furnish the machine used for these operations
Gem Flexible Innersole Machine	70f. Forming and Trimming Canvas to Shoulder of Innersole	See note above under 70n.
Economy Reinforcing Machine		
None		Rib Tighteners or Hardeners — Plymouth Rubber Co. Walpole Shoe Supply Co. (These machines complete the reinforcing operation)
	Lasting Room.	
	71. Putting up Lasts on Racks (Hand Work)	
Staple Tacking Mch.	72. Tacking Innersoles to Lasts	Freeman Insole Tacker — The Louis G. Freeman Co.
USMC Innersole Tacking Machine No. 1.		
Rex Assembling Mach. Mod. E	73. Assembling (Many Manufacturers assemble by hand work)	
Rex Pulling Over Mach. Mods. A & C	74. Pulling over Uppers	Atlas — Atlas-Werke Pohler & Co. Victor — Nolle's Works Moenus — Moenus Machine Wks. Pulling-over — Ward & Gent
Consolidated Hand Method Lasting Machine, Welt, Side.	75. Lasting Sides of Shoes	Welt Lasting Mach.— Gimson & Co. Consolidated Type — Standard Engineering Co. Consolidated Type — Atlas-Werke Pohler & Co.
No. 5 USMC Lasting Mach. Ideal Lasting Machine Chase Lasting Machine Consolidated Hand Method Laster (Welt Machine)	76. Lasting	"Standard Rotary Rapid Lasting Machine"— Standard Rotary Machine Co., Ltd. Lasting Machine (Bed Type) — Atlas-Werke Pohler & Co. Lasting (Bed Type) Machine — The R. H Long Mchy. Co., Inc. Consolidated Type Laster for Welt & McKay Work — The Standard Engineering Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Welt Lasting Mch.— Gimson & Co., Ltd. "Bed Type"— Gimson & Co., Ltd. Victor — Nolle's Works Boston Lasting Mach.— A. Johnson & Sons "Bed Type"— Standard Rotary Machine Co., Ltd. Freeman Toe — The Louis G. Freeman Co. Freeman Heel Seat — The Louis G. Freeman Company Lasting Machine — Ward & Gent Bed Type — The Boylston Mfg. Co. Consolidated Type — Atlas-Werke Pohler & Co.
	77. Inspecting and Crowning (Hand Work)	
Rex Upper Trimming Machine Mod. H.	78. Upper Trimming (Done by hand in many factories)	
	Bottoming Room	
Goodyear Tack Pulling & Resetting Machine Goodyear Upper Tack Pulling Machine (Pulling only) Rapid Tack Pulling Mach.	79. Pulling Tacks & Resetting Tacks (Many manufacturers prefer to perform the setting and some the pulling also by hand)	The K. P. (Krentler-Pym) Tack Puller & Lifter — The Louis G. Freeman Co.
Goodyear Welt & Turn Shoe Machine Goodyear Welt & Turn Shoe Machine Mod. G Goodyear Welt & Turn Mach. Mod. K Goodyear Universal Machine	80. Welting	Haverhill Turn Sewer & Welter — Haverhill Shoe Machy. Co. Welt & Turn Sewer — Hamel Shoe Machinery Co. Universal Welter — Universal Shoe Machinery Co. Welt & Turn Sewing Mach.— Ward & Gent Welt & Turn Sewer — The R. H. Long Machinery Co., Inc. Welt & Turn Sewing Mach.— A. Johnson & Sons Welt Sewing Mach.— The Standard Engineering Co. Welt Sewing Machine — The Boylston Manufacturing Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Universal Inseam Trimming Machine Rapid Inseam Trimmer (lease) Mod. K	81. Inseam Trimming (in many factories manufacturers prefer to have this operation performed by hand)	Keighley Rapid Inseam Trimmer — The Keighley Co., Inc. (sale) Johnson — A. Johnson & Sons
Keighley Rapid Inseam Trimmer (Lease)	82. Trimming and Butting Welt Ends (In most factories manufacturers prefer to have this operation performed by hand)	Keighley Rapid Inseam Trimmer — The Keighley Co., Inc. (sale)
Goodyear Insole Tack Pulling Machine	83. Pulling Insole Tacks	The Combination Insole & Side Tack Puller — The Louis G. Freeman Co.
Goodyear Welt Beating & Slashing Machine Goodyear Universal Welt Beating Machine (Beating Only)	84. Beating and Slashing Welts	Beating Machine — The Standard Rotary Machine Co., Ltd. (Beating Only) Long — The R. H. Long Machy. Co., Inc. (Beating only) Duplessis (Beating only) — Hamel Shoe Machinery Co. Boylston — The Boylston Manufacturing Co. Haverhill — Haverhill Shoe Mchy. Company
Boston Tacking Mach. Taper Nail Tacking Mach. (S. H.) Staple Fastening Mach. Shank Piece Sticking Mach.	85. Tacking in Shanks (usually hand work)	Freeman Insole Tacker — The Louis G. Freeman Co. Tacking Mach.— A. Johnson & Sons Victor — Victor Shoe Mchy. Co.
None	86. Filling Forepart (In some factories manufacturers have preferred to perform this operation by hand)	Besto Filling Machine — North American Chemical Co.
Rapid Rotary Cementing Machine	87. Cementing Soles	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
	88. Wetting Soles (Hand Work)	
Star Channel Cementing Machine (Fitted for Cementing Bottoms)	89. Cementing, Filling and Welts	Union — The Boylston Mfg. Co. Victor — Nolle's Works
Goodyear Improved Turn Sole Laying	90. Laying Soles	Long — The R. H. Long Mchy. Co., Inc.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Machine Mod. C. Goodyear Improved Sole Laying Machine		Sole Layer — Standard Rotary Machine Co., Ltd. Atlas (2 Types) — Atlas-Werke Pohler & Co. Gimson — Gimson & Co., Ltd. Standard — The Standard Engineering Company
Grip Clinch Machine Loose Nailing Mach. No. 2 Loose Nailing Mach.	91. Nailing Heel Seats	Long — The R .H. Long Mchy. Co., Inc. Duplessis Loose Nailer — Hamel Shoe Machinery Co. Universal Loose Nailing Mach.— Universal Shoe Machinery Co. Universal Sole Clinching — Universal Shoe Machinery Co. Victor — Victor Shoe Machy. Co.
Goodyear Universal Rounding & Channeling Mach. Mod. E Goodyear Universal Rounding & Channeling Mach.	92. Rough Rounding and Channeling	"National" Automatic Rounder — Standard Rotary Mach. Co., Ltd. Long National (does not channel)— The R. H. Long Mchy. Co., Inc. Victor — Victor Shoe Mchy. Co. Haverhill — Haverhill Shoe Mchy. Company Arnold (Channel only) — The R. H Long Machinery Co., Inc.
Goodyear Channel Opening Machine Goodyear Channel Opening Machine Mod. X	93. Opening Channels	Opening Mch.— Standard Rotary Machine Co., Inc.
Goodyear Outsole Rapid Lockstitch Machine Mod. M Goodyear Outsole Rapid Lockstitch Machine Goodyear Outsole Rapid Lockstitch Machine Mod. K	94. Stitching	Waldorf —The R. H. Long Mchy. Co., Inc. Universal Stitching Mch.— Universal Shoe Mchy. Co. Union High-Speed Stitching Machine — Union Lockstitch Co. Standard — Standard Rotary Mch. Co., Ltd. Hamel — Hamel Shoe Mchy. Co. Boylston — The Boylston Mfg. Co. Victor Imp.— Victor Shoe Mchy. Company Fleming — Landis Mch. Co. Larsen — Larsen Mchy. Co. Simplex — James Clark Lea. Co. Leger — C. V. Engstrom Co. Atlas — Atlas-Werke Pohler & Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		High Speed — The Standard Engineering Company
		Johnson — A. Johnson & Sons
Star Channel Cementing Machine	95. Cementing Channels	Union — The Boylston Manufacturing Company
Goodyear Channel Laying Machine	95a. Laying Channels	Channel Laying Machine — Standard Rotary Machine Co., Ltd.
Goodyear Channel Laying Machine Mod. X		Standard — The Standard Engineering Co.
		Knight — Geo. Knight & Co.
		American — American Worsted Machinery Co.
Goodyear Automatic Sole Leveling Machine	96. Leveling	Automatic Twin Leveler — Standard Rotary Machine Co., Ltd.
		Webster Welt & Turn — Haverhill Shoe Machinery Co.
Goodyear Automatic Sole Leveling Machine Mod. C		Eclipse — The R. H. Long Mchy. Co., Inc.
Goodyear Welt & Turn Leveling Machine		Ward & Gent — Ward & Gent
		Hamel — Hamel Shoe Mchy. Co.
Welt Trimming & Stitch Rubbing Machine	96a. Stitch Rubbing and welt trimming (if desired)	None
Goodyear Outsole Stitch Rubbing Machine		
Hadaway Stitch Separating Machine	97. Separating Stitches	Long Stitch Separator — The R. H. Long Machinery Co., Inc.
		Stitch Separator — Standard Rotary Mach. Co., Ltd.
		Haverhill — Haverhill Shoe Mchy. Company
Goodyear Heel Seat Rounding Machine	98. Rough Rounding Heel Seats	"Freeman Heel Seat Rounder" (Krentler Heel Seat Machine) — The Louis G. Freeman Co.
Heel Seat Rough Rounding Machine Mod. B		
Goodyear Rounding & Randing Machine		
American Lightning Nailing Machine	99. Heeling	Pettengill Heeling Machine — Haverhill Shoe Machinery Co.
McKay Automatic Heel, Loading & Attaching Machine Mod. B		Johnson — A. Johnson & Sons
		Nolle — Nolle's Works.
		Ward & Gent — Ward & Gent
		National — The R. H. Long Machinery Co., Inc.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Universal Slugging Mach.	100. Slugging	Long — The R. H. Long Machinery Company, Inc. Duplessis Slugging Machine — Hamel Shoe Machinery Co. Boylston — The Boylston Mfg. Co.
Ultima Heel Trimming Machine Busell Heel Trimming Machine McKay Heel Trimming & Randing Machine	101. Heel Trimming	Heel Trimming Machine — Haverhill Shoe Machinery Co. McDowell Heel Trimming Machine — McDowell's Machinery Co. Johnson — A. Johnson & Sons Long — The R. H. Long Machinery Company, Inc. Tower — Tower Bros.
Heel Breasting Mach. Mod. R Imperial Heel Breasting Machine Mod. B Heel Breasting Machine Mod. W	102. Breasting Heels	Haverhill — Haverhill Shoe Machinery Co. Rowan — Hamel Shoe Machinery Co. W & H — Donnelly Machine Co.
Edge Trimming Mach. Mod. A Edge Trimming Mach, Mod. B Edge Trimming Mach. Mod. E	103. Trimming Foreparts	Donnelly — Donnelly Machine Co. Rowan — Hamel Shoe Machinery Co. Briggs-Belmar — Briggs-Belmar Co. Tower — Tower Bros. Long — The R. H. Long Mchy. Co., Inc. Haverhill — Haverhill Shoe Mchy. Company
Goodyear Jointing Machine	104. Jointing (Heels filled at this point if necessary.) Some Manufacturers prefer to have this operation performed by hand as was done universally until recently (If heels are filled at this point it is a hand operation)	
Heel Scouring Mach. Mod. R Heel Scouring Mach. Mod. X Heel Scouring Mach. Carver	105. Scouring Heels (two scourings)	Rowan — Hamel Shoe Machinery Co. Buzzell — J. G. Buzzell & Co. Globe — The Boylston Mfg. Co. Tower — Tower Bros. Heel Scouring Machine — A. Johnson & Sons Carver Heel Scouring Machine — Donnelly Machine Co.
Heel Breast Scouring Mch. H	106. Scouring Heel Breasts	Buzzell — J. G. Buzzell & Co. Donnelly — Donnelly Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Heel Breast Scouring Mch. N		Freeman — The Louis G. Freeman Co. Rowan — Hamel Shoe Machinery Co. Dougherty — Frank B. Dougherty Bendix — George Bendix
	107. Blacking Forepart Edges. (Hand Work)	
Rotary Edge Setting Mach. Mod. C. Rotary Edge Setting Mach. Mod. K Twin Edge Setting Mach. Mod. R Single Edge Setting Mach. Mod. M	108. Setting Edges (2 Settings)	Freeman — The Louis G. Freeman Company Union — The Boylston Mfg. Co. Beaudry — Beaudry Machine Co. Union (Single) — The Boylston Mfg. Co. Vici Edge Setting Mach.— Independent Shoe Machy. Co. Rotary Edge Setting Mach. — Donnelly Machine Co. Edge Setting Mach.— A. Johnson & Sons Rotary — Tower Bros.
Crest Heel Blacking Machine	109. Blacking Heel Edges	Boylston — Boylston Mfg. Co. Star— Worcester Mchy. Co.
None (Xpedite Finish-Machine put out by United Xpedite Finishing Co.)	110. Heel Burnishing	Harlow Heel Burnishing Mach.— Harlow Shoe Finishing Mach. Co. Boylston (or Copeland) — The Boylston Mfg. Co. Apex — Worcester Mchy. Company Matson — Matson-Hoyt Mach. Co. Beckman — A. Beckman Keyco Universal Finishing Mach.— The Keighley Co., Inc.
	111. Inspecting and Crowning (Hand Work)	
	Finishing Room.	
Buffing Machine Mod. S Buffing Machine Mod. G	112. Buffing Bottoms	Donnelly — Donnelly Mach. Co. Tower — Tower Bros. Buzzell — J. G. Buzzell & Co. Rowan — Hamel Shoe Mchy. Co. Giant — The Boylston Mfg. Co. Webster — The Boylston Mfg. Co. Hawkins — Seelye Manufacturing Company
	113. Pulling Lasts (Hand Work)	
None	114. Naumkeaging Shanks (Buffing)	Naumkeag (Single Head) — Naumkeag Buffing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Naumkeag (Twin Head) — Naumkeag Buffing Machine Co. Pine — J. A. Pine Naumkeag (Single Head) — A. Johnson & Sons
	115. Marking Shanks (Hand Work) 116. Staining Foreparts (Hand Work) 117. Blacking Shanks and Toplifts (Hand Work)	
Climax Finishing Shafts Climax Polishing Mch. Mod. X Climax Finishing Mch. Mod. X Climax Finishing & Brush Cleaning Mch. Mod. X	118. Polishing Foreparts	Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Company Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Co. Long — The R. H. Long Machinery Company, Inc. Donnelly — Donnelly Machine Co. American — American Worsted Machinery Co. Victor — Victor Shoe Mchy. Co. Special — The Special Mchy. & Tool Co. Johnson — A. Johnson & Sons. Keighley — The Keighley Co., Inc. American — The American Tool & Machine Co. Universal — Universal Shoe Mchy. Company
Climax Finishing Shafts Climax Finishing Mch. X Climax Polishing Mch. Mod. X Climax Finishing & Brush Cleaning Mch., Mod. X	119. Polishing Shanks and Toplifts	Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Company Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Co. Long — The R. H. Long Machinery Company, Inc. Donnelly — Donnelly Machine Co. American — American Worsted Machinery Co. Victor — Victor Shoe Mchy. Co. Special — The Special Mchy. & Tool Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Johnson — A. Johnson & Sons Keighley — The Keighley Co., Inc. American — The American Tool & Machine Co. Universal — Universal Shoe Mchy. Company
	120. Wheeling Shanks (Hand Work)	
Regent Stamping Machine Stamping Machine Mod. R	121. Stamping Foreparts	Star — O. D. Wheeler Ellison — J. Ellison Holt — J. S. Holt & Co., Inc. Tower — Tower Bros.
Stitch & Upper Cleaning Machine Booth Shaping & Cleaning Machine	121a. Cleaning Uppers	Webster — The Boylston Mfg. Co Keighley — The Keighley Co., Inc.
	Treeing Room.	
	122. Placing Heel Pods and Tack Detecting (Hand Work)	
Miller Twin Treeing Machine Formerly but not now leased by United Co.	123. Treeing	Copeland — Boylston Mfg. Co. Improved Flexor — Boston Last Co. " " (S Arm) " " " Pneumatic — W. J. Young Mchy. Co. Treeing Mch.— A. Johnson & Sons Hobbs & Lewis — Hobbs & Lewis, Ltd. Hobbs & Lewis — Hobbs & Lewis, Ltd.
	124. Lacing Shoes (Hand Work)	
	125. Dressing Shoes (Hand Work)	
Climax Finishing Shafts	126. Brushing Edges	Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Company Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Co. Long — The R. H. Long Machinery Company, Inc. Donnelly — Donnelly Mach. Co. American — American Worsted Machinery Co. Victor — Victor Shoe Mchy. Co. Special — The Special Mchy. & Tool Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Johnson — A. Johnson & Sons. Keighley — The Keighley Co., Inc. American — The American Tool & Machine Co. Universal — Universal Shoe Mchy. Company
	127. Inspecting and Crowning (Hand Work)	
	Packing Room.	
	128. Labeling Cartons (Hand Work)	
None	129. Marking Cartons	Markem — Markem Machy. Co.
	130. Matching Cartons, Wood Cases and Shoes (Hand Work)	
	131. Packing Shoes in Cartons (Hand Work)	
	132. Boxing (Hand Work)	
	133. Stenciling Cases (Hand Work)	
	134. Numbering Cases (Hand Work)	
	135. Nailing Covers to Cases (Hand Work)	

ADDITIONAL OPERATIONS.

If Shoe Manufacturers prepare counters themselves the following operations should be added in the Sole Leather Room:

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
Gearless Sole Cutting Machines	1. Dieing out Counters	Parsons'— Parsons Machinery Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
None	2. Wetting Counters	Stewart — Stewart Bros.
Monarch Box Toe & Counter Skiving Mach. Counter Skiving Mach. Mod. W & S	3. Skiving Counters	Stewart — Stewart Bros. Young — W. J. Young Mchy. Co. Hartwell — L. L. Hartwell Moenus — Moenus Mch. Works

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
None	4. End Finishing Counters	Thurston — W. J. Young Mchy. Co. Stewart — Stewart Bros. Moenus — Moenus Mach. Works
Velvet Box Toe Buffing Machine	5. Buffing Counters	Perfection — W. J. Young Mchy. Co.
None	6. Rolling and Waxing Counters	Stewart — Stewart Bros. Young — W. J. Young Machinery Company
None	7. Moulding Counters	Young — W. J. Young Mchy. Co. Stewart — Stewart Bros.

WOMEN'S GOODYEAR WELT.

For Button Shoes the following operations should be added in the Stitching Room:

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
None	1. Closing outside of Fly to top	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Machine Co. W & W — " " " " Metropolitan — The Metropolitan Sewing Machine Co. Puritan — Puritan Mfg. Co. No. 3 — Union Lockstitch Co. Davis — The Davis Sewing Machine Company
Rapid Seam Rubbing Machine	2. Rubbing Button-fly Seam	Champion — Coburn & Lawrence Co. Boston — Boston Mach. Works Co. Union — " " " " Hand Method — Shawmut Machinery Company
None	3. Staying Button-fly Seam	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Mach. Company
None	4. Cementing in Button-fly Stay	Wheeler — Brockton Stay Co.
None	5. Closing Fly Lining to cloth lining	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " "

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Co.
None	6. Closing Fly outside and lining back to back	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mch. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Co.
Columbia Beading Mach. Victor Beading Mach. Turning & Beading Mach.	7. Turning and Cording Button Fly	Monarch — Boston Mach. Wks. Co. Boston — " " " " Hart — Hamel Shoe Machinery Co. Nangle — J. H. Nangle
None	8. Stitching first row around Fly	Singer — Singer Sewing Mach. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company
None	8a. Marking for Buttonholes	Adams — Adams Manufacturing Co. Button Making Machine — Shoe Manufacturers' Supply Co.
Buttonhole Making Machine	9. Making Buttonholes	Reece — The Reece Buttonhole Machine Co.
Buttonhole Finishing Machine (New machine, none yet leased)	10. Finishing Buttonholes	Reece — The Reece Buttonhole Machine Company Singer — Singer Sewing Mach. Company
None	11. Barring Button Fly at bottom 12. Marking Top for Buttons (Hand Work)	Singer — Singer Sewing Mach. Company

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
None	13. Attaching Buttons	Morley — Singer Sewing Mach. Company R. & M.— Peerless Machinery Co. Singer — Singer Sewing Machine Company Universal — Elliott Mfg. Co. Elliott — Elliott Manufacturing Company Heaton-Peninsular — Elliott Manufacturing Co. Reece — The Reece Buttonhole Machine Co.

Women's Turn Gun Metal, Cut-off, Toe, Fox Blucher.

Cutting Room

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine	1. Cutting Vamps, Tops, Foxings & Tongues.	Parsons'— Parsons Machinery Co. Seelye — Seelye Mfg. Co.
	2. Sorting (Hand Work)	
None	2a. Crimping Vamps	Lockett — Lockett Crimping Machine Co.
Improved Gearless Sole Cutting Machine Ideal Clicking Machine Imp. Geared Sole Cutting Machine	3. Cutting Doublings for Light Uppers.	Eclipse — Parsons Machinery Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Hub Lining Cementing Machine	4. Doubling	K & K — Geo. Knight & Co. Peerless — Peerless Mchy. Co. Mathey — Coburn & Lawrence Co. Weber — J. H. Nangle Foot Power — Shawmut Mchy. Co. Hand " — " " " " Simplex Cloth Backing Machine — Boston Last Co. Davis Electric Taping Machine — The Davis Sewing Machine Co.
	5. Casing (Dividing Sizes to match Tags) (Hand Work)	
Improved Gearless Sole Cutting Ma-	6. Cutting Cloth Linings and Doublers	Eclipse — Parsons Machinery Co. Seelye — Seelye Mfg. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
chine		Tower — Tower Bros.
Ideal Clicking Machine		Knox — Quarmby & Hilliker
Imp. Geared Sole Cutting Machine		
Improved Gearless Sole Cutting Machine Mods. J & K	7. Cutting Box Toe Material	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine Mods. J & K	8. Cutting Reinforcement and Water-proof Material for Box Toe	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
	9. Assembling Cut Stock for Stitching Room (Hand Work)	
Ideal Clicking Machine	10. Cutting Heel Stays, Facings and Hook Stays	Parsons — Parsons Machinery Co. Seelye — Seelye Manufacturing Co.
	Stitching Room.	
	11. Checking work into room (Hand Work)	
	12. Checking Day Sheet and Division of Leather Parts for Skivers (Hand Work)	
Amazeen Skiving Machine	13. Skiving Parts of Uppers	Universal — Peerless Machinery Co.
Pluma Skiving Machine		Fortuna — Fortuna Machine Co. Pierce — C. S. Pierce Amazeen Type — A. Johnson & Sons " " — Donnelly Machine Company
Snipping Machine Booth Sandal	13a. Snipping Preparatory to Folding	Hart — Hamel Shoe Mchy. Co. Boston (6) Foot Power Types — Boston Machine Works Co. Power — Boston Mach. Wks. Co. Snipping & Cementing Machine — Boston Machine Works Co.
None	14. Stitching Eyelet Rows	Singer — Singer Sewing Mach. Co. Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Met. Sewing Machine Co.
None	14a. Cementing Edges of Uppers	Duplex — Peerless Machy. Co. Economy — " " "

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		New York — Boston Mach. Wks. Co.
		Snipping & Cementing Machine — Boston Machine Wks. Co.
None	15. Folding Front Edges of Tops	New Vamp — Boston Mach. Wks. Co.
		Foot Power — " " " "
		Boston — " " " "
		Booth — " " " "
		Dunn — " " " "
		Rapid Hand Method — Perley R. Glass Co.
		New Cylinder — Perley R. Glass Company
		Straight Edge — American Worsted Machinery Co.
		Lufkin — E. H. Lufkin
None	16. Closing Tops	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Machine Company
		W & W — Singer Sewing Machine Company
		Union Special — Union Special Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company
Rapid Seam Rubbing Machine	16a. Seam Rubbing	Hand Method — Shawmut Mchy. Co.
		Champion — Coburn & Lawrence
		Boston — Boston Machine Wks. Co.
		Union — Boston Mach. Wks. Co.
None	17. Stitching Outside Stays	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Machine Company
		W & W — Singer Sewing Machine Co.
		Union Special — Union Special Sewing Machine Co.
		#3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Davis — The Davis Sewing Machine Company
None	18. Closing Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Machine Company W & W — Singer Sewing Machine Co. Union Special — Union Special Sewing Machine Co. #3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company
None	19. Stitching Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company.
None	20. Stamping Sizes and Case Number on Cloth Linings	Power Lining Marking Machine — Markem Machine Co. Various Hand Devices
None	21. Stitching Eyelet Stays	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Machine Company
None	22. Stitching Heel Stays and Closing Linings	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Machine Company
None	23. Stitching Top Facings to Linings	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Machine Company
Embossing Machine Model B	23a. Embossing Top Faces	Simplex — Boston Last Co.
		Universal — Markem Machine Co.
Embossing Machine Model B		Silver King — " " "
		Freeman — The Louis G. Freeman Company
		Perkins — Perkins Machine Co.
None	24. Closing Linings to Top, Back to Back.	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Mach. Co.
	25. Cementing Tops (Hand Work)	
Columbia Beading Machine	26. Turning Edges on Beading Machs.	Monarch — Boston Machine Wks. Co.
		Boston — " " " "
		Hart — Hamel Shoe Mchy. Co.
		Nangle — J. H. Nangle
None	27. Undertrimming, Stitching around Tops from Nose to Nose, and Trimming off Surplus facings	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Metropolitan — The Met. Sewing Machine Company

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	27a. Blacking Front of Tops; if raw edges	Coburn — Coburn & Lawrence Co. Peerless — Peerless Mchy. Co.
Duplex Eyeletting Mach. Perfection Eyeletting Mach. Universal Pwr. Eyeletting Mach. Merrick Eyeletting Mach. Samson Eyeletting Mach. Power Eyeletting Mach. Cameo Ft. Pwr. Eyeletting Mach. Vulcan Ft. Pwr. Eyeletting Mach.	28. Eyeletting	Peerless Rapid — Peerless Mchy. Co. Peerless Gang — " " " Power — Geo. Knight & Co. Ft. Power Gang — Geo. Knight & Co. A. Mach.— Am. Worsted Mchy. Co. B. " " " " " Monitor — " " " " Eureka — " " " "
	29. Marking Vamps for Toe Stiffening (Hand Work)	
None	30. Stitching Toe Stiffening and Water-proof Material to Toes of Vamps	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co.
Royal Perforating Machine Stanbon Perforating Machine	31. Perforating Tips	Hart #6 — Hamel Shoe Mchy. Co. " Mod. A — " " " Barber — L. L. Barber & Co. Johnson — A. Johnson & Sons American — American Worsted Machinery Co. Peerless — Peerless Mchy. Co. Punch Feed — Hamel Shoe Machy. Company
None	32. Stitching Tips to Vamps	Singer — Singer Sewing Mach. Co. W & W — " " " " Uuion Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Puritan — Puritan Mfg. Co. #3 — Union Lockstitch Co. Davis — The Davis Sewing Machine Machine Co.
None	33. Stitching Tongues be-	Singer — Singer Sewing Mach. Co.

Machines of U. S. N. Co.	Operations	Machines of other Dealers
	tween Vamps and Vamp Linings	W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company
None	34. Vamping	Singer — Singer Sewing Mach. Co. W & W — " " " " Standard — The Standard Sewing Machine Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Mach. Company Union Special — Union Special Sewing Machine Co. No. 3 — Union Lockstitch Co.
None	35. Bracing corners of Tops to Vamps	Singer — Singer Sewing Machine Company
Ensign Lacing Mach. Ellis Wire Lacer	36. Lacing Uppers	Rochester Lacer — Boston Mach. Works Co.
	37. Casing Uppers (Hand Work)	
	38. Inspecting Uppers (Hand Work)	
	Sole Leather Room	
	39. Tempering Block Stock (Wetting) (Hand Work)	
Centennial Splitting Machine	40. Evening or Fleshing Block Stock	Hawkins — Seelye Mfg. Co.
Summit Splitting Machine		Nichols — Lacene Mfg. Co. Baby — J. S. Wheeler & Co. Knox — Quarmby & Hilliker
Planet Sole Rounding Machine	41. Rounding Outersoles	Julian — The Boylston Mfg. Co. Improved Loewer Rounding Mach. — Consolidated Rotary Rounder Company Ross — Consolidated Rotary Rounder Co.
Eagle Sole Stamping Machine	42. Stamping sizes on Outersoles	Nichols Grading Machine — Lacene Mfg. Co. Various Hand Devices
Krieg Splitting Mach. (Hand Power) Empire Splitting Mach.	42a. Splitting Heel of Outer sole for Louis Heel	Busfield — Jas. Busfield

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Channeling Mach.: Goodyear Turn & Insole Channeling Machines: Goodyear Universal	43. Channeling Outersoles	Channeling Mach.— The R. H. Long Machinery Co., Inc. Haverhill Turn Channeling Machine — Haverhill Shoe Machinery Co. Hamel — Hamel Shoe Machinery Company
Goodyear Turn & Insole Channeling Machine	44. Shank Reducing	Rapid — Theo. Ringenbach American — American Worsted Machinery Co. Knight — Geo. Knight & Co.
Goodyear Moulding Machine Goodyear Power Moulding Machine	45. Moulding down Edges of Outersoles	Turn Moulder — Haverhill Shoe Machinery Co. Turn Moulder — Hamel Shoe Machinery Co.
	46. Casing Stock (Hand Work)	
	47. Assembling Sole Leather Counters and uppers (Hand Work)	
	Lasting Room	
	48. Putting up Lasts on Racks (Hand Work)	
USMC Innersole Tacking Machine	49. Tacking Soles to Lasts	Freeman Insole Tacker — The Louis G. Freeman Co.
Assembling Machine Turn Shoe	50. Assembling and Lasting	
Goodyear Welt & Turn Shoe Machine Mod. C Goodyear Welt & Turn Shoe Mod. K McKay Turn Sewing Mach.	51. Stitching.	Haverhill Turn Sewer & Welter — Haverhill Shoe Machinery Co. Welt & Turn Sewer (Duplessis) — Hamel Shoe Machinery Co. Universal Welter — Universal Shoe Machinery Co. Welt & Turn Sewer — The R. H. Long Machinery Co., Inc. Welt & Turn Mch.— A. Johnson & Sons Welt & Turn Mach.— Ward & Gent " " " Sewing Mch.— The Standard Engineering Co. Turn Sewing (Little McKay)— George Hobbs Welt Sewing Mch.— The Boylston Mfg. Co.
	52. Pulling Tacks (Hand Work)	
Goodyear Turn	53. Uppers Trimming	

Machines of U. S. M. Co.	Operations (Hand work to some Extent)	Machines of other Dealers
Shoe Trimming Machine		
Goodyear Insole Tack Pulling Machine	53a. Pulling Sole Tacks	Freeman Combination Insole & Side Tack Pulling Machine — The Louis G. Freeman Co.
	54. Pulling Lasts (Hand Work)	
Heel Turning Machine Forepart Turning Mach.	55. Turning Shoes (Largely Hand Work)	
	56. Filling Shanks and Foreparts (Hand Work)	
Goodyear Re-Lasting Machine Consolidated Hand Method Turn Heel Seat Lasting Machine	57. Re-Lasting & lasting Heel Seats (Largely Hand Work)	Freeman Heel Seat Lasting Machine — The Louis G. Freeman Company
Loose Nailing Machine #2	58. Nailing Heel Seats	Long Loose Nailer — The R. H. Long Machinery Co., Inc. Duplessis Loose Nailer — Hamel Shoe Machinery Co. Universal Loose Nailing Machine — Universal Shoe Machinery Co. Universal Sole Clincher — Universal Shoe Machinery Co. Victor — Victor Shoe Machinery Company
Goodyear Welt & Turn Leveling Machine Star Leveling Machine Acme Leveling Machine	59. Leveling	Eclipse — The R. H. Long Mchy. Company, Inc. Ward & Gent — Ward & Gent Hamel — Hamel Shoe Mchy. Co. Webster Machine — Haverhill Shoe Machinery Company
	Bottoming Room.	
Edge Trimming Mach. A Edge Trimming Mach. B Edge Trimming Mach. E	60. Trimming Edges	Donnelly — Donnelly Machine Co. Rowan — Hamel Shoe Mchy. Co. Briggs-Belmar — Briggs-Belmar Co. Haverhill — Haverhill Shoe Mchy. Company Tower — Tower Bros. Long — The R. H. Long Mchy. Co., Inc.
	61. Blacking Edges (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Fudge Edge Machine	62. Setting Edges and Wheeling Top Edges	Two operations: (a) Wheeling Wheeler — E. L. Wheeler Holt — J. S. Holt & Co., Inc. Donnelly — Donnelly Mch. Co. (b) Edge Setting Freeman — The Louis G. Freeman Co. Union — The Boylston Mfg. Co. Beaudry — Beaudry Mch. Co.
Buffing Machine S Buffing Machine G	63. Buffing Shanks and Foreparts	Donnelly — Donnelly Machine Co. Tower — Tower Bros. Buzzell — J. G. Buzzell & Co. Rowan — Hamel Shoe Mchy. Co. Giant — The Boylston Mfg. Co. Webster — The " " " Hawkins — Seelye Mfg. Co.
None	63a. Buffing Shanks	Naumkeag (Double Head) — Naumkeag Buffing Machine Co. Naumkeag (Single Head) — Naumkeag Buffing Machine Co. Pine — J. A. Pine Naumkeag (Single Head) — A. Johnson & Sons
	64. Pulling Lasts and Cutting Lacers. (Hand Work)	
Premier Heel Pricking Mach. (Pricking before nailing high heel) American Lightning Nailing Machine McKay Automatic Heel Loading & Attaching Mach. Mod. B	65. Heeling	Pettengill Heeling Machine — Haverhill Shoe Machinery Co. Johnson — A. Johnson & Sons Nolle's — Nolle's Works Ward & Gent — Ward & Gent National — The R. H. Long Mchy. Co., Inc.
Alpha Wood Heel Nailing Machine (for wood heels)	(If wood heels, frequently attached by hand)	
Universal Slugging Mach.	66. Slugging	Long — The R. H. Long Mchy. Co., Inc. Duplessis — Hamel Shoe Mchy. Co. Boylston — The Boylston Mfg. Co.
Ultima Heel Trimming Machine McKay Heel Trimming & Randing Machine	67. Trimming Heels	Heel Trimming Machine — Haverhill Shoe Machinery Co. McDowell Heel Trimming Machine — McDowell Shoe Machinery Co. Johnson — A. Johnson & Sons

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Busell Heel Trimming Machine		Long — The R. H. Long Mchy. Co., Inc. Tower — Tower Bros.
Imperial Heel Breasting Machine Mod. B Heel Breasting Machines Mods. R & W	68. Breasting Heels	Haverhill — Haverhill Shoe Machinery Co. Rowan — Hamel Shoe Machinery Co. W & H — Donnelly Machine Co. Buzzell — J. G. Buzzell & Co.
	Finishing Room.	
	69. Applying Filling to Heels (Hand Work)	
Heel Scouring Machine Mod. R & X Carver Heel Scouring Machine	70. Scouring Heels (If heels are filled at this point, it is a hand operation)	Rowan — Hamel Shoe Machinery Co. Buzzell — J. G. Buzzell & Co. Globe — The Boylston Manufacturing Company Tower — Tower Bros. Johnson — A. Johnson & Sons Carver — Donnelly Machine Company
Heel Breast Scouring Machine Mods. H & N	71. Scouring Heel Breasts	Buzzell — J. G. Buzzell & Co. Donnelly — Donnelly Machine Co. Freeman — The Louis G. Freeman Company Rowan — Hamel Shoe Machinery Co. Dougherty — Frank B. Dougherty. Bendix — Geo. Bendix
Crest Heel Blacking Machine	72. Blacking Heels	Boylston — The Boylston Mfg. Co. Star — Worcester Machinery Co.
None (Xpedite Finishing Mach. put out by United Xpedite Finishing Co.)	73. Burnishing Heels	Harlow Heel Burnishing Machine — Harlow Shoe Finishing Machine Company Boylston (or Copeland) — The Boylston Mfg. Co. Apex — Worcester Machinery Co. Matson — Matson-Hoyt Machine Co. Beckman — A. Beckman Keyco Universal Finishing Mach.— The Keighly Co., Inc.
	74. Staining Foreparts (Hand Work)	
	75. Blacking Shanks and Toplifts (Hand Work)	
Climax Finishing Shafts Climax Polishing Mch. Mod. X	76. Polishing Foreparts	Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Company

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Climax Finishing Mch. Mod. X Climax Finishing Brush & Cleaning Mch. Mod. X		Landis — Landis Machine Co. Specialty — Specialty Shoe Machinery & Tool Co. Long — The R. H. Long Shoe Machinery Co., Inc. Donnelly — Donnelly Machine Co. American — American Worsted Machinery Co. American — The American Tool & Machine Co. Victor — Victor Shoe Machinery Company Special — The Special Machy. & Tool Company Johnson — A. Johnson & Sons Keighley — The Keighley Co., Inc. Universal — Universal Shoe Mchy. Company
Climax Finishing Shafts	77. Polishing Shanks and Toplifts	Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Company Landis — Landis Machine Co. Specialty — Specialty Shoe Machinery & Tool Co. Long — The R. H. Long Shoe Machinery Co., Inc. Donnelly — Donnelly Machine Co. American — American Worsted Machinery Co. American — The American Tool & Machine Co. Victor — Victor Shoe Machinery Company Special — The Special Machy. & Tool Company Johnson — A. Johnson & Sons. Keighley — The Keighley Co., Inc. Universal — Universal Shoe Machy. Company
Regent Stamping Mach. Stamping Mach. Mod. B	78. Stamping Foreparts	Star — C. D. Wheeler Ellison — J. Ellison Holt — J. S. Holt & Co., Inc. Tower — Tower Bros.
Stitch & Upper Cleaning Machine Booth Shaping & Cleaning Machine	78a. Cleaning Uppers	Webster — The Boylston Mfg. Co. Keighley — The Keighley Co., Inc.

Treeing Room.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	79. Sock Linings inserted (Hand Work)	
Miller Twin Treeing Machine, formerly but not now leased by the United Co.	80. Treeing	Copeland — The Boylston Mfg. Co. Imp. Flexor — Boston Last Co. " " (8 arm) " " " Pneumatic — W. J. Young Mchy. Co. Johnson — A. Johnson & Sons Hobbs & Lewis — Hobbs & Lewis, Ltd.
	81. Dressing (Hand Work)	
	82. Lacing (Hand Work)	
	83. Inspecting and Crowning (Hand Work)	
	Packing Room	
	84. Labeling Cartons (Hand Work)	
	85. Packing Shoes in Cartons (Hand Work)	
None	86. Marking Cartons	Markem — Markem Machine Co.
	87. Stenciling Cases (Hand Work)	
	88. Numbering Cases (Hand Work)	
	89. Nailing Covers (Hand Work)	

Additional Operations.

If Shoe Manufacturers prepare counters themselves the following operations should be added in the Sole Leather Room:

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
Gearless Sole Cutting Machines	1. Dieing out Counters	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
None	2. Wetting Counters	Stewart — Stewart Bros.
Monarch Box Toe & Counter Skiving Mach.	3. Skiving Counters	Young — W. J. Young Machinery Co.
Counter Skiving Machines Mods. W & S		Thurston — W. J. Young Machinery Co. Hartwell — L. L. Hartwell Stewart — Stewart Bros. Moenus — Moenus Machine Works

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
None	4. End Finishing Counters	Thurston — W. J. Young Machinery Co. Stewart — Stewart Bros. Moenus — Moenus Machine Works
Velvet Box Toe Buffing Machine	5. Buffing Counters	Perfection — W. J. Young Machinery Co.
None	6. Rolling and Waxing Counters	Seewart — Stewart Bros. Young — W. J. Young Mchy. Co.
None	7. Moulding Counters	Young — W. J. Young Machinery Company Stewart — Stewart Bros.

WOMEN'S TURN.

For Button Shoes the following operations should be added in the Stitching Room:

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
None	1. Closing outside of Fly to top	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. No. 3 — Union Lockstitch Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Machine Company
Rapid Seam Rubbing Mach.	2. Rubbing Button-fly Seam	Champion — Coburn & Lawrence Co. Boston — Boston Mach. Wks. Co. Union — " " " " Shawmut — Shawmut Machinery Co.
None	3. Staying Button-fly Seam	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Machine Company W & W — Singer Sewing Machine Company No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Mach. Co.
None	4. Cementing in Button-fly Stay	Wheeler — Brockton Stay Co.

Machines of U. S. M. Co.	Additional Operation for Button Shoes	Machines of other Dealers
None	5. Closing Fly Lining to cloth lining	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Co, W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Company Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company
None	6. Closing Fly outside and lining back to back	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Company W & W — Singer Sewing Mach. Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Mach. Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company
Columbia Beading Machine Victor Beading Mach. Turning & " "	7. Turning and Cording Button Fly	Monarch — Boston Machine Wks. Co. Boston — " " " " Hart — Hamel Shoe Machinery Co. Nangle — J. H. Nangle
None	8. Stitching nrst row around Fly	Singer — Singer Sewing Mach. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Co.
Non	8a. Marking for Buttonholes	Adams — Adams Manufacturing Company Button Marking Machine — Shoe Manufacturers' Supply Company
Buttonhole Making Machine (New machine, none yet leased)	9. Making Buttonholes	Reece — The Reece Buttonhole Machine Co.
Buttonhole Finish-Machine	10. Finishing Buttonholes.	Reece — The Reece Buttonhole Machine Co.

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
		Singer — Singer Sewing Mach. Company
None	11. Barring Button Fly at bottom	Singer — Singer Sewing Mach. Company
	12. Marking Top for Buttons (Hand Work)	
None	13. Attaching Buttons	Morley — Singer Sewing Mach. Company R & M — Peerless Mchy. Co. Singer — Singer Sewing Mach. Company Universal — Elliott Manufacturing Co. Elliott — Elliott Mfg. Co. Heaton-Peninsular — Elliott Mfg. Co. Reece — The Reece Buttonholes Machine Co.

DEFENDANTS' EXHIBIT 236.

[Put in Evidence, page 3109.]

MACHINES USED BY J. BROWN & SONS, SALEM, MASS.

CAPACITY OF FACTORY 7500 PAIR OF WOMEN'S, MISSES' AND CHILDREN'S MCKAY SEWED SHOES.

Cutting Room.

(United) 1 Improved Geared Sole Cutting Machine — Model CC (For Linings)

2 Foot Power Pricking Machines (For Marking Lap for Vamping)

—

3

Stitching Room.

7 Skiving Machines
2 Hand Lining Marking Machines
2 Hart Snipping Machines
1 Hart Tip Punching Machine
2 Singer Zigzag Stitching Machines
15 Union Special 1-needle Stitching Machines
4 Lufkin Folding Machines
9 Union Special 2-needle Staying Machines

6 Hart Perforating Machines
25 Singer 1-needle Stitching Machines
3 Wheeler & Wilson 1-needle Stitching Machines
3 Union Special 4-needle Tip Stitching Machines
6 Hooking Machines
1 Wheeler & Wilson 2-needle Staying Machine
1 Union Special 2-needle Staying Machine
2 Glove Fastening Machines
6 Wilcox & Gibbs Closing Machines
2 Singer Cylinder Barber Trimming Machines
6 Singer Chop Trimming Machines
3 Union Special Closing Machines
4 Seam Rubbing Irons
(United) 7 Eyeletting Machines
8 Singer Cylinder 2-needle Machines
4 Singer 2-needle Stitching Machines
1 Wheeler & Wilson Side Staying Machine
1 Singer 1-needle Cylinder Vamping Machine
8 Reece Buttonhole Machines
2 Reece Buttonhole Finishing Machines
14 Singer Undertrimming Machines
4 Booth Cording Machines
20 2-needle Vamping Machines
5 Union Special 4-needle Cylinder Stitching Machines
4 Reece Button Attaching Machines
1 Singer Single Needle Repairing Machine
(United) 2 Ensign Lacing Machines #45-780

191

Sole Leather Room.

1 Graves Foot Power Stripping Machine
(United–1) 7 Rd. Block Sole Cutting Machines
1 4′ Seelye Sole Cutting Machine
(United–1) 2 Rolling Machines
(United–3) 4 Splitting Machines
(United–3) 4 Channeling Machines

	1 Julian Sole Rounding Machine	
	1 Emerson Insole Slashing Machine	
(United–1)	2 Feather Edge & Shank Reducing Machines	
(United)	1 Apex Tap & Rand Splitting Machine #52	
	2 Cementing Machines	
	1 8 Section Veneer Press	
(United)	1 Sole Tacking Machine #855	
(United–1)	3 Tap & Sole Rounding Machines	
(United)	1 Apex Spring Heel Trimming Machine #1128	
	1 Bresnahan Single Moulding Machine	
(United–1)	2 Twin Sole Moulding Machines	
(United)	4 Apex Channel Opening Machines #553, 401, 596, 473	
	39	
	Lasting Room.	
(United)	3 Pulling-Over Machines	2876A, 2340A, 1971A
(United)	24 Hand Method Lasting Mchs.	2539, 5395, 1629
		2142, 2530 4920
		2528, 1968, 3949
		3853, 5895, 4800
		408, 2529, 4210
		2515, 2526, 2527
		224, 547, 2021
		2015, 2512, 218
(United)	6 Rotary Pounding Machines	698, 1004, 1027
		443, 1396, 1225
(United)	8 Staple Tacking Machines	2215D, 1659, 1759
		1761D, 1777, 1679
		1678, 1671
(United)	1 Grinding Machine #3008	
	42	
	Making Room.	
(United–3)	13 McKay Sewing Machines — Model S	
	1 Puritan Fairstitch Machine	
(United)	3 Loose Nailing Machines #60, 521, 1336	
(United)	5 Atlas Leveling Machines #479, 73, 387, 388, 389	

(United) 5 Mayo Heeling Machines #3577, 3657, 3210, 2656, 3103
(United) 5 Universal Slugging Machines #1959, 789, 411, 3028, 1417
(United) 1 Grip Slugging Machine
(United) 1 Heel Protector Driving Machine #111
(United) 4 McKay Heel Trimming Machines #2648, 2614, 1304, 1036
(United) 1 Spring Heel Trimming Machine #186
(United) 4 Imperial Heel Breasting Machines #1424, 736, 1181, 877
6 Emerson Heel Scouring Machines
(United) 1 Heel Breast Scouring Machine #805
(United–5) 15 Post Edge Trimming Machines
(United) 7 Edge Setting Machines — Model R, 440, 698, 1276, 1246, 1288, 1296, 1243
(United) 2 Welt Indenting & Burnishing Machines #1093, 1100
(United) 5 Goodyear Fudge Edge Machines #314, 288, 292, 236, 229
(United) 1 Xpedite Heel Burnishing Machine #1329
5 3′ Finishing Shafts
(United) 2 Knife Grinding Machines

87

Finishing Room.

11 Buffing Machines
5 Naumkeag Buffing Machines
9 Finishing Shafts
1 Webster Cleaning Machine
2 Standard Tying Machines
2 Ellison Stamping Machines
(United) 3 Stitch & Upper Cleaning Machines #130, 345, 19
(United) 1 Nurling Machine #348

34

Packing Room.

3 Locke Bros. Bow Making Machines
(United) 3 Tip Scouring Machines — Mod. G, #54, 86, 354
5 Tubular Rivet Bow Attaching Machines

3 Heaton Peninsular Button Sewing Machines
2 Miller Vamp Creasing Machines #2
2 Finishing Shafts
10 Miller Twin Treeing Machines

28

Summary.

	(United)	(Miscellaneous)
Cutting Room	1	2
Stitching "	6	185
Sole Lea. "	18	21
Lasting "	42	0
Making "	54	33
Finishing "	4	30
Packing "	3	25
	128	296—Grand Total 424

Summary. After Transferring General Dept. Machines to Miscellaneous.

	(United)	(Miscellaneous)
Cutting Room	0	3
Stitching "	1	190
Sole Lea. "	1	38
Lasting "	41	1
Making "	21	66
Finishing "	0	34
Packing "	0	28
	64	360—Grand Total 424

DEFENDANTS' EXHIBIT 237.

[Put in Evidence, page 3110.]

GOODYEAR WELT AND TURN SHOE MACHINES:

Total Outstanding March 1, 1905.

Regular	1577
Type E	140

3.1.05 to 3.1.06	Shipments	264	Returns	105
3.1.06 to 3.1.07	"	222	"	118
3.1.07 to 3.1.08	"	220	"	131
3.1.08 to 3.1.09	"	227	"	152
3.1.09 to 3.1.10	"	144	"	218
3.1.10 to 3.1.11	"	66	"	333
		1143		1057

Outstanding 3.1.11 1663

Model E Machines

3.1.05 to 3.1.06	Shipments	75	Returns	40
3.1.06 to 3.1.07	"	83	"	40
3.1.07 to 3.1.08	"	76	"	42
3.1.08 to 3.1.09	"	64	"	39
3.1.09 to 3.1.10	"	30	"	64
3.1.10 to 3.1.11	"	0	"	84
		328		309

Outstanding 3.1.11 159

Model G Machines

3.1.08.to 3.1.09	Shipments	6	Returns	0
3.1.09 to 3.1.10	"	253	"	2
3.1.10 to 3.1.11	"	464	"	19
		723		21

Outstanding 3.1.11 702

Total number of Welt & Turn Shoe Machines outstanding 2524

Total Shipments and Returns for all Three Models.

3.1.05 to 3.1.06	Shipments	339	Returns	145
3.1.06 to 3.1.07	"	305	"	158
3.1.07 to 3.1.08	"	296	"	173
3.1.08 to 3.1.09	"	297	"	191
3.1.09 to 3.1.10	"	427	"	284
3.1.10 to 3.1.11	"	530	"	436
		2194		1387

DEFENDANTS' EXHIBIT 238.

[Put in Evidence, page 3112.]

CONSOLIDATED HAND METHOD McKAY LASTING MACHINES PUT OUT ON THE UNTIED INITIAL CHARGE LEASE FROM 3/1/99 to 6/1/13.

March 1, 1899 to December 31, 1899	185
January 1, 1900 to December 31, 1900	65
January 1, 1901 to December 31, 1901	143
January 1, 1902 to December 31, 1902	115
January 1, 1903 to December 31, 1903	72
January 1, 1904 to December 31, 1904	87
January 1, 1905 to December 31, 1905	54
January 1, 1906 to December 31, 1906	59
January 1, 1907 to December 31, 1907	36
January 1, 1908 to December 31, 1908	47
January 1, 1909 to December 31, 1909	54
January 1, 1910 to December 31, 1910	21
January 1, 1911 to December 31, 1911	18
January 1, 1912 to December 31, 1912	40
January 1, 1913 to May 31, 1913	10
	1,006

[Stamped:]
Received H. E. Abbey
June 18, 1913, referred to Mr. S. W. W.

CONSOLIDATED HAND METHOD McKAY LASTING MACHINES PUT OUT ON LOAN FORM OF LEASE FROM 3/1/99 TO 6/1/13.

March 1, 1899 to December 31, 1899	250
January 1, 1900 to " " 1900	283
" " 1901 " " " 1901	415
" " 1902 " " " 1902	425
" " 1903 " " " 1903	385
" " 1904 " " " 1904	348
" " 1905 " " " 1905	233
" " 1906 " " " 1906	293

January 1, 1907	to	December 31,	1907	247	
" " 1908	"	" "	1908	159	
" " 1909	"	" "	1909	169	
" " 1910	"	" "	1910	200	
" " 1911	"	" "	1911	243	
					3,650

H. E. A. 12/1/13

DEFENDANTS' EXHIBIT 239.

[Put in Evidence, page 3113.]

SELLING PRICES OF HEEL AND FOREPART CUTTERS.

HEEL CUTTERS.

Price, January '99.	We reduced price March 1, 1900, to:
Complete Set, with Heel Cutter: $3.25	Complete Set of Blades and Heel Seat Cutter: $2.25
Set of Blades only: $2.00	Set of Blades only: $1.00

FOREPART AND SHANK CUTTERS.

Price, January '99.	Price reduced March 1, 1900.
$ .35	$ .25

EDGE IRONS.

Old Price	Price — March 1, 1900.
$ .50	$ .25

NOTE: When we took over the Boston Shoe Tool Company, the price of Forepart Cutters was 35c each, or $25.00 per 100. We reduced this price to 25c each — in any quantity.

Forepart and Shank Cutters have always sold at the same price.

MEMORANDUM. RE MR. E. W. WARREN, SOMERSWORTH, N. H.

Boston, Mass., Dec. 2, 1913.

Mr. E. A. Smith, of our Haverhill Office, reported to me this morning over the telephone that upon my request he had Mr. Locke, of

our Haverhill Office (who is personally acquainted with Mr. E. W. Warren), telephone him yesterday afternoon about four o'clock, in reference to the saving of 3c per dozen that Mr. Warren is making in the cost of welting on our Model K Machine over and above the price that he paid on the regular Welt & Turn Machine; namely — that he formerly paid 15c per dozen and is now paying 12c.

Mr. Warren said that he would be glad to have us use the information if it would do us any good, and that he would also be perfectly willing to be interviewed by our counsel and give such information as he could that might be of advantage and service to us.

F. G. KING.

	Price per Doz. Pairs.
Welt & Turn	.15
Welt & Turn — Mod. K	.12
Saving of Model K over Old 3c per doz. prs.	

DEFENDANTS' EXHIBIT 240 FOR IDENTIFICATION.

[Put in Evidence, page 3168.]

MEMORANDUM.

Boston, Mass., Dec. 1, 1913.

Talked with A. E. C. Hall, of our Auburn Office, with the result that he saw the representatives mentioned below, who said they would be very glad to have us use the information in reference to labor cost and production ont he Welt & Turn Shoe Machine, and that the prices as mentioned on the memoranda which we have are correct.

F. G. KING.

	Price per Doz.
Foss, Packard & Co., Auburn, Me., Mr. Briggs, Supt. & Gen. Mgr.	
Welt & Turn	.16
Welt & Turn — Model K	.14
Saving of Model K over Old 2c per doz.	
Howard, Briggs & Pray Co., Auburn, Me., Mr. Sprague.	
Welt & Turn	.15
Welt & Turn — Model G	.15

Welt & Turn — Model K	.14

Saving of Model K over Model G and Old 1c per Doz.

Dingley-Foss Shoe Co., Auburn, Me., Mr. Traston, Treas.

Welt & Turn	.10	.14	.18
Welt & Turn — Model G	.10	.14	.18
Welt & Turn — Model K	.08	.10	.13

Saving of Model K over Model G and Old 2c, 4c, 5c per Doz.

Field Bros. & Gross Co., Auburn, Me., Mr. Mason, Gen. Mgr.

Welt & Turn	.14
Welt & Turn — Model G	.10
Welt & Turn — Model K	.10

Saving of Models G & K over Old 4c per doz.

MEMORANDUM. C. A. EATON COMPANY, AUGUSTA, MAINE. 12/1/13.

Talked over the telephone with Chester Eaton, of Brockton, who said that we may use any information that is authentic in reference to prices for labor in connection with their factories which we may wish to do, and which will help us.

He says the price paid by them at their Augusta, Maine, Factory for welting on the old machine was 16c per dozen, and on the Model G Machine, 15c per dozen.

When the Model K Machine was installed in the Augusta, Maine, Factory, all but two of their men agreed to take a lower rate, and they tried to establish the price at 14c per dozen, but it has not been definitely adjusted and they are still paying the 15c rate.

F. G. KING.

	Price per Doz.
Welt & Turn	.16
Welt & Turn — Mod. G	.15
Welt & Turn — Mod. K	.15

Saving of Mod. K and Mod. G over Old 1c per doz.

MEMORANDUM. STETSON SHOE COMPANY, SOUTH WEYMOUTH, MASS. 12/1/13.

Talked over the' phone with Mr. Heald, of the above concern, who says they are entirely willing that we use the information in

reference to cost of labor and savings on Welt Machines in operation in their factory, if we desire to do so.

F. G. KING.

	Wage per Week	Price per Doz.
Welt & Turn		.18
Welt & Turn — Models G & K	$25.00	
Required to do 2400 pairs.		
Operators are paid 1 1¼c per pair for all over 2400 prs.		
Averages per doz.		.12½
Saving of Models G & K over Old 5½c per doz.		

DEFENDANTS' EXHIBIT 242.

[Put in Evidence, page 3168.]

GOODYEAR AUXILIARY MACHINES SUPPLIED IN FEBRUARY, 1899. USED IN MANUFACTURE OF GOODYEAR WELT SHOES.

Beating Machine: Goodyear Universal Welt
Channeling Machine: Goodyear Insole
Flexible Sole Machine: Goodyear Power
Laying Machine: Goodyear Channel
Layer: Rotary Sole
Leveling Machine — Model A: Goodyear Automatic Sole
Opening Machine: Goodyear Channel
Rounding & Channeling Machine: Goodyear Universal
Separating Machine: Hadaway Stitch
Skiving Machine: Goodyear Universal Shank
Trimming Machine: Goodyear Universal Inseam
Turning Machine: Goodyear Lip
Winding Machine: Goodyear Rapid Bobbin

DEFENDANTS' EXHIBIT 243.

[Put in Evidence, page 3168.]

GOODYEAR AUXILIARY MACHINES SUPPLIED DECEMBER 12, 1911. USED IN MANUFACTURE OF GOODYEAR WELT SHOES.

Beating & Slashing Machine: Goodyear Welt
Burnishing Machine, No. 2: Goodyear Impression Stitch

Channeling Machine: Goodyear (Insole)
Channeling Machine: Goodyear Universal (Welt)
Flexible Innersole Machine — Model X: Goodyear
Flexible Sole Machine — Model B: (Zeigler)
Flexible Sole Machine: Goodyear Power
Fudge Edge Machine: Goodyear
Grooving & Beveling Machine: Goodyear Welt
Grooving & Beveling Machine: Goodyear Power Welt
Indenting & Burnishing Machine: Goodyear Welt
Indenting & Burnishing Machine — Model X: Goodyear Welt
Jointing Machine — Model A: Goodyear
Laying Machine: Goodyear Channel
Laying Machine — Model X: Goodyear Channel
Laying Machine — Model B: Goodyear Improved Sole
Leveling Machine: Goodyear Automatic Sole
Leveling Machine: Goodyear Welt & Turn (Welt work)
Opening Machine: Goodyear Channel
Pulling Machine: Goodyear Insole Tack
Pulling & Resetting Machine: Goodyear Tack
Reducing Machine: Goodyear Outsole Channel Shank
Rounding Machine: Goodyear Heel Seat
Rounding & Channeling Machine — Model E: Goodyear Universal
Rubbing Machine: Goodyear Outsole Stitch
Separating Machine: Hadaway Stitch (Goodyear)
Skiving Machine: Goodyear Shank Welt
Snipping Machine: Goodyear Insole Toe
Splitting Machine: Goodyear Welt
Stapling Machine: Goodyear Upper
Trimming Machine — Model A: Goodyear Insole Heel Seat
Trimming Machine: Goodyear Universal Inseam
Turning Machine: Goodyear Lip
Turning Machine: Goodyear Welt Edge
Winding Machine: Goodyear Rapid Bobbin

DEFENDANTS' EXHIBIT 244.

[Put in Evidence, page 3168.]

GOODYEAR AUXILIARY MACHINES SUPPLIED IN FEBRUARY, 1899.
USED IN MANUFACTURE OF GOODYEAR TURN SHOES.

Channeling Machine: Goodyear (Turn)
Molding Machine: Goodyear Turn
Trimming Machine: Goodyear Shoe

DEFENDANTS' EXHIBIT 245.

[Put in Evidence, page 3168.]

GOODYEAR AUXILIARY MACHINES SUPPLIED DECEMBER 12, 1911.
USED IN MANUFACTURE OF GOODYEAR TURN SHOES.

Channeling Machine: Goodyear (Turn)
Channeling Machine: Goodyear Universal (Turn)
Leveling Machine: Goodyear Welt & Turn (Turn work)
Molding Machine: Goodyear Turn
Molding Machine: Goodyear Power
Pulling & Trimming Machine: Insole Tack & Turn Shoe
Trimming Machine: Goodyear Turn Shoe
Turning Machine: Goodyear Forepart
Turning Machine: Goodyear Heel

DEFENDANTS' EXHIBIT 246.

[Put in Evidence, page 3170.]

NEW MACHINES PUT OUT BY UNITED SHOE MACHINERY COMPANY
SINCE ITS ORGANIZATION, FEBRUARY 7, 1899.
DECEMBER 1, 1913.

	Department.	Adopted or first put out by U.S.M. Co.	
Assembling Machine: Rex	Pulling-Over	Sept.	1905
Assembling Machine — Model E: Rex	" "	Aug.	1910
Assembling Machine: Rex Turn Shoe	" "	Feb.	1912
Assembling Spindle	" "	Sept.	1904

	Department	Adopted or first put out by U.S.M. Co
Beading Machine — Model G: New Method Heel Seat	General	Mar. 1901
Beating Machine: Beacon Heel Seat	Lasting	Dec. 1906
Beating & Slashing Machine: Goodyear Welt	Goodyear	Nov. 1904
Bevelling Machine — Model B: Champion Strip	General	Nov. 1909
Blacking Machine — Model A: Crest Heel	"	Sept. 1908
Blacking Machine — Model B: Crest Heel	"	May 1911
Buffing Machine — Model G	"	Oct. 1901
Buffing Machine: Velvet Box Toe	Heeling	Jan. 1904
Building Machine — Models B, C & D: Pyramid Heel	General	June 1909
Cementing Machine — Models E & F: Hub Lining	"	May 1908
Cementing Machine — Models A, C & D: Star Channel	"	Oct. 1906
Channeling Machine — Model A:	"	Mar. 1904
Channeling Machine—Models B & C: Apex	"	Nov. 1905
Channeling Machine: Economy Insole	Goodyear	May 1905
Channeling Machine: Goodyear Universal (Turn Work)	"	Nov. 1908
Channeling Machine: Goodyear Universal (Welt Work)	"	Sept. 1907
Cleaning Machine — Model M: Stitch & Upper	General	Apr. 1902
Clicking Machine — Model C: Ideal	"	Mar. 1908
Clinch Machine: Universal Double	Metallic	Nov. 1899
Compressing Machine — Model No. 4: Automatic Heel	Heeling	Sept. 1900
Cutting Machine — Model P: Improved Baby Sole	General	Jan. 1903
Cutting Machine — Model CC: Improved Geared	"	Aug. 1905
Cutting Machine: Improved Gearless Sole	"	Oct. 1904

	Department.	Adopted or first put out by U.S.M. Co.
Cutting Machine — Model A: Rand	"	Apr. 1911
Cutting Machine — Model A: Heel Wedge	"	Aug. 1912
Driving Machine — Models A & B: Heel Protector	Metallic	Dec. 1899
Embossing Machine — Model B:	General	Jan. 1911
Eyeletting Machine: Cameo Foot Power	Eyeletting	Apr. 1910
Eyeletting Machine:— Duplex	"	July 1902
Eyeletting Machine: Sampson	"	May 1912
Eyeletting Machine: Vulcan Foot Power (Improved Foot Power)	"	Aug. 1902
Finishing Machine: U. S. M. C. Buttonhole	Fitting Room	Jan. 1913
Finishing Shaft — Model K: Climax Sectional	General	June 1910
Fleshing or Randing Machine — Models A & B: Apex	"	Mar. 1905
Flexible Sole Machine — Models A & B: (Zeigler) (Goodyear)	Goodyear	Aug. 1899
Generator: Goodyear Steam	"	Nov. 1909
Generating Machine: Goodyear Pattern	"	Mar. 1911
Gouging Machine — Model C: Crescent Toe	General	Aug. 1908
Grooving & Beveling Machine: Goodyear Power Welt	Goodyear	July 1906
Gumming Machine: Rex Toe	Pull Over	Oct. 1904
Hammer — Model B: New Power	General	Aug. 1905
Heel Breasting Machine — Model B: Imperial	"	July 1902
Improving Machine: U. S. M. C. Tap & Sole	Heeling	Jan. 1913
Impression Stitch Machine — Model M: Hand	General	Apr. 1911
Ironing Machine — Model B:	"	Sept. 1913
Indenting & Burnishing Machine: Goodyear Welt	Goodyear	July 1905
Jointing Machine — Model C: Goodyear	"	July 1913

	Department.	Adopted or first put out by U.S.M. Co.
Lacing Machine — Models A & B: Ensign	Fitting Room	Feb. 1906
Lasting Machine: No. 5 U.S.M.C.	Lasting	Jan. 1908
Lasting Machine: Staple	"	Feb. 1912
Laying Machine — Model A: Apex Welt	General	Feb. 1910
Laying Machine — Model W: Channel	General	Dec. 1901
Laying Machine — Models B & C: Goodyear Improved Sole	Goodyear	Dec. 1910
Laying & Tacking Machine: Sole	"	Sept. 1910
Leveling Machine — Model A: Atlas	General	Sept. 1903
Leveling Machine: Goodyear Welt & Turn (Turn Work)	Goodyear	June 1906
Leveling Machine: Goodyear Welt & Turn (Welt Work)	"	June 1906
Leveling Machine — Models A & B: Hercules	General	April 1903
Leveling & Flexing Machine — Model N: Shin	"	Feb. 1906
Loading & Attaching Machine — Model B: McKay Automatic Heel	Heeling	Nov. 1910
Lockstitch Machine — Model K: Goodyear Outsole Rapid	Goodyear	May 1910
Lockstitch Machine — Model M: Goodyear Outsole Rapid	Goodyear	Jan. 1912
Making Machine: USMC Buttonhole	Fitting Room	Jan. 1913
Marking Machine — Model C: Paragon Vamp	General	May 1906
Molding Machine — Models B & C: American Twin Sole	"	May 1907
Molding Machine — Model B: Goodyear Power	Goodyear	May 1912
Molding Machine: Stitch Down Upper	General	Nov. 1907
Nailing Machine: Alpha Wood Heel	Heeling	Sept. 1907
Nailing Machine: Automatic Staple	Metallic	Aug. 1899
Nailing Machine: No. 2 Loose	"	June 1909

	Department.	Adopted or first put out by U.S.M. Co.
Nurling Machine — Model A	"	July 1901
Opening Machine: Apex Channel — Models B & C	General	Feb. 1906
Pincer: USMC Bench	"	Aug. 1911
Pounding Machine — Model E: Rex	Pulling-over	Jan. 1904
Pounding Machine — Model C: Rex Rotary	" "	Mar. 1912
Pounding & Beating-up Machine — Model A: Rex Rotary	" "	Mar. 1912
Pounding & Trimming Machine — Model B: Rex Rotary	" "	July 1908
Press: Handy Heel — Model B	General	July 1913
Pricking Machine: Premier Heel	Heeling	July 1903
Pulling Machine: Goodyear Insole Tack	Goodyear	Feb. 1909
Pulling Machine: Goodyear Upper Tack	"	Nov. 1912
Pulling & Resetting Machine: Goodyear Tack	"	Nov. 1910
Pulling & Turn Shoe Trimming Machine: Goodyear Insole Tack	"	Dec. 1911
Pulling-Over Machine: Models A & C — Rex	Pulling-Over	Sept. 1899
Pulling-Over Machine — Model B: Rex	" "	July 1910
Punch: Improved Foot Power (Vulcan Foot Power)	Eyeletting	Aug. 1902
Punching Machine — Model P: Crown Tip	General	Dec. 1903
Punching Machine — Model A: Royal Tip	"	May 1911
Reducing Machine: Models A & B — Apex Feather Edge & Shank	"	Jan. 1904
Reducing Machine: Goodyear Outsole Channel Shank	Goodyear	Apr. 1909
Reinforcing Machine: Economy Insole	"	Sept. 1904
Repairing Machine — Model A: Patent Leather	General	Aug. 1911
Rounding Machine: Goodyear Heel Seat	Goodyear	Aug. 1909
Rounding Machine: Mod. A — Apex Tap and Sole	General	Mar. 1905

	Department	Adopted or first put out by U.S.M. Co.
Rounding Machine: Models C & D — Planet Sole	General	Nov. 1901
Rounding & Channeling Machine — Model E: Goodyear Universal	Goodyear	Sept. 1910
Rounding & Randing Machine: Goodyear Heel Seat	"	Jan. 1913
Rubbing Machine: Goodyear Outsole Stitch	"	Apr. 1910
Sanding Machine: Model A — Tap and Sole	Heeling	June 1908
Sanding Machine: Model G — Top Piece	General	Dec. 1905
Scarfing Machine — Model N: Tap	"	Sept. 1910
Scarfing Machine: Model A — Turn Sole	"	Jan. 1911
Scarfing Machine: Model P — Spring Heel	"	Dec. 1901
Scalloping Machine — Model B: Top Piece	"	May 1905
Scouring Machine — Model G: Tip	"	Jan. 1904
Sewing Machine: Goodyear Universal Inseam	Goodyear	June 1899
Sewing Machine: Model B — McKay	General	June 1908
Shellacing Machine: Rex Box Toe	Pulling-Over	Mar. 1909
Shoe Machine — Model E: Goodyear Welt & Turn	Goodyear	July 1902
Shoe Machine — Model G: Goodyear Welt & Turn	"	Oct. 1908
Shoe Machine — Model K: Goodyear Welt & Turn	"	June 1911
Skiving Machine — Model A: Champion Heel Lift	General	Sept. 1907
Skiving Machine — Model A: Champion Shank	"	Jan. 1909
Skiving Machine — Eros Rand	Heeling	Aug. 1906
Skiving Machine: Goodyear Shank Welt	Goodyear	Jan. 1904
Skiving Machine — Models C & D: Pluma	General	Apr. 1909
Skiving & Finishing Machine: Monarch Counter & Box Toe	Heeling	Jan. 1903
Skiving or Rand Splitting Machine —		

	Department.	Adopted or first put out by U.S.M. Co.
Models A & C: Apex Tap	General	Aug. 1905
Slugging Machine — No. 5	Metallic	Nov. 1912
Snipping Machine: Goodyear Insole Toe	Goodyear	May 1911
Softening Machine — Models C, D & E: Toe	General	Dec. 1911
Splitting Machine — Models C & D: Empire	"	Sept. 1908
Splitting Machine: Summit		Apr. 1903
Stamping Machine — Model C: Eagle Sole	General	Mar. 1910
Stamping Machine — Model C: Eagle Upper	"	Mar. 1910
Stamping Machine — Models B & C: Regent	"	May 1903
Stapling Machine — Model B: Goodyear Upper	Goodyear	Aug. 1912
Sticking Machine — Model B: Shank Piece	General	Sept. 1911
Stitching Machine: Economy Insole	Goodyear	Oct. 1909
Tacking Machine No. 1 U.S.M.C.: Insole	Lasting	Jan. 1910
Tempering Machine: Double Clinch Stock	Metallic	Feb. 1902
Thin Edge Machine — Models A & C: Apex	General	Oct. 1905
Trimming Machine — Model A: Apex Spring Heel	"	May 1905
Trimming Machine — Models D & E: Edge	"	Dec. 1910
Trimming Machine — Model B: Goodyear Insole Heel Seat	Goodyear	Oct. 1912
Trimming Machine: McKay Heel Breast	Heeling	Apr. 1900
Trimming Machine: Rex Toe — Model B	Pulling-Over	Oct. 1904
Trimming Machine — Model A: Rex Upper	" "	Dec. 1905
Trimming Machine — Model H: Rex Upper	" "	June 1908
Trimming Machine: Ultima Heel	Heeling	Dec. 1904
Turning Machine: Goodyear Forepart	Goodyear	May 1899
Turning Machine: Goodyear Heel	"	Apr. 1901
Turning Machine: Goodyear Welt Edge	"	Dec. 1909
Turning & Slashing Machine: Goodyear Lip	"	Jan. 1912
Wetting Machine: Crest Sole — Model A	General	July 1909
Winding Machine: Goodyear Universal Bobbin	Goodyear	June 1899

DEFENDANTS' EXHIBIT 247.

[Put in Evidence, page 3172.]

MACHINES PUT OUT BY UNITED SHOE MACHINERY COMPANY WHICH DO WORK ALWAYS DONE BY HAND IN 1899 OR NOT DONE AT ALL EITHER BY HAND OR BY MACHINE IN 1899.

October 25, 1913.

	Department	First put out by U.S.M. Co.
Assembling Machine: Rex	Pulling-Over	Sept. 1905
Beating & Slashing Machine: Goodyear Welt	Goodyear	Nov. 1904
Beveling Machine: Goodyear Underwedge	Goodyear	Early 1911
Blacking Machine: Crest Heel	General	Sept. 1908
Buffing Machine: Velvet Box Toe	Heeling	Jan. 1904
Clicking Machine: Ideal	General	Mar. 1908
Clinch Machine: Universal Double	Metallic	Nov. 1899
Eyeletting Machine: Duplex (First machine to set two eyelets on opposite sides of upper simultaneously)	Eyeletting	July 1902
Embossing Machine: Goodyear Heel	Goodyear	1910
Gumming Machine: Rex Toe (Superseded by Shellacking Machine: Rex Box Toe)	Pulling-Over	Oct. 1904
Jointing Machine: Goodyear	Goodyear	Nov. 1910
Lacing Machine: Ensign	Fitting Room	Feb. 1906
Lasting Machine: Consolidated Hand Method (Turn Heel Seat)	Lasting	Apr. 1906
Lasting Machine: Consolidated Hand Method (Turn Toe)	Lasting	Apr. 1906
Lasting Machine: Staple	Lasting	1912
Molding Machine: Stitch Down Upper	General	Nov. 1907
Nailing Machine: Alpha Wood Heel	Heeling	Sept. 1907
Pounding Machine: Rex (Superseded by Pounding Mach.—Mod. E: Rex)	Pulling-Over	1904

	Department.	First put out by U. S. M. Co.
Pincer: USMC Bench	General	Aug. 1911
Pounding & Beating Up Machine — Model A: Rex Rotary	Pulling-Over	Mar. 1912
Pulling Machine: Goodyear Insole Tack	Goodyear	Feb. 1909
Pulling-Over Machine: Rex	Pulling-Over	Sept. 1899
Pulling-Over — Model B: Rex	Pulling-Over	July 1910
Pulling & Resetting Machine: Goodyear Tack	Goodyear	Nov. 1910
Pulling & Trimming Machine: Insole Tack & Turn Shoe	Goodyear	Dec. 1911
Recessing Machine: Goodyear Underwedge	Goodyear	1910
Reducing Machine: Goodyear Outsole Channel Shank	Goodyear	Apr. 1909
Repairing Machine: Patent Leather	General	Aug. 1911
Skiving Machine: Eros Rand	Heeling	Aug. 1906
Skiving Machine: Goodyear Shank Welt	Goodyear	Jan. 1904
Softening Machine: Toe	General	Aug. 1911
Stapling Machine: Goodyear Upper	Goodyear	Oct. 1910
Stitching Machine: Economy Insole	Goodyear	Oct. 1909
Trimming Machine: Goodyear Insole Heel Seat	Goodyear	Jan. 1911
Trimming Machine: Rex Toe (Superseded by Pounding & Trimming Mach.: Rex Rotary)	Pulling-Over	Oct. 1904
Trimming Machine: Rex Upper	Pulling-Over	Dec. 1905
Turning Machine: Goodyear Forepart	Goodyear	Apr. 1901
Turning Machine: Goodyear Heel	Goodyear	Apr. 1901
Turning Machine: Goodyear Welt Edge	Goodyear	Dec. 1909

DEFENDANTS' EXHIBIT 248.

[Put in Evidence, page 3180.]

LIST OF MACHINES OUT JANUARY 1, 1905, ON LEASES EXECUTED BEFORE AND AFTER FEBRUARY 9, 1899.

	Total	With Tie Restricted	Without Tie Independent	
Goodyear Dept:				
Welts & Turns	1,798			
Stitchers	1,817			
Auxiliaries	9,078			
	12,693		12,693	
Metallic Dept:				
Standard Screw	632	572	60	
Slugging	1,817	1,700	117	
Loose Nailing	1,233	1,153	80	
Tacking	3,372	3,079	293	
Miscellaneous	683	630	53	
Auxiliaries	1,541			1,541
	9,278	7,134	603	
Heeling Dept:				
Attaching	1,642	142	1,500	
Auxiliaries	2,168	218	1,950	
	3,810	360	3,450	
Lasting Dept:				
Hand Method	3,110	1,527	1,583	
Chase	999	893	106	
McKay-Copeland	250	30	220	
Ideal & Copeland	855	808	47	
No. 5	0	0	0	
Tacking	175			175
Auxiliaries	3,310			3,310
	8,699	3,258	1,956	
Pulling Over Dept:				
Pulling Over	243	243		
Auxiliaries	0			
Totals	34,723	10,995	18,702	5,026

DEFENDANTS' EXHIBIT 249.

[Put in Evidence, page 3181.]

PRINCIPAL MACHINES NECESSARY FOR MAKING 100, 200, 300, 600, 1200, 2400, AND 4800 PAIRS GOODYEAR TURN SHOES PER DAY.

	No. of Machines for Daily Production						
Machines	100 pairs	200 pairs	300 pairs	600 pairs	1200 pairs	2400 pairs	4800 pairs
Goodyear Welt & Turn Machine — K	1	1	1	2	3	5	9
Loose Nailer #2	1	1	1	1	1	2	3
Universal Slugger	1	1	1	1	1	2	4
McKay Auto. Heeling Mch.— B	1	1	1	1	2	3	6
Premier Heel Pricking Mch.	1	1	1	1	1	1	1

DEFENDANTS' EXHIBIT 250.

[Put in Evidence, page 3182.]

SUMMARY OF GENERAL DEPARTMENT MACHINES UNDER LEASE MARCH 1, 1911.

	Kinds	Models	Number of Machines
30	Less than 100	45	759
9	More than 100 and less than 200	11	1294
7	More than 200 and less than 300	23	1765
4	More than 300 and less than 400	15	1482
1	More than 400 and less than 500	2	419
17	More than 500	86	22751
4	Miscellaneous	7	161
Totals 72		189	28631

LIST OF DIFFERENT KINDS OF GENERAL DEPARTMENT MACHINES OF WHICH LESS THAN ONE HUNDRED WERE ON LEASE MARCH 1, 1911.

Name of Machine	No. of Models	No. of Machines
Strip Beveling	2	56
Heel Seat Beading	2	4
Heel Building	3	54
Heel Burnishing	1	1
Rand Chopping	1	1
Crimping	1	1
Tap & Beam	2	18
Embossing	2	67
Puritan Fair Stitch	1	8
Insole Flexing	2	52
Power Fleshing	1	1
American Slug Grinding	1	4
Planet Grinding	1	20
Fletcher Ironing	1	9
Apex Welt Laying	1	20
Shin Leveling & Flexing	1	55
Vamp Polishing	1	6
Tap & Sole Roughing	1	13
Improved Sole Rounding	1	13
Stanley Rounding	1	3
Vrooman Tap Rounding	1	3
Top Piece Sanding	1	46
Spring Heel & Tap Scarfing	4	29
Rand Splitting	2	21
Empire Splitting	1	70
Cylinder Splitting	2	12
Impression Stitch	1	20
Stripping	2	78
Turning & Beading	3	54
Waukenphast Imitation Stitch	1	20
30 Kinds	45	759

LIST OF DIFFERENT KINDS OF GENERAL DEPARTMENT MACHINES OF WHICH THERE WERE MORE THAN ONE HUNDRED AND LESS THAN TWO HUNDRED UNDER LEASE MARCH 1, 1911.

Name of Machine	No. of Models	No. of Machines
New Method Heel Seat Beading	1	137
Crest Heel Blacking	1	132
Thin Edge	1	122
Toe Gouging	3	144
Imperial Grinding	1	175
Channel Laying	1	143
Crest Sole Wetting	1	169
Welt Trimming & Stitch Rubbing	1	156
Spring Heel Trimming	1	116
9 Kinds	11	1294

LIST OF DIFFERENT KINDS OF GENERAL DEPARTMENT MACHINES OF WHICH THERE WERE MORE THAN TWO HUNDRED AND LESS THAN THREE HUNDRED UNDER LEASE MARCH 1, 1911.

Name of Machine	No. of Models	No. of Machines
Stitch & Upper Cleaning	2	271
Fleshing & Randing	2	249
Nurling	1	278
Crown Tip Punch	1	271
Scalloping	3	202
Counter, Heel Lift & Shank Skiving	6	201
Centennial Splitting	8	293
7 Kinds	23	1765

LIST OF DIFFERENT KINDS OF GENERAL DEPARTMENT MACHINES OF WHICH THERE WERE MORE THAN THREE HUNDRED AND LESS THAN FOUR HUNDRED UNDER LEASE MARCH 1, 1911.

Kind of Machine	No. of Models	No. of Machines
Sole Moulding	5	370
Rolling	6	395

	No. of Modols	No. of Machines
Tip Scouring	3	333
Heel Seat Rough Rounding	1	384
4 Kinds	15	1482

LIST OF DIFFERENT KINDS OF GENERAL DEPARTMENT MACHINES OF WHICH THERE WERE MORE THAN FOUR HUNDRED AND LESS THAN FIVE HUNDRED UNDER LEASE MARCH 1, 1911.

Name of Machine	No.of Models	No.of Machines
Tap & Sole Rounding	2	419

LIST OF DIFFERENT KINDS OF GENERAL DEPARTMENT MACHINES OF WHICH THERE WERE MORE THAN FIVE HUNDRED UNDER LEASE MARCH 1, 1911.

Name of Machine	No. of Models	No. of Machines
Buffing	10	1241
Heel Breasting	3	1066
Cementing	6	712
Channeling	5	673
Sole & Lining Cutting	13	1755
Edge Setting	5	1575
Leveling	8	918
Channel Opening	3	601
Feather Edge & Shank Reducing	6	583
Planet Rounding	2	1067
Heel Scouring	4	1057
Heel Breast Scouring	2	510
Tap Skiving & Rand Splitting	2	559
Summit Splitting	4	1310
Stamping	8	798
Treeing Table & Legs	1	5251
Edge Trimming	4	3075
17 Kinds	86	22751

LIST OF MISCELLANEOUS GENERAL DEPARTMENT MACHINES UNDER LEASE MARCH 1, 1911.

Name of Machine	No. of Model	No. of Machine
Heel & Veneer Presses	3	138
Pattern Shears	2	21
Amazeen Skiving Machines	1	1
12-Ft. Bench	1	1
4 Kinds	7	161

DEFENDANTS' EXHIBIT 251.

[Put in Evidence, page 3194.]

Officers and Executive Committee:
J. Johnson, Pres't.
C. H. Krippendorf, V.-Pres't.
A. D. Brown, V.-Pres't.
M. S. Florsheim, Treas.
F. C. Rand, Sec.
G. W. Brown
J. B. Howarth
H. W. Peters
E. P. Reed
Geo. D. Selby
E. F. Selz

SHOE MANUFACTURERS ALLIANCE
1507 Washington Avenue

St. Louis, Mo., Dec. 29, 1910.

Mr. S. W. Winslow, President, United Shoe Machinery Co., Albany Bldg., Boston, Mass.

My dear Sir: At a recent meeting of the Shoe Manufacturers' Alliance I was requested to extend to you and to Mr. Geo. W. Brown, together with such other officials of your Company as you desire, an invitation to meet with the Executive Committee of the Shoe Manufacturers' Alliance at St. Louis, Chicago or Cincinnati at any date convenient to you between Jan. 5th and 20th.

The object of this conference is to discuss with you matters of mutual interest to your company and the Shoe Manufacturers associated together. Upon indication of the date and place agreeable to you, I will notify the Executive Committee of your pleasure in the matter.

Very truly yours,

F. C. RAND, Secretary.

DEFENDANTS' EXHIBIT 252.

[Put in Evidence, page 3194.]

January 2, 1911.

Mr. F. C. Rand, Sec'y, Shoe Manufacturers' Alliance, 1507 Washington Ave., St. Louis, Mo.

Dear Sir: Yours of the 29th of December at hand, inviting Mr. George W. Brown and myself, together with such other officials of the Company as I may desire, to meet your Executive Committee at St. Louis, Chicago, or Cincinnati, at a date convenient to us between January 5th and 20th. It is impossible for me at this time to name a date, within the dates that you have mentioned, when it will be convenient for me to accept your invitation. I will endeavor, however, to name a date as soon as possible.

You state that the object of this conference is to discuss with you "matters of mutual interest to your Company and the shoe manufacturers associated together."

I should be very glad to discuss any matters of mutual importance, but in order that the interview may be of practical benefit, I would suggest that you inform me specifically as to the matters of mutual interest which your Committee has in mind to discuss.

Awaiting your reply, I remain

SWW–NW

Very truly yours,

DEFENDANTS' EXHIBIT 253.

[Put in Evidence, page 3195.]

Officers and Executive Committee:
J. Johnson, Pres't.
C. H. Krippendorf, V.-Pres't.
A. D. Brown, V.-Pres't.
M. S. Florsheim, Treas.
F. C. Rand, Sec.
G. W. Brown
J. B. Howarth
H. W. Peters
E. P. Reed
Geo. D. Selby
E. F. Sels

SHOE MANUFACTURERS ALLIANCE
1507 Washington Avenue

St. Louis, Mo., Jan. 4th, 1911.

Mr. S. W. Winslow, Pres., United Shoe Machinery Co., Lincoln & Kneeland Sts., Boston.

Dear Sir: I wish to acknowledge receipt of your favor of Jan. 2d,

stating that you cannot meet us between Jan. 5th and 20th but will advise as soon as possible just when it will be convenient for you to meet with the Executive Committee of the Shoe Manufacturers' Alliance.

In answer to your request that we state specifically what we wish to discuss — will state that the shoe manufacturers are looking for improved conditions under which to make shoes. The only specific points of mutual interest between you and the shoe manufacturers are the sale, rental and royalty of machines by you, together with the charges made thereon, and a general discussion of this subject, which is of great significance to all parties concerned, is desired.

Upon receipt of information from you fixing the date of meeting, I will advise the Executive Committee.

Yours truly,

F. C. RAND, Secretary.

Ans. by personal interview Feb. 14, 1910 with the Ex. Com.

S. W. W.

DEFENDANTS' EXHIBIT 254.

[Put in Evidence, page 3217.]

Dec. 27, 1911.

Mr. George A. Learned, George A. Learned Company, Newburyport, Mass.

Dear Sir: While I have no desire to continue a correspondence with you in which, as shown by your letter of December 20th, you so incorrectly record your spoken words to me in the presence of others, I cannot permit your letter of that date to close it.

Our conversation was as I stated it in my letter to you of December 18th, and if you now disavow that retraction of the untrue statements you have been spreading, I shall, both for myself and my Company, hold you strictly responsible for all the consequences that may follow.

I never made to you any statement that "I would drive you out of business if you did not throw out the machines competing with ours"— either in words or substance — or any statement like it. On the contrary, at our first interview — August 24th — I told you

we would give you independent department leases of all machines except Goodyear Department Machines (which you did not care to use) and sell you all General Department Machines, and this you acknowledged at our interview of December 5th, and if you allow this untrue report to remain uncontradicted, or seek to further spread it, you will do so at your peril.

Very truly yours,

S. W. WINSLOW.

DEFENDANTS' EXHIBIT 258.

[Put in Evidence, page 3566.]

UNITED SHOE MACHINERY CO. No. 73767.

Boston, Mass., Sept. 22, 1910.

To the First National Bank,

Pay to the order of Robert F. Herrick $500,000.00

Five hundred thousand 0/000 Dollars.

UNITED SHOE MACHINERY CO.

W. H. Longley Cashier. L. A. Coolidge Treasurer.

UNITED SHOE MACHINERY CO.

[On back:]

Robert F. Herrick

(Stamped) Check Teller. Sept. 22, A. M.

First National Bank Boston

DEFENDANTS' EXHIBIT 259.

[Put in Evidence, page 3617.]

Taken up by Mr. Howe, E. P. H. File.

Boston, January 16, 1901.

Moorfield Storey, Esq.,

Dear Sir: I have reported to the Executive Committee of the United Shoe Machinery Company that, as a result of the conferences between the Committee representing the Shoe Manufacturers, on the one side, and the President of the United Shoe Machinery Company on the other side, and as the outcome of our meeting to-day as counsel for the respective interests, a form of lease of the United Company's metallic department machinery, for those lessees who wish

a lease to use such machinery independently of the lasting machinery and sole sewing machinery leased by the United Company, has been agreed to. This form of lease may be called for convenience of reference the "Independent" lease.

In order that the present and prospective lessees of the United Company may clearly understand the differences between this Independent lease and the lease of metallic department machinery at present in use by the United Company (which I will call the "United" lease) a reasonable time should be afforded for each lessee to judge which form is best for his interest. The "Independent" lease by its terms can be exchanged for a "United" lease at any time, when the lessee is not in default, on written notice to the lessor, and the United Company now proposes, if the Committee whom you represent so approve and recommend to its constituents, to allow any lessee who has signed, or who shall forthwith on request sign, a "United" lease, the right, at any time before February 1st, 1902, if he is not in default, to surrender such "United" lease by accepting and executing an "Independent" lease of the same metallic department machinery. At our interview to-day, you suggested that a period of two years should be allowed for lessees who sign the "United" leases to exchange them for "Independent" leases. It has been assumed by the Executive Committee of the United Company, until I reported your suggestion to them, that three months would give sufficient time for a lessee to make up his mind which form of lease he wished to take, but in view of your suggestion, and with the desire to meet the wishes of the shoe manufacturers as nearly as is practicable, it has been decided, if recommended by your Committee, that such exchange may be made at any time within one year, that is, on or before February 1, 1902, which would seem to afford the most doubtful lessee ample opportunity to acquire information and decide whether it is for his interest to retain the "United" lease.

The proposed "Independent" lease and the privilege, until February 1, 1902, to those lessees, who have signed or shall sign "United' leases, to exchange them for "Independent" leases, are submitted upon the understanding that the Committee, whom you represent, are satisfied with and will recommend the same, and that they appre-

ciate and will report that the officers of the United Company have given careful consideration to all the requests and suggestions of the Committee, and have manifested a sincere desire to accede to the same, so far as consistent with the policy of the Company toward those lessees who wish to use its machinery in all departments of their respective factories. Very truly yours,

ELMER P. HOWE.

The original of the above letter was delivered to Mr. Storey this day upon his assurance that he would recommend the Independent lease and the foregoing offer of the United Company for approval and acceptance by his clients, and that if his clients — the Committee — do not endorse and recommend the same to the N. E. Ass'n the proposition and this letter shall be withdrawn.

E. P. H. Jan. 16/01.

DEFENDANTS' EXHIBIT 260.

[Put in Evidence, page 3619.]

E. P. Howe file.

STOREY THORNDIKE & PALMER, 735 Exchange Building
Counsellors-at-Law

Moorfield Storey
John L. Thorndike
Henry Ware

Bradley W. Palmer
Ezra R. Thayer
Reginald H. Johnson

All letters to be addressed to the firm.

Boston, 21st January, 1901.

Elmer P. Howe, Esq., 53 State Street, Boston, Mass.

Dear Sir: I hand you herewith the draft of the independent lease which you enclosed in your letter of the 16th. The provisions of the 7th article as it seems to me are not in entire accord with our understanding and the point escaped my notice at our previous conferences. According to the structure of the independent lease the agreements which are contained in ss. 1, 2, 3, 4, and 5 are styled conditions, those in 6 are called agreements. Article 7 provides that "if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor or the lessee, whether as a result of the assignment to the lessor or otherwise and expressed to be obligatory on the lessee, etc." You

will observe that this makes the rights of the lessee depend not merely on the provisions of this lease but on the provisions of every other lease that he holds. I have had before me leases in a great variety of forms and in some of them things which you call agreements in the independent lease may be called conditions, and a violation therefore of something that neither of us have in mind may give your company the right to terminate every lease which the lessee holds. I do not think this was contemplated. I said that my committee was content if the lessee did not keep the conditions of this lease, that he should lose this lease and all his other leases, but I think you will see that your clause 7 goes further. I would suggest the elimination of the words which I have enclosed in pencil brackets in clause 7, being the words which begin "or contained in any other lease" and end with "upon the lessee." To this I fancy there can be no objection.

The committee have carefully considered the lease and desire only a slight variation. They would like the privilege of changing from the iron clad lease to this lease for two years, that is to say until the 1st of February 1903, and they would like also some guaranty or assurance that the modified lease will continue to be offered to the trade for say five years. If these concessions are made they will recommend the lease to the trade.

I think that there is no very substantial difference between these requests and what you have been willing to concede. It was the purpose of your company as you told me to continue to offer the modified lease for an indefinite time and if this is so five years is not very long time to fix. And as I told you at our discussion, I think the difference between giving the right to change for one year and for two years for you cannot be very material while I think it will make your relations with the trade cordial and enable you to begin business with the feeling that the difficulties between you have been ended. I trust that your committee will adopt this view and thus bring these discussions to a mutually satisfactory end.

A single further suggestion. Mr. Goddard has suggested, and I think very properly, that clause 6 would be improved if the words in the last line but one "covering the term of five years" are inserted

after the word agreement as has been done in the copy which I send. This is merely a description and makes a little more certain what we are referring to.

Yours very truly,

MOORFIELD STOREY.

DEFENDANTS' EXHIBIT 261.

[Put in Evidence, page 3620.]

Taken up by Mr. Howe Jan. 23, 1901, E. P. H. File.

January 22, 1901.

Moorfield Storey, Esq.,

Dear Sir: I have your letter of this date with which you return the "Independent" Lease I submitted to you on the 16th instant. The terms of this lease were settled as you will remember, after an extended conference on the 14th instant between your Committee and Mr. Winslow, at which both you and Mr. Goddard were present, when, as Mr. Winslow and I supposed, all the clauses in the lease which were in dispute, and the letter, dated January 2nd, 1901, from the Committee to the Company refering to such clauses, were discussed, and an agreement reached as to what changes in the lease should be made, except that no definite right was accorded to a lessee under the present United Lease of Metallic Department machinery to change it for an Independent Lease of the same. At our interview on the 15th instant we settled upon the phraseology to express the conclusions reached at the conference on the 14th, and we then agreed that the only question left open for discussion was what length of time should reasonably be given by the Company to its present and prospective lessees of Metallic Department machinery to decide whether to take and retain the United leases, and that was the only question to be considered when Mr. Storrow was called in. Consequently, immediately after our interview on the 15th, I reported to the Executive Committee of the United Shoe Machinery Company that the Independent lease met your approval, but that you suggested that a period of two years should be allowed for lessees who sign the United lease to exchange them for Independent leases, and I assured our Executive Committee that, if your suggestion could be adopted, the Independent lease would be recommended by your Com-

mittee. I therefore urged our Executive Committee to concede a longer period for such exchange of leases than they had intended to offer, and longer than they deemed necessary for any lessee to judge of the relative advantages or disadvantages of the two leases. On my assurance that the Independent lease met your approval, and would be undoubtedly approved by your clients, inasmuch as substantially all the changes suggested by them in their letter of the 2nd instant had been incorporated in it, our Executive Committee finally authorized me to propose that one year from February 1st next should be allowed for such change of leases.

I am therefore disappointed that, in your letter of to-day, the discussion is not confined to the length of time to be afforded for such exchange of leases; and that other points, which have been debated at length and disposed of, are revived. The Company is unwilling to re-open these questions, and declines to accede to the changes suggested in your letter, except that the insertion of the words "covering the term of five years" in Article Six, is unobjectionable.

The Executive Committee have re-considered the request of your Committee that the period for exchange from the United to the Independent lease be extended to February 1, 1903; but for the reasons given in my letter to you of the 16th instant, they adhere to their decision that one year will afford ample time to the trade for the purpose, especially as it should be kept in mind that a lessee by taking an Independent lease can have the entire term of seventeen years to decide whether he wishes to avail of the lower royalty afforded by the United lease.

The Company has been, and will be at all times desirous of continuing the cordial relations with its lessees which have hitherto been maintained, and to that end its executive officers have carefully considered and have endeavored to accede to all the requests and suggestions made by your Committee during the past three months, so far as is consistent with carrying on the business of the Company on a basis which shall insure not only a safe investment for its stockholders, with fair returns thereon, but also, what is equally important to it, the welfare and prosperity of the shoe manufacturers.

Yours very truly,

ELMER P. HOWE.

DEFENDANTS' EXHIBIT 262.

[Put in Evidence, page 3646.]

MACHINES USED BY R. P. HAZZARD COMPANY, GARDINER, MAINE, IN THE MANUFACTURE OF MEN'S GOODYEAR WELT SHOES.

CUTTING ROOM.

(United) 40 Ideal Clicking Machines #3999–507–3474–3614–3613–3682–5294–5299–8297–5295–5296–882–881–5225–5226–5232–5229–5228–5227–172–4793–4794–1508–2089–2086–2093–4034–1642–2720–5496–5298–398–1048–400–1096–5298–5495–5497–5492–5494

(United–1) 2 Gearless Sole Cutting Machines #1735–

(United–4) 8 Eagle Upper Stamping Machines #144–49–183–47–

3 Power Lining Marking Machines

1 Crimping Machine

1 Grindstone

1 6′ Leather Measuring Machine

56

STITCHING ROOM.

10 Skiving Machines

8 Folding Machines

2 Strap Cutting & Folding Machines

2 Pinking Machines

1 Rogers Vamp Marking Machine

9 Perforating Machines

1 Simplex Embossing Machine

123 Single Needle Stitching Machines

18 2 Needle Stitching Machines

3 Seam Rubbing Machines

10 4 Needle Stitching Machines

(United) 2 Hub Lining Cementing Machines

1 Punching Machine

4 Hooking Machines

(United–2) 7 Eyeletting Machines #411–796–

30 2 Needle Cylinder Stitching Machines
7 Reece Buttonhole Machines
3 Buttonhole Finishing Machines
3 Button Fastening Machines
5 Barring Machines
(United) 4 Ensign Lacing Machines #480–445–1268–1072
5 Bobbin Winding Machines

258

SOLE LEATHER ROOM.

(United–6) 13 Sole Cutting Machines #3184–3185–1391–1400–2573–23
(United–6) 9 Splitting Machines #114–595–173–597–596–2789
(United) 1 Rolling Machine #205
1 Peerless Buffing Machine
3 Tap Skiving or Rand Splitting Machines
(United) 2 Rapid Rotary Cementing Machines #317–126
(United) 3 Boston Lasting Machines #1422–348–630
(United) 1 American Twin Sole Moulding Machine #39
(United–2) 4 Planet Sole Rounding Machines #1090–1503
(United) 2 Gdyr. Universal Channeling Machines #344–852
(United) 3 Gdyr. Lip Turning Machines #112–47–100
2 Insole Lip Cutting & Scoring Machines
(United) 2 Economy Insole Channeling Machines #23–38
(United) 2 " " Reinforcing Machines #25–38
(United) 4 " " Stitching Machines #13–29–39–38
7 Heel Building Machines
1 Heel Measuring Machine
2 Veneer Presses
(United) 3 Automatic Heel Compressing Machines #1379–679–1329
2 Grinding Machines
2 Shellac Mixing Barrels
1 Daniels Planing Machine
1 Shank Boring Machine

71

LASTING ROOM.

(United) 4 USMC #1 Insole Tacking Machines #277–259–67–610
(United) 15 Rex Assembling Machines #1231–1780–1216–1201–350–380–351–381–1175–1204–51–1009–562–1176–1092
(United) 14 Rex Pulling-Over Machines #936–725–717–153–235–281–166–193–268–236–205–646–645–615
21 Toe Softening Machines
(United) 48 Lasting Machines #1759–2326–1981–2276–2435–3660–1850–2025–1876–1750–4072–4078–2322–3937–3923–3936–2436–3823–837–4093–579–4074–2239–5742–5932–5079–2438–3810–3066–5244–859–453–1910–3922–4252–4173–4196–4141–4142–4134–4126–1756–1749–3926–1776–2024–1748–1869
(United) 3 Rex Upper Trimming Machines #101–78–182
(United–1) 2 Grinding Machines #19

107

MAKING ROOM

(United–5) 6 Tack Pulling Machines #323–306–36–272–31
(United) 4 Gdyr. Upper Stapling Machines #14–71–18–85
(United) 2 " Power Welt Grooving & Beveling Machines #72–451
(United) 13 " Welt & Turn Sewing Machines #717–724–6–126–9–117–194–164–718–113–868–887–1117
(United) 5 " Universal Inseam Trimming Machines #96–104–768–16–273
(United) 3 " Welt Beating & Slashing Machines #414–669–107
(United) 2 " Shank Welt Skiving Machines #259–327
6 Besto Bottom Filling Machines
(United) 4 Gdyr. Improved Sole Laying Machines #2518–1849–1896–165
(United) 5 Loose Nailing Machines #3449–2192–3004–219–418
(United) 3 Heel Seat Rounding Machines #10–391–385
(United) 8 Gdyr. Universal Rounding & Channeling Machines #770–374–76–160–366–759–801–776

(United) 1 Gdyr. Channel Opening Machine #630
(United) 2 " Bobbin Winding Machines #1400–530
(United) 16 " Outsole Rapid Lockstitch Machines #594–591–325–510–515–530–552–567–691–206–743–474–441–925–1034–1087–
(United) 1 " Outsole Stitch Rubbing Machine #22
(United) 3 Cementing Machines #212–126–154
(United) 1 Gdyr. Channel Laying Machine #263
(United) 2 " Welt Indenting & Burnishing Machines #735–736
(United) 6 " Automatic Leveling Machines #529–630–681–680–281–481
(United) 3 Hadaway Stitch Separating Machines #1162–865–873
(United) 5 Heeling Machines #1657–1173–2286–288–246
(United) 5 Universal Slugging Machines #978–2446–464–112–2448
(United) 5 Heel Trimming Machines #1668–2049–982–949–850
(United) 1 McKay Knife Grinding Machine #526
(United–5) 8 Heel Scouring Machines #1574–811–547–1734–554
(United–2) 4 Heel Breasting Machines #1078–737
(United–1) 2 Heel Breast Scouring Machines #140
(United–1) 2 Top Piece Scolloping Machines #230
(United–11) 21 Edge Trimming Machines #5069–3192–1881–4418–3107–4418–5390–4050–6546–7288–3669
(United) 4 Gdyr. Jointing Machines #45–48–9–46
(United–5) 9 Edge Setting Machines #359–1236–188–2039–2130
(United–1) 2 Impression Stitch Burnishing Machines #138
(United) 1 Crest Heel Blacking Machine #145
(United) 6 Xpedite Heel Finishing Machines #1538–1731–1796–1279–1987–859
1 Grinding Machine
1 Grindstone & Frame

173

FINISHING ROOM.

2 Shank Buffing Machines
(United–6) 10 Buffing Machines #1277–1426–1280–890–937–930
30 Climax Finishing Shafts

(United–1) 3 Regent Stamping Machines #180
1 Universal Embossing Machine

46

PACKING ROOM.

(United) 2 Nurling Machines #377–166
23 Copeland Finishing Machines
(United) 1 Tip Scouring Machine #62
1 Simplex Bow Attaching Machine
4 Vamp Creasing Machines
2 Box Nurling Machines
1 Stencil Cutting Machine
1 Power Tag Marking Machine

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SUMMARY.

	United	Miscellaneous	
Cutting Room	45	11	
Stitching "	8	250	
Sole Leather Room	37	34	
Lasting Room	85	22	
Making Room	142	31	
Finishing Room	7	39	
Packing Room	3	32	
	327	419	= Grand Total 746

SUMMARY, INCLUDING THOSE GENERAL DEPARTMENT MACHINES WITH AN OUTRIGHT SALE PRICE AS MISCELLANEOUS.

	United	Miscellaneous	
Cutting Room	40	16	
Stitching "	6	252	
Sole Leather Room	52	19	
Lasting Room	85	22	
Making "	111	62	
Finishing "	0	46	
Packing "	2	33	
	296	450	= Grand Total 746

DEFENDANTS' EXHIBIT 263.

[Put in Evidence, page 3691.]

NEW ENGLAND SHOE AND LEATHER ASSOCIATION.

President, Andrew G. Webster

1st Vice-President, Elisha W. Cobb — 2d Vice-President, Robert Batcheller

Secretary, Geo. C. Houghton — Treasurer, Geo. McConnell

Directors.

William H. Allen	James W. Hitchings	Edward Moll
Harry H. Baldwin	George C. Houghton	I. Henry Porter
Robert Bacheller	George Hutchinson	Henry H. Proctor
Edwin W. Baxter	Charles H. Jones	William B. Rice
Frank J. Bradley	George E. Keith	Edwin L. Sprague
George W. Brown	Preston B. Keith	Arthur M. Stone
Elisha W. Cobb	John S. Kent	Edward D. Van Tassel
George M. Coburn	Joseph R. Leeson	John L. Walker
George F. Daniels	Charles A. Locke	Andrew G. Webster
Walter G. Garritt	Maxwell J. Lowry	Edwin S. Woodbury
A. Pierce Green	George H. Maddock	James A. Woolson
Charles P. Hall	George McConnell	

116 and 126 Bedford Street, Shoe and Leather Building.

Notary Public, Justice of the Peace.

Long Distance Telephone "Oxford" 96.

Boston, Mass., Jan. 29th, 1901.

S. W. Winslow, President, United Shoe Machinery Co., Albany Building, Boston.

Dear Sir: I am directed to inform you that the Committee have voted to accept the draft of lease as submitted by Mr. Howe to Mr. Storey and I herewith enclose a copy of a report which they have prepared to give to the press.

I am, Respectfully yours,

GEO. C. HOUGHTON, Secretary.

Dic. G.C.H. Enclosure.

Shirley Reporter City Editor 1–15

A settlement of the lease controversy has been reached between the United Shoe Machinery Company and a Committee of the New England Shoe & Leather Association together with a Committee of the National Association of Boot & Shoe Manufacturers, by which the Shoe Machinery Company offer to Shoe Manufacturers a choice between the lease as originally drawn, or a modified lease which contains among the several important concessions the right to use metallic fastening machines in connection with lasting, welt sewing or other machines other than those owned and leased by the United Shoe

Machinery Company. To such users the Company may charge, not exceeding 10% more for metallic fastening, than to those who use the entire system of the United Shoe Machinery Company.

The option of selection of either of above leases will not expire until Feb. 1st, 1902, after which there can be no change from the original to the modified lease, except by agreement; but the holder of the modified lease may change to the original at any time, by giving six months notice in writing.

The Committee will at an early date prepare and issue to the trade a detailed report.

Sent to the Press at same time it was sent to us.

H.

DEFENDANTS' EXHIBIT 264.

[Put in Evidence, page 3691.]

E. P. H. File.

STOREY THORNDIKE & PALMER, 735 EXCHANGE BUILDING
Counsellors-at-Law

Moorfield Storey
John L. Thorndike
Henry Ware

Bradley W. Palmer
Ezra R. Thayer
Reginald H. Johnson

All letters to be addressed to the firm.

Boston, 29th January 1901

E. P. Howe, Esq., Exchange Building.

Dear Sir: The Committee of the New England Shoe Manufacturers' Association instructs me to notify you that they will accept the last draft of the Independent lease which you have submitted to them, upon the understanding, at which I think we have arrived, that the persons who have taken your Iron Clad lease pending these negotiations may if they see fit take the Independent lease, and that there shall be attached to the Iron Clad lease a rider authorizing the holder to surrender it and take the Independent lease at any time up to the first day of February 1902. I understand moreover that it is your purpose to offer both leases for an indefinite time thereafter unless something in the business situation leads your company to change its policy.

Please let me hear from you that I have correctly stated our understanding, and oblige, Yours very truly,

Del'd C 30 MOORFIELD STOREY.

DEFENDANTS' EXHIBIT 265.

[Put in Evidence, page 3692.]

Copy to Mr. Winslow. E. P. H. File.

Boston, Mass., January 29, 1901.

Moorfield Storey, Esq.,

My dear Sir: I beg to acknowledge your favor of this date informing me of the action of the Committee of the New England Shoe Manufacturers' Association concerning the Independent lease offered by the United Shoe Machinery Company. I confirm what I have heretofore stated to you, namely:

1. That any lessee, who pending the negotiations with your Committee, has signed the United lease of Metallic Department machinery (which you refer to as the Iron Clad lease) or any lessee who shall hereafter sign such United lease may, at any time up to February 1st, 1902, upon giving thirty days written notice to the Company, surrender it, if he is not in default thereunder, by executing an Independent lease of the same machinery, and that the United Company upon the request of any such lessee under the United lease will attach a rider to his United lease expressly granting to him the right to exchange it for an Independent lease. A form of such rider is sent herewith.

2. That the United Company intends to offer both the United and the Independent lease for an indefinite time after February 1, 1902.

The Independent lease has been sent to the printer, and as soon as I have a corrected proof, I would like to submit it to you.

Enclosure. Very truly yours,

RIDER FOR "UNITED" METALLIC LEASE.

The lessee, if not in default in respect to any of the conditions, agreements, stipulations and provisions in Lease No.
granted by the undersigned for certain Metallic Department machinery, upon giving at least thirty days notice in writing of his intention so to do, shall have the privilege of surrendering this "United" lease and license at any time before February 1, 1902, by executing the

"Independent" form of lease and license agreement in respect to the leased machinery.

Dated, Boston, Mass., 190

UNITED SHOE MACHINERY COMPANY.

_____ By

DEFENDANTS' EXHIBIT 266.

[Put in Evidence, page 2785.]

November 13, 1912.

J. E. Williams, Esq., Vice President and General Manager, Excelsior Shoe Company, Portsmouth, Ohio.

Dear Sir: In reply to your inquiry we beg to say that the use of our machines in the manner which you have indicated to us, in the manufacture of McKay welts, is not in accordance with the conditions under which the machines have been supplied to you. Should you desire to make a change in the conditions on which you hold our machines so as to warrant their use in the manner indicated, we will be glad to take the matter up with you further.

Very truly yours,

UNITED SHOE MACHINERY COMPANY

_____ By

DEFENDANTS' EXHIBIT 267.

[Put in Evidence, page 2785.]

Portsmouth, Ohio, Nov. 18, 1912.

Fred G. King, Boston, Mass., United Shoe Machinery Co., Goodyear Dept.

Dear Sir: For the benefit of your files, since the question has been raised as to the use of a certain machine in our Ironton Scout plant, would say that immediately upon returning, the writer had the machine withdrawn from operation, and all the work is being done on your machine. If we should decide at any time in the future to change the plan of making these shoes, we will take the question up with you, but at present we are working on a line as per your interpretation of the lease. Yours very truly,

THE EXCELSIOR SHOE CO.

Dict.—JEW—C. Jno. E. Williams

DEFENDANTS' EXHIBIT 269.

[Put in Evidence, page 4107.]

Lease No. *183*

Transfer from Lease No.

This Lease and Agreement, made the *eighteenth* day of *March* A. D. 1897, by and between the Eppler Welt Machine Company, a corporation existing under the laws of the State of Maine, having a place of business at Boston, Massachusetts, Lessor, the party of the first part, and *Geo. H. Burt & Co., doing business at Lynn, Mass.*, Lessee, the party of the second part, witnesseth:

Whereas, the Lessor is now the owner of the following Letters Patent of the United States, viz.:—

No. 325,063, dated Aug. 25, 1885;
No. 387,058, dated July 31, 1888;
No. 387,059, dated July 31, 1888;
No. 417,872, dated March 10, 1891;
No. 487,011, dated Nov. 29, 1892;
No. 487,214, dated Nov. 29, 1892;
No. 409,281, dated Aug. 20, 1889;
No. 498,017, dated May 23, 1893.
No. 507,873, dated Oct. 31, 1893.

And whereas the Lessee desires to use the hereinafter described machines belonging to the Lessor;

Now, therefore, the Lessor, in consideration of one dollar to it paid by the said Lessee, the receipt whereof is hereby acknowledged, and of the stipulations and conditions hereinafter contained on the part of the Lessee to be kept and performed, doth lease unto the said party of the second part the machines designated by their numbers in the following schedule:—

One Eppler Inseam Sewing Machine , No. *112*
One Eppler Outsole Lock Stitch Machine , No. *80*
One Eppler Insole Channeler , No. *67*
Eppler Outsole Channeler , No.
One Eppler Welt Groover and Beveler , No. *84*
One Eppler Welt Splitter , No. *57*
One Eppler Welt Beater , No. *61*
Eppler Channel Lip Turner , No.
Eppler Shank Skiver , No.
One Eppler Bobbin Winder , No. *65*

It is understood that said machines are and shall remain the property of said Eppler Welt Machine Company, and subject to the conditions of this lease and agreement.

And the Lessor doth hereby license the Lessee, and operatives in his employment, to use said machines, upon the terms and conditions hereinafter set forth; provided, however, and this lease is made and this license is granted on the express condition, that the Lessee shall faithfully keep and perform all the conditions and stipulations herein contained on his part to be kept and performed; and upon breach of the same or of any of them by the Lessee, the Lessor, its successors or assigns, may, at their option, cancel and terminate this lease and license; and upon written notice thereof by the Lessor, its successors or assigns, to the Lessee, or to any one in the possession or apparent control of the said machines or any of them, this lease and license shall terminate, and possession of said machines shall thereupon be transferred to said Lessor, its successors or assigns. And the said party of the second part hereby agrees to keep and perform all the following conditions of this lease and license:—

First. The Lessee is by this lease and license authorized to use the machines hereby leased only in said *Lynn, Mass.*, he shall not add to nor substract from the said machines any mechanism whatever now or hereafter organized or connected therewith by the Lessor, nor make, nor allow to be made, any change or alteration in the same, without the consent thereto in writing by the Lessor, nor interfere with the proper operation of the machines, or any mechanism forming a part thereof, or attached thereto, nor remove nor deface any dates, numbers, or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessor.

Second. It shall be lawful for the Lessor, or its duly authorized agent, at all reasonable times to have convenient access to the machines, to examine and inspect the same and the use thereof, and to verify the operator's reports, and to improve the machines, and to affix indicators thereto, as it may see fit; and the covenants, stipulations, and conditions herein contained shall apply to all improvements which the Lessor shall hereafter add to the machines, to indicators now or hereafter affixed thereto, and to all patents hereafter embodied

therein, with the same effect as if said patents were included in the list herein set forth.

Third. The following is the schedule of rents or royalties hereinafter referred to, and which it is understood and agreed is to be paid on each pair of shoes or boots respectively made by the aid of these machines or any of them, or by the use of the said patents or any of them, viz.:—

SCHEDULE OF RENTS AND ROYALTIES.

Children's	3 cents.
Misses'	4 "
Women's	6 "
Youths'	4 "
Boys'	6 "
Men's	8 "

Fourth. The Lessee hereby agrees to keep an account of all boots and shoes sewed by him, or by any other person for him or for others, by the aid of the machines hereby leased, or by the use of the patents aforesaid and to render an account thereof to the Lessor, its successors or assigns, on or before the tenth day of each month; which account shall specify the number of pairs of boots and shoes, made under this lease and license during the calendar month next preceding, and the class to which they belong according to the above schedule; and the said Lessee agrees that he will require the operator or operators on said machines to keep a daily account of all boots and shoes sewed on said machines, upon the printed forms to be furnished by the Lessor, in duplicate; one copy of which, containing such reports for the calendar month preceding, the Lessee agrees to send, on or before the tenth day of each month, to the Lessor; and whenever required by the Lessor, its successors or assigns, to make oath to the correctness of said returns; and to allow the Lessor, its successors, assigns, or authorized agents to examine the original books and accounts of the Lessee, in order to verify the returns aforesaid, and the Lessee agrees to send to the Lessor, on or before the tenth day of each month, in case the machines, or any of them, hereby leased have not been run during the month next preceding, one of the aforesaid printed forms furnished by the Lessor, for each such

machine, signed by the Lessee, and marked across the face with the words "not running" or "not in use."

Fifth. The Lessee agrees to pay unto the Lessor, as rent for the machines hereby leased, the rent or royalty specified in the schedule forming part of Section Third herein, on each pair of boots or shoes of the respective kinds mentioned or described in said schedule made by the aid of the said machines or of any of them, or by the use of the said patents or of any of them; the rents and royalties for all such boots and shoes made as aforesaid during one calendar month, to be due on the first day of the calendar month next following, and to be paid within three months from that day; but the Lessor hereby agrees that **if the rents and royalties due on the first day of any month shall be paid on or before the fifteenth day of that month, it will, in consideration thereof, grant a discount of fifty per cent. from the rents and royalties specified in the schedule aforesaid; and the Lessee further agrees to pay, while he shall retain possession of the machines hereby leased, all taxes thereon, to whomsoever laid or assessed.** The Lessee hereby further agrees that the rents or royalties actually paid by the Lessee for each sewing or stitching machine herein leased shall, in each and every year, during the continuance of this lease, amount in the aggregate to at least one hundred dollars. The Lessee shall also pay the expense of transportation of the machines herein leased from and to the Lessor's premises, and also the expense of keeping said machines in repair; and shall keep said machines and all of them fully insured in the amounts hereinafter mentioned against loss by fire, and in case of loss of or damage to said machines or any of them shall pay to the Lessor or its order upon demand the full amount of such insurance. The insurance upon said machines shall be in the following amounts, to wit:—

Eppler Inseam Sewing Machine . .	$ 250.00
Eppler Outsole Lock Stitch . .	190.00
Eppler Insole Channeler . . .	50.00
Eppler Outsole Channeler . . .	50.00
Eppler Welt Groover and Beveler .	15.00

Eppler Welt Splitter	10.00
Eppler Welt Beater	25.00
Eppler Channel Lip Turner . .	25.00
Eppler Shank Skiver . . .	35.00
Eppler Bobbin Winder . . .	25.00

Sixth. The Lessee hereby agrees that he will not in any way violate, or infringe, or contest the validity of any of the patents he is hereby licensed to use, or the sufficiency of their specifications, or the validity of the title of the Lessor, or of its successors or assigns, to said patents or any of them.

Seventh. This lease and license is not assignable by the Lessee, by his own act or by operation of law.

Eighth. The following are also agreed to by the parties to this instrument as the terms of lease and license of the machines which the Lessee is hereby licensed to use:—

1st. That the power conveyed by this lease and license is only the right to use the said machines, and not the right to make or sell any machine embodying the patents aforesaid, or any of them; and that a transfer or removal of the machines hereby leased, or any of them, can only be made with the consent of the Lessor, its successors or assigns; and that if the Lessee is or becomes at any time, insolvent or bankrupt, or makes an assignment for the benefit of creditors, or if a sale, lease, transfer, or removal of said machines, or any of them, shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative, or assignee, as the property of the Lessee, without the written consent of the Lessor, or its successors or assigns, this lease and license shall thereupon terminate and expire; and the Lessor, its successors or assigns, may take possession of said machines without the Lessee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this lease and license, or for rent or license under this instrument.

2d. The Lessee agrees that the machines hereby leased shall be used only in the manufacture of boots and shoes known in the trade as "Eppler Welts," and that he will not use or permit the use of

said machines, or either or any of them, upon boots or shoes in the manufacture of which any sole or welt sewing machine not leased to him by the Lessor is employed, or for any other purpose, unless the consent in writing of the Lessor shall first have been obtained.

3d. That in case the Lessee refuses or neglects to perform, or violates any of the terms or conditions of this lease and license, the Lessor, its successors or assigns, shall have the right to terminate this lease and license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this lease and license shall be terminated, and the possession of said machines shall thereupon be transferred to the Lessor, its successors or assigns, free and discharged of this lease and license; and the Lessor, its successors or assigns, or its authorized agent or agents, may thereupon enter the premises where said machines may be, and may take and remove the same without being deemed guilty of any trespass; and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease or license

4th. That this lease and license shall continue (provided the Lessee complies with the terms and conditions thereof) until the expiration of all the Letters Patent which the Lessee is hereunder licensed to use, or any extensions or renewals of the same, or additional patents; and upon the expiration thereof, the Lessee shall deliver to the Lessor, its successors or assigns, the machines hereby leased, in good order; natural wear and tear alone excepted.

Ninth. In case any other machines than these hereby leased and licensed, embracing any of the inventions patented in the aforesaid Letters Patent, or any of them, or any inventions or improvements for which Letters Patent shall be granted or assigned to the Lessor, shall hereafter come into possession of the Lessee, by exchange or otherwise, without lease or license from the Lessor, its successors or assigns, then in case the Lessor, its successors or assigns, shall so elect, all the covenants herein contained shall apply to such machines, inventions or improvements; and shall govern the parties respective y to the same extent as if the said machines, inventions or improvements had been expressly included in this lease and license. The Lessor

shall give written notice of its election as aforesaid within thirty days after it shall have received written notice from the Lessee of the possession of such machines; but may give such notice without having received notice from the Lessee of the possession of such machines.

Tenth. The Lessee agrees that he will not disturb or interfere with, nor permit any one else to disturb or interfere with, any indicator which now is, or which may be hereafter, placed upon the machines as aforesaid.

Eleventh. All the rights and interests which under this instrument and by reason of the ownership of said machines and patents and patent rights belonging to the Lessor shall be deemed to belong to, and may be enforced in, the names of the Lessor and its successors and assigns, and all the stipulations binding on the Lessee shall be binding on his executors or administrators.

Twelfth. It is agreed that the numbers of the machines named in this lease may be entered herein by the Lessor after signing; and in case the Lessee shall require more than one machine, it is agreed that the termination to words relating to the machines shall be construed and considered as written in the singular or plural, as the number of machines entered in the lease and license may require; and also that this instrument may be used in cases where the party of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular, as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained.

In Witness whereof, the parties aforesaid have hereunto put their hands and seals; the said parties of the second part binding themselves to all the foregoing agreements, both jointly and severally.

EPPLER WELT MACHINE COMPANY.

By Walter B. Trowbridge, Treas. [SEAL]

GEO. H. BURT & CO. [SEAL]

[On back:]

No. *183*

Name, *Geo. H. Burt & Co.*
Address, *Lynn, Mass.*
Date, *March 18,* 1897

Machine	No.
Inseam Sewing Machine	*112*
Outsole Lock Stitch	*80*
Insole Channeler	*67*
Outsole Channeler	
Welt Groover and Beveler	*84*
Welt Splitter	*57*
Welt Beater	*61*
Channel Lip Turner	
Shank Skiver	
Bobbin Winder	*65*

DEFENDANTS' EXHIBIT 270.

[Put in Evidence, page 4217.]

INFRINGEMENT SUITS WHICH HAD BEEN BEGUN AGAINST THOMAS G. PLANT AND AGAINST THOMAS G. PLANT COMPANY.

Suits Against Thomas G. Plant

Eq. Nos.	Patents.		Infringing Machines	Bills Filed
749	Grandy	No. 552,834	Toe and Heel Laster	July 28, 1910
751	Pettengill	No. 596,305	Heel Attacher	July 28, 1910
753	Winkley	No. 700,279	Welter	July 28, 1910
764	Lombard	No. 524,446	Toe and Heel Laster	Aug. 11, 1910
766	Bates	No. 921,503 No. 950,986	Clicking Machine	Aug. 13, 1910
768	Cutter	No. 582,579	Loose Nailer	Aug. 13, 1910
775	Arnold	No. 946,591	Stitcher	Sept. 3, 1910
777	Hadaway	No. 963,761	Stitcher	Sept. 3, 1910

Suits Against Thomas G. Plant Company

A. Suits on same patents and same machines as suits listed above.

750	Grandy	No. 552,834	Toe and Heel Laster	July 28, 1910
752	Pettengill	No. 596,305	Heel Attacher	July 28, 1910
754	Winkley	No. 700,279	Welter	July 28, 1910

763	Lombard	No. 524,446	Toe and Heel Laster	Aug. 11, 1910
767	Bates	No. 921,503	Clicking Machine	Aug. 13, 1910
		No. 950,986		
769	Cutter	No. 582,579	Loose Nailer	Aug. 13, 1910
774	Arnold	No. 946,591	Stitcher	Sept. 3, 1910
776	Hadaway	No. 963,761	Stitcher	Sept. 3, 1910
B	Additional suits.			
755	Hadaway	No. 725,077	Welting produced by Welt Slasher & Groover	July 28, 1910
765	Taylor	No. 834,085	Heel produced by Heel Attacher	Aug. 11, 1910

DEFENDANTS' EXHIBIT 271.

[Put in Evidence, page 4219.]

PATENTS OF THE UNITED COMPANY INFRINGED BY THE PLANT MACHINES.

UPPER CLICKING MACHINE

No.	date	Inventor	Date of Application
921,503	May 11, 1909	Bates	
950,986	Mar. 1, 1910	Bates	
1,006,453	Oct. 24, 1911	Ashworth	June 12, 1908
1,010,476	Dec. 5, 1911	Buckminster	June 13, 1908
1,081,751	Dec. 16, 1913	Keats	Mar. 1, 1909
1,004,757	Oct. 3, 1911	Eaton	Mar. 2, 1910

DOUBLE LIP CHANNEL OPENER

No.	date	Inventor
818,774	Apr. 24, 1906	Mitchell

SINGLE LIP CHANNEL OPENER AND EDGE COMPRESSOR

No.	date	Inventor
818,774	Apr. 24, 1906	Mitchell

INNERSOLE FLEXOR

No.	date	Inventor
685,991	Nov. 5, 1901	Knipe
885,244	Apr. 21, 1908	Hadaway
963,708	July 5, 1910	Hadaway

INNERSOLE CLOTH TUCKER AND LIP TRIMMER

No.	date	Inventor	
609,103	Aug. 16, 1898	Keith	
638,010	Nov. 28, 1899	Hadaway	
1,028,982	June 11, 1912	Winkley	May 24, 1906

SOLE ROUNDER

No.	date	Inventor
589,409	Sept. 7, 1897	Breach

GRINDER

No.	date	Inventor	
1,056,419	Mar. 18, 1913	Howe	Mar. 29, 1905

TOP LIFT COMPRESSOR

No.	date	Inventor
781,236	Jan. 31, 1905	Small

PULLER OVER AND TIP MEASURER

No.	date	Inventor	
663,777	Dec. 11, 1900	McFeely	
950,701	Mar. 1, 1910	McFeely	Oct. 31, 1901
1,007,053	Oct. 31, 1911	Bayard	May 17, 1906
1,029,387	June 11, 1912	McFeely	Mar. 28, 1903
597,321	Jan. 11, 1898	Ladd	

RAPID SIDE LASTER

No.	date	Inventor	Date of Application
1,005,234	Oct. 10, 1911	Ladd & Stiggins	Oct. 13, 1902
1,012,742	Dec. 26, 1911	Stiggins	Jan. 28, 1905
1,005,929	Oct. 17, 1911	Bond	Feb. 25, 1907
597,321	Jan. 11, 1898	Ladd	

TOE AND HEEL LASTER

No.	date	Inventor	
524,446	Aug. 14, 1894	Lombard	
552,834	Jan. 7, 1896	Grandy	
935,065	Sept. 28, 1909	Stiggins	
1,030,564	June 25, 1912	Brock	July 19, 1898
1,022,420	Apr. 9, 1912	Jerram	Sept. 26, 1904

Re.13,292	Sept. 19, 1911	Snow	
(Original patent 946,708, Jan. 19, 1910)			
1,002,818	Sept. 12, 1911	Brock	Mar. 19, 1910
571,429	Nov. 17, 1896	Chase	
569,231	Oct. 13, 1896	Ray	

TURN HEEL LASTER

No.	date	Inventor	
552,834	Jan. 7, 1896	Grandy	
935,065	Sept. 28, 1909	Stiggins	
1,030,564	June 25, 1912	Brock	July 19, 1898
1,022,420	Apr. 9, 1912	Jerram	Sept. 26, 1904
Re. 13,292	Sept. 19, 1911	Snow	
(Original patent 946,708, Jan. 19, 1910)			
1,002,818	Sept. 12, 1911	Brock	Mar. 19, 1910

STAPLE TACKER

No.	date	Inventor	
765,650	July 19, 1904	Casgrain	
1,016,930	Feb. 13, 1912	Borden	Jan. 16, 1905

HEEL SEAT NAILER

No.	date	Inventor
765,650	July 19, 1904	Casgrain

WELT SLASHER AND GROOVER

No.	date	Inventor	
885,244	Apr. 21, 1908	Hadaway	
963,708	July 5, 1910	Hadaway	
725,077	Apr. 14, 1903	Hadaway	
1,026,306	May 14, 1912	Eppler	July 20, 1906
1,020,346	Mar. 12, 1912	Eppler	June 20, 1908
Appln. Ser. No. 309,109 filed Mar. 31, 1906, Stanbon			

TACK PULLER & BASTER

No.	date	Inventor
864,532	Aug. 27, 1907	Hadaway
777,795	Dec. 20, 1904	Lyon
545,625	Sept 3, 1895	Fowler & Warren

WELTER

No.	date	Inventor	
700,279	May 20, 1902	Winkley	
993,490	May 30, 1911	Winkley	Mar. 26, 1897

Appln. Ser. No. 247,117 filed Feb. 24, 1905, Eppler

CUSTOM SOLE LAYER

No.	date	Inventor
580,746	Apr. 13, 1897	Winkley
610,314	Sept. 6, 1898	Winkley
935,212	Sept. 28, 1909	Manent
557,744	Apr. 7, 1896	Winkley

ROUGH ROUNDER

No.	date	Inventor
599,602	Feb. 22, 1898	French & Meyer
682,679	Sept. 17, 1901	Fowler

HEEL SEAT DINKER

No.	date	Inventor
613,228	Nov. 1, 1898	Barbour

SHOE CHANNELER

No.	date	Inventor
707,576	Aug. 26, 1902	Fowler
600,883	Mar. 22, 1898	Meyer & French

STITCHER

No.	date	Inventor	
710,613	Oct. 7, 1902	Richardson	
971,014	Sept. 20, 1910	Winkley	Jan. 14, 1905
946,591	Jan. 18, 1910	Arnold	
963,761	July 12, 1910	Hadaway	
704,458	July 8, 1902	Hadaway	

Appln. Ser. No. 321,958 filed June 16, 1906, Nash

LOOSE NAILER

No.	date	Inventor
582,579	May 11, 1897	Cutter
582,580	May 11, 1897	Cutter

1,054,173	Feb. 25, 1913	Casgrain	Sept. 5, 1907
1,053,479	Feb. 18, 1913	Casgrain	Sept. 12, 1908

LEVELER

No.	date	Inventor
540,222	May 28, 1895	Winkley & Phillips
540,223	May 28, 1895	Winkley & Phillips
557,744	Apr. 7, 1896	Winkley
580,746	Apr. 13, 1897	Winkley
610,314	Sept. 6, 1898	Winkley
861,746	July 30, 1907	Mayo
935,212	Sept. 28 1909	Manent

HEEL LOADER

No.	date	Inventor	Date of Application
1,000,957	Aug. 15, 1911	Bates	Aug. 15, 1903
694,656	Mar. 4, 1902	Mayo	
571,931	Nov. 24, 1896	Raymond & Fogg	
662,898	Nov. 27, 1900	Grandy	
663,777	Dec. 11, 1900	McFeely	
566,337	Aug. 25, 1896	Raymond	
596,053	Dec. 28, 1897	Crisp	
1,054,032	Feb. 25, 1913	Raymond	Feb. 20, 1892
1,002,836	Sept. 12, 1911	Gouldbourn	Oct. 13, 1906
776,787	Dec. 6, 1904	Leland	

HEELER

No.	date	Inventor	
884,524	Apr. 14, 1908	Pope	
943,723	Dec. 21, 1909	Webster & Towle	
1,000,957	Aug. 15, 1911	Bates	Aug. 15, 1903
1,009,710	Nov. 21, 1911	Raymond	Feb. 20, 1892
1,054,032	Feb. 25, 1913	Raymond	Feb. 20, 1892
982,550	Jan. 24, 1911	Towle	Oct. 3, 1904
1,019,398	Mar. 5, 1912	Woodward	June 6, 1901
1,000,119	Aug. 8, 1911	Pope & Elliott	May 26, 1898
1,030,654	June 25, 1912	Elliott	Mar. 13, 1902
1,081,917	Dec. 16, 1913	Tripp	Aug. 1, 1907
834,085	Oct. 23, 1906	Taylor	

HEEL ATTACHER ON WOOD LASTS

No.	date	Inventor	
884,524	Apr. 14, 1908	Pope	
943,723	Dec. 21, 1909	Webster & Towle	
1,000,957	Aug. 15, 1911	Bates	Aug. 15, 1903
1,009,710	Nov. 21, 1911	Raymond	Feb. 20, 1892
1,054,032	Feb. 25, 1913	Raymond	Feb. 20, 1892
982,550	Jan. 24, 1911	Towle	Oct. 3, 1904
1,019,398	Mar. 5, 1912	Woodward	June 6, 1901
1,000,119	Aug. 8, 1911	Pope & Elliott	May 26, 1898
1,081,917	Dec. 16, 1913	Tripp	Aug. 1, 1907
834,085	Oct. 23, 1906	Taylor	
596,305	Dec. 28, 1897	Pettengill	
1,030,654	June 25, 1912	Elliott	Mar. 13, 1902

HEEL SLUGGER

No.	date	Inventor	Date of Application
765,650	July 19, 1904	Casgrain	
1,056,419	Mar. 18, 1913	Howe	Mar. 29, 1905

HEEL BREASTER

No.	date	Inventor
636,990	Nov. 14, 1899	Heys

STITCH INDENTER & BURNISHER

No.	date	Inventor	
894,332	July 28, 1908	Krewson	
690,422	Jan. 7, 1902	Hadaway	
855,401	May 28, 1907	Hadaway	
934,434	Sept. 21, 1909	Flynt	
999,161	July 25, 1911	Hadaway	May 17, 1905

STITCH SEPARATOR

No.	date	Inventor
Re. 11,538	May 12, 1896	Hadaway
(Original patent 521,978 June 26, 1894)		

TOP LIFT SCALLOPER

No.	date	Inventor	
1,030,567	June 25, 1912	Busell	Aug. 8, 1906

HEEL WAXER AND BURNISHER

No.	date	Inventor
699,476	May 6, 1902	Beckwith & Pease
743,988	Nov. 10, 1903	Pease
Appln. Ser. No. 320,622 filed June 7, 1906		Pease

SEAT BEADER

No.	date	Inventor	Date of Application
687,225	Nov. 26, 1901	Gordon and Gould	

TREEING MAHINE

No.	date	Inventor	
1,030,810	June 25, 1912	Hansen	Sept. 16, 1902
1,081,907	Dec. 16, 1913	Hansen	Feb. 1, 1905

BRESNAHAN AUTOMATIC SOLE MOLDING MACHINE

No.	date	Inventor
627,122	June 20, 1899	Keighley

KEIGHLEY INSEAM TRIMMER

No.	Date	Inventor
961,200	June 14, 1910	Ashton
968,555	Aug. 30, 1910	Hadaway

DEFENDANTS' EXHIBIT 272.

[Put in Evidence, page 4219.]

INTERFERENCES IN THE PATENT OFFICE BETWEEN APPLICATIONS OWNED BY PLANT AND APPLICATIONS OF UNITED SHOE MACHINERY COMPANY.

(Applications owned by United Company are designated "(United)".)
(" " " Plant " " " "(Plant)".)

Olson	Se. No. 316,304 (United) (patent No. 1,040,393, Oct. 8, 1912)	Interference No. 28127
	v.	Declared Oct. 22, 1907
Heys	Patent No. 860,377 (Plant)	Impression Stitch Machine
Eppler	Se. No .439,487 (United) (patent No. 1,020,346, Mar. 12, 1912)	Interference No. 31306
	v.	Declared Jan. 11, 1910
Stanbon	Se. No. 309,109 (Plant)	Welt Preparing Machine

Allen	Se. No. 450,042 (United) (patent No. 1,027,638, May 28, 1912)	Interference No. 31422 Declared Feb. 1, 1910 Heel Seat Rounding Machine
	v.	
Heys	Se. No. 309,997 (Plant) (patent No. 1,005,545, Oct. 10, 1911)	
Allen	Se. No. 450,042 (United) (patent No. 1,027,638, May 28, 1912)	Interference No. 31657 Declared Mar. 22, 1910 Heel Seat Rounding Machine
	v.	
Phelan	Se. No. 319,709 (Plant) (patent, No. 1,005,573, Oct. 10, 1911)	
Winkley	Se. No. 43,592 (United) (patent No. 961,747, June 14, 1910)	Interference No. 31005 Declared Nov. 2, 1909 Leveling Jack
	v.	
Woodward	Se. No. 327,136 (Plant) (patent No. 1,076,618, Oct. 21, 1913)	
Ladd & Stiggins	Se. No. 127,083 (United) (patent No. 1,005,234, Oct. 10, 1911)	Interference No. 29382 Declared Oct. 6, 1908 Grippers for Lasting Machines
	v.	
Seely	Se. No. 450,941 (Plant) (patent No. 958,187, May 17, 1910)	
Busell	Se. No. 329,732 (United) (patent No. 1,030,567, June 25, 1912)	Interference No. 32078 Declared June 21, 1910 Machine for Concaving Heels
	v.	
McLeod	Se. No. 524,951 (Plant)	
Keats	Se. No. 480,561 (United) (patent No. 1,081,751, Dec. 16, 1913)	Interference No. 31965 Declared June 7, 1910 Presses (Clicking Machine)
	v.	
Stewart	Se. No. 526,760 (Plant) (patent No. 1,030,621, June 25, 1912)	
Ashworth	Se. No. 438,137 (United) (patent No. 1,006,453, Oct. 24, 1911)	Interference No. 31966 Declared June 7, 1910 Presses (Clicking Machine)
	v.	
Stewart	Se. No. 526,760 (Plant) (patent No. 1,030,621, June 25, 1912)	
Engberg	Se. No. 464,137 (United) (patent No. 1,023,826, Apr. 23, 1912)	Interference No. 30644 Declared July 22, 1909 Measure (Tip Measurer for Pulling-Over Machine)
	v.	
Perri	Se. No. 490,216 (United) (patent No. 1,024,019, Apr. 23, 1912)	
	v.	
Heys	(Plant)	
Heys	Patent No. 860,377 (Plant)	Interferences Nos. 26952, Jan. 2, 1907 27259, Mar. 12, 1907
	v.	
Hadaway	Se. No. 224,660 (United) (patent No. 1,003,451, Sept. 19, 1911)	
	v.	
Krewson	Se. No. 211,794 (patent No. 894,332, July 28, 1908)	Impression Stitch Machine

Hadaway	Se. No. 251,383 (United)	Interferences Nos. 26016, 26018 May 8, 1906
	(patent No. 1,003,452, Sept. 19, 1911)	
	v.	
Flynt	Se. No. 231,133 (United)	
	(patent No. 845,939, Mar. 5, 1907)	
	v.	Impression Stitch Machine
Heys	Se. No. 261,490 (Plant)	
Brock	Se. No. 686,319 (United)	Interference No. 31802 Declared Apr. 26, 1910 Lasting Machine
	(patent No. 1,030,564, June 25, 1912)	
	v.	
Phelan	Se. No. 529,313 (Plant)	
Brock	Se. No. 512,907 (United)	Interference No. 31347 Declared Jan. 18, 1910 Lasting Machine
	(patent No. 1,066,375, July 1, 1913)	
	v.	
Phelan	Se. No. 529,313 (Plant)	
Cavanagh	Se. No. 384,511 (United)	Interference No. 29751 Declared Jan. 19, 1909 Machines for Operating on Insoles
	v.	
Plant	(Plant)	
	v.	
Cook		
Hadaway	Se. No. 362,632 (United)	Interference No. 31525 Declared Feb. 23, 1910 Trimming Machine (Shank Trimmer)
	v.	
Moody		
	v.	
Plant	(Plant)	
	v.	
Colber		
Hadaway	Se. No. 362,632 (United)	Interference No. 31854, May 11, 1910 Trimming Machine (Shank Trimmer)
	v.	
Plant	(Plant)	
Hadaway	Se. No. 362,632 (United)	Interference No. 28636 Declared Mar. 3, 1908 Trimming Machine (Shank Trimmer)
	v.	
Perry	Se No. 395,194 (United)	
	(patent No. 1,047,283, Dec. 17, 1912)	
	v.	
Colber		
	v.	
Moody		
	v.	
Plant	(Plant)	
McFeely	Se. No. 372,055 (United)	Interference No. 32056 Pulling-Over Machine Declared June 15, 1910
	v.	
Stewart	Se. No. 343,458 (Plant)	
Towle	Se. No. 226,961 (United)	Interference No. 32021 Declared June 14, 1910 Heel Nailing Machines
	(patent No. 982,550, Jan. 24, 1911)	
	v.	
Stewart	Se. No. 409,142 (Plant)	
	(patent No. 944,389, Dec. 28, 1909)	

Buckminster	Se. No. 438,345 (United) (patent No. 1,010,476, Dec. 5, 1911)	Interference No. 32201 Declared July 19, 1910
	v.	
Keats	Se. No. 480,561 (United) (patent No. 1,081,751, Dec. 16, 1913)	Presses (Clicking Machine)
	v.	
Stewart	Se. No. 526,760 (Plant) (patent No. 1,030,621, June 25, 1912)	

DEFENDANTS' EXHIBIT 273.

[Put in Evidence, page 4220.]

INFRINGEMENT BY PLANT MACHINES OF PATENTS AND APPLICATIONS OF THE UNITED SHOE MACHINERY COMPANY.

DETAILED DISCUSSION.

101 UPPER CLICKING MACHINE (Plant catalog page 14)

The general organization of this machine infringed 17 claims (7, 8, 11, 15, 16, 33, 49, 51, 52, 59, 60, 61, 62, 65, 66, 70 and 71) of patent

921,503 May 11, 1909 Bates

The mechanism (the trough) at the back of the bed to receive and protect the part of the skin not on the bed infringed 7 claims (1, 3, 4, 5, 6, 8 and 9) of patent

950,986 March 1, 1910 Bates

The mechanism of this machine for automatically moving the pressure-applying member laterally after the pressure-applying movement infringed 7 claims (1, 2, 3, 4, 5, 6 and 43) of patent

1,006,453 Oct. 24, 1911 Ashworth (Appln. filed June 12, 1908) (Ashworth was in interference with Stewart application owned by Plant — Ashworth won)

The mechanism in this machine for automatically moving the pressure-applying member laterally to inoperative position and permitting free movement to operative position infringed 6 claims (52, 53, 54, 55, 56 and 57) of patent

1,010,476 Dec. 5, 1911 Buckminster (Appln. filed June 13, 1908) (Buckminster was in interference with Stewart application owned by Plant — Buckminster won)

The specific construction of this machine comprising means oper-

ating independently of the regular operating mechanism of the machine infringed 2 claims (10 and 11) of patent

1,081,751 Dec. 16, 1913 Keats (Appln. filed Mar. 1, 1909) (Keats was in interference with Stewart application owned by Plant and Keats won).

The spring-actuated mechanism in this machine permitting free movement of the pressure-applying member to selected position over the bed and acting to swing it to inoperative position at one side of the bed infringed 5 claims (32, 33, 35, 36 and 37) of patent

1,004,757 Oct. 3, 1911 Eaton (Appln. filed Mar. 2, 1910)

In the aggregate 44 claims were infringed by this machine.

102 DOUBLE LIP CHANNEL OPENER (Plant catalog page 20)

The table and feed wheel mechanism of this machine infringed 2 claims (7 and 8) of patent

818,774 Apr. 24, 1906 Mitchell

103 SINGLE LIP CHANNEL OPENER AND EDGE COMPRESSOR (Plant catalog page 22)

The table and feed wheel mechanism of this machine infringed 2 claims (7 and 8) of patent

818,774 Apr. 24, 1906 Mitchell

104 INNERSOLE FLEXOR (Plant catalog page 26)

The reciprocating knife and intermittently-operated feed wheel of this machine infringed claim 5 of patent

685,991 Nov. 5, 1901 Knipe

The slashing mechanism of this machine for making slits partially through and across the leather infringed 5 claims (5, 10, 16, 17 and 19) of patent

885,244 Apr. 21, 1908 Hadaway

The cutting mechanism making transverse cuts in one side of less depth than the thickness of the leather of this machine infringed 10 claims (1, 2, 4, 9, 10, 11, 12, 13, 14 and 15) of patent

963,708 July 5, 1910 Hadaway

In the aggregate 16 claims were infringed by this machine.

105 INNERSOLE CLOTH TUCKER AND LIP TRIMMER (Plant catalog page 36)

The general organization of this machine infringed 4 claims (1, 4, 5 and 9) of patent

609,103 Aug. 16, 1898 Keith

The canvas tucking mechanism of this machine infringed 4 claims (1, 2, 3 and 5) of patent

638,010 Nov. 28, 1899 Hadaway.

The means for ensuring proper presentation of the work in this machine infringed 11 claims (1, 2, 3, 4, 8, 9, 10, 11, 12, 13 and 14) of patent

1,028,982 June 11, 1912 Winkley (Appln. filed May 24, 1906)

In the aggregate 19 claims were infringed by this machine.

106 Sole Rounder (Plant catalog page 38)

The mechanism acting to clamp the blank and start the rounding operation of this machine infringed claim 10 of patent

589,409 Sept. 7, 1897 Breach

107 Grinder (Plant catalog page 44)

The work guiding mechanism of this machine for presenting the knife to the grinding wheel infringed 10 claims (1, 5, 16, 17, 18, 19, 20, 22, 24 and 25) of patent

1,056,419 Mar. 18, 1913 Howe (Appln. filed Mar. 29, 1905)

108 Top Lift Compressor (Plant catalog page 52)

The product of this machine infringed all the 8 claims of patent

781,236 Jan. 31, 1905 Small

109 Puller Over and Tip Measurer (Plant catalog page 56)

The general organization of this machine infringed 15 claims (1, 14, 29, 54, 55, 56, 57, 58, 59, 60, 112, 122, 124, 126 and 154) of patent

663,777 Dec. 11, 1900 McFeely

This machine was so organized that the upper could be adjusted on the last while it was held under strain by the grippers and the machine would undoubtedly have been operated in this manner in commercial use. When so operated it would infringe 16 other claims of this patent (9, 10, 11, 12, 13, 15, 16, 17, 20, 42, 47, 170, 173, 174, 179, 183).

The mechanism of this machine for longitudinally and trans-

versely stretching the upper infringed 8 claims (69, 73, 74, 75, 76, 78, 79, 94) of patent

950,701 Mar. 1, 1910 McFeely (Appln. filed Oct. 31, 1901)

The mechanism for longitudinally stretching the upper and the tip measuring mechanism of this machine infringed 9 claims (1, 4, 8, 15, 27, 28, 31, 34, 35) of patent

1,007,053 Oct. 31, 1911 Bayard (Appln. filed May 17, 1906)

When operated to adjust the upper on the last to straighten the tip seam, the machine would also infringe 5 additional claims (36, 37, 39, 40, 44) of this patent

1,007,053 Oct. 31, 1911 Bayard (appln. filed May 17, 1906)

The heel rest mechanism in this machine infringed 16 claims (23, 25, 54, 97, 99, 100, 101, 104, 106, 107, 108, 110, 111, 112, 113, 114) of patent

1,029,387 June 11, 1912 McFeely (Appln. filed Mar. 28, 1903)

The mechanism of this machine for effecting the oblique drive of the single fasteners infringed 7 claims (4, 5, 6, 7, 21, 40 and 41) of patent

597,321 Jan. 11, 1898 Ladd

In the aggregate, 76 claims were infringed by this machine.

110 RAPID SIDE LASTER (Plant catalog page 61)

The pincer-actuating mechanism of this machine infringed 2 claims (1 and 15) of patent

1,005,234 Oct. 10, 1911 Ladd & Stiggins (Appln. filed Oct. 13, 1902)

The specific construction of the pincer mechanism also infringed Claim 27 of patent

1,012,742 Dec. 26, 1911 Stiggins (Appln. filed Jan. 28, 1905)

The pincer jaw closing and updraw lever mechanism of this machine infringed 8 claims (1, 2, 3, 4, 5, 6, 7 and 9) of patent

1,005,929 Oct. 17, 1911 Bond (Appln. filed Feb. 25, 1907)

The work presser mechanism of this machine infringed 6 claims (8, 11, 15, 16, 17 and 20) of patent

597,321 Jan. 11, 1898 Ladd

In the aggregate 17 claims were infringed by this machine.

111 TOE AND HEEL LASTER (Plant catalog page 66)

The gripper mechanism on this machine infringed 3 claims (6, 9 and 10) of patent

524,446 Aug. 14, 1894 Lombard (expired Aug. 14, 1911)

The mechanism in this machine for tipping the toe lasting head and heel lasting head laterally infringed Claim 1 of patent

552,834 Jan. 7, 1896 Grandy

The specific construction of the lateral tilting mechanism for the lasting head infringed 4 claims (7, 8, 9 and 12) of patent

935,065 Sept. 28, 1909 Stiggins

The equalizing mechanism of this machine for insuring uniform operation of the end band on right and left shoes infringed 2 claims (68 and 69) of patent

1,030,564 June 25, 1912 Brock (Appln. filed July 19, 1898)

The end band supporting and operating mechanism of this machine infringed 7 claims (26, 27, 28, 82, 83, 84 and 89) of patent

1,022,420 April 9, 1912 Jerram (Appln. filed Sept. 26, 1904)

The wedge-controlled equalizing mechanism of this machine infringed 8 claims (11, 12, 13, 14, 16, 17, 18 and 19) of patent

Reissue 13,292 Sept. 19, 1911 Snow

(Original patent 946,708 Jan. 19, 1910)

This mechanism having a transversely movable equalizer also infringed 20 claims (1, 8, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32) of patent

1,002,818 September 12, 1911 Brock (Appln. filed Mar. 19, 1910)

The toe rest on this machine, arranged to move with the shoe lengthwise of the shoe to avoid injuring the upper, infringed Claim 26 of patent

571,429 Nov. 17, 1896 Chase

The mechanism of this machine for holding the pad and chain in co-operative relation infringed 3 claims (1, 2 and 5) of patent

569,231 Oct. 13, 1896 Ray

In the aggregate, 49 claims were infringed by this machine.

112 TURN HEEL LASTER (Plant catalog page 70)

The mechanism in this machine for laterally tipping the heel lasting head infringed Claim 1 of patent

552,834 Jan. 7, 1896 Grandy

The mechanism in this machine for tipping the heel lasting head about an axis extending longitudinally of the last bottom infringed 4 claims (7, 8, 9 and 12) of patent

935,065 Sept. 28, 1909 Stiggins

The same equalizing mechanism for the heel band in this machine infringed 2 claims (68 and 69) of patent

1,030,564 June 25, 1912 Brock (Appln. filed July 19, 1898)

The heel band supporting and operating mechanism of this machine infringed 7 claims (26, 27, 28, 82, 83, 84 and 89) of patent

1,022,420 April 9, 1912 Jerram (Appln. filed Sept. 26, 1904)

The wedge-controlled heel band equalizing mechanism of this machine infringed 8 claims (11, 12, 13, 14, 16, 17, 18 and 19) of patent

Reissue 13,292 Sept. 19, 1911 Snow

(Original patent 946,708)

The heel band equalizer mechanism movable transversely of this machine to swing the slide bars, infringed 19 claims (1, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32) of patent

1,002,818 Sept. 12, 1911 Brock (Appln. filed Mar. 19, 1910)

In the aggregate 41 claims were infringed by this machine.

113 Staple Tacker (Plant catalog page 72)

The reel used on this machine infringed all the 9 claims of patent

765,650 July 19, 1904 Casgrain.

The staple-forming mechanism infringed Claim 5 of patent

1,016,930 Feb. 13, 1912 Borden (Appln. filed Jan. 16, 1905)

In the aggregate, 10 claims were infringed by this machine.

114 Heel Seat Nailer (Plant catalog page 78)

The reel used on this machine infringed all the 9 claims of patent

765,650 July 19, 1904 Casgrain

115 Welt Slasher and Groover (Plant catalog page 82)

In this machine the mechanism for slitting the welt through and partially across the welt infringed 4 claims (5, 16, 17 and 19) of patent

885,244 Apr. 21, 1908 Hadaway

The same mechanism also infringed 11 claims (1, 2, 3, 4 and 9 to 15) of patent

963,708 July 5, 1910 Hadaway

[Take sample] The product of this machine, that is, the slashed welt strip produced by it, infringed the 3 claims of patent

725,077 April 14, 1903 Hadaway

In this machine, the general organization for feeding, guiding and slitting the welt infringed 2 claims (1 and 5) of patent

1,026,306 May 14, 1912 Eppler (Appln. filed July 20, 1906)

The mechanism for guiding varying widths of welts in this machine infringed 10 claims (2, 3, 4, 5, 6, 9, 10, 11, 12 and 13) of patent

1,020,346 Mar. 12, 1912 Eppler (Appln. filed June 20, 1908)

These two Eppler cases were in interference with an application

309,109 Mar. 31, 1906 Stanbon

owned by Plant, but this interference was terminated November 28, 1910, by a concession of priority by Stanbon to Eppler, who was clearly ahead of Stanbon.

In the aggregate, 30 claims were infringed by this machine.

116 TACK PULLER & BASTER (Plant catalog page 84)

The tack-pulling and channel-moistening mechanism of this machine infringed 2 claims (27 and 28) of patent

864,532 Aug. 27, 1907 Hadaway

The tack-pulling mechanism of this machine infringed 2 claims (1 and 4) of patent

777,795 Dec. 20, 1904 Lyon

The feeding mechanism of this machine infringed 1 claim of patent

545,625 Sept. 3, 1895 Fowler & Warren

In the aggregate, this machine infringed 5 claims.

117 WELTER (Plant catalog page 86)

The welt-holding and cutting mechanism of this machine infringed 2 claims (1 and 6) of patent

700,279 May 20, 1902 Winkley.

This infringing mechanism was one of the valuable features of the Plant Welter, as has been fully explained in Mr. Winslow's testimony. This mechanism was greatly improved upon by the United Company's inventors and the improved mechanism as now embodied in the United Company's standard Model K Welt and Turn Machine, embodies, first, this broad Winkley invention which had not been developed to a point of commercial success, second, the valuable

Plant inventions constituting the first commercially successful mechanism for accomplishing this purpose and, third, valuable improvements on the Plant mechanism made by the United Company's inventors.

The thread arm of this machine infringed claim 24 of patent
993,490 May 30, 1911 Winkley (Appln. filed Mar. 26, 1897)

The eccentric mounting of the welt guide, awl and needle of this machine infringes allowed claim 11 of application
247,117 Feb. 24, 1905 Eppler

In the aggregate, 4 claims were infringed by this machine.

118 CUSTOM SOLE LAYER (Plant catalog page 96)

The jack and toe rest of this machine infringed claim 2 of patent
580,746 Apr. 13, 1897 Winkley

The mechanism in this machine for regulating the pressure of the levelling form on the shoe infringed 2 claims (1 and 2) of patent
610,314 Sept. 6, 1898 Winkley

The mechanism in this mechane for securing the form to the form carrier infringed claim 1 of patent
935,212 Sept. 28, 1909 Manent

The mechanism in this machine for proportionately moving the toe and heel supports to properly locate the shank of the shoe infringed 2 claims (3 and 23) of patent
557,744 Apr. 7, 1896 Winkley

In the aggregate, 6 claims were infringed by this machine.

119 ROUGH ROUNDER (Plant catalog page 100)

The means for automatically operating the mechanism for securing the desired contour for the sole infringed Claim 17 of patent
599,602 Feb. 22, 1898 French & Meyer

The pattern mechanism for determining the contour to be given to the edge of the sole infringed Claim 6 of patent
682,679 Sept. 17, 1901 Fowler

120 HEEL SEAT DINKER (Plant catalog page 102)

The general organization of this machine which enables the knife to conform to the heel seat infringed Claim 2 of patent
613,228 Nov. 1, 1898 Barbour

This claim goes to the essence of the machine.

121 SHOE CHANNELER (Plant catalog page 106)

The feed wheel and edge guide of this machine infringed Claim 8 of patent

707,576 Aug. 26, 1902 Fowler

The mechanism in this machine for positioning the channeling knife nearer to or farther from the sole edge infringed Claim 9 of patent

600,883 Mar. 22, 1898 Meyer & French

In the aggregate, 2 claims were infringed by this machine.

122 STITCHER (Plant catalog page 112)

The presser foot mechanism of this machine infringed Claim 16 of patent

710,613 Oct. 7, 1902 Richardson

This mechanism also infringed 3 claims (1, 2 and 6) of patent

971,014 Sept. 20, 1910 Winkley (Appln. filed Jan. 14, 1905)

This presser foot mechanism also infringes 5 claims (allowed claims 3, 5, 7, 10 and 12) of application

321,958 June 16, 1906 Nash

The fudge stitch mechanism of this machine infringed 2 claims (1 and 4) of patent

946,591 Jan. 18, 1910 Arnold

This fudge stitch mechanism also infringed 3 claims (1, 2 and 3) of patent

963,761 July 12, 1910 Hadaway

The gage mechanism in this machine, movable with the feed, infringed Claim 10 of patent

704,458 July 8, 1902 Hadaway

In the aggregate 15 claims were infringed by this machine.

123 LOOSE NAILER (Plant Catalog page 118)

The horn operating mechanism of this machine infringed 2 claims (22 and 23) of patent

582,579 May 11, 1897 Cutter

The horn controlling mechanism also infringed Claim 1 of patent

582,580 May 11, 1897 Cutter

This horn controlling mechanism also infringed 8 claims (40, 41, 42, 43, 44, 45, 46 and 47) of patent

1,054,173 Feb. 25, 1913 Casgrain (Appln. filed Sept. 5, 1907)

This horn controlling mechanism also infringed 17 claims (186 to 202 inclusive) of patent

1,053,479 Feb. 18, 1913 Casgrain (Appln. filed Sept. 12, 1908)

In the aggregate, 28 claims were infringed by this machine.

124 LEVELLER (Plant catalog page 120)

The general organization of this machine infringed 3 claims (1, 2 and 4) of patent

540,222 May 28, 1895 Winkley & Phillips

The twin jack presenting mechanism of this machine also infringed Claim 1 of patent

540,223 May 28, 1895 Winkley & Phillips

The proportional movements of heel and toe rest in this machine infringed 2 claims (3 and 23) of patent

557,744 Apr. 7, 1896 Winkley

The jack and toe rest of this machine infringed Claim 2 of patent

580,746 Apr. 13, 1897 Winkley

The pressure-regulating mechanism of this machine infringed 2 claims (1 and 2) of patent

610,314 Sept. 6, 1898 Winkley

The machine infringed 2 claims (3 and 4) of patent

861,746 July 30, 1907 Mayo

The devices for securing the form to the form carrier in this machine infringed Claim 1 of patent

935,212 Sept. 28, 1909 Manent

In the aggregate 12 claims were infringed by this machine.

125 HEEL LOADER (Plant catalog page 122)

The general construction and organization of this machine for driving nails obliquely into the heel infringed 9 claims (31, 32, 33, 43, 44, 45, 46, 47 and 48) of patent

1,000,957 Aug. 15, 1911 Bates (Appln. filed Aug. 15, 1903)

The general organization and nail supplying mechanism of this machine infringed 4 claims (9, 43, 44 and 50) of patent

694,656 Mar. 4, 1902 Mayo

The general organization of nail-supplying mechanism of this

machine infringed 10 claims (16, 19, 48, 49, 50, 51, 52, 55, 57 and 58) of patent

571,931 Nov. 24, 1896 Raymond & Fogg

The nail clearer and striker of this machine infringed Claim 5 of patent

662,898 Nov. 27, 1900 Grandy

The nail separator mechanism of this machine infringed Claim 166 of patent

663,777 Dec. 11, 1900 McFeely

The general organization of the nail-distributing mechanism of this machine infringed Claim 6 of patent

566,337 Aug. 25, 1896 Raymond

This nail-distributing mechanism also infringed 6 claims (1 to 6) of patent

596,053 Dec. 28, 1897 Crisp

The blank holder on this machine infringed 4 claims (10, 11, 12, and 14) of patent

1,054,032 Feb. 25, 1913 Raymond (Carr executor of the will of Raymond) (Division of application filed in 1892)

The rotatable three-arm heel holder of this machine infringed 12 claims (16, 17, 18, 19, 20 21, 22, 24, 25, 26, 27 and 28 of patent)

1,002,836 Sept. 12, 1911 Gouldbourn (Appln. filed Oct. 13, 1906)

The heel feeding and ejecting mechanism infringed Claim 5 of patent

776,787 Dec. 6, 1904 Leland

In the aggregate, 49 claims were infringed by this machine.

127 HEELER (Plant catalog page 126)

This was Plant's machine for attaching heels on McKay sewed shoes.

The top-lift holder used on these machines infringed 5 claims (4, 7, 11, 13 and 15) of patent

884,524 Apr. 14, 1908 Pope

The top-lift cementing attachment on these machines infringed 3 claims (10, 20 and 23) of patent

943,723 Dec. 21, 1909 Webster & Towle

The nailing mechanism arranged to drive nails inclined rearwardly infringed 17 claims (26, 27, 28, 29, 30, 31, 32, 33, 34, 37, 38, 39, 40, 41, 42, 45 and 46) of patent

1,000,957 Aug. 15, 1911 Bates (granted on an application filed as a division of an application which was filed in 1903)

The top-lift holder as a whole in this machine infringed 12 claims (13 to 24) of patent

1,009,710 Nov. 21, 1911 Raymond (Appln. filed Feb. 20, 1892)

The specific construction of gages on the top-lift holder in this machine infringed 6 claims (9, 10, 11, 12, 13 and 14) of patent

1,054,032 Feb. 25, 1913 Raymond (Carr executor of will of Raymond application 422,320 filed Feb. 20, 1892)

The specific construction of back gages on the toplift holder infringed 2 claims (33 and 34) of patent

982,550 Jan. 24, 1911 Towle

The Towle application was in interference with a Stewart application owned by Plant and Towle won the interference.

The organization in this machine, by which the top-lift holder engaged a flat abutment on the head for the spanking operation infringed 7 claims (27, 31, 32, 33, 35, 36 and 38) of patent

1,019,398 Mar. 5, 1912 Woodward (Appln. filed June 6, 1901)

The mechanism for imparting positive pressure to the heel and the separate trains of mechanism for applying pressure and for actuating the drivers infringed 16 claims (1, 6, 11, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27) of patent

1,000,119 Aug. 8, 1911 Pope & Elliott (Appln. filed May 26, 1898)

The mechanism in this machine for attaching a heel and top-lift to a shoe and regulating the pressure for the top-lift attaching operation infringed 4 claims (1, 31, 45, and 46) of patent

1,030,654 June 25, 1912 Elliott (Appln. filed Mar. 13, 1902)

The stop in this machine for preventing displacement of the heel toward the rear while the nails are being driven infringed 7 claims (11, 12, 13, 14, 15, 16 and 17) of patent

1,081,917 Dec. 16, 1913 Tripp (Appln. filed Aug. 1, 1907)

In the aggregate, the Plant Heeling Machines infringed 79 claims.

Also all shoes made on Plant's Heeling Machines infringed the 3 claims of patent

834,085 Oct. 23, 1906 Taylor

126 HEEL ATTACHER ON WOOD LASTS (Plant catalog page 125)

This machine was designed by Plant and was used in the Thomas G. Plant factory for attaching the heels of welt shoes The machine was a reorganization of the "Heeler" to produce a machine adapted for attaching the heels of shoes while still on the last and comprised elaborate mechanism to enable the machine to attach the heels of welt shoes without breaking lasts.

The Heel Attacher on Wood Lasts infringed the same patents which were infringed by the Heeler, as follows:

The top-lift holder used on these machines infringed 5 claims (4, 7, 11, 13 and 15) of patent

884,524 Apr. 14, 1908 Pope

The top-lift cementing attachment on these machines infringed 3 claims (10, 20 and 23) of patent

943,723 Dec. 21, 1909 Webster & Towle

The nailing mechanism arranged to drive nails inclined rearwardly infringed 17 claims (26, 27, 28, 29, 30, 31, 32, 33, 34, 37, 38, 39, 40, 41, 42, 45 and 46) of patent

1,000,957 Aug. 15, 1911 Bates (granted on an application filed as a division of an application which was filed in 1903)

The top-lift holder as a whole in this machine infringed 12 claims (13 to 24) of patent

1,009,710 Nov. 21, 1911 Raymond (Appln. filed Feb. 20, 1892)

The specific construction of gages on the top-lift holder in this machine infringed 6 claims (9, 10, 11, 12, 13 and 14) of patent

1,054,032 Feb. 25, 1913 Raymond (Carr executor of the Will of Raymond) (Division of Raymond application 422,320 filed Feb. 20, 1892)

The specific construction of back gage on the top-lift holder infringed 2 claims (33 and 34) of patent

982,550 Jan. 24, 1911 Towle (Appln. filed Oct. 3, 1904)

The Towle application was in interference with a Stewart application owned by Plant and Towle won the interference.

The organization in this machine, by which the top-lift holder engaged a flat abutment on the head for the spanking operation infringed 7 claims (27, 31, 32, 33, 35, 36 and 38) of patent

1,019,398 Mar. 5, 1912 Woodward (Appln. filed June 6, 1901)

The mechanism for impart ng positive pressure to the heel and the separate trains of mechanism for applying pressure and for actuating the drivers infringed 16 claims (1, 6, 11, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27) of patent

1,000,119 Aug. 8, 1911 Pope & Elliott (Appln. filed May 26, 1898)

The stop in this machine for preventing displacement of the heel toward the rear while the nails are being driven infringed 7 claims (11, 12, 13, 14, 15, 16 and 17) of patent

1,081,917 Dec. 16, 1913 Tripp (Appln. filed Aug. 1, 1907)

Also all shoes made on Plant's Heel Attacher on Wood Lasts infringed the 3 claims of patent

834,085 Oct. 23, 1906 Taylor

In addition to the infringem nts noted above, the Heel Attacher on Wood Lasts also infringed other patents owned by the United Company, as follows:

The last support used on these machines infringed 5 claims (1, 3, 4, 8 and 10) of patent

596,305 Dec. 28, 1897 Pettengill

The pressure controlling and heel measuring mechanism infringed 10 claims (1, 28, 31, 45, 46, 50, 51, 52, 53 and 54) of patent

1,030,654 June 25, 1912 Elliott (Appln. filed Mar. 13, 1902)

In the aggregate 90 claims were infringed by this machine.

The patents infringed by the Plant Heeler and the Plant Heel Attacher on Wood Lasts covered both these machines so thoroughly that by no possibliity could they have been changed to avoid infringement. Plant's only course would have been to junk the machines and begin over again.

128 HEEL SLUGGER (Plant catalog page 128)

The reel used on this machine infringed all the 9 claims of patent

765,650 July 19, 1904 Casgrain

The knife grinding mechanism of this machine infringed 4 claims (1, 11, 16 and 17) of patent

1,056,419 March 18, 1913 Howe (Appln. filed March 29, 1905)

In the aggregate 13 claims were infringed by this machine.

129 HEEL BREASTER (Plant catalog page 130)

The mechanism in this machine for automatically varying the knife movement in accordance with the thickness of the sole infringed 2 claims (14 and 21) of patent

636,990 Nov. 14, 1899 Heys

130 STITCH INDENTER & BURNISHER (Plant catalog page 140)

The organization of the work-indenting tool with relation to the work support and tool movement of this machine infringed 5 claims (9 to 13) of patent

894,332 July 28, 1908 Krewson

There was an interference between the application for the Krewson patent (then owned by Booth Brothers) and a Heys application owned by Plant. A settlement of this interference was effected in accordance with which a license was given to Plant under and limited to the issues of the interference. Claims 9 to 13 were none of them issues of the interference and are directed to different subject-matter.

The mechanism in this machine for varying the angle of tool action on the work infringed Claim 4 of patent

690,422 Jan. 7, 1902 Hadaway

The general organization of this machine for rolling the tool back and forth while in contact with the work infringed 2 claims (3 and 11) of patent

855,401 May 28, 1907 Hadaway

The same general organization including the movement of the tool in a direction approaching the work in the line of feed infringed 4 claims (1, 2, 7 and 8) of patent

934,434 Sept. 21, 1909 Flynt

The mechanism in this machine for indenting the work by repeated blows infringed 5 claims (1, 2, 5, 9 and 10) of patent

999,161 July 25, 1911 Hadaway (Appln. filed May 17, 1905)

In the aggregate, 17 claims were infringed by this machine.

131 STITCH SEPARATOR (Plant catalog page 142)

The automatic action of the indenting tool in locating the stitches in this machine infringed 4 claims (2, 10, 13 and 14) of reissued patent

Reissue 11,538 May 12, 1896 Hadaway
(Original patent 521,978 June 26, 1894)

132 Top Lift Scalloper (Plant catalog page 148)

The mechanism in this machine for locating the heel with relation to the knife infringed 7 claims (1, 2, 3, 10, 13, 15 and 16) of patent

1,030,567 June 25, 1912 Busell (Appln. filed Aug. 8, 1906)

Claims 1, 10 and 15 were the issues of an interference between the Busell application and the McLeod application, owned by Plant, which interference was won by Busell.

133 Heel Waxer and Burnisher (Plant catalog page 152)

The general organization of this machine for heating, applying and spreading the wax upon the wheel infringed 6 claims (1, 9, 11, 16, 20 and 21) of patent

699,476 May 6, 1902 Beckwith & Pease

This waxing mechanism also infringed Claim 7 of patent

743,988 Nov. 10, 1903 Pease

These two patents may be regarded as pioneer patents on the modern method of finishing heels.

This machine also infringes allowed Claim 5 of application

320,622 June 7, 1906 Pease

In the aggregate, 8 claims were infringed by this machine.

134 Seat Beader (Plant catalog page 154)

The general organization in this machine of beading tool and work support to position the heel and cause the tool to travel around the heel infringed 2 claims (1 and 9) of patent

687,225 Nov. 26, 1901 Gordon & Gould

135 Treeing Machine (Plant catalog page 160)

The general mechanical organization of this machine for bringing the trees into operative position infringed 10 claims (1, 4, 41, 42, 43, 44, 45, 46, 47, 48) of patent

1,030,810 June 25, 1912 Hansen (Appln. filed Sept. 16, 1902)

The machine also infringed Claim 66 of patent

1,081,907 Dec. 16, 1913 Hansen (Appln. filed Feb. 1, 1905)

In the aggregate, 11 claims were infringed by this machine.

136 BRESNAHAN AUTOMATIC SOLE MOLDING MACHINE

All the sole molding in the Thomas G. Plant factory was being done on Bresnahan Automatic Sole Molding Machines which were manufactured and put out by the Bresnahan Shoe Machinery Company, two-thirds of the stock of which was owned by Thomas G. Plant. This machine infringed Claim 2 of patent

627,122 June 20, 1899 Keighley

which was owned by the United Shoe Machinery Company. The United Company had brought suit against the Bresnahan Shoe Machinery Company on this patent

Equity No. 1772, United Shoe Machinery Company v. Bresnahan Shoe Machinery Company, et al.

137 KEIGHLEY INSEAM TRIMMER

While this machine is not shown in the Plant Catalog, there were about ten of these machines being used in the shoe factory of the Thomas G. Plant Company, and as Plant had made a contract subject to cancellation on six months' notice by either party, with the Keighley Company, Inc., for the purchase by Plant of thirty of these machines per year, it is fair to consider that by this contract Plant had made the Keighley machine one of his own.

The machine infringed Claims 1 and 2 of patent

961,200 June 14, 1910 Ashton

and Claims 12 to 19, inclusive, of patent

968,555 Aug. 30, 1910 Hadaway

Suits were brought by the United Company on these patents against the George H. Snow Company of Brockton, Massachusetts, a user of the Keighley Inseam Trimmer, as follows—:

Equity No. 795, bill filed Oct. 18, 1910, Ashton patent No. 961,200

Equity No. 796, bill filed Oct. 18, 1910, Hadaway patent No. 968,555

After the filing of these suits, and several months after the acquisition of the Plant patents by the United Company, Keighley changed all of his machines including those in the Plant factory, in an attempt to avoid the infringement. The substituted construction clearly infringed claims 1 and 2 of patent

961,200 June 14, 1910 Ashton

and another suit for infringement of that patent by the changed machine was brought against the George H. Snow Company:

Equity No. 311 Bill filed Feb. 3, 1912

Including the two machines last discussed, the Bresnahan Automatic Sole Molding Machine and the Keighley Inseam Trimmer, which it seems fair to consider that Plant had adopted as his own, the first through his stock control of the Bresnahan Shoe Machinery Company and the second through his contract with The Keighley Company, then the aggregate of infringements will be increased so that thirty-seven Plant machines, including practically all of his important machines, infringed 539 claims in ninety-nine patents and 7 claims allowed in three pending applications, amounting in the aggregate to 546 claims in 102 patents and pending applications. If, as before, each patent and each claim be counted for each machine which infringed it, the aggregate would be 708 claims of 132 patents and applications.

DEFENDANTS' EXHIBIT 274.

[Put in Evidence, page 4220.]

INFRINGEMENT OF PLANT PATENTS BY COMMERCIAL AND EXPERIMENTAL MACHINES OF THE UNITED COMPANY.

The United Company's machines infringed Plant patents as follows:

141 Lockstitch Machine — Model K: Goodyear Outsole Rapid

This machine was adopted in May 1910 as the United Company's standard outsole stitcher.

The fudge stitch mechanism of this machine infringed 5 claims (1, 2, 4, 5 and 9) of patent

940,723 Nov. 23, 1909 Plant

and 2 claims (9 and 10) of patent

940,725 Nov. 23, 1909 Plant

The means for protecting the upper from injury by the stitch forming mechanism, as originally designed for this machine, infringed patent

940,055 Nov. 16, 1909 Plant

The construction of the machine was changed to avoid this infringement. After the acquisition of the Plant patents, the original construction was re-adopted and has been used ever since.

142 LASTING MACHINE: No. 5 U. S. M. Co.

The automatic unlocking device for the jack post elevating hand wheel of the No. 5 Lasting Machine infringed 5 claims (13, 14, 15, 16 and 18) of patent

957,949 May 17, 1910 Glass

and claim 52 of patent

958,280 May 17, 1910 Plant

The heel band equalizing means of the No. 5 Lasting Machine is a direct infringement of 4 claims (46, 47, 48 and 50) of said patent

958,280 May 17, 1910 Plant

although the validity of those claims is questionable.

In 1908 the United Company found it necessary to make an improvement in the No. 5 Lasting Machine as it was then being put out in order to enable the machine to do its work properly. A construction accomplishing the desired results was devised and embodied in an experimental machine which was put out for a shoe factory test. Our validity search disclosed a British patent, application for which was filed by Plant in 1906, through which we became aware that a similar improvement had been made by one of Plant's inventors. In view of the probability that a United States application was pending we abandoned our construction and conducted further experiments. Two unsatisfactory constructions were devised before we succeeded in producing a commercially successful construction which we believed did not embody the Plant invention.

An experimental hold-down applied by us to the No. 5 Lasting Machine in Brockton infringed claim 24 of patent

957,949 May 17, 1910 Glass

and claim 51 of patent

958,280 May 17, 1910 Plant.

We were obliged to change our construction to avoid the infringement.

143 LOADING & ATTACHING MACHINE — MODEL B: MCKAY AUTOMATIC HEEL

This machine infringed 2 claims (10 and 11) of patent

958,282 May 17, 1910 Plant.

144 NAILING MACHINE: AMERICAN LIGHTNING

In January 1910, our inventor, J.H. Pope, began the construction

of an improved form of nailing mechanism for the Lightning Heeling Machine. After the mechanism had been constructed it was found to infringe 2 claims (15 and 16) of patent

958,302 May 17, 1910 Plant

and the Patent Department advised that manufacture of this improvement could not be authorized.

On September 29, 1910, after the acquisition of the Plant patents, the Patent Department advised that there was no longer any objection to putting out this mechanism and since then a large number of machines have been put out which embody this mechanism, which is a distinct improvement on the machine.

145 ROUNDING & CHANNELING MACHINE — MODEL E: GOODYEAR UNIVERSAL

This machine infringed 4 claims (51–54) of Plant's patent

878,478 Feb. 4, 1908 English

Two of these claims were directed to vital features of the machine.

As first designed this machine infringed 3 claims (18, 20 and 21) of Plant's patent

878,478 Feb. 4, 1908 English

A validity search on these claims was made which indicated that they were valid. A great deal of difficulty and much expense was incurred in changing the machine to avoid these claims.

146 ROUNDING MACHINE: GOODYEAR HEEL SEAT

On February 1, 1910, interferences were declared involving two applications of J. V. Allen, who invented the United Company's Goodyear Heel Seat Rounder, and two applications on the Plant Heel Seat Dinker

309,997 Apr. 5, 1906 Heys (Patent 1,005,545, Oct. 10, 1911)

319,709 June 1, 1906 Phelan (" 1,005,573, Oct. 10, 1911)

The interference proceedings showed that Heys and Phelan were clearly entitled to claims covering broadly mechanism which was vital to our machine and that undoubtedly Plant would eventually obtain patents dominating our machines. Vigorous efforts were made to redesign the machine so as to avoid the claims allowed in the Heys and Phelan applications but in no way could the broad claims

be avoided and as this mechanism was indispensable, it was decided to discontinue the machine and to withdraw as soon as possible the machines already out.

As noted elsewhere, the Plant Heel Seat Dinker infringed our patent

613,228 Nov. 1, 1898 Barbour

and suit would have been brought on that patent.

The result of this situation was of course a complete deadlock and if the interests had not combined, shoe manufacturers would not have been supplied with this machine. After the Plant patents were acquired the Goodyear Heel Seat Rounder was again adopted and put into extensive commercial use.

147 INDENTING & BURNISHING MACHINE: GOODYEAR WELT

The work supporting mechanism of this machine infringed 3 claims (1, 2 and 6) of patent

860,377 July 16, 1907 Heys.

148 GROOVING & BEVELING MACHINE: GOODYEAR POWER WELT

This machine prima facie infringed claim 3 of Plant's patent

966,484 Aug. 9, 1910 Stanbon

but it is believed that that claim is invalid.

149 MOLDING MACHINE: STITCHDOWN UPPER

This machine infringed 4 claims (4, 7, 28 and 37) of patent

871,963 Nov. 26, 1907 Stewart

and infringed 3 claims (1, 2 and 4) of patent

871,966 Nov. 26, 1907 Stewart.

150 CHANNELING MACHINE: GOODYEAR UNIVERSAL (TURN WORK)

The mechanism which was known as the Wald tension release and which was supplied for this machine on special order for turn work infringed the terms of claim 58 of patent

878,478 Feb. 4, 1908 English

151 PULLING OVER MACHINE — MODEL B: REX

This machine is a combined pulling over and lasting machine for turn work. We were very anxious to put on this machine a tip measuring device for which there was insistent demand from the trade, but this could not be done because such a device would infringe claim 55 of Plant's patent

957,955 May 17, 1910 Heys

Immediately upon acquisition of the Plant patents this device was adopted and put out commercially.

152 PULLING OVER & LASTING MACHINE FOR WELT WORK

The transversely adjustable toe gripper mechanism which has been used for several years on the experimental welt pulling over and lasting machine which we were in 1910 and still are developing and which we considered indispensable in that machine, infringed a large number of allowed claims in a pending application owned by Plant

343,458 Nov. 14, 1906 Stewart.

We became aware of this application through an interference in the Patent Office which was declared between it and one of our applications. We should have been prevented from further developing this machine and from putting it out commercially if we had not acquired the Plant patents.

We are now developing another pulling over and lasting machine of entirely different design which is intended for lasting McKay sewed as well as welt shoes and this Plant toe gripper mechanism is also incorporated in this new machine.

153 SHOE MACHINE — MODEL M: GOODYEAR WELT & TURN

This is an experimental welting machine upon which one of the Company's inventors has been at work for many years and it is expected that it will be a much faster machine than any welting machine heretofore produced. This machine, however, prima facie infringed 3 claims (48, 49 and 53) of patent

947,401 Jan. 25, 1910 Plant

There is also a prima facie infringement by the looper mechanism of this machine of 2 claims (9 and 11) of Plant's patent

524,338 Aug. 14, 1894 Mills.

Two of the United Company's machines infringed patents owned by the Bresnahan Shoe Machinery Company which Plant controlled through ownership of two-thirds of the stock of that company.

154 WHEELING MACHINE NO. 2: GOODYEAR IMPRESSION STITCH

This machine infringed 2 claims (2 and 5) of a patent owned by the Bresnahan Shoe Machinery Company

784,263 Mar. 7, 1905 Heys.

155 LEVELING MACHINE — MODEL B: HERCULES

This machine infringed 3 claims (10, 11, and 13) of a patent owned by the Bresnahan Shoe Machinery Company

684,239 Oct. 8, 1901 Heys

It also infringed claim 11 of another patent owned by the Bresnahan Shoe Machinery Company

707,414 Aug. 19, 1902 Heys

The Bresnahan Shoe Machinery Company had brought suit for infringement by the Hercules Leveling Machine of this patent, as follows:

Eq. No.	Patent	Infringing Machine	Bill Filed
286	Heys No. 707,414	Leveling Machine	Aug. 9, 1906

DEFENDANTS' EXHIBIT 275.

[Put in Evidence, page 4222.]

GODDU SONS METAL FASTENING COMPANY

In addition to the pending suit which had been brought under Louis Goddu's contracts by the trustees of the McKay Metallic Fastening Association against Louis Goddu, his sons, Albert Van Wagenen and the Goddu Sons Metal Fastening Company,

Equity No. 985 James W. Brooks, et al.

v.

Goddu Sons Metal Fastening Company, et al.

the McKay Shoe Machinery Company had caused to be prepared bil's of complaint and affidavits to accompany motions for preliminary injunctions in suits for infringements of its patents by all of the machines of the Goddu Sons Metal Fastening Company Affidavits of James W. Brooks, Franklin O. Tobey and Joseph P. Livermore, covering all of the machines, and the b ll of complaint in the proposed suit against the Goddu Sons' Loose Nailer, had been printed prior to the formation of the United Company and printed copies constitute Defendant's Exhibit No. 101.

According to Mr. Livermore's affidavit the infringements were as follows:

(1) Goddu Sons' Loose Nailer infringed the following patents of McKay Metallic Fastening Association:

383,455 May 29, 1888 L.Goddu (cls. 1, 7 & 8)

265,227 Sept. 26, 1882 L. Goddu (cls. 3, 17 & 18)

493,910 Mar. 21, 1893 Cummings & Coupal (cl. 2)

356,107 Jan. 18, 1887 Dunham (cls. 1, 2, 3, 5 & 6)

385,802 July 10, 1888 L. Goddu (cl. 7)

289,103 Nov. 27, 1883 Hopkins (cl. 1)

(2) Goddu Sons' Screw Machine infringed the following patents:

265,227 Sept. 26, 1882 L. Goddu (cls. 17 & 18)

403,835 May 21, 1889 L. Goddu (cls. 10, 11, 12, 18 & 26)

(3) Goddu Sons' Slugging Machine infringed the following patents:

383,455 May 29, 1888 L. Goddu (cls. 7, 8 & 9)

563,478 July 7, 1896 L. Goddu (cl. 4)

(4) Goddu Sons' String Nailer infringed the following patents:

490,625 Jan. 24, 1893 L. Goddu (cls. 12 & 13)

383,455 May 29, 1888 L. Goddu (cls. 7 & 8)

385,802 July 10, 1888 L. Goddu (cl. 7)

All of the patents enumerated above were owned by the trustees of the McKay Metallic Fastening Association, one of the predecessors in business of the McKay Shoe Machinery Company.

In addition to the infringements above discussed, after the purchase from Louis Goddu and his sons of their stock in the Goddu Sons' Metal Fastening Company and of the patents and applications which were owned by the sons individually, machines of the Goddu Sons' Company further infringed patents and applications which had been owned by the sons individually and had been acquired from them by the United Company, as follows:

The Goddu Sons' String Nail Tacker infringed all of the 12 claims, except claim 8, of patent

584,735 June 15, 1897 W. Goddu

This machine also infringed all 4 claims of patent

614,460 Nov. 22, 1898 L. H. Goddu

The string nail wire which was intended and adapted for use on this machine infringed all 3 claims of patent

641,099 Jan. 9, 1900 G. Goddu

The Goddu Sons' Loose Nailer infringed all 4 claims of patent
614,460 Nov. 22, 1898 L. H. Goddu
The Goddu Sons' Slugging Machine infringed all 4 claims of patent
614,460 Nov. 22, 1898 L. H. Goddu
The machine which had been constructed for making the screw threaded wire to be used on the Goddu Sons' Screw Machine infringed all of the 11 claims of patent
655,223 Aug. 7, 1900 G. Goddu

PETER A. COUPAL & WILLIAM GORDON

The "Basting Machine" for pulling lasting tacks, trimming the upper and securing the upper temporarily for the welting operation by means of a basting stitch, of which Coupal and Gordon had built several experimental machines and in which the Goodyear Company had been interested to the extent of trying out some of the machines experimentally, prior to the formation of the United Company, infringed 3 claims (1, 2, 5) of patent
520,775 June 5, 1894 Fowler & Warren

EDWIN T. FREEMAN INFRINGEMENT OF UNITED COMPANY'S PATENTS BY FREEMAN MACHINE

The Freeman experimental Slugging Machine, constructed substantially as shown in patent
714,572 Nov. 25, 1902 Freeman
but embodying the broad invention of patent
618,082 Jan. 24, 1899 Freeman
infringed claims 6 and 7 of patent
582,579 May 11, 1897 Cutter
After January 21, 1902, the Freeman machine would have infringed 5 claims (1, 5, 17, 42 and 43) of patent
691,354 Jan. 21, 1902 Casgrain
To avoid these infringements it would have been necessary to reconstruct entirely the Freeman machine and omit from it valuable inventions on account of which the United Company purchased the Freeman patents.
Freeman had not organized his experimental machine with mechan-

ism for giving the work support a final depression when the machine stopped to facilitate removal of the work, although such mechanism is shown in his patents, because such mechanism is broadly covered in the United Company's patents

582,579 May 11, 1897 Cutter

582,580 May 11, 1897 Cutter

Freeman's machine could not have been a commercial success without such mechanism.

INFRINGEMENT OF FREEMAN PATENTS BY UNITED COMPANY

At the time of the acquisition of the Freeman patents the United Company was developing an improved standard screw machine which later became Screw Machine — Model B: Rapid Standard. This experimental machine infringed claims 1 and 2 of Freeman patent

618,082 Jan. 24, 1899 Freeman

PATENT OFFICE INTERFERENCE

There was an interference in the Patent Office between an application owned by the United Company and an application for reissue of Freeman patent No. 618,082, Jan. 24, 1899, as follows:

Casgrain	Se. No. 670,337 (Patent No. 691,354, Jan. 21, 1902)	Interference No. 21528
v.		
Freeman	Se. No. 12, 948 (Patent Re. 11,962, Jan. 21, 1902)	

Priority on the 19 issues of this interference was awarded to Casgrain and those 19 claims are now in United Company's patent No. 691,354, Jan. 21, 1902, Casgrain.

ALBERT G. BREWER

The Brewer experimental machine infringed 14 claims (1–5, 7, 8, 9, 11–16) of United Company's patent

636,990 Nov. 14, 1899 Heys

This Heys patent was the pioneer patent on the Power Heel Breasting Machine and in my opinion Brewer could not have built a power heel breasting machine without infringing that patent.

On the other hand the United Company's experimental machine never became a commercial success until the invention of the Brewer

patent was incorporated in it. 698 Power Heel Breasting Machines, embodying the Brewer inventions, were made and put out by the United Company.

GLOBE SHOE TOOL COMPANY

This company was infringing the one claim of patent

452,540 May 19, 1891 Bresnahan

and the first claim of patent

528,467 Oct. 30, 1894 Emery

SEAVER PROCESS LASTING COMPANY.

The Seaver lasting machine infringed claim 8 of the United Company's patent

548,671 October 29, 1895 Stirckler

and claim 7 of patent

601,934 April 5, 1898 Brock.

Suits had been brought on these patents as follows

Equity No. 1168 Consolidated & McKay Lasting Machine Company

v.

Seaver Process Lasting Company;

Equity No. 1167 Consolidated & McKay Lasting Machine Company

v.

Seaver Process Lasting Company.

When, after these suits were brought, the infringing construction was removed from the machines the Seaver business fell to pieces.

The most important reason, however, for the acquisition of the Seaver patents by the United Company was that the Seaver Company's experimental pulling-over machine, which was being tried out in a Brockton shoe factory, was provided with means for adjusting the upper on the last while the upper was under strain. The experimental pulling-over machine which the United Company was then developing also embodied such means, which is probably indispensable for a successful pulling-over machine. If it had proved that the Seaver Company's inventors had been the first to provide such means for a pulling-over machine and the Seaver Company had obtained a patent for this important and indispensable invention, the United

Company, after its expenditure of hundreds of thousands of dollars in developing this pulling-over machine would not have been able to put that machine into commercial use without infringing the Seaver Company's patent; and the United Company had no means of ascertaining whether its inventor or the Seaver Company's inventor had been the first to produce such mechanism.

After the acquisition of the Seaver Company's patents a thorough and extended investigation satisfied the United Company that its inventor, McFeely, was the first inventor and many broad claims to this invention are embodied in United Company's patent No.

663,777 December 11, 1900 McFeely.

This invention has been embodied in every pulling-over machine which has been put out by the United Company.

Boston Fast Color Eyelet Company

While there were no infringements between the United Company and the Boston Fast Color Eyelet Company, it should be noted that the United Company could not extend its field to include the manufacturing and marketing of fast color eyelets without acquiring the broad patents owned by the Boston Fast Color Eyelet Company which dominated that field.

Enamel Eyelet Company

While this Company was controlled by the same people who controlled the Boston Fast Color Eyelet Company and the acquisition of the stock of the Enamel Company was a part of the same transaction by which the stock of the Boston Fast Color Eyelet Company was acquired, it should be noted that had it not acquired control of the Enamel Company the United Company could not have entered the enamel eyelet field without subjecting itself to liability of suit under the Enamel Company's design patent

24,867 Nov. 12, 1895 Kempshall

The Enamel Company had brought and vigorously prosecuted suit on that patent against John C. Rhodes as follows:

Equity No. 1013 Enamel Eyelet Co. v. John C. Rhodes

BAY STATE INTERNATIONAL SHOE MACHINERY COMPANY

This company's outsole stitcher infringed the United Company's British patents as follows:

No. 10,102/87 July 19, 1887 Reed (claims 1, 2, 3, 10 & 16)
13,365/88 Sept. 17, 1888 French & Meyer (claim 2)

The United Company owned other foreign patents corresponding to British patent No. 10,102/87 as follows:

French	No. 184,880	July 19, 1887
German	44,439	July 19, 1887
Belgian	78,260	July 19, 1887

The United Company owned other foreign patents corresponding to British patent No. 13,365/88 as follows:

French	No. 193,080	Sept. 20, 1888
German	54,678	Sept. 20, 1888
Belgian	83,338	Sept. 20, 1888
Canadian	33,081	Dec. 7, 1889

SWAIN FULLER MANUFACTURING COMPANY

The United Company had produced and desired to use the sole pressing form for sole laying machines shown and described ln patent
694,367 Mar. 4, 1902 Gifford
but this pad infringed claims 12 and 14 of patent
376,406 Jan. 10, 1888 Coy
which was owned by the Swain Fuller Manufacturing Company.

It should be noted that another important reason for this acquisit on was the desire of the United Company to obtain a leveling machine adapted for leveling turn shoes. The United Company did not then have any leveling machine adapted for turn work. The Star Leveling Machine of the Swain Fuller Manufacturing Company was adapted for leveling turn shoes and after this acquisition was the United Company's standard machine for turn shoe leveling until it was superseded in 1907 by the United Company's greatly improved machine known as Leveling Machine: Goodyear Welt & Turn.

GLOBE SEWING MACHINE COMPANY

The welting machine which was being put out by the Globe Company at the time of the acquisition infringed United Company's patent

461,793 Oct. 20, 1891 Briggs

There was a pending suit against the Globe Company on this patent as follows:

Equity No. 1284 Goodyear Shoe Machinery Company
v.
Globe Sewing Machine Company

A motion for preliminary injunction in this suit had been argued but had not been decided at the time of the purchase of the stock of the Globe Company by the United Company.

There were also pending five suits against users of this machine as follows:

Equity No. 1246	Goodyear	Shoe	Machinery	Company	v. Bartlett
Equity No. 1247	"	"	"	"	v. Morrison
Equity No. 1248	"	"	"	"	v. Smith
Equity No. 1249	"	"	"	"	v. Belonga
Equity No. 1250	"	"	"	"	v. Fox

After March 19, 1901, this machine would also have infringed all three claims of the United Company's patent

670,195 Mar. 19, 1901 Chadbourn (application filed Nov. 11, 1898)

The Globe Company's outsole stitcher infringed claims 3, 6, of the United Company's patent

366,935 July 19, 1887 Dancel

The Globe Company had built one experimental "rounder" which had never been put out. That machine infringed United Company's patents

546,852 Sept. 24, 1895 French & Meyer (claim 8)
630,339 Aug. 8, 1899 " " " (claims 1 and 4)

The Globe Company had also constructed one experimental rounding and channeling machine which infringed the 8th claim of United Company patent

546,852 Sept. 24, 1895 French & Meyer.

Boot and Shoe Sole Laying Company

The United Company produced and desired to use the pressing form for sole laying machines shown and described in its patent

694,367 Mar. 4, 1902 Gifford (application filed Apr. 20, 1900)

but this pressing form infringed claims 1 and 2 of patent

304,416 Sept. 2, 1884 Eppler

which was owned by the Boot and Shoe Sole Laying Company.

Another important reason for the acquisition of the patents of the Boot and Shoe Sole Laying Company was the fact that the United Company did not have a satisfactory sole laying machine. The only machine which it had was the "Rotary Sole Layer" which it had acquired from the Goodyear Company and which was very unsatisfactory because it was continually breaking down, particularly on men's shoes. After the acquisition of a majority of the stock of the Boot and Shoe Sole Laying Company in June, 1899, the United Company discarded the Rotary Sole Layer and adopted as its standard commercial machine the sole layer of the Boot and Shoe Laying Machine Company, using on that machine the pressing form of Gifford patent No. 694,367. This machine, combining the best features of the rotary machine and the machine of the Boot and Shoe Sole Laying Company, has been much improved by a number of inventions made from time to time, and in the various stages of its development it has ever since been and is to-day the standard sole laying machine of the United Company.

J. C. Rhodes & Company

As previously explained, when the United Company entered the fast color eyelet field by its acquisition of the business of the Boston Fast Color Eyelet Company it acquired from the same parties and as a part of the same transaction the stock of the Enamel Eyelet Company. It has also been explained that the Enamel Eyelet Company had brought and was vigorously prosecuting a suit against John C. Rhodes for infringement of design patent

24,867 Nov. 12, 1895 Kempshall viz.

Equity No. 1013 Enamel Eyelet Company v. John C. Rhodes

J. C. Rhodes & Company owned a patent containing broad claims to an enamel eyelet so constructed as to prevent breaking of the enamel coating by the pressure exerted in the eyelet setting operation. This patent was

565,091 Aug. 4, 1896 Rhodes

A suit had been brought by J. C. Rhodes & Company against users of eyelets supplied by the Enamel Company for infringement of that patent

565,091 Aug. 4, 1896 Rhodes.

This suit was

Equity No. 1285 John C. Rhodes and John B. Rhodes (doing business as J. C. Rhodes & Company)

v.

Marcus Beebe, Decius Beebe, Junius Beebe, Lucius Beebe & Sons.

Besides clearing up this complicated situation the United Company accomplished two important objects by the acquisition of the Rhodes business:

1. It was able to produce a commercially satisfactory enamel eyelet. As explained in previous testimony, the eyelet made by the Enamel Eyelet Company was not satisfactory and the United Company was not able to get rid of the stock which it secured from the Enamel Company and finally had to junk most of those eyelets.

2. The United Company was able for the first time to produce satisfactory metal blanks for its fast color eyelets. Prior to that time those blanks, which had been procured from different sources had not been satisfactory.

Morley Button Manufacturing Co.

The eyelets manufactured by the Morley Button Manufacturing Co. infringed patents owned by J. C. Rhodes & Co. Incorporated and on October 29, 1901, a suit was brought for infringement of claim 2 of patent

565,091, August 4, 1896 Rhodes

Equity No. 1543 J. C. Rhodes & Co. Incorporated v. Morley Button Manufacturing Co.

On October 30, 1901, a suit was begun for infringement of design patent

24,876, Nov. 12, 1895 Kempshall

Equity No. 1544 J. C. Rhodes & Co. Incorporated v. Morley Button Manufacturing Co.

Among the considerations stated in the agreement between the United Company and the Morley Company (Pltff's. Ex. 92) were a covenant by the United Company to cause the bills of complaint in the two suits against the Morley Company to be dismissed without costs or damages, and a further covenant that the Morley Company should be licensed under patents 565,091, and Design 24,867 to manufacture eyelets in process to fill the orders which the Morley Company had on hand.

American Sole Laying Machine Company

This company was supplying a double or "two-form" sole laying machine which was twice as fast as a single machine because while a sole was being laid by one form the operator could be removing a shoe from and presenting another shoe to the other form. The standard commercial machine of the United Company at that time was the machine which it had acquired from the Boot and Shoe Sole Laying Company with improvements which the United Company had made, but that was a one-form or single machine. The United Company desired to develop that machine into a double machine but such a machine would infringe the much litigated patent

384,893 June 19, 1888 Cutcheon

which had been sustained by the Court of Appeals in the First Circuit. The American Sole Laying Machine Company had a license under that Cutcheon patent and the acquisition of that license, with the right to build a two-form machine without infringement of the Cutcheon patent, was the object of this transaction. The United Company immediately proceeded to develop a double or two-form machine and the new machine, known as Laying Machine (Twin): Goodyear Improved Sole, was first put out in July, 1903, broadly speaking a combination of the two machines. This twin machine, incorporating important later improvements, is now known as Laying

Machine — Model C: Goodyear Improved Sole, and is the present standard machine.

G. W. EMERSON & COMPANY

The Emerson Heel Finishing Machine infringed 3 claims (3, 10 & 11) of patent

699,476 May 6, 1902 Beckwith & Pease

which was owned by the United-Xpedite Finishing Company. At the time of this acquisition there was still pending the application for patent

743,988 Nov. 10, 1903 Pease

which shows and describes the commercial Xpedite Heel Finishing Machine and is one of the most important patents on that machine. The Emerson machine infringed 8 claims (1, 2, 7, 8, 17, 20, 21 & 22) of that patent. The members of the Emerson concern were advised of these infringements and suits would have been brought if the Emerson business had not been acquired.

BOOTH BROTHERS

BOOTH BROTHERS COMPANY

At the time of this acquisition Booth Brothers had a machine for forming impression stitches on the upper face of the welt of a welt shoe. This machine, known as the Booth Geared Wheeler, had recently superseded a machine known as Booth Impression Stitch Wheeling Machine. Both of these machines infringed claim 4 of the United Company's patent

690,422 Jan. 7, 1902 Hadaway

The Booth Geared Wheeler also infringed several allowed claims of an application owned by the United Company. These infringed claims are numbered 1, 2 and 3 in the United Company's patent, which was granted on that application,

906,705 Dec. 15, 1908 Hadaway

For burnishing the impression stitches made by the machines above mentioned Booth Brothers were putting out a machine known as Booth Impression Stitch Burnishing Machine. That machine infringed several claims of an application owned by the United Com-

pany, which claims are numbered 1, 2 and 3 in the patent which was granted on that application,

906,705 Dec. 15, 1908 Hadaway

BROCKTON SUPPLY COMPANY

When these patents were acquired the United Company was developing a tack pulling machine which infringed two claims (1 and 2) of patent

777,795 Dec. 20, 1904 Lyon

which was owned by the Brockton Supply Company.

On the other hand the "Rapid Tack Puller" which was being put out by the Brockton Supply Company infringed claims of an application filed November 6, 1899, owned by the United Company, on which was granted patent

864,532 Aug. 27, 1907 Hadaway

The claims infringed are numbered 24 and 25 in that patent.

The Brockton Supply Company's machine also infringed claims of a pending application filed September 9, 1905, owned by the United Company, on which was subsequently granted patent

1,011,773 Dec. 12, 1911 Hadaway.

Claims infringed are numbered 1, 2, 17, 18, and 20 in that patent.

SMITH LACING MACHINE COMPANY

The Smith Lacing Machine infringed many allowed claims in a pending application filed August 29, 1902, controlled by the United Company, on which was granted patent

855,969 June 4, 1907 Paine & Winkley

11 claims of that patent are infringed (34, 35, 36 and 38 to 45, inc.).

The machine of this Paine & Winkley patent, however, was only experimental and was never used commercially. It was provided with only one needle so that it could lace only one pair of eyelets. A commercially successful lacing machine must be adapted to lace a plurality of pairs of eyelets and a machine so organized was broadly covered by the claims of a patent owned by the Smith Company, which also owned other patents containing broad claims to many features of the machine which were found indispensable for a com-

mercially successful machine, as is fully explained in that portion of my testimony before the Examiner in regard to Lacing Machine — Model A: Ensign, beginning on page 2599 of the record. This situation resulted in a deadlock since neither the United Company nor the Smith Lacing Machine Company was able to put out a commercial lacing machine without infringing a patent or patents owned by the other.

ZOTIQUE BEAUDRY

Beaudry's experimental Heel Burnishing Machine, which had not been even tried out in any shoe factory, infringed 9 claims (2, 9, 10, 11, 12, 13, 14, 15, 16) of a patent owned by the United Xpedite Finishing Company

805,763 Nov. 28, 1905 Tuttle (appln. filed May 20, 1902)

The United Shoe Machinery Company owned the majority of the capital stock of the United Xpedite Finishing Company.

RICHARDSON SHOE MACHINERY COMPANY

The United Company's McKay Sewing Machine — Model B infringed claim 16 of the Richardson Shoe Machinery Company's patent

710,613 Oct. 7, 1902 Richardson

The United Company's present commercial Outsole Stitching Machine, known officially as Lockstitch Machine — Model M: Goodyear Outsole Rapid, which was adopted January 6, 1912, embodies the mechanism defined in claim 16 of the Richardson Company's patent

710,613 Oct. 7, 1902 Richardson

and embodies mechanism defined in 3 claims (29, 33, 35) of the Richardson Company's patent

710,612 Oct. 7, 1902 Richardson

The mechanisms of the Model M Outsole Stitcher, which embody the inventions defined in the claims of these two Richardson patents, constitute important and valuable improvements, as is fully explained in my deposition before the Examiner regarding this machine. Had the Richardson Company's patents not been acquired by the United Company, these important improvements could not have been incorporated in the Model M Outsole Stitcher without infringement.

It should further be noted that immediately after the acquisition of the Richardson Company's patents the United Company undertook the development of a new McKay Sewing Machine which should embody the best features of both the United Company's Model B machine and the Richardson machine. After several years continuous experimental work such a machine was produced and was first put out for shoe factory trial in September, 1912. During the period since that date it has been tried out in several different shoe factories and has been gradually perfected until it is now nearly ready for adoption and manufacture in large numbers for commercial use. While, as originally intended, the machine embodies the best features of both the Model B machine and the Richardson machine, in its organization and in its appearance it more nearly resembles the Richardson machine than it does the Model B. In this new machine many valuable improvements have been made by the United Company's inventors which could not have been embodied in a commercial machine and made available to shoe manufacturers had there not been common ownership of the United Company's patents and the Richardson Company's patents.

The experimental Clicking Machine in which the Richardson Shoe Machinery Company and the Essex Machine Company were jointly interested infringed at least 37 claims (1–6, 9, 10, 12, 13, 14, 18, 20, 21, 22, 24–32, 35–43, 46, 56, 57, 58) of patent

921,503 May 11, 1909 Bates

This machine also infringed 3 claims of a pending application owned by the United Company, which claims are numbered 30, 32, and 33 in United Company's patent

1,070,729 Aug. 19, 1913 Prime & Ashton

The machine also infringed 10 claims of a pending application owned by the United Company which are the 10 claims of patent

1,075,064 Oct. 7, 1913 Prime

There has been an interference in the Patent Office between the application for Prime patent No. 1,075,064 and a Reed application on the experimental clicking machine in which the Richardson Com-

pany and the Essex Machine Company were jointly interested. This interference which was declared on March 1, 1910, was as follows:

Prime	Se. No. 393,195 (Patent No. 1,075,064, Oct. 7, 1913)	Interference No. 31,544
v.		
Reed	Se. No. 435,260	

In this interference priority was awarded to Prime on 9 counts of the interference and priority was awarded to Reed on 2 counts of the interference.

Another interference was declared March 1, 1910, between the Gordon application owned by the United Company and the Reed application, as follows:

Gordon	Se. No. 454,738 (Patent 1,082,628, Dec. 30, 1913	Interference No. 31,545
v.		
Reed	Se. No. 435,260	

In this interference priority on all the counts was awarded to Reed.

Ellis Lacer Company

The Victoria Self Lacing Company, which had been controlled by the Consolidated & McKay Lasting Machine Company and which has been controlled by the United Shoe Machinery Company since its organization, had, prior to 1899, attempted to put upon the market a lacing device for temporarily securing together the eyeletted edges of uppers during the lasting operation. This device had not been successful and attempts to market it had been discontinued before 1899 so that after 1899 and up to the time of the Ellis Company acquisition neither the Victoria Company nor the United Shoe Machinery Company had been putting out any form of wire lacer. The Victoria Company's inventors, however, had made considerable progress in experimenting along the lines of the Ellis Lacer. Although these experimental lacers were not developed to the point of commercial success, patent applications had been filed upon them and on those applications patents were eventually granted which were infringed by the Ellis Lacers as follows:

627,441 June 20, 1899 Peck

930,426 Aug. 10, 1909 Smith

930,485 Aug. 10, 1909 Leonard

The Ellis Lacers infringed 7 claims (2–8) of the Victoria Company's patent

627,441 June 20, 1899 Peck.

In addition to these 7 claims the Adjustable Ellis Lacer also infringed claim 1 of that patent

627,441 June 20, 1899 Peck.

The Ellis Lacers also infringed 8 claims (1, 3, 8, 9, 11, 12, 14, and 15) of Victoria Company's patent

930,426 Aug. 10, 1909 Smith (application filed April 3, 1899)

The Ellis Lacer which was designed especially for Blucher shoes also infringed 7 claims (4, 5, 6, 7, 11, 13, and 14) of the Victoria Company's patent

930,485 Aug. 10, 1909 Leonard (application filed Mar. 20, 1899).

The claims of the Smith and Leonard patents were broad and after these patents were granted they were submitted to counsel with a view to bringing suit upon them as well as upon the Peck patent against the Ellis Lacer Company. The Ellis Company was promptly notified of the infringement of these patents and opened negotiations with officials of the United Shoe Machinery Company which resulted in the acquisition of the Ellis Company's stock by the United Company.

While the patents of the Victoria Self Lacing Company completely dominated the Ellis Lacers, the Victoria Company's devices were not satisfactory commercial lacers and the essential features of a satisfactory commercial lacer were the subject-matter of broad claims in patents owned by the Ellis Lacer Company. As a result each company's patents if held valid and sustained would have prevented the other company from putting out lacers for commercial use.

The Wentworth Company

The Wentworth Heel Seat Beating Machine of The Wentworth Company infringed 23 claims (1–6, 8–11, 13–17, 21, 23–29) of a patent owned by the United-Xpedite Finishing Company (a majority of

the stock of which was owned by the United Shoe Machinery Company) —

616,432 Dec. 20, 1898 Beaudry.

A suit for infringement of this patent was brought in April, 1908, in this District against a user of the Wentworth machine as follows:

Equity No. 470 United-Xpedite Finishing Company

v.

Reinhard E. Bartels et al.

This suit was prosecuted to final hearing and on December 1, 1909, the claims were held to be valid and infringed. This machine further infringed 13 claims (1, 2, 3, 4, 6, 12, 16, 19, 20, 21, 22, 23, and 25) of United Shoe Machinery Company's patent

768,560 Aug. 23, 1904 Casgrain

and in March, 1909, a suit for infringement of this patent was brought in the Southern District of Ohio as follows:

Equity No. 515 United Shoe Machinery Company

v.

The Wentworth Company

This suit was uncontested and final decree was entered for complainant.

The patents upon which these two suits were brought covered indispensable features of the Wentworth machine and The Wentworth Company could no longer put out their Heel Seat Beating Machine.

The Wentworth Shank Sticker, for attaching shank stiffeners to shoes by hot pitch instead of cementing or tacking them, infringed 3 claims (34, 35, and 36) of the United Company's patent

940,419 Nov. 16, 1909 Ashton.

ADAM H. PRENZEL

The machine for beveling the upper face of the margin of the heel seat piece, which Prenzel was using in the manufacture of his improved turn shoe, infringed two allowed claims of an application owned by the United Company filed November 22, 1906, those claims being 2 and 6 of the United Company's patent granted on that application

1,003,981 Sept. 26, 1911 Busell.

It should further be noted that the work support which Prenzel had constructed for use in channeling the sole of his improved turn shoe

had been applied by him and was being used by him on the United Company's Channeling Machine: Goodyear Universal (Turn work) which was the subject-matter of several patents owned by the United Company.

M. V. BRESNAHAN & Co.

The Bresnahan Heel Burnishing Machine as it was first put out infringed several patents owned by the United-Xpedite Finishing Company (of which the United Shoe Machinery Company owns a controlling stock interest). It infringed 8 claims (1, 20–26) of the United-Xpedite Company's patent

743,988 Nov. 10, 1903 Pease.

This machine also infringed 7 claims (8, 9, 10, 13, 15, 17, and 18) of United-Xpedite Company's patent

743,993 Nov. 10, 1903 Thomson.

It also infringed 2 claims (3 and 7) of United-Xpedite Company's patent

743,994 Nov. 10, 1903 Thomson.

About 10 of these machines had been put into use in shoe factories when users of the machine were notified of the infringement by the United-Xpedite Company. Thereupon the Bresnahan firm discontinued manufacture of these machines and developed another heel burnishing machine of entirely different type. This new machine also infringed 2 patents of the United-Xpedite Company. It infringed 6 claims (3, 9, 10, 16, 20 and 21) of patent

699,476 May 6, 1902 Beckwith & Pease.

It also infringed claim 7 of patent

743,988 Nov. 10, 1903 Pease.

Only a few of the later type of machines had been put out by the Bresnahan firm before negotiations were opened which led to the acquisition of the Bresnahan firm by the United Company.

In addition to the infringements above noted there was a large amount of litigation pending in the state courts between the United Company and the Bresnahan Shoe Machinery Company. When Bresnahan sold his interest in the Bresnahan Shoe Machinery Company to Thomas G. Plant in January, 1906, the Bresnahan Company transferred to Bresnahan and Heys, who together owned all

the stock of the Bresnahan Company, all interests under this litigation in the state courts between the United Company and the Bresnahan Company. These suits were as follows:

Four actions of replevin had been brought in the Superior Court for Essex County as follows:

Docket No. 3582 United Shoe Machinery Company v. Bresnahan Shoe Machinery Company. Writ dated Jan. 2, 1904.

Docket No. 3583 United Shoe Machinery Company v. Bresnahan Shoe Machinery Company. Writ dated Dec. 30, 1903.

Docket No. 3584 United Shoe Machinery Company v. Bresnahan Shoe Machinery Company. Writ dated Jan. 1, 1904.

Docket No. 3585 United Shoe Machinery Company v. Bresnahan Shoe Machinery Company. Writ dated Jan. 1, 1904.

There were verdicts for the defendant in each of these actions. These cases went to the Massachusetts Supreme Court on exceptions and the exceptions were overruled, the decision of the court being reported in 197 Mass., 206.

At the date of the acquisition of the Bresnahan business by the United Company there were also pending four suits which had been brought in the Superior Court for Suffolk County as folllows:

Docket No. 44259 Bresnahan Shoe Machinery Company v. United Shoe Machinery Company. Suit begun Nov. 4, 1907.

Docket No. 44260 Maurice V. Bresnahan v. United Shoe Machinery Company. Suit begun Nov. 4, 1907.

Docket No. 44079 Maurice V. Bresnahan v. United Shoe Machinery Company. Suit begun May 4, 1908.

Docket No. 47080 Maurice V. Bresnahan v. United Shoe Machinery Company. Suit begun May 4, 1908.

C. P. STANBON & COMPANY

INFRINGEMENTS

The later type of Stanbon Channel Opening Machine (Stanbon patent No. 898,016, Sept. 8, 1908) infringed 6 claims (1, 2, 3, 5, 6, 10) of United Company's patent

809,332 Jan. 9, 1906 Smith

This machine also infringed 2 claims (3 & 4) of United Company's patent

818,774 Apr. 24, 1906 Mitchell

Stanbon's Channel Cementing Machine infringed claim 8 of United Company's patent

1,030,623 June 25, 1912 Warren (appln. filed July 29, 1905)

Stanbon had an experimental Channel Cementing Machine (Stanbon patent No. 1,004,098, Sept. 26, 1911) which he did not put into commercial use because it infringed 2 claims (1 & 2) of United Company's patent

743,929 Nov. 10, 1903 Rollins

In April, 1908, United Company was notified by counsel for Stanbon that its Apex Channeling Machine infringed Stanbon's patents

500,438 June 27, 1893

607,140 July 12, 1898

No suits, however, had been brought on these patents up to the time of the acquisition of the Stanbon business by the United Company.

PATENT OFFICE INTERFERENCES

CHANNEL CEMENTING MACHINE

In 1904 the United Company and Stanbon each put upon the market a new and greatly improved type of channel cementing machine. The distinguishing characteristic of each machine was a device which may be conveniently designated the "Lip Lifting Finger." Three patent applications filed by Furber, Howe and Warren and owned by the United Company were put into interference in the Patent Office with a Stanbon application. In all, 6 interferences involving these applications were declared, these interferences being numbered

25,427

25,428

25,429

25,431
25,433
26,519

All these interferences were either consolidated with or made by stipulation to depend upon the outcome of the first one above listed, No. 25,427. After decisions both ways by the lower tribunals of the Patent Office, the Court of Appeals of the District of Columbia finally decided the interferences in favor of Stanbon on February 23, 1910, so that it was impossible for the United Company to use this improvement until it acquired the Stanbon patents. It should be noted, however, that the Stanbon application which was involved in interferences disclosed an oscillating type of brush which was not a successful commercial construction, and the Stanbon commercial machine employed a rotary brush. United Company's Warren application which was involved in these interferences and on which was granted patent

1,030,623 June 25, 1912

disclosed and claimed a combination including a rotary brush and the Stanbon commercial machine, as has already been noted, infringed claim 8 of that patent. Accordingly, if both the United Company and the Stanbon patents had been sustained in litigation, there would have been a deadlock which would have prevented commercial use of this improved machine.

FOLDING MACHINE

Prior to the Stanbon acquisition, both the United Company and Stanbon had been developing an improved folding machine of a radically new character. Both machines incorporated substantially the same improvements and two interferences involving United Company's Smith application and one of the Stanbon applications were declared. The question of priority was a very close one and the issues were so broad that the party that won the interference could undoubtedly prevent the other party from putting out any machine of this character.

The United Company had no folding machine of any description and since the Stanbon acquisition has put out in large numbers folding machines embodying the Stanbon inventions.

CHANNEL OPENING MACHINE

The applications for the United Company's Smith patent

809,332 Jan. 9, 1906 Smith

and United Company's Mitchell patent

818,774 Apr. 24, 1906 Mitchell

which, as already explained, were infringed by the later type of Stanbon's Channel Opening Machine, were in interference in the Patent Office with the application for Stanbon's patent on that machine

898,016 Sept. 8, 1908 Stanbon

These interferences were as follows:

No. 24,132 Smith v. Stanbon, declared Dec. 13, 1904.

No. 25,147 Mitchell v. Stanbon, declared Aug. 26, 1905.

Both of these interferences were decided adversely to Stanbon.

DEFENDANTS' EXHIBIT 278.

[Put in Evidence, page 4234.]

The provisions of Section Four of Goodyear Department Lease and License "No. Full Set", dated the day of , 19 , are hereby waived to the extent that permission is given to the lessee to use the thereby leased for on "Fair Stitch McKay Sewed" boots and shoes and other footwear, on condition that the lessee shall pay to the lessor on the last day of each calendar month, as rent and royalty for the use of said the sum of for each pair of McKay sewed boots, shoes or other footwear or portions thereof operated on during the next preceding calendar month in any way whether wholly or in part by the aid of said or any part thereof, provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of said for the next preceding calendar month, the lessor will, in consideration of such prompt payment, grant a discount of fifty per cent from such rent or royalty due for such preceding calendar month.

Dated the day of 19 .

UNITED SHOE MACHINERY COMPANY

By President.

DEFENDANTS' EXHIBIT 279.

[Put in Evidence, page 4234.]

AUXILIARY MACHINES

Permission is hereby given to , of , lessee under Goodyear Department Auxiliary Machines Lease and License Agreement No. , dated , granted by the United Shoe Machinery Company as lessor, to use the Auxiliary Machines thereby leased in the manufacture of women's welted boots, shoes or other footwear, the inseams of which have been or are to be sewed by the use of Goodyear Welt & Turn Shoe Machine, No. , held by said lessee under Lease and License Agreement from said lessor, No. , dated , and the outsoles of which are to be attached by hand sewing in accordance with the provisions of a rider dated , attached to said last mentioned Lease and License Agreement, and providing for the use of said designated Goodyear Welt & Turn Shoe Machine in the manufacture of such footwear upon the terms and conditions in said rider set forth.

The permission hereby given does not include the use of any machine or machines other than Goodyear Auxiliary Machines specifically designated by number in said Lease and License Agreement first above mentioned; and except as herein expressly provided none of the conditions, stipulations or provisions in said Lease and License Agreement contained is hereby in any manner waived or modified.

Dated this day of 19 .

UNITED SHOE MACHINERY COMPANY.

DEFENDANTS' EXHIBIT 280.

[Put in Evidence, page 4235.]

, of , lessee under Goodyear Department Lease and License Agreement No. dated , granted by the United Shoe Machinery Company as lessor, is hereby given permission to use

GOODYEAR WELT & TURN SHOE MACHINE

thereby leased for sewing the inseams of women's welted boots, shoes or other footwear, the outsoles of which have been or are to

be attached by hand sewing, and for such use only of said Goodyear Welt & Turn Shoe Machine shall pay to the lessor in respect to each pair of such footwear, the inseams of which have been in whole or in part sewed by the use of said Goodyear Welt & Turn Shoe Machine, the sum of four cents per pair. Said payments shall be made at the same time and in the same manner and shall be subject to discount for prompt cash payment as in Article Six of said Lease and License Agreement provided.

Said footwear shall not, nor shall the boxes nor cartons containing the same, be stamped or marked with the word "Goodyear" nor advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The permission hereby given does not include the use of any machine or machines other than said Goodyear Welt & Turn Shoe Machine hereinbefore specifically designated by number, and except to the extent herein expressly provided, none of the conditions, stipulations or provisions in said Lease and License Agreement contained are in any manner waived or modified.

Dated this day of 19 .

UNITED SHOE MACHINERY CO.

_____ By

DEFENDANTS' EXHIBIT 281.

[Put in Evidence, page 4237.]

The , of , the lessee named in Goodyear Department Lease and License Agreement No , dated , granted by the United Shoe Machinery Company as lessor, is hereby given permission to use

Goodyear Outsole Rapid Lockstitch Machine, No. and

Goodyear Rapid Bobbin Winding Machine, No.

for attaching the outsoles of children's shoes (sizes one to ten and one-half inclusive) having an upper, insole and welt, all of sheepskin, fastened together by the aid of a dry thread Sewing or Stitching Machine and for such use only of said Goodyear Outsole Rapid Lockstitch Machine and Goodyear Rapid Bobbin Winding Machine the lessee shall pay to the lessor in respect to each pair of such children's

shoes whose outsoles are attached by the aid of said Goodyear Outsole Rapid Lockstitch Machine the sum of two cents (2c) in lieu of the amount specified in the "Schedule of Payments per pair" contained in Article Six of said Lease and License Agreement,

Said shoes shall not nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear" or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The requirements of said Lease and License Agreement with reference to time for payments, records and accounts are hereby extended to apply to shoes operated upon in accordance with permission hereby given,

The provisions contained in this instrument shall have the same force and effect as though included in said Lease and License Agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said Goodyear Outsole Rapid Lockstitch Machine and said Goodyear Rapid Bobbin Winding Machine hereinbefore specifically designated by number and excepting to the extent herein expressly provided none of the conditions, stipulations or provisions in said Lease and License Agreement contained is hereby, in any manner, waived or modified.

Dated this

UNITED SHOE MACHINERY COMPANY,

_____ By

DEFENDANTS' EXHIBIT 282.

[Put in Evidence, page 4238.]

Gentlemen:— We hereby consent to the removal by you of the following designated machine:—
held by you under Lease and License Agreement No , dated , from your factory in , to your factory in , upon the understanding and agreement that said machine is to be held and used by you at said factory under all the agreements, conditions, stipulations and provisions in said Lease and License Agreement contained, with the same force and effect as if said machine

had been originally leased to you by said Lease and License Agreement for use in said factory in place of said factory

Yours truly,

UNITED SHOE MACHINERY COMPANY,

By

DEFENDANTS' EXHIBIT 283.

[Put in Evidence, page 4238.]

The following modifications are hereby made in Goodyear Department Lease and License Agreement, No , dated , between the United Shoe Machinery Company, lessor, and , of , lessee, covering one (1) Goodyear Outsole Rapid Lockstitch Machine, No , and one (1) Goodyear Bobbin Winding Machine (Rapid), No , viz;

1. The lessee may use said Goodyear Outsole Rapid Lockstitch Machine, No. , in repair work for sewing on new outsoles to boots, shoes or other footwear not manufactured by the lessee, and for each pair of boots, shoes or other footwear upon which said machine shall be used shall pay to the lessor for such use of said machine in accordance with the following schedule:

Schedule of Payments for Use of Goodyear Outsole Rapid Lockstitch Machine, No. for Repair Work.

Children's, misses', youths' and women's footwear four cents per pair
Boys' and men's footwear . . . . six cents per pair

in lieu of the amounts specified in the "Schedule of Rents and Royalties for Goodyear Welts and Turns" in Article Five of said lease and license agreement contained. The payments in accordance with the Schedule above set forth shall be made at the same time and in the same manner and shall be subject to discount under the same circumstances as is provided in said Article Five.

II. The monthly guarantee of ten dollars per month provided in said lease and license agreement shall be due and payable on the fifteenth day of each calendar month for the preceding month unless the rental or royalty for the use of said machine during such preceding month (less all abatements) as shown by the lessee's return to the

lessor for said preceding month shall equal or exceed said guaranteed amount.

III. The provisions of Article Six of said lease and license agreement with reference to accounts to be kept by the lessee and return to be made to the lessor are hereby extended to cover the use of the said machinery made by the lessee in accordance with this instrument.

IV. Excepting to the extent herein provided none of the conditions, agreements, stipulations or provisions of said lease and license agreement are hereby in any manner waived or modified.

UNITED SHOE MACHINERY COMPANY,

By _____

DEFENDANTS' EXHIBIT 284.

[Put in Evidence, page 4238.]

HAND-SEWED WELTS (Form JM–79–409–Ln)

Goodyear Outsole Rapid Lockstitch Machine

of lessee under Goodyear Department Lease and License Agreement, No. , dated , 19 , granted by the United Shoe Machinery Company as lessor, is hereby given permission to use Goodyear Outsole Rapid Lockstitch Machine, No. , thereby leased for stitching on the outsoles of that class of welted footwear known in the trade as "Hand-sewed Welts," the inseams of which have been sewed by hand, and for such use only of said Goodyear Outsole Rapid Lockstitch Machine, shall pay to the lessor in respect to each pair of such "Hand-sewed Welts," the outsoles of which have been in whole or in part stitched by the use of said Goodyear Outsole Rapid Lockstitch Machine, the amount specified in the "Schedule of Payments — Handsewed Welts — Per Pair" hereinafter contained, in lieu of the amount specified in the "Schedule of Payments Per Pair" in Article Six of said lease and license agreement contained.

Schedule of Payments — Hand-sewed Welts — Per Pair.

	Sizes. From No.	To No.	
Children's	1	10½ inclusive	2 cents
Misses'	11	2 "	2 cents

	Sizes From No.	to No.	
Women's	2½	and over	4 cents
Youths'	9	13½ inclusive	2 cents
Boys'	1	5 "	4 cents
Men's	5½	and over	6 cents

Said "Hand-sewed Welts" shall not nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear," or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The requirements of said lease and license agreement with reference to time for payment, record and accounts, are hereby extended to apply to "Hand-sewed Welts."

The provisions in this instrument contained shall have the same force and effect as though included in said lease and license agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said Goodyear Outsole Rapid Lockstitch Machine hereinbefore specifically designated by number, and excepting to the extent herein expressly provided none of the conditions, stipulations or provisions in said lease and license agreement contained is hereby in any manner waived or modified.

Dated this day of , 19 .

By

By

DEFENDANTS' EXHIBIT 285.

[Put in Evidence, page 4239.]

STITCH DOWNS (Form JM-28-306)

Goodyear Outsole Rapid Lockstitch Machine

, of , lessee under Goodyear Department Lease and License Agreement No. dated , granted by the United Shoe Machinery Company, as lessor, is hereby given permission to use Goodyear Outsole Rapid Lockstitch Machine, No. thereby leased, for stitching on the soles of that class of boots, shoes or other footwear

known in the trade as "Stitch Downs," the uppers of which are turned outwardly upon their outsoles and sewed to their outsoles by a single seam only passing through the upper and outsole, or through a mock welt laid upon the out-turned portion of the upper, the upper, and the outsole; and for any such use only of said Goodyear Outsole Rapid Lockstitch Machine shall pay to the lessor in respect to each pair of such "Stitch Downs" in the manufacture of which the said designated machine has been used as aforesaid the amount specified in the "Schedule of Payments — Stitch Downs — Per Pair", hereinafter contained, in lieu of the amount specified in the "Schedule of Payments Per Pair" in Article Six in said lease and license agreement contained.

Schedule of Payments — Stitch Downs — Per Pair.

	Sizes.		
	From No.	To No.	
Children's	1	10½ inc.	2 cents
Misses'	11	2 "	2 cents
Women's	2½	and over	4 cents
Youths'	9	13½ inc.	2 cents
Boys'	1	5 "	4 cents
Men's	5½	and over	6 cents

Said "Stitch Downs" shall not nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear", or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The requirements of said lease and license agreement with reference to time for payments, records and accounts are hereby extended to apply to "Stitch Downs" made in accordance with the permission hereby given.

The provisions in this instrument contained shall have the same force and effect as though included in said lease and license agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said Goodyear Outsole Rapid Lockstitch Machine hereinbefore specifically designated by number, and excepting to the extent herein expressly provided, none of the conditions, stipu-

lations or provisions in said lease and license agreement contained are in any manner waived or modified, but the same are and shall remain in full force and effect.

Dated this day of 19 .

UNITED SHOE MACHINERY CO.

[SEAL] By

[SEAL] By

DEFENDANTS' EXHIBIT 286.

[Put in Evidence, page 4239.]

"FAIR STITCHING" (Form JM–44–306–Ln.)

Goodyear Outsole Rapid Lockstitch Machine

, of , lessee under Goodyear Department Lease and License Agreement No. , dated , granted by the United Shoe Machinery Company, as lessor, is hereby given permission to use Goodyear Outsole Rapid Lockstitch Machine No. thereby leased, for "fair stitching" for ornamentation only the outsoles of boots, shoes or other footwear the soles of which have been attached to their uppers by the use of Metallic Fastening Machines held by said lessee under lease from said lessor, or have been attached by McKay Sewing Machines, and for the use of said Goodyear Outsole Rapid Lockstitch Machine for such "fairstitching" only shall pay to the lessor in respect to each pair of such "fairstitched" boots, shoes, or other footwear the sum of two cents in lieu of the amount specified in the "Schedule of Payments Per Pair" in Article Six in said lease and license agreement contained.

Said "fairstitched" boots, shoes or other footwear shall not be nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear," or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The requirements of said lease and license agreement with reference to time for payments, records and accounts are hereby extended to apply to "fairstitched" boots, shoes or other footwear made in accordance with the permission hereby given.

The provisions in this instrument contained shall have the same

force and effect as though included in said lease and license agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said Goodyear Outsole Rapid Lockstitch Machine hereinbefore specifically designated by number, and excepting to the extent herein expressly provided, none of the conditions, stipulations or provisions of said lease and license agreement contained are in any manner waived or modified, but the same are and shall remain in full force and effect.

Dated this day of 19 .

UNITED SHOE MACHINERY CO.
By
By

DEFENDANTS' EXHIBIT 287.

[Put in Evidence, page 4240.]

FAIR STITCHING. (Form JM–44–306–Ln.)

Goodyear Outsole Rapid Lockstitch Machine

of lessee under Goodyear Department Lease and License Agreement, No. , dated , 19 , granted by the United Shoe Machinery Company, as lessor, is hereby given permission to use Goodyear Outsole Rapid Lockstitch Machine, No. thereby leased for "fair stitching" for ornamentation only the outsoles of boots, shoes or other footwear the soles of which have been attached to their uppers by the use of Metallic Fastening Machines held by said lessee under lease from said lessor, or have been attached by McKay Sewing Machines, and for the use of said Goodyear Outsole Rapid Lockstitch Machine for such "fair stitching" only shall pay to the lessor in respect to each pair of such "fair stitched" boots, shoes or other footwear, the sum of two cents in lieu of the amount specified in the "Schedule of Payments Per Pair" in Article Six in said lease and license agreement contained.

Said "fair stitched" boots, shoes or other footwear shall not nor shall the boxes or cartons containing the same be stamped or marked

with the word "Goodyear," or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns".

The requirements of said lease and license agreement with reference to time for payments, records and accounts are hereby extended to apply to "fair stitched" boots, shoes or other footwear made in accordance with the permission hereby given.

The provisions in this instrument contained shall have the same force and effect as though included in said lease and license agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said "Goodyear Outsole Rapid Lockstitch Machine" hereinbefore specifically designated by number, and excepting to the extent herein expressly provided, none of the terms, conditions, stipulations or provisions of said lease and license agreement is hereby in any manner waived or modified.

Dated this day of 19 .

By

By

DEFENDANTS' EXHIBIT 288.

[Put in Evidence, page 4240.]

MOCK WELTS. (Form JM–46–506–Ln.)

Goodyear Outsole Rapid Lockstitch Machine

of lessee under Goodyear Department Lease and License Agreement, No. , dated , 19 , granted by the United Shoe Machinery Company, as lessor, is hereby given permission to use Goodyear Outsole Rapid Lockstitch Machine, No. thereby leased for stitching on the outsoles of that class of boots, shoes or other footwear known in the trade as "Mock Welts," the insoles of which have been attached to welts or slip soles by the aid of pegging, wiring, nailing, screwing or stapling machines held by the lessee under lease from the lessor, or of McKay Sewing Machines, and for such use only of said Goodyear Outsole Rapid Lockstitch Machine, shall pay to the lessor in respect to each pair of such "Mock Welts" the outsoles of which shall have been in whole or in part stitched by

the use of said Goodyear Outsole Rapid Lockstitch Machine the amount specified in the "Schedule of Payments — Mock Welts — Per Pair" hereinafter contained, in lieu of the amount specified in the "Schedule of Payments Per Pair" in Article Six of said lease and license agreement contained.

Schedule of Payments — Mock Welts — Per Pair.

	Sizes. From No.	To No.	
Children's	1	10½ inc.	2 cents
Misses'	11	2 "	2 cents
Women's	2½	and over	3 cents
Youths'	9	13½ inc.	2 cents
Boys'	1	5 "	3 cents
Men's	5½	and over	4 cents

Said "Mock Welts" shall not nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear," or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The requirements of said lease and license agreement with reference to time for payment, records and accounts are hereby extended to apply to "Mock Welts."

The provisions in this instrument contained shall have the same force and effect as though included in said lease and license agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said Goodyear Outsole Rapid Lockstitch Machine hereinbefore specifically designated by number, and excepting to the extent herein expressly provided none of the conditions, stipulations or provisions in said lease and license agreement contained is hereby in any manner waived or modified.

Dated this day of 19 .

By

By

DEFENDANTS' EXHIBIT 289.

[Put in Evidence, page 4240.]

AUXILIARY MACHINES. (Form JM–41–306)

Permission is hereby given to of , lessee under Goodyear Department Lease and License Agreement, No. dated granted by the United Shoe Machinery Company, as lessor, to use the "Auxiliary Machines" thereby leased in the manufacture of that class of boots, shoes or other footwear known in the trade as which have been made by the use of Goodyear Outsole Rapid Lockstitch Machine, No. held by said lessee under lease and license agreement from said lessor, dated No. in accordance with the provisions of Rider, dated attached to said last mentioned lease and license agreement, and providing for the use of said designated Goodyear Outsole Rapid Lockstitch Machine in the manufacture of said class of boots, shoes or other footwear upon the terms and conditions in said Rider set forth.

The permission hereby given does not include the use of any machine or machines other than the "Auxiliary Machines" specifically designated by number in said lease and license agreement first above mentioned, and excepting to the extent herein expressly provided none of the terms, conditions, stipulations or provisions of said lease and license agreement is hereby in any manner waived or modified.

Dated this day of 19 .

By

By

DEFENDANTS' EXHIBIT 290.

[Put in Evidence, page 4241.]

Goodyear Department A (Form C—31—1105)

This Instrument Witnesseth that the United Shoe Machinery Company of Canada, the lessor named in Goodyear Department Lease and License Agreement No. , dated , between said Company and , of , as lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No.
Goodyear Outsole Rapid Lockstitch Machine, No
Extension Edge Attachment (A), No.
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof for the termination of the lease and license thereby granted, and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, then neither the payment provided for in Article Nine of said lease and license agreement No. to be thereupon made by the lessee, of such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee, nor the payment provided for in Article Ten of said lease and license agreement to be thereupon made by the lessee, of the sum of One Hundred and Fifty Dollars ($150.00) in respect to each welting or stitching or sewing machine thereby leased, shall be required to be made, and in such case the lessor shall thereupon, in addition, credit to the account of the lessee the sum of Dollars in respect to each Goodyear Welt and Turn Shoe Machine and Goodyear Outsole Rapid Lockstitch Machine designated in the foregoing schedule.

UNITED SHOE MACHINERY COMPANY OF CANADA.

By

Montreal, P. Q. , 190 .

DEFENDANTS' EXHIBIT 291.

[Put in Evidence, page 4241.]

Goodyear Department B (Form JM–32–105)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. , dated, between said Company and , of , as lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No.
Goodyear Universal Inseam Sewing Machine, No.
Goodyear Outsole Rapid Lockstitch Machine, No.
Extension Edge Attachment (A), No.
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof or the termination of the lease and license thereby granted and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, then neither the payment provided for in Article Nine of said lease and license agreement No. to be thereupon made by the lessee, of such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee, nor the payment provided for in Article Ten of said lease and license agreement to be thereupon made by the lessee, of the sum of One Hundred and Fifty Dollars ($150.00) in respect to each welting or stitching or sewing machine thereby leased, shall be required to be made.

UNITED SHOE MACHINERY COMPANY,
By

Boston, Mass., , 190 .

DEFENDANTS' EXHIBIT 292.

[Put in Evidence, page 4241.]

Goodyear Department C (Form JM–33–105)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. , dated , between said Company and , of , as lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No.
Goodyear Universal Inseam Sewing Machine, No.
Goodyear Outsole Rapid Lockstitch Machine, No.
Extension Edge Attachment (A), No.
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof or the termination of the lease and license thereby granted and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, then the payment provided for in Article Ten of said lease and license agreement No. to be thereupon made by the lessee, of the sum of One Hundred and Fifty Dollars ($150.00) in respect to each welting or stitching or sewing machine thereby leased, shall not be required to be made, and in such case the lessor shall thereupon, in addition, credit to the account of the lessee the sum of Dollars in respect to each Goodyear Welt and Turn Shoe Machine, Goodyear Universal Inseam Sewing Machine and Goodyear Outsole Rapid Lockstitch Machine designated in the foregoing schedule.

UNITED SHOE MACHINERY COMPANY,

By

Boston, Mass., , 190 .

DEFENDANTS' EXHIBIT 293.

[Put in Evidence, page 4241.]

Goodyear Department D (Form JM–34–105)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. , dated , between said Company and , of , as lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No.
Goodyear Universal Inseam Sewing Machine, No.
Goodyear Outsole Rapid Lockstitch Machine, No.
Extension Edge Attachment (A), No.
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof, or the termination of the lease and license thereby granted and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, the lessor will accept the sum of Dollars in respect to each Goodyear Welt and Turn Shoe Machine, Goodyear Universal Inseam Sewing Machine and Goodyear Outsole Rapid Lockstitch Machine designated by number in the foregoing schedule in lieu of the sum provided in Article Ten of said lease and license agreement to be thereupon paid by the lessee of One Hundred and Fifty Dollars ($150.00) in respect to each such designated machine.

UNITED SHOE MACHINERY COMPANY,

By

Boston, Mass., , 191 .

DEFENDANTS' EXHIBIT 294.

[Put in Evidence, page 4241.]

Goodyear Dapertment E (Form JM–36–305.)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. , dated , between said Company and , of , as lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No.
Goodyear Universal Inseam Sewing Machine, No.
Goodyear Outsole Rapid Lockstitch Machine, No.
Extension Edge Attachment (A), No.
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof or the termination of the lease and license thereby granted and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, then the payment provided for in Article Ten of said lease and license agreement No. to be thereupon made by the lessee, of the sum of One Hundred and Fifty Dollars ($150.00) in respect to each welting or stitching or sewing machine thereby leased, shall not be required to be made.

UNITED SHOE MACHINERY COMPANY,
By

Boston, Mass., , 19 .

DEFENDANTS' EXHIBIT 295.

[Put in vidence, page 4242.]

Goodyear Department M (Form JM–35–105)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. , dated , between said Company and , of , as lessee, and covering the machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Bobbin Winder (Universal) No.
Goodyear Bobbin Winder (Rapid) No.
Goodyear Welt Grooving and Beveling Machine No.
Goodyear Welt Splitting Machine No.
Goodyear Channeler { Turn No. / Insole No. / Outsole No.
Goodyear Universal Welt Beater No.
Goodyear Welt Beating and Slashing Machine No.
Goodyear Universal Shank Skiving Machine No.
Goodyear Universal Inseam Trimming Machine No.
Goodyear Universal Rounding and Channeling Machine No.
Goodyear Channel Opening Machine No.
Goodyear Automatic Sole Leveling Machine No.
Goodyear Rotary Sole Laying Machine No.
Hadaway Stitch Separating Machine No.
Goodyear Channel Laying Machine No.
Goodyear Flexible Sole Machine No.
Goodyear Moulding Machine No.
Goodyear Turn Shoe Trimming Machine No.
Goodyear Lip Turning Machine No.
Goodyear Improved Sole Laying Machine No.
Goodyear Shank Welt Skiving Machine No.
Goodyear Forepart Turning Machine No.
Goodyear Heel Turning Machine No.

hereby waives payment by the lessee of the amounts called for by

Article Seven of said lease and license agreement in respect to each of said designated machines in respect to the year

Excepting as herein expressly provided none of the conditions, stipulations, or provisions of said lease and license agreement are in anywise waived or modified.

UNITED SHOE MACHINERY COMPANY,
By

Boston, Mass., , 190 .

DEFENDANTS' EXHIBIT 296.

[Put in Evidence, page 4242.]

[Form J. M. 83.]

The following modifications are hereby made in Lasting Machine Department Lease and License Agreement No. , dated , between the United Shoe Machinery Company, lessor, and of , lessee, covering

Consolidated Hand Method Lasting Machine, No.

viz.:

1. Article Four of said Lease and License Agreement is hereby changed to read as follows:

Four. The leased machinery shall be used only in the manufacture of boots, shoes and other footwear made by the lessee known in the trade as "Goodyear Welts" which are welted wholly by "Goodyear Welt and Turn Shoe Machines" or "Goodyear Universal Inseam Sewing Machines" held by the lessee under lease from the lessor and the soles of which are attached to their welts wholly by "Goodyear Outsole Rapid Lockstitch Machines" held by the lessee under lease from the lessor, and shall be used for no other purpose than for lasting the sides of such boots, shoes and other footwear which have been pulled over by "Rex Pulling Over Machines" held by the lessee under lease from the lessor, and which shall be otherwise lasted by "U. S. M. Co. Lasting Machines, No. 5," held by the lessee under lease from the lessor.

2. The lessor hereby waives payment by the lessee of any rental or royalty on account of the use by the lessee of the leased machinery

as specified in said Article Four of said Lease and License Agreement as hereby changed.

Except as herein expressly provided none of the conditions, agreements, stipulations or provisions in said Lease and License Agreement contained is hereby in any manner waived or modified.

Dated this day of 19 .

By

By

DEFENDANTS' EXHIBIT 297.

[Put in Evidence, page 4243.]

[Form J. M. 84.]

The following modifications are hereby made in Lasting Machine Department Lease and License Agreement No. , dated , between the United Shoe Machinery Company, lessor, and of , lessee, covering

Consolidated Hand Method Lasting Machine, No.

viz.:

1. Article Four of said Lease and License Agreement is hereby changed to read as follows:

Four. The leased machinery shall be used only in the manufacture of boots, shoes and other footwear made by the lessee known in the trade as "Goodyear Welts" which are welted wholly by "Goodyear Welt and Turn Shoe Machines" or "Goodyear Universal Inseam Sewing Machines" held by the lessee under lease from the lessor and the soles of which are attached to their welts wholly by "Goodyear Outsole Rapid Lockstitch Machines" held by the lessee under lease from the lessor, and shall be used for no other purpose than for lasting the sides of such boots, shoes and other footwear which have been pulled over by "Rex Pulling Over Machines" held by the lessee under lease from the lessor, and which shall be otherwise lasted by "U. S. M. Co. Lasting Machines, No. 5" held by the lessee under lease from the lessor.

2. The lessor hereby waives payment by the lessee of any rental or royalty on account of the use by the lessee of the leased machinery

as specified in said Article Four of said Lease and License Agreement as hereby changed.

Except as herein expressly provided none of the conditions, agreements, stipulations or provisions in said Lease and License Agreement contained is hereby in any manner waived or modified.

Lasting Machine Department Lease and License Agreement No. , dated , heretofore granted by the said United Shoe Machinery Company to said covering the machine herein referred to is hereby cancelled and superseded by Lasting Machine Department Lease and License Agreement, No. to which this rider is attached.

Dated this day of 19 .

By

By

DEFENDANTS' EXHIBIT 298.

[Put in Evidence, page 4243.]

[Form J. M. 55–806]

This instrument witnesseth that the following changes are hereby made in the conditions of Lasting Machine Department Lease and License, No. , dated , between the United Shoe Machinery Company, lessor, and , of lessee, and covering

Consolidated Hand Method Lasting Machine, No.

viz.—

Articles Four and Five are hereby changed to read as follows:

Four. The leased machinery shall be used for no other purpose than for lasting the heel portions of turned shoes or other footwear the soles of which shall be attached to their uppers by Turn Sewing Machines held by the lessee under lease from the lessor, and for that purpose the leased machinery shall be used to its full capacity, limited only by the number of such shoes or other footwear made by or for the lessee.

Five. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of one-half of one cent for each pair of shoes or other footwear in the manufacture or preparation of which the leased machinery shall be used during the next preceding

calendar month, provided, however, that in the computation of such rental or royalty upon children's shoes seventy-two (72) pairs of such shoes shall be considered as the equivalent of sixty (60) pairs of all other kinds, and further provided, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month. The lessee guarantees that the rent or royalty herein provided (less all abatements) shall amount in each calendar year, ending December thirty-first, to at least ten dollars ($10.00) for each calendar month and at the end of each such calendar year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty; provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle, but such reduction shall not be made in respect to more than ten (10) out of twelve (12) consecutive calendar months.

Excepting as herein expressly provided, none of the conditions, agreements, stipulations or provisions of said lease and license are in any manner waived or modified, but the same are and shall remain in full force and effect.

Dated at Boston, Massachusetts, this , day of , 190 .

By

UNITED SHOE MACHINERY COMPANY

By President.

DEFENDANTS' EXHIBIT 299.

[Put in Evidence, page 4243.]

[Form J. M. 54–806]

This instrument witnesseth that the following changes are hereby made in the conditions of Lasting Machine Department Lease and License, No. , dated , between the United Shoe Machinery Company, lessor, and of , lessee, and covering

Consolidated Hand Method Lasting Machine, No.

viz.—

Articles Four and Five are hereby changed to read as follows:

Four. The leased machinery shall be used for no other purpose than for wiring the toes of turned shoes or other footwear the soles of which shall be attached to their uppers by Turn Sewing Machines held by the lessee under lease from the lessor, and for that purpose the leased machinery shall be used to its full capacity, limited only by the number of such shoes or other footwear made by or for the lessee.

Five. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of one-half of one cent for each pair of shoes or other footwear in the manufacture or preparation of which the leased machinery shall be used during the next preceding calendar month, provided, however, that in the computation of such rental or royalty upon children's shoes seventy-two (72) pairs of such shoes shall be considered as the equivalent of sixty (60) pairs of all other kinds, and further provided, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month. The lessee guarantees that the rent or royalty herein provided (less all abatements) shall amount in each calendar year, ending December thirty-first, to at least ten dollars ($10.00) for each calendar month and at the end of each such calendar year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty; provided, however, that if in any calendar year the factory of the lessee

remains wholly idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle, but such reduction shall not be made in respect to more than ten (10) out of twelve (12) consecutive calendar months.

Excepting as herein expressly provided, none of the conditions, agreements, stipulations or provisions of said lease and license are in any manner waived or modified, but the same are and shall remain in full force and effect.

Dated at Boston, Massachusetts, this , day of , 190 .

By

UNITED SHOE MACHINERY COMPANY

By President.

DEFENDANTS' EXHIBIT 300.

[Put in Evidence, page 4244.]

The following provision contained in Article Three of Metallic Department Lease and License No. , dated , 19 , granted by the United Shoe Machinery Company, as lessor, to of , as lessee, covering is hereby stricken out, namely:

"except that the lessee agrees that the said machinery shall not be used in the manufacture of any boots or shoes which are lasted on machines or by the aid of lasting or tacking mechanisms other than those leased from the lessor or any welted boots or shoes which are not welted and stitched on welt sewing and sole stitching machines leased from the lessor, or turn shoes the soles of which are not attached by turn sewing machines leased from the lessor."

Excepting as herein expressly provided none of the conditions, agreements, stipulations or provisions contained in said Lease and License is hereby in any wise waived or modified.

Dated this day of , 19 .

UNITED SHOE MACHINERY CO.

By

DEFENDANTS' EXHIBIT 301.

[Put in Evidence, page 4244.]

[Form J. M. 85]

The following modifications are hereby made in Metallic Department Lease and License Agreement, No. dated , between the United Shoe Machinery Company, as lessor, and of , as lessee, covering the machine designated by name and number in the following

Schedule of Machines.

Rapid Standard Screw Machine, No.
Loose Nailing Machine, No.
Universal Slugging Machine, No.
Taper Nail Tacking Machine, No.
Grip Tacking Machine, No.
Staple Fastening Machine, No.
Knife Grinder, No.

1. The lessee agrees to pay to the lessor immediately upon the execution of said Lease and License Agreement, as a lease premium for said machine, the sum of Dollars.

2. The following provision contained in Article Three of said Lease and License Agreement is hereby stricken out, namely:—
"except that the lessee agrees that the said machinery shall not be used in the manufacture of any boots or shoes which are lasted on machines or by the aid of lasting or tacking mechanisms other than those leased from the lessor or any welted boots or shoes which are not welted and stitched on welt sewing and sole stitching machines leased from the lessor, or turn shoes the soles of which are not attached by turn sewing machines leased from the lessor."

Except as herein expressly stated, none of the conditions, stipulations, or provisions contained in said Lease and License Agreement is hereby in any wise waived or modified.

Dated this day of , 19 .

By

By

DEFENDANTS' EXHIBIT 302.

[Put in Evidence, page 4245.]

[Form J. M. 65.]

It is hereby made a condition of Metallic Department Lease and License, No. , dated between the United Shoe Machinery Company, lessor, and of , lessee, and covering No. , with the same force and effect as though printed therein before execution, that the lessee independently of and in addition to all other obligations under said Lease and License Agreement shall pay to the lessor on the fifteenth day of each calendar month during the continuance of said Lease and License the sum of dollars ($) per month. And the lessor hereby waives the guarantee provided in said Lease and License Agreement of four hundred (400) pounds of fastening material per year.

Excepting to the extent herein expressly provided none of the terms or conditions of said Lease and License are hereby, in any manner, waived or modified.

Dated this day of 1907.

By

By

DEFENDANTS' EXHIBIT 303.

[Put in Evidence, page 4245.]

Dear Sirs:—

Referring to that clause contained in Article Three of our Metallic Department Lease and License No. to you, dated , and covering Machines, Nos. , which provides that the said machinery shall not be used on any welted boots or shoes which are not welted and stitched on welt sewing and sole stitching machines leased from the lessor, or turn shoes the soles of which are not attached by turn sewing machines leased from the lessor, we beg to state in accordance with your request that said clause in said lease shall not be held to prevent the use of said designated machines by you upon "hand sewed welts" made by or for you by reason of the fact that the same are not welted on welt sewing machines held under lease

from us, or upon "hand turns" made by or for you by reason of the fact that the soles of the same are not attached by turn sewing machines held by you under lease from us.

Very truly yours,

UNITED SHOE MACHINERY COMPANY

By _____

DEFENDANTS' EXHIBIT 304.

[Put in Evidence, page 4246.]

The conditions and provisions contained in Heeling Department Lease and License, No. , dated , granted by the United Shoe Machinery Company as lessor, to , as lessee, and covering , are hereby modified to the extent hereinafter stated but not otherwise.

1. Article numbered in said Lease and License is hereby stricken out, and in lieu thereof it is provided and agreed as follows, with the same force and effect as if the following article were printed in said Lease and License as one of the conditions thereof:—

. The lessee shall use the leased machinery for no other purpose than for compressing heels for boots, shoes and other footwear. The leased machinery shall not nor shall any part thereof be used for compressing or in anywise operating upon toplifts, soles or taps.

2. Articles numbered in said Lease and License are hereby stricken out, and in lieu thereof it is provided and agreed as follows, with the same force and effect as if the following article were printed in said Lease and License as one of the conditions thereof:—

. The lessee shall pay to the lessor as rental or royalty for the term of one year herein provided for the sum of three hundred dollars ($300.00), payable in equal monthly payments of twenty-five dollars ($25.00) each. Said payments of twenty-five dollars ($25.00) each shall be made to the lessor at its office in Boston, Massachusetts, on or before the fifth day of each calendar month.

3. The first sentence in article numbered in said Lease and License, beginning with the words "This lease and license" and ending with the words "date hereof" is hereby stricken out, and

in lieu thereof the following sentence is substituted with the same force and effect as if so printed in said lease and license.

This lease and license shall continue, unless sooner terminated by the lessor by notice, or because of breach thereof on the part of the lessee, or otherwise as herein provided, for one year from the date hereof.

Excepting as herein expressly provided none of the conditions, agreements, stipulations or provisions of said Lease and License are in anywise waived or modified, but the same are and shall remain in full force and effect.

In Witness Whereof the parties hereto have duly executed this instrument in duplicate this day of .

UNITED SHOE MACHINERY COMPANY
By

DEFENDANTS' EXHIBIT 305.

[Put in Evidence, page 4246.]

UNITED SHOE MACHINERY COMPANY
Albany Building, Boston, Mass.

We beg to advise you that we have received the following named machines heretofore held by you as lessee of this Company under Department Lease and License Agreement, No. dated, viz:

Yours respectfully

UNITED SHOE MACHINERY COMPANY.
By

DEFENDANTS' EXHIBIT 306.

[Put in Evidence, page 4246.]

Article Five of Pulling Over System Lease and License Agreement, No. , dated , granted by the United Shoe Machinery Company, as lessor, to of as lessee, covering is hereby changed to read as follows:

"Five. The machinery hereby leased or held by the lessee under other lease or license agreement from the lessor shall be used only

in the manufacture or preparation of boots, shoes or other footwear made by or for the lessee and shall be used for no other purpose than for performing the work for which it is designed and leased. The machinery of the Pulling Over System of the lessor hereby leased or held by the lessee under other lease or license agreement from the lessor shall not nor shall any thereof be used in the manufacture of any boots, shoes or other footwear upon which any operation for which any of the machines of the lessor mentioned by name in the foregoing schedule of machines are designed, has been or is to be performed by machinery not held by the lessee under lease from the lessor. Subject to the foregoing limitations, the lessee shall use all Rex Pulling Over Machines held by him under lease from the lessor to their full capacity upon all boots, shoes or other footwear or portions thereof made by or for the lessee in the manufacture or preparation of which such machines are capable of being used and shall use all other machinery of the Pulling Over System of the lessor held by him under lease from the lessor to its full capacity upon all work in the manufacture or preparation of boots, shoes and other footwear, or portions thereof, which is done by or for the lessee by the aid of machinery and which is of a kind which such machinery is designed to perform."

Except as herein expressly provided none of the conditions, stipulations or provisions contained in said lease and license agreement is hereby in any way waived or modified.

Dated this day of, 19 .

By _____

DEFENDANTS' EXHIBIT 307.

[Put in Evidence, page 4247.]

Dear Sirs:—

Referring to our Pulling Over lease to you , covering Rex Pulling Over Machines Nos. , together with other machines of the Pulling Over System referred to in said lease and auxiliary to said Pulling Over Machines we beg to say that it is understood and agreed that nothing contained in said lease shall be construed to pre-

vent the lessee from pulling over by hand such portion of the footwear manufactured by or for the lessee as is in excess of the capacity of the machinery leased for use in the factory in which said footwear is pulled over.

Very truly yours,

UNITED SHOE MACHINERY COMPANY

By _____

DEFENDANTS' EXHIBIT 308.

[Put in Evidence, page 4247.]

The following provision contained in Article Five of Heeling Machine Department Lease and License No. , dated , 19 , granted by the United Shoe Machinery Company, as lessor, to of , as lessee, covering is hereby stricken out, namely:

"The leased machinery shall not however nor shall any part thereof be used for manufacturing, preparing or attaching heels, top-lifts, soles or taps for any boots, shoes or other footwear which have been or shall be welted or the soles stitched by the aid of any welt sewing or sole stitching machinery not held by the lessee under lease from the lessor, or for any turn boots, shoes or other footwear the soles of which have been or shall be attached by the aid of any turn sewing machinery not held by the lessee under lease from the lessor, or for any boots, shoes or other footwear which have been or shall be lasted, pegged, slugged, heel seat nailed or otherwise partly made by the aid of any lasting, pegging or metallic machinery not held by the lessee under lease from the lessor."

Excepting as herein expressly provided none of the conditions, agreements, stipulations or provisions contained in said Lease and License is hereby in any wise waived or modified.

Dated this day of , 19 .

UNITED SHOE MACHINERY CO.

By

DEFENDANTS' EXHIBIT 309.

[Put in Evidence, page 4248.]

[Form J. M. 86]

The following modifications are hereby made in Heeling Machine Department Lease and License Agreement No. , dated , between the United Shoe Machinery Company, as lessor, and of , as lessee, covering the machine designated by name and number in the following

Schedule of Machines.

Automatic Heel Compressing Machine (No. 4 Model), No.
McKay Rapid Nailing Machine, No.
McKay Automatic Heel Loading & Attaching Machine, No.
American Lightning Nailing Machine, No.
Improved National Nailing Machine, No.
McKay Heel Trimming and Randing Machine, No.
McKay Knife Grinding Machine, No.
Smith Heel Trimming Machine, No.
Busell Heel Trimming Machine, No.
Ultima Heel Trimming Machine, No.

1. The lessee agrees to pay to the lessor immediately upon the execution of said Lease and License Agreement as a lease premium for said machine the sum of Dollars.

2. Clause 3 of said Lease and License Agreement is hereby stricken out.

3. The following provision, contained in Article 5 of said Lease and License Agreement, is hereby stricken out, viz.:—

"The leased machinery shall not however nor shall any part thereof be used for manufacturing, preparing or attaching heels, toplifts, soles or taps for any boots, shoes or other footwear which have been or shall be welted or the soles stitched by the aid of any welt sewing or sole stitching machinery not held by the lessee under lease from the lessor, or for any turn boots, shoes or other footwear the soles of which have been or shall be attached by the aid of any turn sewing machinery not held by the lessee under lease from the lessor, or for any boots, shoes or other footwear which have been or shall be lasted, pegged, slugged, heel seat nailed or otherwise partly made by the aid

of any lasting, pegging or metallic machinery not held by the lessee under lease from the lessor."

Except as herein expressly stated, none of the conditions, stipulations, or provisions contained in said Lease and License Agreement is hereby in any wise waived or modified.

Dated this day of , 19 .

By

By

DEFENDANTS' EXHIBIT 310.

[Put in Evidence, page 4248.]

March 23, 1910.

W. H. McElwain Company, 348 Congress Street, Boston, Mass.

Gentlemen:— We hereby consent to the removal by you of the following designated machine:—

Goodyear Welt Splitting Machine, No. 802

held by you under Lease and License Agreement No. 5884A., dated October 28, 1904, from your Cohas factory in Manchester, New Hampshire, to your Eastside factory in said Manchester, upon the understanding and agreement that said machine is to be held and used by you at said Eastside factory under all the agreements, conditions, stipulations and provisions in said Lease and License Agreement contained, with the same force and effect as if said machine had been originally leased to you by said Lease and License Agreement for use in said Eastside factory in place of said Cohas factory.

Yours truly,

UNITED SHOE MACHINERY COMPANY,

By Vice-President.

The following modifications are hereby made in Goodyear Department Lease and License Agreement, No. 5301 "A", dated July 23, 1907, between the United Shoe Machinery Company, lessor, and Robertson & Sons, of New York, N. Y., lessee, covering one (1) Goodyear Outsole Rapid Lockstitch Machine, No. 2633, and one (1) Goodyear Bobbin Winding Machine (Rapid), No. 1393, viz:

I. The lessee may use said Goodyear Outsole Rapid Lockstitch Machine, No. 2633, in repair work for sewing on new outsoles to boots, shoes or other footwear not manufactured by the lessee, and for each pair of boots, shoes or other footwear upon which said machine shall be so used shall pay to the lessor for such use of said machine in accordance with the following schedule:

Schedule of Payments for Use of Goodyear Outsole Rapid Lockstitch Machine, No. 2633 for Repair Work.

Children's, misses', youths' and women's footwear four cents per pair
Boys' and men's footwear . . . . . six cents per pair

in lieu of the amounts specified in the "Schedule of Rents and Royalties for Goodyear Welts and Turns" in Article Five of said lease and license agreement contained. The payments in accordance with the Schedule above set forth shall be made at the same time and in the same manner and shall be subject to discount under the same circumstances as is provided in said Article Five.

II. The monthly guarantee of ten dollars per month provided for in said lease and license agreement shall be due and payable on the fifteenth day of each calendar month for the preceding month unless the rental or royalty for the use of said machine during such preceding month (less all abatements) as shown by the lessee's return to the lessor for said preceding month shall equal or exceed said guaranteed amount.

III. The provisions of Article Six of said lease and license agreement with reference to accounts to be kept by the lessee and return to be made to the lessor are hereby extended to cover the use of the said machinery made by the lessee in accordance with this instrument.

IV. Excepting to the extent herein provided none of the conditions, agreements, stipulations or provisions of said lease and license agreement are hereby in any manner waived or modified.

UNITED SHOE MACHINERY COMPANY

(CORPORATE SEAL) By Wallace F. Robinson, Vice President.
By R. A. Blackwell, Asst. Secretary.

ROBERTSON & SONS

By James Robertson

The Kyng B. Shoe Company, of Rochester, N. Y., the lessee named in Goodyear Department Lease and License Agreement, No. 7071 "A", dated February sixth, 1911, granted by the United Shoe Machinery Company as lessor, is hereby given permission to use

Goodyear Outsole Rapid Lockstitch Machine, No. 4302 and
Goodyear Rapid Bobbin Winding Machine, No.

for attaching the outsoles of children's shoes (sizes one to ten and one-half inclusive) having an upper, insole and welt, all of sheepskin, fastened together by the aid of a dry thread Sewing or Stitching Machine and for such use only of said Goodyear Outsole Rapid Lockstitch Machine and Goodyear Rapid Bobbin Winding Machine the lessee shall pay to the lessor in respect to each pair of such children's shoes whose outsoles are attached by the aid of said Goodyear Outsole Rapid Lockstitch Machine the sum of two (2) cents in lieu of the amount specified in the "Schedule of Payments per pair" contained in Article Six of said Lease and License Agreement.

Said shoes shall not nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear" or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The requirements of said Lease and License Agreement with reference to time for payments, records and accounts are hereby extended to apply to shoes operated upon in accordance with permission hereby given.

The provisions contained in this instrument shall have the same force and effect as though included in said Lease and License Agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said Goodyear Outsole Rapid Lockstitch Machine and said Goodyear Rapid Bobbin Winding Machine hereinbefore specifically designated by number and excepting to the extent herein expressly provided none of the conditions, stipulations or provisions in said Lease and License Agreement contained is hereby, in any manner, waived or modified.

Dated this sixth day of February, 1911.

UNITED SHOE MACHINERY COMPANY

(CORPORATE SEAL) By L. A. Coolidge, Treasurer.
R. A. Blackwell, Assistant Treasurer.

KYNG B. SHOE COMPANY,

(CORPORATE SEAL) Per John B. Snell, Treas.

L. A. Stiles & Company, Incorporated, of Brooklyn, N. Y., lessee under Goodyear Department Lease and License Agreement No. 7105 B, dated October 4, 1911, granted by the United Shoe Machinery Company as lessor, is hereby given permission to use

Goodyear Welt & Turn Shoe Machine, Model G, 883

thereby leased for sewing the inseams of women's welted boots, shoes or other footwear, the outsoles of which have been or are to be attached by hand sewing, and for such use only of said Goodyear Welt & Turn Shoe Machine shall pay to the lessor in respect to each pair of such footwear, the inseams of which have been in whole or in part sewed by the use of said Goodyear Welt & Turn Shoe Machine, the sum of four cents per pair. Said payments shall be made at the same time and in the same manner and shall be subject to discount for prompt cash payment as in Article Six of said Lease and License Agreement provided.

Said footwear shall not, nor shall the boxes nor cartons containing the same, be stamped or marked with the word "Goodyear" nor advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The permission hereby given does not include the use of any machine or machines other than said Goodyear Welt & Turn Shoe Machine hereinbefore specifically designated by number, and except to the extent herein expressly provided, none of the conditions, stipulations or provisions in said Lease and License Agreement contained are in any manner waived or modified.

Dated this day of 19 .

UNITED SHOE MACHINERY CO.

(CORPORATE SEAL) By L. A. Coolidge, Treasurer.
R. A. Blackwell, Asisstant Secretary.

AUXILIARY MACHINES.

Permission is hereby given to L. A. Stiles & Company, Incorporated, of Brooklyn, N. Y., lessee, under Goodyear Department Auxiliary Machines Lease and License Agreement No. 7105 "C" dated October fourth, 1911, granted by the United Shoe Machinery Company as lessor, to use the Auxiliary Machines thereby leased in the manufacture of women's welted boots, shoes or other footwear, the inseams of which have been or are to be sewed by the use of Goodyear Welt & Turn Shoe Machine, Model G, No. 883 held by said lessee under Lease and License Agreement from said lessor, No. 7105 "B" dated October 4, 1911, and the outsoles of which are to be attached by hand sewing in accordance with the provisions of a rider dated October fourth, 1911, attached to said last mentioned Lease and License Agreement, and providing for the use of said designated Goodyear Welt & Turn Shoe Machine in the manufacture of such footwear upon the terms and conditions in said rider set forth.

The permission hereby given does not include the use of any machine or machines other than Goodyear Auxiliary Machines specifically designated by number in said Lease and License Agreement first above mentioned; and except as herein expressly provided none of the conditions, stipulations or provisions in said Lease and License Agreement contained is hereby in any manner waived or modified.

Dated this day of 19 .

UNITED SHOE MACHINERY CO.

(SEAL) L. A. Coolidge, Treasurer.

R. A. Blackwell, Assistant Secretary.

The provisions of Section Four of Goodyear Department Lease and License "No. 5930 Full Set", dated the 30th day of December, 1904, are hereby waived to the extent that permission is given to the lessee to use the Hadaway Stitch Separating Machine hereby leased for separating or indenting the stitches on "Fair Stitch McKay Sewed" boots and shoes and other footwear, on condition that the lessee shall pay to the lessor on the last day of each calendar month, as rent and royalty for the use of said Stitch Separating Machine,

the sum of One Cent for each pair of McKay sewed boots, shoes or other footwear or portions thereof operated on during the next preceding calendar month in any way whether wholly or in part by the aid of said Stitch Separating Machine or any part thereof, provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of said Stitch Separating Machine for the next preceding calendar month, the lessor will, in consideration of such prompt payment, grant a discount of fifty per cent from such rent or royalty due for such preceding calendar month.

Dated the eighth day of February, 1905.

UNITED SHOE MACHINERY COMPANY,

(CORPORATE SEAL) By S. W. Winslow, President. (SEAL)

HAND-SEWED WELTS. (Form JM–79–409–Ln.)

Goodyear Outsole Rapid Lockstitch Machine.

Quaker City Shoe Company of Philadelphia, Pennsylvania, lesser under Goodyear Department Lease and License Agreement, No. 6624 "A", dated June twelfth, 1908, granted by the United Shoe Machinery Company as lessor, is hereby given permission to use Goodyear Outsole Rapid Lockstitch Machine, No. 2940, thereby leased for stitching on the outsoles of that class of welted footwear known in the trade as "Hand-Sewed Welts", the inseams of which have been sewed by hand, and for such use only of said Goodyear Outsole Rapid Lockstitch Machine, shall pay to the lessor in respect to each pair of such "Hand-Sewed Welts", the outsoles of which have been in whole or in part stitched by the use of said Goodyear Outsole Rapid Lockstitch Machine, the amount specified in the "Schedule of Payments — Hand Sewed Welts — Per Pair" hereinafter contained, in lieu of the amount specified in the "Schedule of Payments Per Pair" in Article Six of said lease and license agreement contained.

Schedule of Payments — Hand-Sewed Welts — Per Pair.

	Sizes.		
	From No.	To No.	
Children's	1	10½ inclusive	2 cents
Misses'	11	2 "	2 cents

	Sizes From No.	to No.	
Women's	2½	and over	4 cents
Youths'	9	13½ inclusive	2 cents
Boys'	1	5 "	4 cents
Men's	5½	and over	6 cents

Said "Hand-Sewed Welts" shall not nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear", or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns".

The requirements of said lease and license agreement with reference to time for payment, record and accounts, are hereby extended to apply to "Hand-Sewed Welts".

The provisions in this instrument contained shall have the same force and effect as though included in said lease and license agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said Goodyear Outsole Rapid Lockstitch Machine hereinbefore specifically designated by number, and excepting to the extent herein expressly provided none of the conditions, stipulations or provisions in said lease and license agreement contained is hereby in any manner waived or modified.

Dated this 25th day of Jan., 1910.

UNITED SHOE MACHINERY CO.
By L. A. Coolidge, Treasurer.
QUAKER CITY SHOE CO.
By A. W. Down, Mgr.

(CORPORATE SEAL)

EST. OF JOHN G. SCHMIDT
Chas. E. Schmidt, Ex.

Goodyear Department E (Form JM–36–305.)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. 6624 "A", dated June twelfth, 1908, between said Company and Quaker City Shoe Company, of Philadelphia, Pennsylvania, as lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No.
Goodyear Universal Inseam Sewing Machine, No.
Goodyear Outsole Rapid Lockstitch Machine, No. 2940
Extension Edge Attachment (A), No. 2524
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof or the termination of the lease and license thereby granted and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, then the payment provided for in Article Ten of said lease and license agreement No. to be thereupon made by the lessee, of the sum of One Hundred and Fifty Dollars ($150.00) in respect to each welting or stitching or sewing machine thereby leased, shall not be required to be made.

UNITED SHOE MACHINERY COMPANY,
(CORPORATE SEAL) By Geo. W. Brown, Treasurer
R. A. Blackwell, Asst. Secretary.

Paterson, New Jersey, June 12th, 1908

"STITCH DOWNS." (Form JM 28-306)

Goodyear Outsole Rapid Lockstitch Machines.

Albina A. Hedlund, doing business as Hedlund Shoe Company of Lynn, Massachusetts, Lessee under Goodyear Department Lease and License Agreement, No. 6557 "A" dated April third, 1908, granted by the United Shoe Machinery Company, as lessor, is hereby given permission to use Goodyear Outsole Rapid Lockstitch Machines, Nos. 1850, 1697, 655 thereby leased, for stitching on the soles or that class of boots, shoes or other footwear known in the trade as "Stitch

Downs", the uppers of which are turned outwardly upon their outsoles and sewed to their outsoles by a single seam only passing through the upper and outsole, or through a mock welt laid upon the out-turned portion of the upper, the upper and the outsole; and for such use only of said Goodyear Outsole Rapid Lockstitch Machines shall pay to the lessor in respect to each pair of such "Stitch Downs" in the manufacture of which the said designated machines have been used as aforesaid the amount specified in the "Schedule of Payments — Stitch Downs — Per Pair", hereinafter contained, in lieu of the amount specified in the "Schedule of Payments Per Pair" in Article Six in said lease and license agreement contained.

Schedule of Payments — Stitch Downs — Per Pair.

	Sizes		
	From No.	To No.	
Children's	1	10½ inclusive	2 cents
Misses'	11	2 "	2 "
Women's	2½	and over	4 "
Youths'	9	13½ inclusive	2 "
Boys'	1	5 "	4 "
Men's	5½	and over	6 "

Said "Stitch Downs" shall not nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear", or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns".

The requirements of said lease and license agreement with reference to time for payments, records and accounts are hereby extended to apply to "Stitch Downs" made in accordance with the permission hereby given.

The provisions in this instrument contained shall have the same force and effect as though included in said lease and license agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said Goodyear Outsole Rapid Lockstitch Machines hereinbefore specifically designated by number, and excepting to the extent herein expressly provided none of the terms,

conditions, stipulations, or provisions of said lease and license agreement are hereby in any manner waived or modified.

Dated this third day of April, 1908.

UNITED SHOE MACHINERY CO.

(CORPORATE SEAL) By Geo. W. Brown, Treasurer.

HEDLUND SHOE CO.

By Albina A. Hedlund

"FAIRSTITCHING." (Form JM–44–306–Ln.)

Goodyear Outsole Rapid Lockstitch Machine.

The Fuller Shoe Company of Salem, Massachusetts, lessee under Goodyear Department Lease and License Agreement No. 6627 dated April twenty-second 1908 granted by the United Shoe Machinery Company, as lessor, is hereby given permission to use Goodyear Outsole Rapid Lockstitch Machine, No. 546 thereby leased, for "fair stitching" for ornamentation only the outsoles of boots, shoes or other footwear the soles of which have been attached to their uppers by the use of Metallic Fastening Machines held by said lessee under lease from said lessor, or have been attached by McKay Sewing Machines, and for the use of said Goodyear Outsole Rapid Lockstitch Machine for such "fair stitching" only shall pay to the lessor in respect to each pair of such "fair stitched" boots, shoes or other footwear the sum of two cents in lieu of the amount specified in the "Schedule of Payments Per Pair" in Article Six in said lease and license agreement contained.

Said "fair stitched" boots, shoes or other footwear shall not, nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear" or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The requirements of said lease and license agreement with reference to time for payments, records and accounts are hereby extended to apply to "fair stitched" boots, shoes or other footwear made in accordance with the permission hereby given.

The provisions in this instrument contained shall have the same

force and effect as though included in said lease and license agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said "Goodyear Outsole Rapid Lockstitch Machine" hereinbefore specifically designated by number, and excepting to the extent herein expressly provided none of the terms, conditions, stipulations or provisions of said lease and license agreement are hereby in any manner waived or modified.

Dated this twenty-second day of April, 1908.

[SEAL] UNITED SHOE MACHINERY CO.
By Wallace F. Robinson, Vice-Pres.

[SEAL] THE FULLER SHOE CO.
By Fred P. Fuller, Treas.

MOCK WELTS. (Form JM–46–506–Ln.)

Goodyear Outsole Rapid Lockstitch Machine.

Marlboro Shoe Company of Marlboro, Massachusetts, lessee under Goodyear Department Lease and License Agreement, No. 6745 "B", dated March First, 1909, granted by the United Shoe Machinery Company, as lessor, is hereby given permission to use Goodyear Outsole Rapid Lockstitch Machine, No. 1548 thereby leased for stitching on the outsoles of that class of boots, shoes or other footwear known in the trade as "Mock Welts", the insoles of which have been attached to welts or slip soles by the aid of pegging, wiring, nailing, screwing or stapling machines held by the lessee, under lease from the lessor, or of McKay Sewing Machines, and for such use only of said Goodyear Outsole Rapid Lockstitch Machine, shall pay to the lessor in respect to each pair of such "Mock Welts" the outsoles of which shall have been in whole or in part stitched by the use of said Goodyear Outsole Rapid Lockstitch Machine the amount specified in the "Schedule of Payments — Mock Welts — Per Pair" hereinafter contained, in lieu of the amount specified in the "Schedule of Payments Per Pair" in Article Six of said lease and license agreement contained.

Schedule of Payments — Mock Welts — Per Pair.

	Sizes. From No.	To No.	
Children's	1	10½ inc.	2 cents
Misses'	11	2 "	2 cents
Women's	2½	and over	3 cents
Youths'	9	13½ inc.	2 cents
Boys'	1	5 "	3 cents
Men's	5½	and over	4 cents

Said "Mock Welts" shall not nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear," or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The requirements of said lease and license agreement with reference to time for payment, records and accounts are hereby extended to apply to "Mock Welts".

The provisions in this instrument contained shall have the same force and effect as though included in said lease and license agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said Goodyear Outsole Rapid Lockstitch Machine hereinbefore specifically designated by number, and excepting to the extent herein expressly provided none of the conditions, stipulations or provisions in said lease and license agreement contained is hereby in any manner waived or modified.

Dated this seventh day of September, 1909.

UNITED SHOE MACHINERY CO.

(CORPORATE SEAL) By Geo. W. Brown, Treasurer.

MARLBORO SHOE CO.

(CORPORATE SEAL) By H. L. Tinkham, Treas.

AUXILIARY MACHINES. (Form JM 41–306)

Permission is hereby given to The Foster-Williams Shoe Company of Lynn, Massachusetts, lessee under Goodyear Department Lease and License Agreement, No. 6753 "B" dated May eleventh, 1909,

granted by the United Shoe Machinery Company, as lessor, to use the "Auxiliary Machines" thereby leased in the manufacture of that class of boots, shoes or other footwear known in the trade as Fair Stitched and Mock Welts which have been made by the use of Goodyear Outsole Rapid Lockstitch Machine, No. 2805 held by said lessee under lease and license agreement from said lessor, dated January twentieth, 1908, No. 6753 in accordance with the provisions of Rider, dated January twentieth, 1908, attached to said last mentioned lease and license agreement, and providing for the use of said designated Goodyear Outsole Rapid Lockstitch Machine in the manufacture of said class of boots, shoes or other footwear upon the terms and conditions in said Rider set forth.

The permission hereby given does not include the use of any machine or machines other than the "Auxiliary Machines" specifically designated by number in said lease and license agreement first above mentioned, and excepting to the extent herein expressly provided none of the terms, conditions, stipulations or provisions of said lease and license agreement is hereby in any manner waived or modified.

Dated this 11th day of May, 1909.

UNITED SHOE MACHINERY CO.

[SEAL] By Wallace F. Robinson, Vice-President

THE FOSTER-WILLIAMS SHOE CO.

[SEAL] Per C. P. Williams, Pres.

By

Goodyear Department A (Form JM–31–105)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. 6865, dated December twentieth 1909, between said Company and Reed B. Force, of Burlington, New Jersey, as lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No. 1111

Goodyear Universal Inseam Sewing Machine, No.

Goodyear Outsole Rapid Lockstitch Machine, No.
Extension Edge Attachment (A), No.
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof or the termination of the lease and license thereby granted and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, then neither the payment provided for in Article Nine of said lease and license agreement No. 6865 to be thereupon made by the lessee, of such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee, nor the payment provided for in Article Ten of said lease and license agreement to be thereupon made by the lessee, of the sum of One Hundred and Fifty Dollars ($150.00) in respect to each welting or stitching or sewing machine thereby leased, shall be required to be made, and in such case the lessor shall thereupon, in addition, credit to the account of the lessee the sum of One Hundred Dollars in respect to each Goodyear Welt and Turn Shoe Machine, Goodyear Universal Inseam Sewing Machine and Goodyear Outsole Rapid Lockstitch Machine designated in the foregoing schedule.

UNITED SHOE MACHINERY COMPANY,
(CORPORATE SEAL) By L. A. Coolidge, Treasurer.
Paterson, New Jersey R. A. Blackwell, Assistant Secretary.
December 20th, 1909.

Goodyear Department B (Form JM–32–105)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. 6243 "I", dated February fifth, 1908, between said Company and A. M. Creighton, of Lynn, Massachusetts, as

lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No.
Goodyear Universal Inseam Sewing Machine, No.
3 Goodyear Outsole Rapid Lockstitch Machines, Nos. 1700–1658–1741
3 Extension Edge Attachments (A), Nos. 2097–2109–2108
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof or the termination of the lease and license thereby granted and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, then neither the payment provided for in Article Nine of said lease and license agreement No. 6243 "I" to be thereupon made by the lessee, of such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee, nor the payment provided for in Article Ten of said lease and license agreement to be thereupon made by the lessee, of the sum of One Hundred and Fifty Dollars ($150.00) in respect to each welting or stitching or sewing machine thereby leased, shall be required to be made.

(CORPORATE SEAL) UNITED SHOE MACHINERY COMPANY,
Boston, Mass., February fifth, 1908. By Geo. W. Brown, Treas.

Goodyear Department C (Form JM–33–105)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. 6779 "C", dated June Fifteenth 1909, between said Company and D. Armstrong & Company, of Rochester, New York,

as lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No. (Model "E") Nos. 62–63–134–125

Goodyear Universal Inseam Sewing Machine, No.

Goodyear Outsole Rapid Lockstitch Machine, No.

Extension Edge Attachment (A), No.

Extension Edge Attachment (B), No.

Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof or the termination of the lease and license thereby granted and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, then the payment provided for in Article Ten of said lease and license agreement No. 6779 "C" to be thereupon made by the lessee, of the sum of One Hundred and Fifty Dollars ($150.00) in respect to each welting or stitching or sewing machine thereby leased, shall not be required to be made, and in such case the lessor shall thereupon, in addition, credit to the account of the lessee the sum of Seventy-five Dollars in respect to each Goodyear Welt and Turn Shoe Machine, Goodyear Universal Inseam Sewing Machine and Goodyear Outsole Rapid Lockstitch Machine designated in the foregoing schedule.

UNITED SHOE MACHINERY COMPANY, [SEAL]

Paterson, New Jersey, By Geo. W. Brown Treasurer

June 15th, 1909. R. A. Blackwell, Assistant Secretary.

Goodyear Department D (Form JM–34–105)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and Li-

cense Agreement No. 6352E, dated June twelfth, 1908, between said Company and Beal and Hanscom, of Haverhill, Massachusetts, as lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No. 287 "E"
Goodyear Universal Inseam Sewing Machine, No.
Goodyear Outsole Rapid Lockstitch Machine, No.
Extension Edge Attachment (A), No.
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof, or the termination of the lease and license thereby granted and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, the lessor will accept the sum of One Hundred Dollars in respect to each Goodyear Welt and Turn Shoe Machine, Goodyear Universal Inseam Sewing Machine and Goodyear Outsole Rapid Lockstitch Machine designated by number in the foregoing schedule in lieu of the sum provided in Article Ten of said lease and license agreement to be thereupon paid by the lessee of One Hundred and Fifty Dollars ($150.00) in respect to each such designated machine.

UNITED SHOE MACHINERY COMPANY,

(CORPORATE SEAL) By Geo. W. Brown, Treasurer.

Boston, Mass., June twelfth, 1908.

Goodyear Department M (Form JM–35–105)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. 6551 "A", dated April twenty-first, 1908,

between said Company and F. A. Parker and Company, of Marblehead, Massachusetts, as lessee, and covering the machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Bobbin Winder (Universal) No..
Goodyear Bobbin Winder (Rapid) No.
Goodyear Welt Grooving and Beveling Machine No.
Goodyear Welt Splitting Machine No.
1 Goodyear Channeler { Turn No. 3130 / Insole No. / Outsole No.
Goodyear Universal Welt Beater No.
Goodyear Welt Beating and Slashing Machine No.
Goodyear Universal Shank Skiving Machine No.
Goodyear Universal Inseam Trimming Machine No.
Goodyear Universal Rounding and Channeling Machine No.
Goodyear Channel Opening Machine No.
Goodyear Automatic Sole Leveling Machine No.
Goodyear Rotary Sole Laying Machine No.
Hadaway Stitch Separating Machine No.
Goodyear Channel Laying Machine No.
Goodyear Flexible Sole Machine No.
1 Goodyear Moulding Machine No. 1042
Goodyear Turn Shoe Trimming Machine No.
Goodyear Lip Turning Machine No.
Goodyear Improved Sole Laying Machine No.
Goodyear Shank Welt Skiving Machine No.
Goodyear Forepart Turning Machine No.
Goodyear Heel Turning Machine No.

hereby waives payment by the lessee of the amounts called for by Article Seven of said lease and license agreement in respect to each of said designated machines in respect to the year 1908–1909–1910–1911 and 10/12 of said amounts in respect to the year 1912.

Excepting as herein expressly provided none of the conditions,

stipulations, or provisions of said lease and license agreement are in anywise waived or modified.

UNITED SHOE MACHINERY COMPANY,
[CORPORATE SEAL] By Wallace F. Robinson, Vice-President.
Boston, Mass., April 21st, 1908.

(Form J. M. 83.)

The following modifications are hereby made in Lasting Machine Department Lease and License Agreement No. 6197 "I", dated December eleventh, 1911, between the United Shoe Machinery Company, lessor, and B. F. Spinney and Company of Norway, Maine, lessee, covering

CONSOLIDATED HAND METHOD LASTING MACHINE, No. 4882
viz.:

1. Article Four of said Lease and License Agreement is hereby changed to read as follows:

Four. The leased machinery shall be used only in the manufacture of boots, shoes and other footwear made by the lessee known in the trade as "Goodyear Welts" which are welted wholly by "Goodyear Welt and Turn Shoe Machines" or "Goodyear Universal Inseam Sewing Machine" held by the lesssee under lease from the lessor and the soles of which are attached to their welts wholly by "Goodyear Outsole Rapid Lockstitch Machines" held by the lessee under lease from the lessor, and shall be used for no other purpose than for lasting the sides of such boots, shoes and other footwear which have been pulled over by "Rex Pulling Over Machines" held by the lessee under lease from the lessor, and which shall be otherwise lasted by "U. S. M. Co. Lasting Machines, No. 5," held by the lessee under lease from the lessor.

2. The lessor hereby waives payment by the lessee of any rental or royalty on account of the use by the lessee of the leased machinery as specified in said Article Four of said Lease and License Agreement as hereby changed.

Except as herein expressly provided none of the conditions, agree-

ments, stipulations or provisions in said Lease and License Agreement contained is hereby in any manner waived or modified.

Dated this eleventh day of December, 1911.

UNITED SHOE MACHINERY COMPANY,

(CORPORATE SEAL) By Edw. P. Hurd, Vice-President.

By

(Form J. M. 84.)

The following modifications are hereby made in Lasting Machine Department Lease and License Agreement No. 6597, dated June first, 1911, between the United Shoe Machinery Company, lessor, and Thomson Crooker Shoe Company of Lynn, Massachusetts, lessee, covering

CONSOLIDATED HAND METHOD LASTING MACHINE, NO. 5530

viz.:

1. Article Four of said Lease and License Agreement is hereby changed to read as follows:

Four. The leased machinery shall be used only in the manufacture of boots, shoes and other footwear made by the lessee known in the trade as "Goodyear Welts" which are welted wholly by "Goodyear Welt and Turn Shoe Machines" or "Goodyear Universal Inseam Sewing Machines" held by the lessee under lease from the lessor and the soles of which are attached to their welts wholly by "Goodyear Outsole Rapid Lockstitch Machines" held by the lessee under lease from the lessor, and shall be used for no other purpose than for lasting the sides of such boots, shoes and other footwear which have been pulled over by "Rex Pulling Over Machines" held by the lessee under lease from the lessor, and which shall be otherwise lasted by "U. S. M. Co. Lasting Machines, No. 5" held by the lessee under lease from the lessor.

2. The lessor hereby waives payment by the lessee of any rental or royalty on account of the use by the lessee of the leased machinery as specified in said Article Four of said Lease and License Agreement as hereby changed.

Except as herein expressly provided none of the conditions, agreements, stipulations or provisions in said Lease and License Agreement contained is hereby in any manner waived or modified.

Lasting Machine Department Lease and License Agreement No. 6282 H, dated October 25th, 1910, heretofore granted by the said United Shoe Machinery Company to said Thomson Crooker Shoe Company covering the machine herein referred to is hereby cancelled and superseded by Lasting Machine Department Lease and License Agreement, No. 6597 to which this rider is attached.

Dated this first day of June, 1911.

THOMSON CROOKER SHOE CO.
[CORPORATE SEAL] By H. E. Crooker, Treas.

UNITED SHOE MACHINERY CO.
[CORPORATE SEAL] By L. A. Coolidge, Treasurer.

(Form J. M. 54–806)

This instrument witnesseth that the following changes are hereby made in the conditions of Lasting Machine Department Lease and License, No. 6164 "A", dated November twentieth, 1909, between the United Shoe Machinery Company, lessor, and Curtis and Jones Company of Reading, Pennsylvania, lessee, and covering

CONSOLIDATED HAND METHOD LASTING MACHINE, No. 5243.

viz.—

Articles Four and Five are hereby changed to read as follows:

Four. The leased machinery shall be used for no other purpose than for wiring the toes of turned shoes or other footwear the soles of which shall be attached to their uppers by Turn Sewing Machines held by the lessee under lease from the lessor, and for that purpose the leased machinery shall be used to its full capacity, limited only by the number of such shoes or other footwear made by or for the lessee.

Five. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of one-half of one cent for each pair of shoes or other footwear in the manufacture or preparation of which the leased machinery shall be used during the next preceding

calendar month, provided, however, that in the computation of such rental or royalty upon children's shoes seventy-two (72) pairs of such shoes shall be considered as the equivalent of sixty (60) pairs of all other kinds, and further provided, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month. The lessee guarantees that the rent or royalty herein provided (less all abatements) snall amount in each calendar year, ending December thirty-first, to at least ten dollars ($10.00) for each calendar month and at the end of each such calendar year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty; provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle, but such reduction shall not be made in respect to more than ten (10) out of twelve (12) consecutive calendar months.

Excepting as herein expressly provided, none of the conditions, agreements, stipulations or provisions of said lease and license are in any manner waived or modified, but the same are and shall remain in full force and effect.

Dated at Paterson, New Jersey, this twentieth day of November, 1909.

CURTIS & JONES CO.

[CORPORATE SEAL] By Fred S. Jones, Treas.

UNITED SHOE MACHINERY COMPANY

By Geo. W. Brown, Treasurer.

[CORPORATE SEAL] R. A. Blackwell, Assistant Secretary

[Form J. M. 55–806]

This instrument witnesseth that the following changes are hereby made in the conditions of Lasting Machine Department Lease and

License, No. 1792 "G", dated August twenty-second, 1906, between the United Shoe Machinery Company, lessor, and Moore-Shafer Shoe Manufacturing Company of Brockport, New York, lessee, and covering

CONSOLIDATED HAND METHOD LASTING MACHINE, No. 5416

viz.—

Articles Four and Five are hereby changed to read as follows:

Four. The leased machinery shall be used for no other purpose than for lasting the heel portions of turned shoes or other footwear the soles of which shall be attached to their uppers by Turn Sewing Machines held by the lessee under lease from the lessor, and for that purpose the leased machinery shall be used to its full capacity, limited only by the number of such shoes or other footwear made by or for the lessee.

Five. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of one-half of one cent for each pair of shoes or other footwear in the manufacture or preparation of which the leased machinery shall be used during the next preceding calendar month, provided, however, that in the computation of such rental or royalty upon children's shoes seventy-two (72) pairs of such shoes shall be considered as the equivalent of sixty (60) pairs of all other kinds, and further provided, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month. The lessee guarantees that the rent or royalty herein provided (less all abatements) shall amount in each calendar year, ending December thirty-first, to at least ten dollars ($10.00) for each calendar month and at the end of each such calendar year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty; provided, however, that if in any calendar year the factory of the lessee remains wholly

idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle, but such reduction shall not be made in respect to more than ten (10) out of twelve (12) consecutive calendar months.

Excepting as herein expressly provided, none of the conditions, agreements, stipulations or provisions of said lease and license are in any manner waived or modified, but the same are and shall remain in full force and effect.

Dated at Boston, Massachusetts, this 22nd day of August, 1906.

MOORE-SHAFER SHOE MFG. CO.
By C. P. Lane, Secy.

[SEAL[UNITED SHOE MACHINERY COMPANY
By Wallace F. Robinson, Vice-President.

(A)

The following provision contained in Article Three of Metallic Department Leasee and License No. 3011, dated September 10th, 1910, granted by the United Shoe Machinery Company as lessor to F. E. Leavitt and Company of Haverhill, Massachusetts, as lessee, covering

One (1) Loose Nailing Machine, No. 872
One (1) Universal Slugging Machine, No. 148
One (1) Staple Fastening Machine, No. 1385
Two (2) Knife Grinding Machines, Nos. 4608–4392

is hereby stricken out, namely:

"except that the lessee agrees that the said machinery shall not be used in the manufacture of any boots or shoes which are lasted on machines or by the aid of lasting or tacking mechanisms other than those leased from the lessor or any welted boots or shoes which are not welted or stitched on welt sewing and sole stitching machines leased from the lessor, or turn shoes the soles of which are not attached by turn sewing machines leased from the lessor."

Excepting as herein expressly provided none of the conditions

agreements, stipulations or provisions contained in said Lease and License is hereby in any wise waived or modified.

Dated this tenth day of September, 1910.

UNITED SHOE MACHINERY CO.

[CORPORATE SEAL] L. A. Coolidge, Treasurer.

F. E. LEAVITT & CO.

F. E. Leavitt

[Form J. M. 65.]

It is hereby made a condition of Metallic Department Lease and License, No. 2614, dated August twentieth, 1908, between the United Shoe Machinery Company, lessor, and The Hartley-Rose Belting Company, of Pittsburg, Pennsylvania, lessee, and covering Standard Screw Machine No. 92, with the same force and effect as though printed therein before execution, that the lessee independently of and in addition to all other obligations under said Lease and License Agreement shall pay to the lessor on the fifteenth day of each calendar month during the continuance of said Lease and License the sum of five dollars ($5.00) per month. And the lessor hereby waives the guarantee provided in said Lease and License Agreement of four hundred (400) pounds of fastening material per year.

Excepting to the extent herein expressly provided none of the terms or conditions of said Lease and License are hereby, in any manner, waived or modified.

Dated this Twentieth day of August, 1908.

UNITED SHOE MACHINERY CO.

[CORPORATE SEAL] Geo. W. Brown, Treasurer.

By R. A. Blackwell, Assistant Secretary.

THE HARTLEY ROSE BELTING CO.

By W. G. Nicholson, Pres.

[Form J. M. 85]

The following modifications are hereby made in Metallic Department Lease and License Agreement No. , dated , between the United Shoe Machinery Company, as lessor, and of , as

lessee, covering the machine designated by name and number in the following

Schedule of Machines.

Rapid Standard Screw Machine, No.
Loose Nailing Machine, No.
Universal Slugging Machine, No.
Taper Nail Tacking Machine, No.
Grip Tacking Machine, No.
Staple Fastening Machine, No.
Knife Grinder, No.

1. The lessee agrees to pay to the lessor immediately upon the execution of said Lease and License Agreement, as a lease premium for said machine, the sum of Dollars.

2. The following provision contained in Article Three of said Lease and License Agreement is hereby stricken out, namely:—

"except that the lessee agrees that the said machinery shall not be used in the manufacture of any boots or shoes which are lasted on machines or by the aid of lasting or tacking mechanisms other than those leased from the lessor or any welted boots or shoes which are not welted and stitched on welt sewing and sole stitching machines leased from the lessor, or turn shoes the soles of which are not attached by turn sewing machines leased from the lessor."

Except as herein expressly stated, none of the conditions, stipulations, or provisions contained in said Lease and License Agreement is hereby in any wise waived or modified.

Dated this day of , 19 .

By

By

Sept. 25, 1908.

Messrs. A. E. Little & Company, Lynn, Massachusetts.

Dear Sirs:— Referring to that clause contained in Article Three of our Metallic Department Lease and License No. 1271 "A" to you, dated September 25, 1908, and covering Universal Slugging Machines Nos. 3004 and 3005, Knife Grinding Machines Nos. 5576 and 5710,

and Loose Nailing Machines Nos. 125 and 142, which provides that the said machinery shall not be used on any welted boots or shoes which are not welted and stitched on welt sewing and sole stitching machines leased from the lessor, or turn shoes the soles of which are not attached by turn sewing machines leased from the lessor, we beg to state in accordance with your request that said clause in said lease shall not be held to prevent the use of said designated machines by you upon "hand sewed welts" made by or for you by reason of the fact that the same are not welted on welt sewing machines held under lease from us, or upon "hand turns" made by or for you by reason of the fact that the soles of the same are not attached by turn sewing machines held by you under lease from us.

Very truly yours,

[SEAL] UNITED SHOE MACHINERY COMPANY,
By S. W. Winslow, President.

The conditions and provisions contained in Heeling Department Lease and License, No. 1242, dated March first, 1905, granted by the United Shoe Machinery Company as lessor, to the Houghton Heel & Leather Company as lessee, and covering Automatic Heel Compressing Machine (No. 4 Model) No. 209 are hereby modified to the extent hereinafter stated but not otherwise.

1. Article numbered Four in said lease and license is hereby stricken out, and in lieu thereof it is provided and agreed as follows, with the same force and effect as if the following article were printed in said lease and license as one of the conditions thereof:—

Four. The lessee shall use the leased machinery for no other purpose than for compressing heels for boots, shoes and other footwear. The leased machinery shall not nor shall any part thereof be used for compressing or in anywise operating upon toplifts, soles or taps.

2. Articles numbered Five, Six and Seven in said lease and license are hereby stricken out, and in lieu thereof it is provided and agreed as follows, with the same force and effect as if the following article were printed in said lease and license as one of the conditions thereof:—

Five. The lessee shall pay to the lessor as rental or royalty for the term of one year herein provided for the sum of three hundred dollars

8355

($300.00), payable in equal monthly payments of twenty-five dollars ($25.00) each. Said payments of twenty-five dollars ($25.00) each shall be made to the lessor at its office in Boston, Massachusetts, on or before the fifth day of each calendar month.

3. The first sentence in article numbered Ten in said lease and license, beginning with the words, "This lease and license" and ending with the words "date hereof" is hereby stricken out, and in lieu thereof the following sentence is substituted with the same force and effect as if so printed in said lease and license:

This lease and license shall continue, unless sooner terminated by the lessor by notice or because of breach thereof on the part of the lessee, or otherwise as herein provided, for one year from the date hereof.

Excepting as herein expressly provided none of the conditions, agreements, stipulations or provisions of said lease and license are in anywise waived or modified, but the same are and shall remain in full force and effect.

In witness whereof the parties hereto have duly executed this instrument in duplicate this first day of March, A. D. 1905.

UNITED SHOE MACHINERY COMPANY

[CORPORATE SEAL] By S. W. Winslow, President.

HOUGHTON HEEL & LEATHER COMPANY

By Henry C. Attwill, Treas.

Article Five of Pulling Over System Lease and License Agreement, No. 1972, dated February Twenty-seventh, 1911, granted by the United Shoe Machinery Company, as lessor, to A. Garside & Sons, of New York, N. Y., as lessee, covering

One Rex Pulling Over Machine No. 2644

is hereby changed to read as follows:

"Five. The machinery hereby leased or held by the lessee under other lease or license agreement from the lessor shall be used only in the manufacture or preparation of boots, shoes or other footwear made by or for the lessee and shall be used for no other purpose than for performing the work for which it is designed and leased. The machin-

ery of the Pulling Over System of the lessor hereby leased or held by the lessee under other lease or license agreement from the lessor shall not nor shall any thereof be used in the manufacture of any boots, shoes or other footwear upon which any operation for which any of the machines of the lessor mentioned by name in the foregoing schedule of machines are designed, has been or is to be performed by machinery not held by the lessee under lease from the lessor. Subject to the foregoing limitations, the lessee shall use all Rex Pulling Over Machines held by him under lease from the lessor to their full capacity upon all boots, shoes or other footwear or portions thereof made by or for the lessee in the manufacture or preparation of which such machines are capable of being used and shall use all other machinery of the Pulling Over System of the lessor held by him under lease from the lessor to its full capacity upon all work in the manufacture or preparation of boots, shoes and other footwear, or portions thereof, which is done by or for the lessee by the aid of machinery and which is of a kind which such machinery is designed to perform."

Except as herein expressly provided none of the conditions, stipulations or provisions contained in said Lease and License Agreement is hereby in any way waived or modified.

Dated this Twenty-seventh day of February, 1911.

A. GARSIDE & SONS

[SEAL] By John R. Garside, Pres.

UNITED SHOE MACHINERY CO.

[SEAL] By L. A. Coolidge, Treas.

R. A. Blackwell, Assistant Secretary.

June 14, 1909.

Davis Boot & Shoe Co., Richmond, Va.

Dear Sirs:— Referring to our Pulling Over lease to you (Form A. E. E. 1095) covering Rex Pulling Over Machines Nos. 393, 2016, 2029, 2046, 2047, and 2062, together with other machines of the Pulling Over System referred to in said lease and auxiliary to said Pulling Over Machines, we beg to say that it is understood and agreed that nothing contained in said lease shall be construed to prevent the lessee from pulling over by hand such portion of the footwear

manufactured by or for the lessee as is in excess of the capacity of the machinery leased for use in the factory in which said footwear is pulled over.

Very truly yours,

UNITED SHOE MACHINERY COMPANY,
By Wallace F. Robinson, Vice-President.

DEFENDANTS' EXHIBIT 331.

[Put in Evidence, page 4360.]

MEMORANDUM OF WELT AND TURN SHOE MACHINES AND OUTSOLE STITCHING MACHINES OFFERED TO SHOE MANUFACTURERS.

1899 TO 1911, INCLUSIVE. PURITAN STITCHING MACHINE — FOR FAIRSTITCHING, AND THE NATIONAL STITCHING MACHINE — FOR THE SAME WORK, AS WELL AS THE McKAY SEWING MACHINES COULD BE PROCURED AT ANY TIME DURING THE ABOVE PERIOD FROM MANUFACTURERS OF SAME, OR SECOND-HAND DEALERS.

1899

Mills Turned Shoe Machine. Stanley Manufacturing Company, 117 Lincoln Street, Boston, Mass.

The above machine was advertised in the "Superintendent & Foreman" on March 7, 1899, (Page 2) and also on dates prior and subsequent; and it was stated in the advertisement, "Sold without royalty".

1900 also 1901, 1902 and 1903.

Loop-Lock Turn Shoe Machine. Loop-Lock Machine Company, 100 Purchase Street, Boston, Mass.

The above concern advertised their machines in "Superintendent & Foreman", issue of December 25, 1900, and throughout the entire year of 1901; and I believe they were offered prior to that date. They were also offering their machines to the trade in 1902 and 1903, and during the latter year tried to sell their machines to us.

They installed their machines in several factories in different districts, including Hervey E. Guptill, Haverhill; C. K. Fox, Haverhill; Morrison Shoe Company, Concord, N. H.; H. E. Davis Company,

Freeport, Maine; H. B. Eastman, Hampstead, N. H.; Best Ever Shoe Company, Lynn, Mass.

1903 also 1904 to 1911 inclusive.

Champion Outsole Stitching Machine.

Champion Shoe Machinery Company,
St. Louis, Mo.

This company supplied machines principally for shoe repairing, but in 1905 our Mr. Hadaway saw one of these machines in use at one of the shoe factories in the States Prison at Jefferson City, Mo., stitching foreparts of shoes.

1903 also 1904 to 1910, inclusive.

Welt and Turn Sets. Duplessis Shoe Machinery Company,
Haverhill, Mass.

The above concern had nine or more Turn Shoe Machines installed in and about Haverhill, Mass., before January 1, 1904 (with such concerns as Parsley & Brown, S. B. McNamara, C. K. Fox, George B. Leavitt — all of Haverhill — and others).

Mr. Frank Chauteauneuf (who is now in our employ) was with the above concern from 1902 (when they were in Canada and before coming to Haverhill, to which place they moved in January, 1903, and commenced to put out machines at about April of the same year) to 1910 inclusive, and he informs me that they continued to offer machines to the trade up to early in 1910.

1904 also 1905, 1906 and 1910.

Heys Turn Shoe Machines. Bresnahan Shoe Machinery Company,
Lynn, Mass.

Machines were supplied by the above company to the Criterion Shoe Company, Beverly, Mass., about November, 1904, and they were used by this concern up to the fall of 1908 and possibly longer. Our Lynn Office believes this concern has some Duplessis Welt and Turn Shoe Machines and R. H. Long Outsole Stitching Machines. They say we do not have ready access to this factory, but they will try to have this statement verified.

The Bresnahan Company also installed machines in Lynn and Salem, and Connecticut.

I am informed by Mr. Donlon that the Bresnahan Shoe Machinery Company offered the Heys Turn Shoe Sewing Machine up to and including 1906, after which time Mr. Bresnahan went with T. G. Plant, and discontinued offering machines to the trade until 1910, when he organized the firm of M. V. Bresnahan & Company — of which Mr. Donlon was a partner; and Welt and Turn Shoe Machines and Outsole Stitching Machines were offered to the trade during 1910.

1907 (?) (Probably earlier than this)

Also 1908 to 1911, inclusive.

Outsole Stitching Machines. Union Lockstitch Machine Company, Boston, Mass.

Straight Needle Machines have been supplied regularly to the trade; and in the "Superintendent & Foreman", issue of July 26, 1911, Page 17, the above company, under address of #299 Marginal Street, East Boston, Mass., advertised a Union Curved Needle High Speed Stitcher, and stated "Designed to stitch outsoles and also welted or inseam work."

1908 or 1909 (About January 1)

Welt Sewing and Outsole Stitching Machines.

Larsen Machines Company,
100 Covert Street, Brooklyn, N. Y.
Afterwards 291 Broadway, New York City.

About January 1, 1909, the above concern opened an office and show room at 100 Covert Street, Brooklyn, N. Y., when they offered to shoe manufacturers in the New York district their Welt Sewing and Outsole Stitching Machines. (Prior to the above date they tried to sell their enterprise to us, and the machines were examined by Mr. William C. Meyer, Mr. George E. Warren, Mr. George F. Wolfe and Mr. F. G. King; and it was recommended that they not be purchased by us).

The office of the Larsen Machines Company is now located at 291 Broadway, New York City, where it has been for some time.

1910 also 1911

Fox Turn Shoe Sewing Machine.

The first machine of this type of which we have any record was

installed in the factory of F. M. Hodgson, Haverhill, under date of May 1, 1910.

Advertisement appeared in "Superintendent & Foreman", issue of January 25, 1911, Page 39, referring to machine as follows:

Webster Turn Shoe Sewing Machine

Haverhill Channeling Machine Company,
601 Kimball Building, Boston, Mass.

Also advertisement in same paper, issues of March 15, 1911, Page 47, and May 31, 1911, Page 25; together with reading notice by Haverhill Shoe Machinery Company, Haverhill, Mass., offering machines "Supplied at a fixed sale price, per pair royalty, or rental basis".

1910 also 1911

Welt and Turn Sets. Hamel Shoe Machinery Company,
Haverhill, Mass.

The above concern took over the business of the Duplessis Company and offered the same line of machines from early in 1910 up to the present time (January, 1914). I understand some changes in construction of machines have been made.

1910 also 1911

Welt Set Machinery. R. H. Long Shoe Machinery Company,
So. Framingham, Mass.

In the fall of 1910 A. M. Creighton, Lynn, together with his superintendent, Mr. Connor, visited the factory of the R. H. Long Shoe Machinery Company, and the above line of machines was offered to them to be installed in their factory in Lynn, for making welt shoes.

A Welter and a Stitcher manufactured by the above Machinery Company were installed in the factory of the Buffalo Shoe Company, Pepperell, Mass., during the spring of 1911 — or about that time — and, I understand, have been offered to the trade generally.

1910 also 1911

Welt Set Machinery. Universal Shoe Machinery Company,
St. Louis, Mo.

I understand this company was organized by Mr. Dobyne, principal owner of the Champion Shoe Machinery Company, and others, in

1910; and a line of machinery was exhibited in operation, and offered to the trade, at the Mechanics' Fair Building in Boston during the summer of 1911. Some machines were later supplied to the Non-Royalty Shoe Company, St. Louis, Mo.

1910

Foreign Makes of Welt and Turn Sets of Machinery were advertised in several issues of the "Superintendent & Foreman" by the following:

Nollesche Werke, Weisenfels, Germany.

A. H. Johnson, Leicester, England.

Gimson Company, Leicester, England.

1911

John Callahan, Lynn, Mass.

Reading notice in "Superintendent & Foreman" April 12, 1911, Page 31, in reference to Welt Machine a statement is made —"If Plant's machinery is worth $7,000,000, mine is worth $15,000,000".

1911

Foreign Makes of Welt and Turn Sets of Machinery were advertised in several issues of the "Superintendent & Foreman" by the following:

Atlas-Werke-Pohler & Company, Leipsic, Germany. "Welting machinery exactly like any Goodyear."

A. H. Johnson, Leicester, England. "Complete welting plant."

The Standard Engineering Company, Leicester, England. "High Speed Stitcher, Welt Sewers, with all accessory machines."

The Standard Rotary Machine Company, Rushden, Northampton, England. "Are revolutionizing the welting trade." "Complete sets supplied."

Nollesche Werke, Weisenfels, Germany. "Shoe machinery for all departments of manufacture."

Moenus Machine Works, Frankfurt, Germany. "Complete Outfits."

Gimson Company, Leicester, England. "Machines for every operation."

Universal Shoe Machinery Company, Ltd., Northampton, England. "For high-grade welting."

1911

Welt Set Machinery. Boylston Shoe Machinery Company, Boston, Mass.

A delegation of St. Louis shoe manufacturers examined the above machinery during January, 1911, and a Turn Shoe Machine was sent to Hervey E. Guptill, Haverhill, Mass., during the spring of 1911; and a Welt Shoe Machine was sent to the Buffalo Shoe Company, Pepperell, Mass., some time about the spring of 1911, and an introduction of the machines to the trade generally was solicited during that year and since then.

DEFENDANTS' EXHIBIT 332.

[Put in Evidence, page 4363.]

LIST SHOWING GOODYEAR AUXILIARY MACHINES AND THOSE OFFERED BY OTHER MACHINERY MANUFACTURERS FOR PERFORMING THESE OPERATIONS.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Universal Channeling Machine — (fitted for Gem Insoles, Goodyear insoles and turn soles) Goodyear Channeling Machine — (Hand Belt Power)	Channeling Insoles (Welt Work only)	Channeling Machine — The R. H. Long Machinery Co., Inc. Haverhill Turn Channeling Machine — Haverhill Shoe Machinery Company Channeling Machine — Hamel Shoe Machy. Co.
Goodyear Insole Toe Snipping Machine	Snipping Lip of Insole at toe (Welt work only)	Insole Snipping and Pinking Machine, No. 7 — Boston Machine Works Co.
Goodyear Lip Turning Machine, Model X Goodyear Lip Turning Machine Goodyear Lip Turning & Slashing Machine	Turning Lip of Insole (Welt work only)	American — American Worsted Machy Co. Knight — Geo. Knight & Co. Duplessis — Hamel Shoe Machinery Company Haverhill — Haverhill Shoe Machinery Company Long — The R. H. Long Machinery Co., Inc.
Gem Lip Turning Machine	Turning Lip of Gem Insole (Welt work only)	Lip Turning Machine — Haverhill Shoe Machy. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Lip Turning & Slashing Machine		American — American Worsted Machy Co. Knight — Geo. Knight & Co. Duplessis — Hamel Shoe Machinery Company Haverhill — Haverhill Shoe Machy. Co. Long — The R. H. Long Machy. Co., Inc.
Gem Cementing Machine — (Cementing canvas) Rapid Rotary Cementing Machine— (Cementing Gem Insoles)	Cementing Gem Insoles & Gem Canvas (Welt work only)	Haverhill — Universal Supply Co. (Cementing insoles) Hazen-Brown — Hazen-Brown Co. (Cementing insoles) Julian — Boston Machine Works Co. (Cementing insoles).
Rapid Rotary Cementing Machine, Model J	Cementing Economy Insole (Welt work only)	Julian — Boston Machine Works Company Brown — Hazen-Brown Co. Haverhill — Universal Supply Company
Goodyear Turn & Insole Channeling Machine Goodyear Universal Channeling Machine (turn)	Channeling Turn Soles (Turn work only)	Channeling Machine — The R. H. Long Machy. Co., Inc. Haverhill Turn Channeling Machine— Haverhill Shoe Machinery Company Channeling Machine — Hamel Shoe Machinery Company
Goodyear Turn & Insole Channeling Machine — (turn work only) Goodyear Outsole Channel Shank Reducing Machine — (welt work only)	Shank Reducing & Feather Edging Outsole	Knight — Geo. Knight & Co. Rapid — Theo. Ringenbach American — American Worsted Machinery Company
Goodyear Moulding Machine Goodyear Power Moulding Machine	Moulding Down Edge of Sole (Turn work only)	Turn Moulder — Haverhill Shoe Machinery Company Turn Moulder — Hamel Shoe Machinery Company
Goodyear Tack Pulling and Resetting Machine Goodyear Upper Tack Pulling Machine	Pulling and Resetting Upper Tacks (Welt Work only)	Krentler-Pym Tack Puller and Relifter — L. G. Freeman Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Power Welt Grooving and Beveling Machine	Grooving and beveling Welting	Haverhill — Haverhill Shoe Machinery Company Long — R. H. Long Machinery Company, Inc. Hamel — Hamel Shoe Machinery Company
Goodyear Universal Inseam Trimming Machine Inseam Trimming Machine — Model K — (Lease)	Inseam Trimming (Welt Work only)	Keighley Rapid Inseam Trimming Machine — The Keighley Company, Inc. Inseam Trimming Machine — A. Johnson & Son
Goodyear Insole Tack Pulling Machine	Pulling Insole Tacks	Combination Insole and Side Tack Pulling Machine — Louis G. Freeman Co.
Goodyear Welt Beating and Slashing Machine Goodyear Universal Welt Beating Machine (Beating only)	Beating and Slashing Welt (Welt Work only)	Beating Machine — Standard Rotary Machine Co., Ltd. (Beating only) Beating Machine — R. H. Long Machinery Co., Inc. (Beating only) Duplessis Beating Machine — Hamel Shoe Machinery Co. Boylston — Boylston Mfg. Co. Haverhill — Haverhill Shoe Machinery Co.
Goodyear Shank Welt Skiving Machine	Reducing Shanks of Welts (Welt Work only)	Rapid — Theo. Ringenbach
Goodyear Improved Sole Laying Machine Goodyear Improved Sole Laying Machine — Model C	Laying Soles (Welt Work only)	Atlas (2 types) — Atlas-Werke Pohler Company Long — The R. H. Long Machinery Co., Inc. Gimson — Gimson & Son, Ltd. Standard Rotary — Standard Rotary Machine Co., Ltd. Standard Engineering — Standard Engineering Company
Goodyear Heel Seat Rounding Machine Goodyear Rounding & Randing Machine	Rounding Heel Seats (Welt Work only)	Freeman Heel Seat Rounding Machine — Louis G. Freeman Co.
Goodyear Universal Rounding and	Rough Rounding & Channeling Outsole	National Automatic Rounder — Standard Rotary Machine Co., Ltd.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Channeling Machine Goodyear Universal Rounding and Channeling Machine — Model E.	(Welt Work only)	National Rough Rounding Machine — The R. H. Long Machy. Co., Inc. (Rounds only) Victor Rough Rounding and Channeling Machine — Victor Shoe Machinery Company Rough Rounding and Channeling Machine — Haverhill Shoe Machinery Company Arnold Channeling Machine — The R. H. Long Machinery Co., Inc. (Channeling only)
Goodyear Channel Opening Machine Goodyear Channel Opening Machine — Model X	Opening Channels (Welt Work Only)	Channel Opening Machine — Standard Rotary Machine Co., Ltd.
Goodyear Outsole Shank Reducing Machine	Channel Shank Reducing (Welt Work Only)	Rapid — Theo. Ringenbach
Goodyear Channel Laying Machine Channel Laying Machine — Model X	Laying Channels	Channel Laying Machine — Standard Rotary Machine Co. American — American Worsted Machinery Co. Standard — Standard Engineering Co. Knight — George Knight & Co.
Goodyear Welt Indenting and Burnishing Machine — Model X Goodyear Welt Indenting and Burnishing Machine	Welt Indenting	American Welt Fudging Mch.—Victor Shoe Machinery Co. Wheeler — E. L. Wheeler Holt — J. S. Holt & Co. Donnelly — Donnelly Machine Co. Haverhill — Haverhill Shoe Machinery Co. Long — R. H. Long Machinery Co., Inc.
Goodyear Automatic Sole Leveling Machine Goodyear Welt and Turn Leveling Machine	Leveling	Automatic Twin Leveling Machine — Standard Rotary Machine Co. Webster Welt & Turn — Haverhill Shoe Machinery Co. Eclipse — R. H. Long Machinery Co., Inc. Leveling Machine — Ward & Gent Leveling Machine — Hamel Shoe Machinery Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Hadaway Stitch Separating Machine	Separating Stitches	Long Stitch Separating Machine — R. H. Long Machinery Co., Inc. Standard Rotary Stitch Separating Machine — Standard Rotary Machine Co., Ltd. Haverhill — Haverhill Shoe Machinery Co.
Goodyear Welt Indenting and Burnishing Machine Goodyear Impression Stitch Burnishing Machine No. 2 Goodyear Fudge Edge Machine (Settinig and Wheeling Light Edges Only)	Impression Stitch Finishing	American — Victor Shoe Machinery Co. Wheeler — E. L. Wheeler Holt — J. S. Holt & Co., Inc. Donnelly — Donnelly Machine Co. Haverhill — Haverhill Shoe Machinery Co.

DEFENDANTS' EXHIBIT 333.

[Put in Evidence, page 4364.]

January 3, 1912.

Gentlemen: We are in receipt of orders from you for one or more machines of our Goodyear, Pulling-Over, Lasting, Metallic, or Heeling Departments.

In ordering these machines you have requested the Company to lease them to you under the form of lease "where the lessee does not pay in advance a 'lease premium' ".

We assume that you are fully acquainted with the fact that machines in any of these departments may be had from this Company under "initial payment" department form of leases, which leases do not contain those clauses which restrict the use of machines of one department to work that has been done on machines of one, or more, of the other departments. We shall be very glad to furnish you the machines which you have ordered under the "initial payment" form of lease if you prefer. We call this matter to your attention at the present time in order to avoid the possibility of any question of fact regarding this subject in the future.

Kindly notify us promptly of your decision, and with kindest regards, I remain

Very truly yours,

General Manager.

DEFENDANTS' EXHIBIT 334.

[Put in Evidence, page 4381.]

September 2, 1910.

F. E. Leavitt, Esq., Haverhill, Mass.

Dear Sir: We have been requested by you through our Mr. Smith to quote terms for the installation in your factory of the machines hereinafter mentioned upon conditions which will not preclude the use of the same by you in conjunction with certain machinery now in your possession. Complying therewith we beg to say that we will install the following machines under lease at the lease premium indicated — rents and royalties to be at usual rates:

LASTING MACHINE DEPARTMENT.

	Lease Premium
1 Consolidated Hand Method McKay Lasting Machine	$300.00

METALLIC DEPARTMENT.

1 Staple Fastening Machine	100.00
1 Universal Slugging Machine	250.00
1 Loose Nailing Machine	250.00
1 String Nail Tacking Machine	75.00
1 Taper Nail Tacking Machine	75.00

HEELING DEPARTMENT.

1 McKay Automatic Heel Loading & Attaching Machine	400.00
1 McKay Heel Trimming & Randing Machine	150.00
1 Spring Heel Trimming Machine	100.00

GENERAL DEPARTMENT.

1 McKay Sewing Machine	100.00

And that we will sell to you outright the following machines at the prices indicated:

	Price
1 Atlas Leveling Machine, Model A	$500.000
1 Heel Scouring Machine	65.0
1 Twin Edge Setting Machine	150.00
1 Heel Breast Scouring Machine	50.00

		Price
2	Finishing Shafts, 72″ at $12.00 each	24.00
1	Victor Rolling Machine, Model E	250.00
1	Improved Gearless Sole Cutting Machine, Model C	225.00
1	Improved Veneer Press (6 sections)	18.00
1	American Twin Sole Moulding Machine	450.00
1	Apex Channeling Machine	65.00
1	Apex Feather Edge & Shank Reducing Machine, Model A	35.00
1	Apex Channel Opening Machine, Model C	45.00
1	Apex Tap Skiving or Rand Splitting Machine, Model C	50.00
1	Apex Tap & Sole Rounding Machine, Model A	35.00
1	Crescent Toe Gouging Machine, Model C	125.00

Yours very truly,

UNITED SHOE MACHINERY COMPANY

By

DEFENDANTS' EXHIBIT 336.

[Put in Evidence, page 4392.]

LIST OF MACHINES OFFERED BY SHOE MACHINERY MANUFACTURERS AND DEALERS OTHER THAN UNITED SHOE MACHINERY COMPANY NAMED IN

DEFENDANTS' EXHIBIT 311 (FOLIO OF CATALOGS).

DEFENDANTS' EXHIBITS 312, 313, 314, 315, 316, 317, 318, 319 AND 320 (CATALOGS).

DEFENDANTS' EXHIBIT 321 (LETTERS, ADVERTISEMENTS AND CATALOGS).

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Adams Manufacturing Co., The Portsmouth, Ohio.			
Marking Machine: Buttonhole	76		
American Tool & Machine Co., The Boston, Mass.			
Splitting Machine	51		
American Lacing & Hook Co., Waltham, Mass.			
Hooking Machine	162B		

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
American Shoe Machinery & Tool Co., St. Louis, Mo.			
Finishing Shaft	124		Ex. 316; p. 166
American Worsted Machinery Co., Abington, Mass.			
Channeling Machine: McKay		2A	
Eyeletting Machine — Mod. A		2K	
" " " B		2B	
" " Monitor		2D	
" " Eureka		2C	
Finishing Shaft		1C	
Folding Machine: Straight Edge		1B	
Hammer: Little Giant Power		1E	
Hooking Machine: Foot Power		2E	
Laying Machine: Channel		1D	
Opening Machine: Fischer Channel		1J	
Perforating Machine		1G	
Pinking Machine: Geared		2H	
Pinking Machine: Hand		2I	
Punching Machine: Hook Hole		2F	
Rounding Machine: Severance Tap		1A	
Reducing Machine: Feather Edge & Shank		1F	
Skiving Machine: N. O. S.		2J	
" " Improved Tripp Tap		2G	
Sewing Machine: McKay		1K	
Turning Machine: Lip		1I	
" " Rand		1H	
Atlas-Werke Pohler & Co., Leipsic, Germany.			Exh. #319: p. 4
Pattern Shears			" #319; p. 5
Pattern Binding Machine			" #319; p. 5
Small Upper Clicking Press			" #319; p. 6
Large Upper Clicking Press			" #319; p. 7
Lining Cutting Machine			" #319; p. 8
"Fortuna" Upper Skiver			" #319; p. 9
Power Stamping Machine for Lining			" #319; p. 10
Perforating and Pinking Mach. "Stanbon"			" #319; p. 11
Upper Cementing Machine			" #319; p. 12
Upper Folding Machine "Lufkin"			" #319; p. 13
Upper Folding Machine			" #319; p. 14
Upper Beading Machine With Seam Hammer			
Punching and Automatic Eyeletting Mchs. for Foot Power			" #319; p. 15

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Punching and Eyeletting Machine with Automatic Eyelet Supply		Exh.	#319; p. 16
Automatic Hook Setter		"	#319; p. 17
Heavy Leather Rolling Machine		"	#319; p. 19
Lift Dinking Machine		"	#319; p. 20
Dinking Machine, Accessible from 3 sides		"	#319; p. 21
Dinking Machine (open on 3 sides) with long Stroke		"	#319; p. 22
Beam Cutting Machine		"	#319; p. 23
Beam Cutting Machine with Guide above the Bed		"	#319; p. 24
Beam Cutting Machine for Whole Hides		"	#319; p. 25
Dies		"	#319; p. 26
Cutting Block		"	#319; p.
Sole Rounding Machine		"	319; p. 27
Sole Leather Splitting Machine		"	319; p. 28
Sole Stamping and Numbering Machine		"	319; p. 29
Insole Skiving Machine		"	319; p. 30
Heelpart Splitting Machine		"	319; p. 31
Counter Skiving and Rand Splitting Machine		"	319; p. 32
Counter Skiving and Evening Machine		"	319; p. 33
Counter and Shank Skiving Machine		"	319; p. 34
"Fortuna" Counter Skiving Machine		"	319; p. 35
Automatic Counter Skiving Machine		"	319; p. 36
Counter Pinking Machine		"	319; p. 37
Rand Bending Machine		"	319; p. 38
Leather Remnants Skiving and Tacking Machine		"	319; p. 39
Welt and Rand Tacker		"	319; p. 40
Heel Building and Tacking Machine		"	319; p. 41
Power Heel Building and Tacking Machine		"	319; p. 42
Hand Heel Press		"	319; p. 43
Automatic Heel Press		"	319; p. 44
"Atlas Welt" Insole Channeling Machine		"	319; p. 45
Lip Turning Machine with Cement Pot		"	319; p. 46
Insole Reinforcing and Trimming Machine		"	319; p. 47
Sole Channeling Machine		"	319; p. 48
McKay Channel Opener		"	319; p. 49
"Crispin" Pulling-Over and Lasting Jack		"	319; p. 51
Jacks		"	319; p. 52
Rotary Lasting Tack Holders		"	319; p.
Lasting, Finishing and Heel Building Jacks		"	319; p. 53
Insole Tacking Machine for Welt Work		"	319; p. 54
Insole Tacking Machine for McKay Work		"	319; p. 55
Pulling-Over Machine with Automatic Tack Supply for McKay and Welt Work	71	"	

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Toe Lasting and Binding Apparatus		Exh.	#319; p. 56
"Ideal" Toe Lasting and Binding Machine	138B	"	319; p. 57
Welt Lasting Machine "Atlas"		"	319; p. 58
"Atlas" Lasting Machine		"	319; p. 59
"Atlas Rapid" Laster	191	"	319; p. 60
Pounding and Ironing Machine		"	319; p. 61
Toe Trimming Machine		"	319; p. 62
Light Sole Molding Machine		"	319; p. 63
Heavy Sole Molding Machine		"	319; p. 64
Single Head Sole Tacking Machine		"	319; p. 65
Double Head Sole Tacking Machine		"	319; p. 66
McKay Chain Stitch Sewing Machine		"	319; p. 68
Original Chain Stitch Sewing Machine "Lipsia" for Felt and Leather		"	319; p. 69
Friction Outfit		"	319; p. 70
Waxing and Winding Apparatus		"	319; p.
Lockstitch McKay Sewing Machine		"	319; p. 71
Standard Sole Screwing Machine		"	319; p. 72
Loose Nailer		"	319; p. 73
Pegging Machine		"	319; p. 74
High Speed Pegging Machine		"	319; p. 75
Pegging Machine — Model H		"	319; p. 76
Peg Rasping Machine		"	319; p. 77
Edge Molding Machine		"	319; p. 78
"Atlas Welt" Inseam Sewing Machine		"	319; p. 79
"Atlas" Rapid Inseam and Turn Sewing Machine		"	319; p. 80
Shoe Turning Devices		"	319; p. 81
Heel Turner		"	319; p.
"Atlas" Welt Beater		"	319; p. 82
Atlas Welt Channeling Machine		"	319; p. 83
Atlas Welt Evening Machine		"	319; p. 83K
Rapid Shank Skiving Machine for Welt Work		"	319; p. 84
Quadruple Sole Laying Machine	129A	"	319; p. 86
"Atlas Welt" Rough Rounding and Channeling Machine		"	319; p. 87
"Rapid" Rough Rounding and Channeling Machine		"	319; p. 88
"Atlas Welt" Grinding Machine		"	319; p. 89
"Atlas Welt" Channel Opener		"	319; p. 90
"Atlas Welt" Stitcher (Welt Outsole)		"	319; p. 91
Newest "Rapid" Stitcher with Chamfering Device	189	"	319; p. 92
Upper Leather Edge Trimming Machine for Sandals		"	319; p. 93
Cementing Apparatus for Channels and Soles		"	319; p. 94

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Atlas Welt Channel Closer		Exh.	#319; p. 95
Last Inserting Machine		"	319; p. 96
Sole Leveling Machine		"	319; p. 97
Automatic Twin Sole Leveling Machine		"	319; p. 98
Heel Part Edge Trimmer		"	319; p. 99
Heavy Edge and Shank Trimming Machine		"	319; p. 101
Heel Nailing Machine		"	319; p. 102
"Lightning" Heel Nailing Machine		"	319; 0. 103
Heel Breasting Machine — Model B		"	319; p. 104
Heel Breasting Machine		"	319; p. 105
New Wood Heel Nailing Machine		"	319; p. 106
Heel Breast Trimmer for Loose Heels		"	319; p. 107
Apparatus for Use in Covering Heel Breasts		"	319; p. 108
Heel Breast Trimmer for Attached Heels		"	319; p. 109
Heel Breast Scouring Machine		"	319; p. 110
Universal Top Lift Slugger — Model A		"	319; p. 111
"Universal" Top Lift Slugger — Model B		"	319; p. 112
Slug Grinding Machine		"	319; p. 113
Top Lift Scouring Machine		"	319; p. 114
Heavy Heel Trimming Machine		"	319; p. 115
Trimming Cutter Grinding Machine		"	319; p. 116
Sole Buffing Machine with Buffing Belts		"	319; p. 117
Single Sole Buffing Machine		"	319; p. 118
Bottom Cleaning Machine — System "Naumkeag"		"	319; p. 119
Heel Scouring Machine		"	319; p. 120
Twin Heel Scouring Machine		"	319; p. 121
Twin Edge Setting Machine		"	319; p. 122
Rolls		"	319; p. 123
Leather Polishing Disks		"	319; p.
Finishing Shaft		"	319; p. 123K
"Atlas Welt" Stitch Separating Machine		"	319; p. 124
"Atlas" Stitch Burnishing Machine		"	319; p. 125
"Atlas" Stitch Polishing Machine		"	319; p. 126
Bottom Coloring and Brushing Machine		"	319; p. 127
Heel Beading and Brushing Machine		"	319; p. 128
Edge Setter		"	319; p. 129
Sole Stamping Machine		"	319; p. 130
"Gasoline" Gas Generator		"	319; p. 131
Central Exhaust Installation with Dust Collector		"	319; p. 132
Vamp Creaser		"	319; p. 134
Vamp Creaser		"	319; p. 135
Upper Cleaning Machine		"	319; p. 136
Treeing Machine		"	319; p. 137
Shoe Box Wiring Machine		"	319; p. 138

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Shoe Box Wiring Machine to Reinforce Corners		Exh.	#319; p. 139
Sole Rounding Roller		"	319; p. 141
Small Parallel Roller		"	319; p. 142
Light Leather Roller		"	319; p. 143
Hand Operated Press		"	319; p. 144
Finishing Machine		"	319; p. 145
Combined Trimming and Finishing Machine		"	319; p. 146
Combined Finishing and Trimming Machine		"	319; p. 147
Combined Trimming and Finishing Machine		"	319; p. 148
Combination Finishing Outfit		"	319; p. 149
Small Stitch Wheeling Machine		"	319; p. 151
Stitch Wheeling Machine		"	319; p. 152
Adrian & Busch, Oberursel near Frankfort on the Main, Germany.			
Germania Welt & Turn Sewing Machine		Cat.	#23; p. B
Germania Welt Outsole Stitcher		"	23; p. A
These two pages A & B illustrate the Germania Welt & Turn Sewing Machine and the Germania Welt Outsole Stitcher of the Complete Germania Welt System for the manufacture of Goodyear Welt Shoes.			
Barber & Co., L. L., Boston, Mass.			
Punch: Foot Power Tip	102D		
" Power Tip	102B		
" Hand Tip	102C		
Perforating Machine	102A		
Beaudry Machine Co., Lynn, Mass.			
Setting Machine: Edge	156		
Beckett & Hammond, Haverhill, Mass.			
Trimming Machine: Wood Heel Top Lift	175		
Beckman, A., Lynn, Mass.			
Finishing Machine: Heel	111		
Beading Machine: Heel Seat	111		
Beckwith Box Toe Co., Boston, Mass.			
Softening Machine: Toe	25		
Bendix, Geo., Brooklyn, N. Y.			
Scouring Machine: Heel Breast	154–155		
Bostock & Sons, Thomas, Brockton, Mass.			
Building Machine: Heel	21F		
Cutting Machine: Rand	21G		
" " Tap	21C		
Gouging Machine: Heel Lift	21B		
Slashing Machine: McKay Welt	21G		
Scarfing Machine: Spring Heel	21D		

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Softening Machine: Toe	21A		
Turning Machine: Rand	21E		
Boston Last Company, Boston, Mass.			
Backing Machine: Simplex Cloth	64		
Embossing Machine: Simplex	45A		
Ironing Machine: Post	45 (Cat. p. 15)		
Treeing Machine: Imp. Flexor	45 (" p. 26)		
Treeing Machine: Imp. Flexor (8 arm)	45 (" p. 27)		
Boston Machine Works Co., Lynn, Mass.			
Beading Machine: Monarch	49) " p. 12)		
Beading Machine: Boston	49 (" p. 13)		
Cementing Machine: New York	49 (" p. 20A)		
Cementing Machine: Julian	95X–49 (" p. 34)		
Folding Machine: Booth	49 (" p. 5)		
Folding Machine: Boston	49 (" p. 4)		
Folding Machine: Foot Power	48B–49 (" p. 3)		
Folding Machine: New Vamp	49 (" p. 6)		
Lacing Machine: Rochester	49 (" p. 20)		
Marking Machine: Eureka Match	49 (" p. 20D)		
Marking Machine: Eureka Upper	49 (" p. 16–17)		
Pricking Machine: Lining	49 (" p. 15)		
Snipping Machine: (6 types)	48C–49 (" p. 7–8–9)		
Snipping Machine: Power	49 (" p. 20C)		
Snipping & Cementing Machine	49 (" p. 20B)		
Scouring Machine: Tip	49 (" p. 38)		
Snipping & Pinking Machine: Insole	49 (" p. 33)		
Slashing Machine: Flap	49 (" p. 32)		
Auto. Hook Hole Punch	49 (" p. 14)		
Rubbing Machine: Union Seam	49 (" p. 11)		
Rubbing Machine: Boston	48A–49 (" p. 10)		
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Brockton Stay Co., Brockton, Mass.			
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Davis Sewing Machine Co., The Dayton, Ohio.			
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Double Sole Laying Mach.		" #20; p. 16	
Rough Rounding and Channeling Machine		" #20; p. 16	
Stitch Separating Machine		" #20; p. 16	
"Hercules" Stitching Machine (System Goodyear) (Welt Outsole)		" #20; p. 16	
"Victor" Inner-rand Cutting Machine		" #20; p. 16	
Gem Innersole Drawing-over and Cutting Machine		" #20; p. 16	
Heel Splitting Machine		" #20; p. 16	
Rand Marking Machine		" #20; p. 16	
Victor Sole Buffing Machine		" #20; p. 17	
Heel Trimming Machine "Ideal"		" #20; p. 18	
Heel Trimming Machine "Triumph"		" #20; p 18	
Heel Breast Trimming Machine		" #20; p. 18	
Heel Breast Buffing Machine		" #20; p. 18	
Top Lift Pin Grinding Machine		" #20; p. 18	
Sole Edge and Waist Trimming Machine "Meteor"		" #20; p. 18	
Sole Edge and Waist Trimming Machine "Victor" with ventilator		" #20; p. 18	
Combined Heel and Sole Edge Trimming Machine		" #20; p. 19	
Top Ironing Machine "Ideal"		" #20; p. 19	
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Quadruple Sole Edge Setting Machine		Cat. #2p; p. 19	
Heel Edge Setting Machine		" #20; p. 19	
Combined Finishing Machine "Ideal" for foot drive		" #20; p. 19	
"Harlow" Heel Burnishing Machine		" #20; p. 19	
Top Lift Trimming Machine "Victor"		" #20; p. 20	
Combined Bottom Scouring and Buffing Machine		" #20; p 20	
Bottom Buffing Machine "Ideal"		" #20; p. 20	
Bottom Buffing Machine "National"		" #20; p. 20	
Northampton Machinery Co., Ltd., Northampton, England.			
Improved Heel Assembler		" #1; p. 1	
Heel Compressor		" #1; p. 2	
Top Piece Compressor		" #1; p. 3	
Heel Attaching Machine		" #1; p. 4	
Heel Slugging Machine		" #1; p. 5	
Rand Cutting Machine		" #1; p. 6	
Rand Turning Machine		" #1; p. 6	
Heel Breasting Machine		" #1; p. 7	
Spring Heel Scarfing Mach.		" #1; p. 8	
Channel Cementing Machine		" #1; p. 9	
Sole Cementing Machine		" #1; p. 10	
Cement Pot		" #1; p. 11	
Sole Wetting Machine		" #1; p. 12	
Vamp Creasing Machine		" #1; p. 13	
Lasting Machine		" #1; p. 14	
Lasting Jack		" #1; p. 16	
Lip Taping Machine (For Goodyear Insoles)		" #1; p. 17	
Lip Turner		" #1; p. 18	
Lip Cutting Machine		" #1; p. 19	
Edge Beating Machine		" #1; p. 20	
Cutting Press		" #17; p. 31	
North American Chemical Co.: Boston, Mass.			
Filling Machine: Besto Bottom	147		
O'Flaherty Co., The John, Rouses Point, N. Y.			
Lockstitch Machine	58		
Parsons Machinery Co.: Marlboro, Mass.			
Building Machine: Pieced Heel	12C		
Clicking Machine	12B		
Cutting Machine: Sole	12A		
Stripping Machine	13		
Pearson, Walter: Whitman, Mass.			
Channeling Machine: McKay	23B		

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Sewing Machine: McKay	23A		
Peerless Machinery Co.: Boston, Mass.			
Attaching Machine: R. & M. Button	67G		
Cementing Machine: Duplex	67H		
" " Economy	67D		
" " Lining	67E		
Eyeletting Machine: Gang	67F		
" " Rapid	67A		
Punching Machine: Imp. Tip	67I		
Perforating Machine	67B		
Scouring Machine: Tap	67J		
Skiving Machine: Universal	67C		
Perkins Machine Co.: Warren, Mass.			
Embossing Machine	104		
Pierce, C. S.: Brockton, Mass.			
Skiving Machine	127		
Pine, J. A.: Marlboro, Mass.			
Buffing Machine, Naumkeag	103		
Plymouth Rubber Co., The, Canton, Mass.			
Tightening or Hardening Machine: Rib	81		
Progressive Shoe Machinery Co.: Minneapolis, Minn.			
Finishing Shaft	96		Ex. 316–p. 169
Puritan Mfg. Co., Boston, Mass.			
Fairstitch Machine	73E		
Staying Machine: Back Seam	73B		
Stitching Machine: Boot Counter	73F		
Seaming Machine: Button Fly	73A		
Staying Machine: " "	73A		
Stitching Machine: Counter	73F		
" " " Lining	73F		
Seaming Machine: Foxing	73A		
Staying Machine: "	73B		
Stitching Machine: Foxing	73C		
" " Pocket Strap	73B		
Seaming Machine: Quarter	73A		
Staying Machine: Side	73D		
Siding Machine	73D		
Stitching Machine: Strap & Stay	73B		
" " Tip	73C		
Seaming Machine: Vamp	73A		
Staying Machine: "	73A		
Seaming Machine: " Welt	73A		
Vamping Machine	73C		

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Quarmby & Hilliker: Lynn, Mass.			
Blocking Machine: Knox Power (heavy)	11A		
" " Knox Power (Light)	11B		
Compressing Machine: Knox Heel	10A		
Cutting Machine: Sole	10B		
Moulding Machine: Knox Sole	10D		
Rolling Machine: Knox	10E		
Stripping Machine	10C		
Splitting Machine: Knox	10F		
Ralphs, A. T., Leeds & Norwich, England.			
Eyeletting, Hooking & Punching Machine		Loose Leaf 15	
Heeling Machine: Boss		" " 15	
Lockstitch Machine: Boss (Welt Outsole)		" " 14	
Lasting Machine: Boss		" " 14	
Slugging Machine: Boss High Speed		" " 14	
Trimming Machine: Boss Upper		" " 14	
Randall Co., The J. D.: Cincinnati, O.			
Lockstitch Machine	57		Defts. Ex. 313
Reece Buttonhole Machine Co., The Boston, Mass.			
Attaching Machine: Button	69		
Finishing Machine: Buttonhole	141B		
Making Machine: Buttonhole	141A		
Ringenbach, Theo.: Cincinnati, O.			
Edge Machine: Thin	126		
Seelye Mfg. Co., Boston, Mass.			
Buffing Mch.: Hawkins	91A		
Clicking Mch.:	182		
Cutting Mch.: Sole	92–93–94–95U		
Moulding Mc.: Hawkins Sole	91F		
Heel Press	91B		
Rolling Mch.	91D–95W		
Splitting Mch.: Hawkins	91C–95V		
Stripping Mch.:	91E		
Shoe Mfrs. Supply Co., Newark, N. J.			
Marking Mch.: Buttonhole	187		
Shawmut Machinery Co., Boston, Mass.			
Cementing Mch.: Foot Power Lining	68E		
Cementing Mch.: Hand Lining	68D		
Power Hammer	68C		
Scouring Mch.: Tip	68B		
Rubbing Mch. Hand Method Seam	68A		
Singer Sewing Mch. Co., New York, N. Y.			
Attaching Mch.: Button	99		

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Attaching Mch.: Morley	153D		
Barring Mch.: Button Fly	99		
Binding Mch.: Edge	99		
" " "	99		
Butting Mch.: Zigzag	99		
" " " W. & W.	99		
Cording Mch.: Buttonhole	99		
" " " W. & W.	99		
Finishing Mch. Buttonhole	99		
Overedging Mch.	99		
" " W. & W.	99		
Staying Mch.: Back Seam	99		
" " " " W. & W.	99		
Stitching Mch. Bellows Tongue	99		
Stitching Mch., Bellows Tongue, W. & W.	99		
Stitching Mch.: Boot Counter	99		
" " " " W. & W.	99		
" " Button Fly Lining, W. Wheeler & Wilson	99		
Stitching Mch.: Button Fly Lining	99		
Seaming Mch.: Button Fly	99		
" " " " W. & W.	99		
Stitching Mch.: Button Stay	99		
" " " " W. Wheeler & Wilson	99		
Staying Mch.: Button Fly	99		
" " " " W. & W.	99		
Stitching Mch.: Counter Lining	99		
Stitching Mch.: Counter Lining, W. & W.	99		
Stitching Mch.: Counter	99		
" " " W. & W.	99		
" " Eyelet Row	99		
" " " " W. & W.	99		
" " " Stay	99		
" " " " Wheeler & Wilson	99		
Stitching Mch.: Fancy	99		
" " " W. & W.	99		
Seaming Mch.: Foxing	99		
" " " W. & W.	99		
Staying Mch. "	99		
" " " W. & W.	99		
Stitching Mch.: "	99		
" " " W. & W.	99		
" " French Cord	99		
" " " "	99		

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
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" " " W. & W.	99		
Seaming Mch.: Lining	99		
" " "	99		
Wheeler & Wilson	99		
Seaming Mch.: Lining	99		
" " " W. & W.	99		
Stitching Mch.: Lining Stay	99		
" " " " Wheeler & Wilson	99		
Stitching Mch.: Back Stay	99		
" " " " W. & W.	99		
" " Lining & Tongue	99		
" " " " " W. & W.	99		
" " " & Top	99		
" " " & " W. & W.	99		
" " Outside Heel Stay	99		
" " " " " W. & W.	99		
" " Pocket Strap	99		
" " " " W. & W.	99		
Seaming Mch.: Quarter	99		
" " " W. & W.	99		
Stitching Mch.: Side Stay & Tongue	99		
Stitching Mch.: Side Stay & Tongue, W. & W.	99		
Staying Mch.: Side	99		
" " " W. & W.	99		
Stitching Mch.: Strap & Stay	99		
" " " & "	99		
" " Tip	99		
Stitching Mch.: Tip, W. & W.	99		
" " Tongue	99		
" " " W. & W.	99		
" " Top Facing	99		
" " " " W. & W.	99		
Staying Mch.: Top	99		
Stitching Mch.: "	99		
" " W. & W.	99		
Seaming Mch.: Vamp	99		
" " W. & W.	99		
Staying Mch.: Vamp	99		
" " " W. & W.	99		
Seaming Mch.: Vamp Welt	99		
" " " " W. & W.	99		
" " Zigzag Top	99		
" " " " W. & W.	99		
Undertrimming Mch.:	99		

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Undertrimming Mch.: W. & W.	99		
Vamping Mch.:	99		
" " W. & W.	99		
Special Machinery & Tool Co., The New Haven, Conn.			
Finishing Shaft	163		
Specialty Shoe Mchy. & Tool Co., St. Joseph, Mo.			
Finishing Shaft	164 (Cat. pp. 10–11)		
Spencer, Edw. E., Jr., New York, N. Y.			
Flexing Mch., Insole	26		Defts. Ex. 312
Standard Engineering Co., Leicester, England.			
Standard Combined Finishing Machine (No. 1 Treadle) (For finishing bottoms of shoes)		Cat. #9; p. 14	
Treadle Combined Finishing Machine (No. 2, Foot Power)		" #9; p. 16	
Standard Combined Finishing Machine (No. 2 Power) (Including Naumkeag Attachment)		" #9; p. 18	
No. 2 B Combined Finisher (Bottom Scouring & Finishing)		" #9; p. 20	
No. 2 C Standard Combined Finishing Machine (Bottom Finishing & Edge Setting)		" #9; p. 22	
Standard Combined No. 2 D (Power) (Bottom Finishing, Heel Finishing, Edge Trimming, Etc.)		" #9; p. 24	
Standard Combined Finisher No. 2 D With Stitcher (Bottom Finishing & Outsole Stitching)		" #9; p. 25	
Standard Combined Finisher No. 3 (Power) (Bottom & Edge Finishing)		" #9; p. 26	
Standard Combined Finisher No. 4 (Power) (Large Mch. for Bottomand Edge Finishing)		" #9; p. 28	
Standard Combined Finisher No. 5 (Power) (Very large machine for Bottom and Edge Finishing)		" #9; p. 30	
Standard Combined Finisher for Power, Smal. Bench Type		" #9; p. 32	
Sectional Table (No. 6) Combined Finishing Machine (Insert with page 32) (All operations of Finishing. Built in sections.)			
McKay Chan. Mch.		" #9; p. 34	
Improved Power McKay Sole Sewing Mch.—with Stanley Horn		" #9; p. 35	
Improved Treadle McKay Sole Sewing Machine with Stanley Horn		" #9; p. 36	

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All-round Feed A 1 Repairing Machine (For shoe repairing)		Cat. #9; p. 37	
Standard Extra Heavy Patching Machine (For shoe repairing)		" #9; p. 38	
"Stanlock" New Model High-Speed Outsole Stitcher (For Welt Outsoles)	50 B	" #9; p. 39	
Standard Single Open-Ended Press (Sole Cutting or Dinking Mch.)		" #9; p. 43	
Standard Single Open-Ended Press (Small Sole Cutting or Dinking Mch.)		" #9; p. 44	
Roller — Skiver, (Rolling and Skiving Shanks, Counters, etc.)		" #9; p. 45	
Skiving Mch. with Fly Wheel (Skiving Counters, etc.)		" #9; p. 45	
New Patent Rolling Mch. for Leather Soles		" #9; p. 46	
Machine for rolling large ranges of Leather		" #9; p. 47	
Riveting Machine (For attachingsoles, etc.)		" #9; p. 49	
Power Loose Nailer No. 9		" #9; p. 51	
Standard No. 2 Treadle Combined Finishing Machine — 1908 Model (Post Type of Bottom Finishing Machine)		" #10; p. 12	
Standard Combined Fairstitching & Patching Machine (For Shoe Repair Work)		" #10; p. 31	
Standard No. 2 Sole Stitching Machine (Straight Needle Type)		" #10; p. 33	
Eccentric Cutting Press — for Treadle or Power (For dieing out small pieces)		" #10; p. 37	
Standard Lightning Cutting Press		" #10; p. 38	
Leather Clump Sole Skiving Machine		" #10; p. 40	
"Stanlock" Bed Laster with Side Pincers		" #10A; p. 4	
"Stanlock" Automatic Twin Tack Filler — (For filling Hand Tackers)		" #10A; p. 5	
"Stanlock" New Model Welt & Turn Sewing Machine	50 C	" #10 A; p. 6	
Krentler-Pym Insole Tack Puller		" #10 A; p. 7	
Insole Channeling Machine		" #10 A; p. 8	
Welt Grooving & Beveling Machine		" #10 A; p. 8	
Welt Ranging Machine (For stripping leather into welting)		" #10 A; p. 8	
Sole Channeler — For Welt or McKay Sewed Work		" #10A; p. 9	
Welt Hammer		" #10A; p. 9	
Lip Turner		" #10A; p. 9	
Shank Skiving Machine (Hand Power)		" #10A; p. 10	
Shank Skiving Machine (Power)		" #10A; p. 11	
Channel Opening Machine		" #10A; p. 11	

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Rough Rounding and Channeling Machine		Cat.	#10A; p. 12	
Channel Closing Machine	86 A	"	#10A; p. 14	
"Stanlock" Stitch Indenting Machine		"	#10A; p. 15	
Automatic Twin Leveler		"	#10A; p. 16	
"Webster" Turn Shoe Leveling Machine		"	#10A; p. 17	
"Stanlock" Laster (Consolidated Type)	86	"	#10A; p. 18	
Tacking, Pulling Over and Lasting Machine		"	#10A; p. 19	
"Stanlock" Rand Tacker (For tacking rands on Heels)		"	#10A; p. 21	
Double Open-Ended Cutting Press (Sole Cutter)		"	#10B; p. 4	
Revolution Cutting Press (Sole Cutter)		"	#10B; p. 5	
Standard Fitting Cutting Press (For cutting small pieces of Upper Leather)		"	#10B; p. 8	
"Julian" Sole Rounding Machine		"	#10B; p. 9	
Power Ranging or Stripping Machine		"	#10B; p. 10	
Power Bench Ranging Machine		"	#10B; p. 11	
"Commonsense" Leather Splitting Machine		"	#10B; p. 12	
Baby Splitting Machine		"	#10B; p. 13	
Bench Power Pricking Machine		"	#10B; p. 13	
Treadle Sole Stamping Machine		"	#10B; p. 14	
Power Sole Stamping Machine		"	#10B; p. 14	
Power Heeling Machine (For attaching heels)		"	#10B; p. 15	
Improved Power Heel Attaching Machine		"	#10B; p. 16	
Power Outside Heel Attaching Machine		"	#10B; p. 17	
Standard Patent Power Breasting Machine		"	#10B; p. 18	
Treadle Heel Breasting Machine		"	#10B; p. 19	
Bench Heel Breasting Machine		"	#10B; p. 20	
Shank Splitting and Ranging Machine		"	#10B; p. 20	
Leather Stiffener Skiving Machine		"	#10B; p. 21	
Improved Leatherboard Stiffener Skiving Machine		"	#10B; p. 21	
Tandem Stiffener Skiving Machine		"	#10B; p. 22	
Stiffener Moulding Machine		"	#10B; p. 23	
Twin Stiffener Moulding Machine		"	#10B; p. 24	
Stiffener Rolling Machine		"	#10B; p. 25	
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Puff Toe Moulding Machine		"	#10B; p. 26	
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Bench Power Feathering Machine (Sole Edge Beveling)		"	#10B; p. 28	
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Loop Lock Turn Shoe Sewing Machine		" #10B; p. 40	
Loop Lock Channeling Machine		" #10B; p. 41	
Waist and Breast Scouring Machine		" #10B; p. 42	
Standard Heel Filing Machine (Smoothing flat surface of heels).		" #10B; p. 43	
Improved Patent Heel Paring Machine (Heel trimming)		" #10B; p. 44	
Improved Forepart Paring Machine (Forepart Edge Trim.)		" #10B; p. 45	
Patent Heel & Breast Scouring Machine		" #10B; p. 46	
Seat Wheel & Heel Polishing Machine		" #10B; p. 47	
Patent Twin Edge Setting Machine		" #10B; p. 48	
Rotary Edge Setting Machine		" #10B; p. 49	
Improved Patent Bottom Scouring & Naumkeag Machine		" #10B; p. 50	
Breasting Machine		" #10B; p. 53	
The Standard Patent Top Iron Machine — (For ironing tops of shoes)		" #10B; p. 54	
Premier Piece Sole Skiving Machine (Tap Skiving)		" #10B; p. 56	
Stitch Separtaing and Welt Indenting Mach.		" #10B; p. 56	
Champion Seam Rubbing Machine (Back Seam)		" #10B; p. 59	
Union Seam Finisher (Back Seam)		" #10B; p. 59	
Power Toe Cap Perforating Machine		" #10B; p. 60	
Hand Toe Cap Perforator		" #10B; p. 61	
Eureka Self-Feeding Eyeletting Machine		" #10B; p. 61	
Gold Embossing Machine (For top facings, etc.)		" #10B; p. 62	
Improved Power Embossing Machine		" #10B; p. 63	
Patent Boot Treeing Machine		" #10B; p. 64	
Inseam Trimming Machine		" #17; p. 25	
Standard Twin Bottom Scouring Machine		" #17; p. 25	
Stanlock Knocking Up Machine (Rotary Pounding and Trimming Machine)		" #17; p. 10 (also loose leaf No. 5).	
Laying Machine: Sole	50 A		
Standard Rotary Machine Co., Rushden and Northampton, England.			
Rapid Lasting Machine	5X	Ex. 320; p. 1	
Chain Welt & Turn Sewer		" 320; p. 2	
Welt Insole Channeler		" 320; p. 3	
Welt Beater		" 320; p. 4	
Welt Splitter, Beveler and Groover		" 320; p. 4	
Welt Feather Edge and Sole Skiving Machine		" 320; p. 4A	
Welt Preparer (Cutting off, splitting, grooving and beveling welting)		" 320; p. 4 B	

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Automatic Rounder	7I–5K–95J	"	320; p. 5A
Rounder and Channeler		"	320; p. 6
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Outsole Stitcher (Welt Outsole)	7K–95K	"	320; p. 8
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Wire Tacking Machine		"	320; p. 11
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Stapling Machine		"	320; p. 14A
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McKay Sewing Machine		"	320; p. 16
Loose Nailer		"	320; p. 17
Trimming Machine (Heel Seat Trimmer)		"	320; p. 18
Rapid Heel Attacher		"	320; p. 19
Inside Heel Attacher		"	320; p. 20
High Speed Slugging Machine		"	320; p. 21
Sole Moulding Machine (Turn Sole Moulde)		"	320; p. 22
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Revolution Press (Sole Cutting Machine)		"	320; p. 26
Double Open Ended Press (Sole Cutting Machine)		"	320; p. 27
Single Open Ended Press (Sole Cutting Machine)		"	320; p. 27A
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Sole Rounding Machine		"	320; p. 29
Rapid Noiseless Splitter		"	320; p. 30
Splitting Machine		"	320; p. 30A
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Stiffener and Box Toe Skiver (Counter and Box Toe Skiving Machine)		"	320; p. 31A
Skiving Machine (Tap Skiving Machine)		"	320; p. 32
Improved Channeler (Apex Channeling Machine)		"	320; p. 33
Channel Opening Machine (Apex Channel Opening Machine		"	320; p. 35
Heel Building Machine		"	320; p. 37
Heel Compressor		"	320; p. 38
Heel Breasting Machine (foot power)		"	320; p. 40
Heel Breasting Machine (power)		"	320; p. 40A
Heel Trimmer		"	320; p. 41
Edge Trimmer		"	320; p. 42
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Bottom Buffing Machine (Shank wheel, shanking out device and brush)			" 320; p. 46
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Edge Setter			" 320; p. 47
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Seat Wheeling and Heel Burnishing Machine			" 320; p. 49
Polishing Machine (High Stand Finishing Shaft)			" 320; p. 51
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British Treeing Machine (Revolving)			" 320; p. 55A
New Power Grading and Cutting Machine			" 320; p. 55B
Perforating, Punching and Scolloping Machine			" 320; p. 56
Hook Setting Machine			" 320; p. 56A
Punching and Eyeletting Machine			" 320; p. 56B
Eclipse Clicking Press (Clicking Machine)			" 320; p. 57
Repairs Finishing Machine (Repairing Outfit)			" 320; p. 57A
Mixing Machine (for bottom filling)			" 320; p. 57B
Roller Skiver (Combined skiving and rolling machine)		Cat. 11; p. 8	
Channeling Machine (McKay)		" 11; p. 9	
Standard Sewing Machine Co., The, Cleveland, O.			
Butting Machine: Zigzag	100		
Staying Machine: Back Seam	100		
Stitching Machine: Bellows Tongue	100		
Stitching Machine: Button Fly Lining	100		
Stitching Machine: Button Stay	100		
Stitching Machine: Eyelet Row	100		
Stitching Machine: Eyelet Stay	100		
Stitching Machine: Fancy	100		
Seaming Machine: Foxing	100		
Stitching Machine: Foxing	100		
Stitching Machine: French Cord	100		
Stitching Machine: Label	100		
Seaming Machine: Lining	100		
Seaming Machine: Lining	100		
Stitching Machine: Lining Stay	100		
Stitching Machine: Lining Back Stay	100		
Stitching Machine: Lining to Tongue	100		
Stitching Machine: Lining & Top	100		
Stitching Machine: Pocket Strap	100		
Seaming Machine: Quarter	100		

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Stitching Machine: Side Stay & Tongue	100		
Stitching Machine: Tip	100		
Stitching Machine: Tongue	100		
Stitching Machine: Top Facing	100		
Staying Machine: Top	100		
Stitching Machine: Top	100		
Seaming Machine: Vamp Welt	100		
Seaming Machine: Zigzag Top	100		
Vamping Machine:	100		
Stewart Bros., Lynn, Mass.			
Finishing Machine: Counter End	52C		
Moulding Machine: Counter	52A		
Skiving Machine: Counter	52B		
Waxing & Rolling Machine: Counter	52D–53A		
Wetting Machine: Counter	52E		
Stimpson Co., Edwin B., New York, N. Y.			
Flexing Machine: Insole	118		
Pinking Machine: Hand Power	118		Defts. Ex. 314 p. 37
Perforating & Pinking Machine	118		Defts. Ex. 314 p. 97 (Insert)
Punching Machine: Tip	118		Defts. Ex. 314 p. 152
Summers & Sons, Wellinborough, England.			
Vamp Crimping Machine (Vamp Creasing Machine)		Cat. #17; p. 35	
John Thacker, Leicester & Northampton, Eng.			
Famous Skiving Machine (Tap Skiving Machine)		" #17; p. 41	
Finishing Shaft		" #17; p. 41	
Timson, Bullock & Barber Kettering, England.			
Heel Attaching Machine (Inside and out)		" #5; p. 1	
Heel Compressor		" #5; p. 2	
Lasting Machine		" #5; p. 9	
Welt Tacker		" #5; p. 11	
Heel Assembling Machine		" #5; p. 15	
Rand Tacker		" #5; p. 19	
Heel Slugging Machine		" #5; p. 28	
Power Breasting Machine		" #5; p. 25	
Heeling Machine (Lightning)		Loose Leaf; p. 17	
Rapid Lift Cutting Press		" " p. 17	
Cutting Press		" " p. 17	
Stapling Machine (With or without Horn)		Cat. #17; p. 21	

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to In Miscellaneous Individual Catalogues
Tower Bros., Hudson Mass.			
Buffing Machine	3A		
Cutting Machine: Sole	3F		
Scouring Machine: Heel	3C		
Stamping Machine	3D		
Stripping Machine	3E		
Setting Machine: Rotary Edge	3G		
Trimming Machine: Edge	3B		
Trimming Machine: Heel	3H		
Tubular Rivet & Stud Co., Boston, Mass.			
Hooking Machine:	162A		
Attaching Machine: Bow	157		
Riveting Machine:	131		
Turner Tanning Machinery Co., The, Peabody, Mass.			
Splitting Machine: Vaughan	119		
Union Lockstitch Co., E. Boston, Mass.			
Lockstitch Machine: High Speed (Welt Outsole)	5J–44B		
Staying Machine: Back Seam	44A		
Stitching Machine: Boot Counter	44A		
Siding Mach ne: Boot	44A		
Seaming Machine: Button Fly	44A		
Staying Machine: Button Fly	44A		
Stitching Machine: Counter	44A		
Seaming Machine: Foxing	44A		
Staying Machine: Foxing	44A		
Stitching Machine: Foxing	44A		
Seaming Machine: Quarter	44A		
Stitching Machine: Pocket Strap	44A		
Staying Machine: Side	44A		
Stitching Machine: Strap & Stay	44A		
Stitching Machine: Tip	44A		
Seaming Machine: Vamp	44A		
Staying Machine: Vamp	44A		
Seaming Machine: Vamp Welt	44A		
Vamping Machine	44A		
Union Special Sewing Machine Co., Boston, Mass.			
Butting Machine: Zigzag	101		
Overedging Machine	101		
Staying Machine: Back Seam	101		
Stitching Machine: Button Fly Lining	101		
Seaming Machine: Button Fly	101		
Staying Machine: Button Fly	101		

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Stitching Machine: Button Stay	101		
Stitching Machine: Eyelet Row	101		
Stitching Machine: Eyelet Stay	101		
Stitching Machine: Fancy	101		
Seaming Machine: Foxing	101		
Staying Machine: Foxing	101		
Stitching Machine: Label	101		
Seaming Machine: Lining	101		
Stitching Machine: Lining Stay	101		
Stitching Machine: Lining Back Stay	101		
Stitching Machine: Lining & Top	101		
Stitching Machine: Outside Heel Stay	101		
Seaming Machine: Quarter	101		
Stitching Machine: Tip	101		
Stitching Machine: Tongue	101		
Stitching Machine: Top Facing	101		
Seaming Machine: Vamp	101		
Staying Machine: Vamp	101		
Seaming Machine: Vamp Welt	101		
Seaming Machine: Zigzag Top	101		
Vamping Machine	101		
Universal Shoe Machinery Co., St.Louis, Mo.			
Clinch Machine: Sole	88–95I		
Finishing Shaft			Defts. Ex. 316 p. 163–164
Lockstitch Machine (Welt Outsole)	7L–95L		
Nailing Machine: Loose	7H–95P		
Sewing Machine: Welt & Turn	7D–95D		
Universal Shoe Machinery Co., Ltd., Northampton, England.			
Universal New Julian Sole Rounding Machine (Sole Rounding Machine)		Cat. #2; p. 7	
Universal Sole Rounding Machine (Sole Rounding Machine)		" #2; p. 8	
Universal Revolution Press (Sole Cutting Machine)		" #2; p. 9	
Universal Improved Double Open-ended Press (Sole Cutting Machine)		" #2; p. 10	
Universal Single Open-ended Press (Sole Cutting Machine)		" #2; p. 11	
Universal 7" Splitting Machine 1A Sole Splitter		" #2; p. 12	
Universal Louis Heel Skiving Machine (Splitting Machine for turned Soles)		" #2; p. 13	
Universal Leather Splitting Machine		" #2; p. 14	
Universal Leather Splitting Machine		" #2; p. 15	
Universal Power Sole Stamping Machine		" #2; p. 16	

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Improved Circular Knife Machine for cutting leather (Stripping Mch.)		Cat. #2; p. 17	
Universal Automatic Punching & Eyeletting Machine		" #2; p. 28	
Universal Lasting Machine		" #2; p. 35	
Universal High-Speed Chain-Stitch Welt and Turn Shoe Sewing Machine		" #2; p. 36	
Universal Lockstitch Welt & Turn Shoe Sewing Machine		" #2; p. 38	
Universal Welt Beater		" #2; p. 40	
Universal Lever Cement Cans		" #2; p. 41	
Universal Revo ution Sole Laying Machine		" #2; p. 42	
Ideal Rough Rounding & Channeling Machine		" #2; p. 44	
Universal Channel Opening Machine		" #2; p. 46	
Universal High-Speed Lockstitch Outsole St tching Machine		" #2; p. 47	
Universal Waxing & Wind ng Apparatus (Bobbin Winding Machine)		" #2; p. 48	
Universal Twin Channel Closing Machine (Channel Laying Machine)		" #2; p. 49	
Universal Automatic Twin Leveling Machine		" #2; p. 50	
Universal Stitch Separating Machine (No. 1)		" #2; p. 51	
Universal Stitch Separating Machine (No. 2)		" #2; p. 52	
Universal Rand Tacking Machine		" #2; p. 60	
Universal Heel Building Tacker		" #2; p. 61	
Universal Heel & Top Piece Compressing Machine		" #2; p. 62	
Universal Heel Machine (Heeling Machine)		" #2; p. 63	
Brittania Slugging Machine (on or off the last)		" #2; p. 65	
Universal Pulling-Over & Lasting Machine		" #2; p. 70	
Universal Piece Sole Skiving Machine		" #2; p. 71	
Universal Channel Opening Machine		" #2; p. 71	
Tacking-On Machine — machine sewn work (Sole Tacker)		" #2; p. 72	
Universal Improved Sole Sewing Machine (McKay Sewer)		" #2; p. 73	
Universal Chopping-Up & Bunking Machine (Nurling Machine)		" #2; p. 74	
Universal Loose Nailing Machine		" #2; p. 80	
Universal Patent Wire Screwing Machine (Standard Screw Machine)		" #2; p. 81	
Universal Heel Trimming Machine		" #2; p. 85	
Universal Edge Trimming Machine		" #2; p. 86	
Universal Heel Scouring Machine		" #2; p. 87	
Universal Edge Setter	" #2; p. 88		
Universal Seat Wheeling & Heel Burnishing Machine		" #2; p. 89	

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Universal Improved Bottom Buffing Machine		Cat. #2; p. 90	
Universal Naumkeag Buffing Machine		" #2; p. 92	
Universal Polishing Machine (Bottom Finishing Machine)		" #2; p. 93	
Universal Brushing Machine (High Stand Finishing Machine)		" #2; p. 94	
Universal Supply Co., Haverhill, Mass.			
Cementing Machine	160		
Velocity Machs. Co., Ltd., London, England.			
Finishing Machine: Little Victor #3		Loose Leaf 25	
Finishing Machine: Little Victor #4		Cat. #17; p. 42	
Victor Shoe Machinery Co., Boston, Mass.			
Finishing Shart	174E		
Indenting Machine	190		
Lockstitch Machine (Welt Outsole)	174D		
Skiving Machine: Am. Tap	174C		
Tacking Machine	174A		
Rounding & Channeling Mch.: Victor Rough Rounding	174B		
Ward & Gent, Northampton, England.			
Heeling Machine	188E		
Lasting Machine	188B		
Leveling Machine	188D		
Pulling-Over Machine	188A		
Sewing Machine: Welt & Turn	188C		
Walpole Shoe Supply Co., Boston, Mass.			
Rib Tightening or Hardening Machine	80		
Wheeler, E. L., Marlboro, Mass.			
Indenting Machine: Welt	115		
Knurling Machine	114		
Wheeler & Co., J. S., Boston, Mass.			
Flexing Machine: Insole	65X		
Splitting Machine: Baby	41A		
Wheeler, O. D., Marlboro, Mass.			
Stamping Machine: Star	112		
White & Co., F. H., So. Easton, Mass.			
Building Machine: Heel	46A		
Whitehead & Co., Dukinfield, England.			
Finishing Shaft		Cat. #17; p. 41	
Wilcox & Gibbs Sewing Machine Co., Boston, Mass.			
Stitching Machine: Bellows Tongue	135		
Stitching Machine: Button Fly Lining	135		

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Stitching Machine: Button Stay	135		
Stitching Machine: Eyelet Row	135		
Stitching Machine: Eyelet Stay	135		
Seaming Machine: Foxing	135		
Staying Machine: Foxing	135		
Stitching Machine: Foxing	135		
Stitching Machine: French Cord	135		
Stitching Machine: Label	135		
Seaming Machine: Lining	135		
Seaming Machine: Lining	135		
Stitching Machine: Lining Stay	135		
Stitching Machine: Lining Back Stay	135		
Stitching Machine: Lining to Tongue	135		
Stitching Machine: Lining & Top	135		
Stitching Machine: Outside Heel Stay	135		
Stitching Machine: Pocket Strap	135		
Stitching Machine: Side Stay & Tongue	135		
Stitching Machine: Top Facing	135		
Stitching Machine: Tongue	135		
Staying Machine: Top	135		
Stitching Machine: Top	135		
Seaming Machine: Vamp	135		
Staying Machine: Vamp	135		
Seaming Machine: Vamp Welt	135		
Worcester Machinery Co., Worcester, Mass.			
Blacking Machine: Star Heel	116		
Finishing Machine: Apex Heel	117		
Beading Machine: Heel	117		
W. J. Young Machinery Co., Lynn, Mass.			
Building Machine: Foot Power Heel	150		
Building Machine: Grover Heel	62F		
Buffing Machine: Perfection Box Toe	61D		
Buffing Machine: Perfection Counter	61D		
Beveling Machine: Strip	62I		
Compressing Machine: Heel	62G		
Cutting Machine: Wedge Lift	62J		
Finishing Machine: Counter End	61E		
Gouging Machine: Heel Lift	62K		
Moulding Machine: Counter	61C		
Skiving Machine: Box Toe	61B		
Skiving Machine: Counter	61B		
Skiving Machine: Shank Piece	62K		
Splitting Machine: Rand	185		
Treeing Machine: Pneumatic	166		
Waxing & Rolling Machine: Counter	61A		

DEFENDANTS' EXHIBIT 337.

[Put in Evidence, page 4392.]

LIST OF MACHINES OFFERED BY SHOE MACHINERY MANUFACTURERS AND DEALERS OTHER THAN UNITED SHOE MACHINERY COMPANY FOR PREPARING AND ATTACHING THE BOTTOMS TO THE UPPERS OF SHOES, EYELETTING MACHINES, DIEING-OUT MACHINES AND CLICKING MACHINES. NAMED IN

DEFENDANT'S EXHIBIT 311 (FOLIO OF CATALOGS).
DEFENDANT'S EXHIBIT 312, 313, 314, 315, 316, 317, 318, 319 and 320 (CATALOGS).
DEFENDANT'S EXHIBIT 321 (LETTERS, ADVERTISEMENTS AND CATALOGS).

BEATING MACHINE—WELT

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
The Boylston Mfg. Co., Boston, Mass.	192D		
Hamel Shoe Mchy. Co., Lynn and Haverhill, Mass.	95G		
Haverhill Shoe Mchy. Co., Haverhill, Mass.	5T		
The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	56E		
Standard Rot. Mch. Co., Ltd., Rushden and Northampton, England.	7G		
Type 1			Ex. 320; P. 4
" 2			" 320; P. 4C
Gimson & Co., Ltd., Leicester, England.			
Type 1		Cat. 6; P. 35J	
" 2		" 7; P. 10	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; P. 82
Universal Shoe Mchy. Co., Ltd., Northampton, England.		Cat. 2; P. 40	
Standard Engineering Co., Leicester, England.		Cat. 10A; P. 9	
Northampton Mchy. Co., Northampton, England.		Cat. 1; P. 20	
A. Johnson et Ses Fils, Paris, France.			Ex. 317; P. 139
Moenus Machine Works, Frankfurt, Germany.			
Type 1			Ex. 318; P. 100
" 2		Cat. 14A; P. 8	
Keats Mchy. Co., Frankfurt a. Main, Germany.		Cat. 24; P. 82	

BLOCKING MACHINE — OUTSOLE (Cutting Outsoles)

Quarmby & Hilliker (2 Types) Lynn, Mass.	11A & 11B

BUILDING MACHINE — HEEL

Manufacturer's Name and Location	Defts. Exhibit No. 121 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
W. T. Bosworth, Brockton, Mass.	43A		
Thos. Bostock & Sons, Brockton, Mass.	21F		
Fortuna Mch. Co., New York, N. Y.	79		
W. J. Young Mchy. Co., Lynn, Mass. (2 Types)	62F & 150		
Geo. Knight & Co., Brockton, Mass.	9H		
Parsons Mchy. Co., Marlboro, Mass.	12C		
F. H. White & Co., So. Easton, Mass.	46A		
Gimson & Co., Ltd., Leicester, Eng.			
Type 1.		Cat. 6; p. 45	
Type 2.		" 6; p. 53	
Atlas-Werke Pohler & Co., Leipsic, Germany.			
Type 1.			Exh. #319; p.41
Type 2.			" #319; p. 42
Northampton Machinery Co., Ltd., Northampton, Eng.		" #1; p. 1	
Universal Shoe Machinery Co., Northampton, Eng.		" #2; p. 61	
Standard Rotary Machine Co., Rushden & Northampton, England.			" #320; p. 37
Moenus Machine Works, Frankfurt, Germany.			
Type 1.			" #318; p.134
Type 2.		" #14A; p. 3	
A. Johnson et Ses Fils, Paris, France.			" #317; p.163
Timson, Bullock & Barber, Kettering, Eng.		" #5; p. 15	
Nolle's Works, Weissenfels, a S., Germany		" #18; p. 15	
Nolle's Works, Weissenfels, a S., Germany.		" #18; p. 16	
		" #18; p. 17	
		" #18; p. 23	
Keats Machy. Co., Frankfurt a Main, Germany.		" #21; p. 94	
		" #24; p. 48	
		" #24; p. 48	
		" #24; p. 48	
		" #24; p. 48	
		" #24; p. 96	

CEMENTING MACHINES (Cementing Taps or Soles).

Universal Supply Co., Haverhill, Mass.	160
Hazen-Brown Co., Brockton, Mass.	158
Boston Mch. Works Co., Lynn, Mass.	95X–49 (Cat. p. 34)
Nolle's Works, Weisenfels, Germany	70

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Northampton Mchy. Co., Northampton, England		Cat. #1; p. 9 & 10	
Atlas-Werke, Pohler & Co., Leipsic, Germany			Ex. 319; p. 94
A. Johnson et Ses Fils, Paris, France			Ex. 317; p. 147
			Ex. 317; p. 141
Keats Mchy. Co., Frankfurt, a M. Germany.		Cat. #22; p. 3	
Nolle's Works, Weisenfels, a S. Germany		Cat. #18; p. 48	
Nolle's Works, Weisenfels, a S. Germany		Cat. #20; p. 3	
Keats Mchy. Co., Frankfurt, a M. Germany		Cat. #24; p. 76	
Keats Mchy. Co., Frankfurt, a M. Germany		Cat. #24; p. 82	

Channeling Machine (Insoles and Outsoles).

The R. H. Long Mchy. Co., (2 Types) So. Framingham, Mass.	56W–56D		
Haverhill Shoe Mchy. Co., Haverhill, Mass.	95A–Welt–5B		
Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.	8Y–95Z		
Walter Pearson, Whitman, Mass.	23B		
Amer. Worsted Mchy. Co., Abington, Mass.	2A		
Geo. Knight & Co., Brockton, Mass.	9I		
Gimson & Co., Ltd., Leicester, England.			
Type 1		Cat. 6; p. 35I	
Type 2		" 6; p. 35K	
Type 3		" 7; p. 11	
Atlas-Werke-Pohler & Co., Ltd., Leipsic, Germany.			
Type 1			Exh. 319; p. 48
Type 2			" 319; p. 83
Type 3			" 319; p. 45
Keats & Bexon, Ltd., Stafford, England		" 4; p. 16	
Standard Rotary Machine Co., Rushden & Northampton, Eng.			
Type 1			" 320; p. 3
Type 2			" 320; p. 33
Type 3		" 11; p. 9	
Job Lee Premier Works, Kettering, England.		" 16; p. 3	
Standard Engineering Co., Leicester, England.			
Type 1		" 9; p. 24	
Type 2		" 10A; p. 8	
Type 3		" 10A; p. 9	
Type 4		" 10B; p. 41	
A. Johnson et Ses Fils, Paris, France.			
Type 1			" 317; p. 85
Type 2			" 317; p. 89
Type 3			" 317; p. 90

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Moenus Machine Works, Frankfurt, Germany.			
Type 1			Exh. 318; p. 39
Type 2			" 318; p. Insert 41A
Type 3			" 318; p. 41
Type 4			" 318; p. 43
Type 5			" 318; p. 100
Type 6	Cat.	#14A; p. 7	
Keats Machinery Co., Frankfurt a Main, Germany	"	#24; p. 46	
	"	#24; p. 79	
	"	#24; p. 88	
Nolle's Works, Weissenfels a S., Germany	"	#20; p. 15	
	"	#20; p. 15	

Clicking Machine.

Parsons Mchy. Co., Marlboro, Mass.	12B		
Seelye Mfg. Co., Boston, Mass.	182		
Gimson & Co., Leicester, Eng.			
Type 1		Cat. 6; p. 2	
Type 2		" 6; p. 3	
Type 3		" 6; p. 4	
Type 4		" 6; p. 5	
Atlas-Werke, Pohler & Co., Leipsic, Ger.			
Type 1			Ex. 319; p. 5
Type 2			Ex. 319; p. 6
Standard Rotary Mach. Co., Rushden & Northampton, Eng.			Ex. 320; p. 57
Dilley & Sons, Northampton, Eng.		Cat. 17; p. 24	
A. Johnson et Ses Fils, Paris, France			Ex. 317; p 15
Keats Mchy. Co., Frankfurt, Ger.		Cat. 23; p. 26	
Nolle's Works, Weissenfels, Ger.			
Type 1		Cat. 20; p. 2	
Type 2		" 20; p. 3	
Type 3		" 20; p. 7	
Type 4		" 18; p. 47	

Clinching Machine (Attaching Outsoles).

Universal S. M. Co., St. Louis, Mo.	88	
Standard Rotary Mach. Co., Rushden and Northampton, England.		Ex. 320; p. 11

Compressing Machine (Compressing Heels).

Gimson & Co., Leicester, Eng.	87A
Knox, Quarmby & Hilliker, Lynn, Mass.	10A

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Nolle's Works, Weisenfels, Germany.	74A		
W. J. Young Mchy. Co., Lynn, Mass.	62G		
Gimson & Company, Ltd., Leicester, Eng.		Cat. 6; p. 46	
Atlas-Werke Pohler & Co., Leipsic, Germany.		Cat. 319; p. 44	
Northampton Machinery Co., Ltd., Northampton, Eng.		" 1; p. 2 & 3	
Universal Shoe Machinery Co., Northampton, Eng.		" 2; p. 62	
Timson, Bullock & Barber, Kettering, Eng.		" 5; p. 2	
Job Lee Premier Works, Kettering, Eng.		" 16; p. 17	
Standard Rotary Machine Co., Rushden & Northampton, Eng.			Ex. 320; p. 38
A. Johnson et Ses Fils, Paris, France.			Ex. 317; p. 164
Moenus Machine Works, Frankfort, Germany.		" 14A; p. 2	
Keats Machinery Co., Frankfort a Main, Germany.		" 22; p. 5	
Nolle's Works, Weissenfels, a. S., Germany.			
Type 1	74A	" 18; p. 18	
Type 2		" 18; p. 19	
Type 3		" 18; p. 20	
Keats Machinery Company, Frankfort a Main, Germany.		" 24; p. 97	

Leather Cutting Machines (Including Dieing-out Machines).

Thos. Bostock & Sons, Brockton, Mass. (2 Types)	21H–21C	
Jas. Busfield, Haverhill, Mass.	6H	
Parsons Mchy. Co., Marlboro, Mass.	12A	
Boston Mch. Works Co., Lynn, Mass.	49 (Cat. P. 32)	
Quarmby & Hilliker, Lynn, Mass.	10B	
Seelye Mfg. Co., Boston, Mass.	92–93–94–95U	
Tower Bros. Co., Hudson, Mass.	3F	
W. J. Young Mchy. Co., Lynn, Mass.	62J	
Gimson & Co., Ltd., Leicester, England.		
Type 1		Cat. 6; p. 87A
" 2		" 6; P. 87B
" 3		" 6; P. 87
" 4		" 6; P. 89
" 5		" 6; P. 91
" 6		" 6; P. 93
" 7		" 6; P. 94
" 8		" 6; P. 94
" 10		" 8; P. 2
" 11		" 8; P. 12
" 12		" 8; P. 2

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Atlas-Werke-Pohler & Co., Leipsic, Germany.			
Type 1			Ex. 319; P. 7
" 2			" 319; P. 20
" 3			" 319; P. 21
" 4			" 319; P. 22
" 5			" 319; P. 23
" 6			" 319; P. 24
" 7			" 319; P. 25
Northampton Mchy. Co., Northampton, England.			
Type 1		Cat. 1; P. 6	
" 2		" 17; P. 31	
Universal Shoe Mchy. Co., Northampton, England.			
Type 1		Cat. 2; P. 9	
" 2		" 2; P. 10	
" 3		" 2; P. 11	
Keats & Bexon, Stafford, England.			
Type 1		Cat. 4; P. 17	
" 2		" 4; P. 18	
Timson, Bullock & Barber, Kettering, England.			
Type 1		Loose Leaf P. 17	
" 2		" " P. 17	
Standard Rotary Mch. Co., Northampton, England.			
Type 1			Ex. 320; P. 26
" 2			" 320; P. 27
" 3			" 320; P. 27A
" 4			" 320; P. 28
Standard Engineering Co., Leicester, England.			
Type 1		Cat. 9; P. 43	
" 2		" 9; P. 44	
" 3		" 10; P. 37	
" 4		" 10; P. 38	
" 5		" 10B; P. 4	
" 6		" 10B; P. 5	
" 7		" 10B; P. 8	
A. Johnson et Ses Fils, Paris, France.			
Type 1			Ex. 317; P. 73
" 2			" 317; P. 74
" 3			" 317; P. 76
" 4			" 317; P. 161
Moenus Machine Works, Frankfurt, Germany.			
Type 1			Ex. 318; P. 16
" 2			" 318; P. 18
" 3			" 318; P. 22

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Type 4			Cat. 318; P. 24
" 5			" 318; P. 26
" 6			" 318; P. 28
" 7			" 318; P. 30
" 8			" 318; P. 245
Keats Mchy. Co., Frankfurt a Main, Germany.			
Type 1		Cat. 22; P. 26	
" 2		" 24; P. 35	
" 3		" 24; P. 36	
" 4		" 24; P. 36	
" 5		" 24; P. 36	
" 6		" 24; P. 37	
" 7		" 24; P. 35	
" 8		" 24; P. 38	
" 9		" 24; P. 38	
" 10		" 24; P. 26	
Nolle's Works, Weissenfels a S., Germany.			
Type 1		Cat. 18; P. 43	
" 2		" 18; P. 44	
" 3		" 18; P. 45	
" 4		" 18; P. 46	
" 5		" 20; P. 5	
" 6		" 20; P. 6	
" 7		" 20; P. 6	
" 8		" 20; P. 7	
" 9		" 20; P. 7	
" 10		" 20; P. 7	

Evening Machine; Heel Lifts.

Quarmby & Hilliker, Lynn, Mass.	10F		
Seelye Mfg. Co., Boston, Mass.	91C–95V		
J. S. Wheeler & Co., Boston, Mass.	41A		
Gimson & Co., Ltd., Leicester, England.		Cat. 6; p. 5	
Atlas–Werke, Pohler & Co., Leipsic, Germany.			
Type 1			Ex. 319; p. 28
" 2			" 319; p. 31
Universal Shoe Mchy. Co., Northampton, Eng.		Cat. 2; p. 12	
		" 2; p. 14	
		" 2; p. 16	
Job Lee Premier Works, Kettering, Eng.		" 16; p. 12	
Standard Rotary Mach. Co., Rushden & Northampton, Eng.			Ex. 320; p. 30
			" 320; p. 30A
			" 320; p. 30B
E. Mills & Co., Kettering, Eng.		Cat. 17; p. 4	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Standard Engineering Co., Leicester, Eng.		Cat. 9; p. 45	
		" 10B; p. 12, 13	
Moenus Machine Works, Frankfurt a Main, Ger.			
Type 1		" 14A; p. 5	Ex. 318; p. 37
" 2			" 318; p. 59
A. Johnson et Ses Fils, Paris, France.			" 317; p. 80
			" 317; p. 81
Keats Mchy. Co., Frankfurt a M., Germany.		" 22; p. 4	
		" 24; p. 40	
		" 24; p. 40	
		" 24; p. 41	
		" 24; p. 41	
		" 24; p. 41	
		" 24; p. 43	
		" 24; p. 89	
Nolle's Works, Weissenfels, a S., Germany.		" 20; p 6	
		" 20; p. 16	

Eyeletting Machine.

American Worsted Mchy. Co., Abington, Mass.			
(4 Types)	2K–2B–2C–2D		
Geo. Knight & Co., Brockton, Mass.			
(Automatic Gang) (Gang-Double Raceway)			
(The United Co. have never had a Gang Eyeletting Machine or Eyeletting Machines of the Gang type.)	9G		
Peerless Machinery Co., Boston, Mass.			
(Rapid Gang Type)			
(The United Co. have never had a Gang Eyeletting Machine or Eyeletting Machines of the Gang type.)	67F–67A		
Gimson & Co., Leicester, England.			
Type 1		Cat. #6; p. 16A	
Type 2		" #6; p. 17	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. #319; p. 16
Universal Shoe Mchy. Co., Northampton, Eng.		" #2; p. 28	
Keats & Bexon, Ltd., Stafford, Eng.			
Type 1		" #4; p. 21	
Type 2		" #4; p. 21	
Job Lee Premier Works, Kettering, Eng.		" #16; p. 2	
Standard Rotary Mach. Co., Rushden & Northampton, England.			Ex. #320; p. 56B

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Dilley & Sons, Northampton, England.		Loose Leaf 15	
Standard Engineering Co., Leicester, Eng.		Cat. #10B; p. 61	
A. Johnson et Ses Fils, Paris, France.			
Type 1			Ex. #317; p. 57
Type 2			" #317; p. 58
Type 3			" #317; p. 59
Moenus Machine Works, Frankfurt, Germany.			
Type 1			Ex. #318; p. 235
Type 2			" #318; p. 236
Type 3			" #318; p. 238
Type 4			" #318; p. 240
Nolle's Works, Weissenfels, a S , Germany.			
Type 1		Cat. #18; p. 35	
Type 2		" #20; p. 4	
Type 3		" #20; p. 4	
Type 4		" #20; p. 4	
Keats Machinery Co., Frankfurt a M., Germany.			
Type 1		" #20; p. 15	
Type 2		" #20; p. 16	
Type 3		" #24; p. 17	
Type 4		" #24; p. 18	
Type 5		" #24; p. 19	

FAIRSTITCHING MACHINE.

Landis Mch. Co., St. Louis, Mo.			Ex. 316; p. 161
Larsen Mchy. Co., Brooklyn, N. Y.			Ex. 316; p. 159
C V. Engstrom Co., Peoria, Ill.			Ex. 316; p. 161A
The John O'Flaherty Co., Rouses Point, N. Y.	58		
Puritan Mfg. Co., Boston, Mass	73E		
The J. D. Randall Co , Cincinnati, O	57		Ex. 313;
Jas. Clark Lea. Co., St. Louis, Mo.	161 (Cat. p. 68–69–70)		
Union Lockstitch Co., E. Boston, Mass.	44B–5J		
Victor S. M. Co., Boston, Mass.	174D		
Gimson & Company, Ltd., Leicester, England.			
Type 1		Cat. 6; p. 35C	
" 2		" 6; p. 36A	
" 3		" 7; p. 7	
Atlas-Werke, Pohler & Co., Leipsic, Germany	189		Ex. 319; p. 91
			Ex. 319; p. 92
Universal S. Mchy. Co., Northampton, England,			
Type 1		Cat. 2; p. 47	
Keats & Bexon, Ltd., Stafford, England.			
Type 1		" 4; p. 3	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Type 2		Ex. 4; p. 4	
" 3		" 4; p. 5	
" 4		" 4; p. 13	
" 5		" 3; p. 12	
Standard Rotary Mch. Co., Northampton, England.	7K–95K		Ex. 320; p. 8
Standard Eng. Co., Leicester, Eng.	50B	Cat. 9; p. 39	
		" 10; p. 31	
		" 10; p. 33	
A. Johnsen et Ses Fils, Paris, France	66L		Ex. 317; p. 145
Moenus Machine Works, Frankfurt, Germany.			
Type 1			Ex. 318; p. 80
" 2			Ex. 318; p. 82
" 3			Ex. 318; p. 86
" 4			Ex. 318; p. 96
" 5			Ex. 318; p. 100
" 6		Cat. 14A; p. 1 & 9	
" 7		" 14A; p. 6	

Filling Machine — Bottom.

No. American Chemical Co., Boston, Mass.	147		
Standard Rotary Mach. Co., Rushden & Northampton, England.			Ex. 320; p. 57B
Keats Mchianery Co., Frankfurt, Germany.		24; p. 92	

Flexing Machine: McKay Insole.

Edw. E. Spencer, Jr., New York, N. Y.	26	Ex. 312
Edwin B. Stimson Co., New York, N. Y.	118	Ex. 314
J. S. Wheeler & Co., Boston, Mass.	65X	

Gouging Machine: Heel Lifts.

Thos. Bostock & Sons, Brockton, Mass.	21B	
W. J. Young Mchy. Co., Lynn, Mass.	62K	
A. Johnson et Ses Fils		Ex. 317, P. 160

Grading Machine (Gauging Thickness of Soles)

Lacene Mfg. Co., Manchester, N. H.	77	
Standard Rotary Machine Company, Northampton, Eng.		Ex. 320; p. 55B
Moenus Machine Works, Frankfurt, Germany.	Cat. 14A; p. 4	
Keats Machinery Company, Frankfurt a Main, Ger.		
Type 1	Cat. 24; p. 8	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Type 2		Cat. 24; p. 80	
" 3		Cat. 24; p. 38	

Grooving & Beveling Machine — Welt.

Hamel Shoe Mchy. Co., Lynn and Haverhill, Mass.	178B		
Haverhill Shoe Mchy. Co., Haverhill, Mass.	5U		
The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	56M		
Standard Rotary Mach. Co., Rushden & Northampton, Eng.			
(Type 1)			Ex. 320; p. 4
(" 2)			" 320; p. 4B
Standard Engineering Co., Leicester, Eng.		Cat. 10A; p. 8	
Moneus Machine Works, Frankfurt, Germany.		" 14A; p. 6	
Nolle's Works, Weissenfels a. S., Germany.		" 20; p. 15	
A. Johnson & Son, Paris, France.			

Hardening Shoulder Machine (For Gem Insoles).

The Plymouth Rubber Co., Canton, Mass.	81
Walpole Shoe Supply Co., Boston, Mass.	80

Heeling Machine (Attaching Heels)

The R. H. Long Mchy. Co., S. Framingham, Mass.	56Q		
Hav. Shoe Mchy. Co., Haverhill, Mass.	8P–5N		
Ward & Gent, Northampton, Eng.	188–E		
Gimson & Co., Ltd., Leicester, England.			
(Type 1)		Cat. 6; p. 49–50	
(" 2)		" 6; p. 49A	
(" 3)		" 6; p. 51	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			
(Type 1)			Ex. 319; p. 102
(" 2)			" 319; p. 103
(" 3)			" 319; p. 106
Universal S. Mch. Co., Northampton, Eng.		" 2; p. 63	
Timson, Bullock & Barber Co., Kettering, Eng.			
(Type 1)		" 5; p. 1	
(" 2)		Loose Leaf p. 17	
Job LeePremier Works, Kettering, Eng.		Cat. 16; p. 5	
Standard Rot. Mch. Co., Northampton, Eng.			
(Type 1)			Ex. 320; p. 19
(" 2)			" 320; p. 20

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Standard Engineering Co., Leicester, Eng.			
(Type 1)		Cat. 10B; p. 15	
(" 2)		" 10B; p. 16	
(" 3)		" 10B; p. 17	
A. Johnson et Ses Fils, Paris, France.			
(Type 1)			Ex. 317; p. 169
(Type 2)			" 317; p. 170
(Type 3)	66K		" 317; p. 171
Moenus Machine Works, Frankfurt, Germany.			
(Type 1)			" #318; p. 141
(" 2)			" #318; p. 136
(" 3)			" #318; p. 143
(" 4)			" #318; p. 145
(" 5)		Cat. #14A; p. 11	
Northampton Mchy. Co., Northampton, Eng.		" #1; p. 4	
H. Keeper, London, Eng.		Loose Leaf p. 22	
Timson, Bullock & Barber Co., Kettering, Eng.		Cat. #1; p. 17	
A. T. Ralphs Co., Leeds, Eng.		Loose Leaf; p. 15	
Nolle's Works	74B	Cat. #19; p. 22	
Ward & Gent, Northampton, Eng.	188E		
Keats Mchy. Co., Frankfurt, Germany.		Cat. #24; p. 98	
Type 2.		" #24; p. 102	
" 3.		" #24; p. 89	
" 4.		" #24; p. 101	

Lasting Machine.

Atlas-Werke, Pohler & Co., Leipsic, Germany. (2 Types)	138B–191		
Gimson & Co., Ltd., Leicester, England. (2 Types)	5F–165		
The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	5E–56C		
Stand. Rot. Mch. Co., Ltd., Rushden & Northampton, Eng. (2 Types)	5X–95B		
A. Johnson & Sons, Paris, France.	66A		
The Boylston Mfg. Co., Boston, Mass.	192A		
The Louis G. Freeman Co., Cincinnati, O. (2 Types)	7A1–7A2		
Ward & Gent, Northampton, England.	188B		
Nolle's Works, Weisenfels, Germany.	139		
The Stand. Eng. Co., Leicester, England.	86		
Gimson & Co., Ltd., Leicester, England.		Cat. #6; p. 25	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; p. 56 to 59

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Northampton Mchy. Co., Northampton, England.		Cat. #1; p. 14	
Universal Shoe Mchy. Co., Northampton, England.		Cat #2; p. 35	
Timson, Bullock & Barber, Kettering, England.		Cat. #5; p. 9	
Standard Rot. Mach. Co., Rushden & Northampton, England.			Ex. 320; p. 1
Standard Rot. Mach. Co., Rushden & Northampton, England.			Ex. 320, p. 12B
Standard Engineering Co., Leicester, England.		Cat. #10A; p. 4 " #10A; p. 5 " #10A; p. 18, 19, 21.	
A. Johnson et Ses Fils, Paris, France.			Ex. 317; p. 122 123, 124
Moenus Machine Works, Frankfurt, Germany.		Cat. #14A; p. 3	Ex. 318; Insert–63A Ex. 318; p. 66 and 68.
A. T. Ralphs, Leeds & Norwich, England.		Loose Leaf 14	
Nolle's Works, Weissenfels, a S. Germany.			
Type 1		Cat. #18; p. 3	
Type 2		Cat. #18; p. 4	
Type 3		Cat. #20; p. 11	
Keats Shoe Mchy. Co., Frankfurt a Main. Germany.			
Type 1		Cat. #22; p. 10	
Type 2		Cat. #22; p. 12	
Type 3		Cat. #24; p. 61	
Type 4		Cat. #24; p 89	
Nolle's Works, Weissenfels, a S., Germany.			
Type 4		Cat. #20; p. 11	
Type 5		Cat. #20; p. 11	
Ward & Gent, Northampton, Eng.	188B		

Laying Machine: Channel.

Amer. Worsted Mchy. Co., Abington, Mass.	1D		
Geo. Knight & Co., Brockton, Mass.	9J		
Stand. Rot. Mch. Co., Ltd., Rushden and Northampton, England.	7M–95L		Ex. 320; p. 9
Gimson & Co., Ltd., Leicester, Enlgand. (Type #1)		Cat. #6; p. 35L	
Gimson & Co., Ltd., Leicester, England. (Type #2)		Cat. #6; p. 41	
Gimson & Co., Ltd., Leicester, England. (Type #2)		Cat. #6; p. 42	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; p. 95
Universal Shoe Mchy. Co., Ltd., Northampton, England.		Cat. #2; p. 49	
Job Lee Premier Works, Kettering, England.		Cat. #16; p. 5	
A. Johnson et Ses Fils, Paris, France.			Ex. 317; p. 148
Moenus Machine Works, Frankfurt, Germany. (Type #1)			Ex. 318; p. 106
Moenus Machine Works, Frankfurt, Germany. (Type #2)			Ex. 318; p. 124
Moenus Machine Works, Frankfurt, Germany. (Type #3)		Cat. #14A; p. 10	
Moneus Machine Works, Frankfurt, Germany.			Ex. 318; p. 65
Keats Machinery Co., Frankfurt, Germany. (Type #1)		Cat. #24; p. 75	
(Type #2)		Cat. #24; p. 84	
Nolle's Works, Weissenfels, Germany.		Cat. #18; p. 33	
Standard Eng. Co., Leicester, England.	86A	Cat. #10A; p. 14	

Laying Machine: McKay Welt.

Kimball Bros. & Sprague, Brockton, Mass.	36		
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; p. 40

Laying Machine: Sole.

The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	5H–56F		
The Standard Eng. Co., Leicester, England.	50A		
Gimson & Co., Leicester, England.	5S	Cat. 6; p. 35E	
A. Johnson et Ses Fils, Paris, France.			Ex. 317; p. 141
Moenus Machine Works, Frankfurt, Germany.			Ex. 318; p. 76
Atlas-Werke, Pohler & Co., Leipsic, Germany.	129A–186		Ex. 319; p. 87
Standard Rotary Mch. Co., Rushden & Northampton, Eng.	5Y–95H		Ex. 320; p. 5
Universal Shoe Mchy. Co., Northampton, England.		Cat. 2; p. 42	
Nolle's Works, Weisenfels, Germany. Type 2		" 18; p. 8	
		" 20; p. 16	
Keats Machinery Co., Frankfurt, Germany. Type 2		" 24; p. 82	
		" 24; p. 83	
Standard Engineering Co., Leicester, England.	50A	" 17; p. 10	
		Loose Leaf #5	

Leveling Machine.

The Boylston Mfg. Co., Boston, Mass. (3 Types)	109–179–108		

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.	193A		
The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	56I		
Haverhill Shoe Mchy. Co., Haverhill, Mass.	5M		
Ward & Gent, Northampton, Eng.	188D		
Gimson & Co., Ltd., Leicester, Eng.			
Type 1.		Cat. #6; p. 43	
Type 2.		" #6; p. 44	
Type 3.		" #7; p. 14	
Universal Shoe Mchy. Co., Northampton, Eng.		" #2; p. 50	
Standard Rotary Mch. Co., Northampton, Eng.	7N–95N		Ex. #320; p. 9A
Standard Engineering Co., Leicester, England.			
Type 1.		" #10A; p. 16	
Type 2.		" #10A; p. 17	
Type 3.		" #10B; p. 39	
A. Johnson et Ses Fils, Paris, France.		"	#317; p. 151
Moenus Machine Works, Frankfurt, Germany.			
Type 1.		"	#318; p. 126
Type 2		"	#318; p. 128
Type 3		" #14A; p. 10	
Atlas-Werke, Pohler Co., Leipsic, Germany.			
Type 1.		"	#319; p. 97
Type 2.		"	#319; p. 98
Standard Engineering Co., Leicester, England.		1 #10B; p. 39	
Keats Machinery Co., Frankfurt a Main, Germany.		Cat. #23; p. 69	
		" #23; p. 69	
		" #23; p. 70	
		" #23; p. 70	
		" #24; p. 75	
		" #24; p. 76	
		" #24; p. 91	
		" #22; p. 21	
Nolle's Works, Weissenfels a S., Germany.		" #18; p. 26	
Ward & Gent, Northampton, Eng.	188D		

Welt Outsole Stitcher.

The Boylston Mfg. Co., Boston, Mass.	192B		
Landis Mach. Co., St. Louis, Mo.	170 (Cat. p. 27)		Ex. 316; p. 161
Larsen Mchy. Co., Brooklyn, N. Y.			Ex. 316; p. 159
C. V. Engstrom Co., Peoria, Ill.			Ex. 316; p. 161A
Jas. Clark Lea. Co., St. Louis, Mo.	161		

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
		(Cat. p. 68–69–70)	
Union Lockstitch Co., E. Boston, Mass.	5J–44B		
Universal S. M. Co., St. Louis, Mo.	7L–95L		
Victor S. M. Co., Boston, Mass.	174D		
The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	5I–56A		
Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.	193C		
Gimson & Co., Ltd., Leicester, England, Type 1		Cat. 6; p. 35C	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			
Type 1	189		Ex. 319; p. 91
" 2			Ex. 319; p. 92
Universal Shoe Mchy. Co., Northampton, Eng., Type 1		Cat. 2; p. 47	
Keats & Bexon, Ltd , Stafford, England.			
Type 1		Cat. 4; p. 3	
" 2		" 4; p. 4	
" 3		" 3; p. 12	
Standard Rot. Mch. Co., Northampton, England.	7K–95K		Ex. 320; p. 8
Standard Eng. Co., Leicester, Eng.			
Type 1		Cat. 9; p. 25	
" 2	50B	" 9; p. 39	
" 3		" 10; p. 33	
A. Johnson et Ses Fils, Paris, France.	66L		Ex. 317; p. 145
Moenus Machine Works, Frankfurt a Main, Germany.			
Type 1			Ex. 318; p. 96
" 2			Ex. 318; p. 100
" 3		Cat. 14A; p. 2–7	
" 4		" 14A; p. 6	
Job Lee Premier Works, Kettering, England.		Cat. 16; p. 10	
A. T. Ralphs, Leeds & Norwich, England.		Loose Leaf p. 15	
Adrian & Busch, Oberursel, Germany. (This concern offers a complete German Welt System for the manufacture of Goodyear Welt Shoes)		Cat. 23; p. A	
Nolle's Works, Weisenfels, Germany			
Type 1		Cat. 18; p. 7	
Type 2		Cat. 20; p. 16	
Keats Mchy. Co., Frankfurt a Main, Germany			
Type 1		Cat. 22; p. 15	
" 2		" 22; p. 16	
" 3		" 22; p. 17	
" 4		" 23; p. 65	
" 5		" 24; p. 72	
" 6		" 24; p. 73	

MOULDING MACHINE (For Outsoles and Turn Soles)

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
The Boylston Mfg. Co., Boston, Mass.	110		
Seelye Mfg. Co., Boston, Mass.	91F		
Quarmby & Hilliker, Lynn, Mass.	10D		
Haverhill Shoe Mchy. Co., Haverhill, Mass.	5D		
Hamel S. Mchy. Co., Lynn & Haverhill, Mass.	159		
Gimson & Co., Leicester, England.			
Type #1		Cat. #7; p. 19	
Type #2		Cat. #6; p. 24	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			
Type #1			Ex. 319; p. 63
Type #2			Ex. 319; p. 64
Type #3			Ex. 319; p. 78
Moneus Machine Works, Frankfurt, Germany.			
Type #1			Ex. 318; p. 45
Type #2			Ex. 318; p. 47
Moenus Machine Works, Frankfurt, Germany.			Ex. 318; p. 89
Standard Rotary Mach. Co., Rushden, Northampton, England.			Ex. 320; p. 22
Standard Eng. Co., Leicester, England.		Cat. #10B; p. 32	
Nolle's Works, Weissenfels, a S., Germany.		Cat. #18; p. 9	
Keats Mchy. Co., Frankfurt, a Main, Germany.		Cat. #23; p. 45	
Keats Mchy. Co., Frankfurt, a Main, Germany.		Cat. #24; p. 50	
Keats Mchy. Co., Frankfurt, a Main, Germany.		Cat. #24; p. 51	
A. Johnson et Ses Fils, Paris, France.			Ex. 317; p. 136

NAILING MACHINE: LOOSE.

Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.	172A		
The R. H. Long Mchy. Co., So. Framingham, Mass.	56J		
Universal Shoe Mchy. Co., St. Louis, Mo.	7H–95P		
Victor Shoe Mchy. Co., Boston, Mass.	174A		
Gimson & Co., Leicester, Eng.			
Type 1		Cat. 6; p. 35N	
Type 2		Cat. 6; p. 36	
Standard Engineering Co., Leicester, Eng.			
Type 1		" 9; p. 51	
Type 2		" 9; p. 49	
A. Johnson et Ses Fils, Paris, France.			
Type 1			Ex. 317; p. 130
Type 2			Ex. 317; p. 172
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; p. 73

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Moenus Machine Works, Frankfurt, Germany.			
Type 1			Ex. 318; p. 198
Type 2		Cat. 14A; p. 10	
Type 3			Ex. 318; p. 120
Standard Rotary Machine Co., Rushden & Northampton, Eng.			Ex. 320; p. 17
Keats Machinery Co., Frankfurt, Germany.			
Type 1		" 24; p. 74	
Type 2		" 24; p. 110	
Nolle's Works, Frankfurt, Germany.		" 20; p. 14	
Universal Shoe Machinery Co., Northampton, Eng.		" 2; p. 80	

Opening Machine — Channel.

Amer. Worsted Mchy. Co., Abington, Mass.	1J		
Geo. Knight & Co., Brockton, Mass.	9K		
Gimson & Co., Ltd., Leicester, England.		Cat. 6; P. 35M & 107	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			
Type 1			Ex. 319; P. 49
" 2			" 319; P. 90
Universal Shoe Mchy. Co., Northampton, England.		Cat. 2; p. 46	
		" 2; p. 71	
Job Lee Premier Works, Kettering, England.		Cat. 16; P. 8	
Standard Rotary Mch. Co., Rushden & Northampton, England.	7J		Ex. 320; P. 7 & 35
Standard Engineering Co., Ltd., Leicester, England.		Cat. 10A; P. 11	
		" 10B; P. 34	
A. Johnson et Ses Fils, Paris, France.			
Type 1			Ex. 317; P. 96
" 2			" 317; P. 144
Moenus Machine Works, Frankfurt, Germany.		Cat. 14A; P. 9	Ex. 318; P. 103
Nolle's Works, Weissenfels a S., Germany.			
Type 1		Cat. 18; P. 33	
" 2		" 20; P. 15	
Keats Mchy. Co., Frankfurt, Germany.			
Type 1		Cat. 24; P. 26	
" 2		" 24; P. 84	
" 3		" 24; P. 51	

Press — Veneer (For pressing Cemented Soles and Taps).

Jas. Busfield, Haverhill, Mass.	6E		
Keats Machinery Co., Frankfurt a M., Germany.			
Type 1		Cat. 24; p. 46	

PRESSING MACHINE: HEEL.

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Seelye Mfg. Co., Boston, Mass.	91B		
Atlas-Werke, Pohler & Co. Leipsic, Germany.			Ex. #319; p. 44
Nolle's Works, Weissenfels, a. S , Germany.		Cat. #18; p. 21	
Keats Machinery Co., Frankfurt a Main, Germany.		Cat. #24; p. 99	

PULLING MACHINE: TACK.

The Louis G. Freeman Co., Cincinnati, O. (2 Types)	78F–78A		
Standard Engineering Co., Leicester, England.		Cat. 10A; p. 7	
Nolle's Works, Weissenfels a S., Germany.		" 20; p. 12	

PULLING-OVER MACHINE.

Atlas-Werke, Pohler & Co., Leipsic, Germany.	71		Ex. 319; p. 55
Moenus Mch. Works, Frankfurt, Germany.	151	Cat. 14A; p. 1	
Ward & Gent, Northampton, England.	188A		
Gimson & Co., Ltd., Leicester, England.		Cat. 6; p. 27	
Universal Shoe Mchy. Co., Ltd., Northampton, England.		Cat. 2; p. 70	
Standard Rotary Mch. Co., Rushden & Northampton, England.			Ex. 320; p. 13
Standard Engineering Co., Leicester, England.		Cat. 10A; p. 19	
Nolle's Works, Weisenfels, Germany.	168	Cat. 18; pp. 1	
Keats Mchy. Co., Frankfurt a Main, Germany.		Cat. 22; p. 9	

PULLING & RESETTING MACHINE: TACK.

The Louis G. Freeman Co., Cincinnati, Ohio.	7B		
Standard Engineering Co., Leicester, England.		Cat. #10A; p. 7	
Nolle's Works, Weissenfels, a S., Germany.		" #20; p. 12	

REDUCING MACHINE.

Amer. Worsted Mchy. Co., Abington, Mass.	1F		
Geo. Knight & Co., Brockton, Mass.	9D		
Theo. Ringerbach, (3 Types) Cincinnati, Ohio.	126		
Standard Engineering Co., Leicester, England.			
Type 1		Cat. 10A; P. 10	
" 2		" 10A; P. 11	
A. Johnson et Ses Fils, Paris, France.			
Type 1			Ex. 317; P. 91
" 2			" 317; P. 140

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; P. 84
Job Lee Premier Works, Kettering, England.		Cat. 16; P. 11	
Moenus Machine Works, Frankfurt, Germany.			Ex. 318; P. 58
Keats Mchy. Co., Frankfurt a Main, Germany.			
Type 1		Cat. 24; P. 80	
" 2		" 23; P. 73	

Rolling Machine.

James Busfield, Haverhill, Mass.	6D		
Quarmby & Hilliker, Lynn, Mass.	10E		
Seelye Mfg. Co., Boston, Mass.	91D–95W		
Moenus Machine Works, Frankfurt, Germany.			
Type 1			Ex. 318; p. 12
Type 2			Ex. 318; p. 14
Gimson & Company, Leicester, England.			
Type 1		Cat. 6; p. 81	
Type 2		Cat. 6; p. 84	
Type 3		Cat. 6; p. 85	
Type 4		Cat. 6; p. 86	
Type 5		Cat. 6; p. 86	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			
Type 1			Ex. 319; p. 141
Type 2			Ex. 319; p. 142
Type 3			Ex. 319; p. 143
Standard Engineering Co., Leicester, England.			
Type 1		Cat. 9; p. 46	
Type 2		Cat. 9; p. 47	
Keats & Bexon, Ltd., Stafford, England.			
Type 1		Cat. 4; p. 15	
Type 2		Cat. 4; p. 15	
Type 3		Cat. 4; p. 18	
Type 4		Cat. 4; p. 19	
Type 5		Cat. 3; p. 17	
Nolle's Works, Weissenfels, a S., Ger.			
Type 1		Cat. 18; p. 41	
Type 2		Cat. 20; p. 6	
Type 3		Cat. 20; p. 6	
Keats Machinery Company, Frankfurt a M., Germany.			
Type 1		Cat. 24; p. 39	
Type 2		Cat. 24; p. 39	
Standard Rotary Machine Co., Rushden & Northampton, England.			Ex. 320; p. 25

ROUGHING MACHINE: TAP.

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Peerless Machinery Co., Boston, Mass.	67J		
Keats Machinery Company, Frankfurt a M., Germany		Cat. 24; p. 51	

ROUGH ROUNDING & CHANNELING MACHINE.

Stand. Rot. Mch. Co., Ltd., Rushden and Northampton, Eng.	71–5K–95J		
The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	56G		
Victor Shoe Mchy. Co., Boston, Mass.	174B		
Haverhill Shoe Mchy. Co., Haverhill, Mass.	5V		
Moenus Machine Works, Frankfurt, Germany.			Ex. 318; p. 41
Type 2			" 318; p. 35
" 3			" 318; p. 101
Gimson & Co., Leicester, Eng.		Cat. 6; p. 35G	
Type 2		" 7; p. 12	
Standard Rotary Mch. Co., Rushden & Northampton, Eng.	71–5K–95J		" 320; p. 6
Type 2			" 320; p. 29
Atlas-Werke, Pohler & Co., Leipsic, Germany.			" 319; p. 87
			" 319; p. 88
Standard Engineering Co., Leicester, England.		Cat. 10A; p. 12	
Universal Shoe Mchy. Co., Northampton, England.		" 2; p. 44	
A. Johnson et Ses Fils, Paris, France.			" 317; p. 143
Moenus Machine Works, Frankfurt, Germany.		" 14A; p. 9	
Nolle's Works, Weissenfels, Germany.		" 20; p. 16	
Keats Machinery Co., Frankfurt, Germany.		" 24; p. 34	

ROUNDING MACHINE (Rounding Soles, Heel Seats and Taps)

The Louis G. Freeman Co., Cincinnati, Ohio.	8T–78D		
Cons. Rot. Rdr. Co., Cincinnati, Ohio			
Type 1	128A		
Type 2	128A		
The Boylston Mfg. Co., Boston, Mass.	8X–5A–95B2		
Amer. Worsted Mchy. Co., Abington, Mass.	1A		
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; p. 27
Stephen Lucking, Chester, England.		Cat. 17; p. 13	
Universal Shoe Mchy. Co., Northampton, Eng.			
Type 1		" 2; p. 7	
Type 2		" 2; p. 8	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Standard Engineering Co., Leicester, Eng.		Cat. 10B; p. 9	
A. Johnson et Ses Fils, Paris, France.			Ex. 317; p. 78
Nolle's Works, Weissenfels, Germany.		" 18; p. 42	
Keats Mchy. Co., Frankfurt, Germany.		" 24; p. 38	
Gimson & Co., Ltd., Leicester, England.			
Type 1		" 6; p. 34	
" 2		" 7; p. 15	

Scarfing Machine: Spring Heel.

Thos. Bostock & Sons, Brockton, Mass.	21D	
Thos. J. Bowden & Son, Marblehead, Mass.	28	
W. J. Young Mchy. Co., Lynn, Mass.	152K	
Northampton Mchy. Co., Northampton, England.		Cat. #1; p. 8

Sewing Machine: Little McKay Turn.

George Hobbs, Boston, Mass.	177	

Sewing Machine: McKay.

Shawmut Machinery Co., Boston, Mass.		
Haverhill Supply Co., Haverhill, Mass.		
Louis G. Freeman, Cincinnati, Ohio.		
E. E. Spencer & Co., New York, N. Y.		
Manufacturers' Supply Co., St. Louis, Mo.		
J. W. White & Co., Haverhill, Mass.		
Lynn Supply Co., Lynn, Mass.		
Amer. Worsted Mchy. Co., Abington, Mass.	1K	
Walter Pearson, Whitman, Mass.	23A	
Standard Rotary Mach. Co., Rushden & Northampton, England.		Ex. #320; p. 16
Gimson & Co., Leicester, England.		Cat. 6; p. 38
Standard Engineering Co., Leicester, England.		
Type 1		" #9; p. 35
Type 2		" #9; p. 36
Atlas-Werke, Pohler & Co., Leipsic, Germany.		
Type 1		Ex. #319; p. 68
Type 2		" #319; p. 69
Type 3		" #319; p. 71
Type 4		" #319; p. 69
A. Johnson et Ses Fils, Paris, France.	66B	" #317; p. 131
Job Lee Premier Works, Kettering, Eng.		Cat. #16; p. 15
Keats & Bexon, Ltd., Stafford, England.		
Type 1		" #4; p. 2
Type 2		" #4; p. 3

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Keats Mchy. Co., Frankfurt a M., Germany.			
Type 1		Cat. #24; pp. 69–71	
Type 2		" #22; p. 23	
Nolle's Works, Weissenfels, Germany.			
Type 1	130A	" #18; p. 13	
Type 2		" #18; p. 14	
Universal Shoe Mchy. Co., Northampton, Eng.		" #2; p. 73	
Moenus Machine Works, Frankfurt a M., Germany.			Ex. #318; p. 78

Sewing Machine — Welt & Turn.

Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.	178C		
Haverhill Shoe Mchy. Co., Haverhill, Mass.	7C–5A–95C		
The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	56B		
Universal Shoe Mchy. Co., St. Louis, Mo.	7D–95D		
Boylston Mfg. Co., Boston, Mass.	192–E		
Gimson & Co., Ltd., Leicester, England.			
Type 1		Cat. #6; p. 35A	
Type 2		Cat. #7; p. 6	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			
Type 1			Ex. #319; p. 79
Type 2			Ex. #319; p. 80
Universal Shoe Mchy. Co., Northampton, England.			
Type 1		Cat. #2; p. 36	
Type 2		Cat. #2; p. 38	
Adrian & Busch, Oberursel, near Frankfurt, Germany. (This concern offers a complete German Welt System for the manufacture of Goodyear Welt Shoes.)		Cat. #23; p. B	
Standard Engineering Co., Leicester, England.			
Type 1	50C	Cat. #10A; p. 6	
Type 2		Cat. #10B; p. 40	
Moenus Machine Works, Frankfurt, Germany.			
Type 1			Ex. #318; p. 88
Type 2			Ex. #318; p. 94
Type 3		Cat. #14A; p. 2 and 7.	
Standard Rot. Mach. Co., Northampton, England.			Ex. #320; p. 2
A. Johnson et Ses Fils, Paris, France.	66D		Ex. #317; p. 138
Keats Machinery Co., Frankfurt a Main, Ger.			
Type 1		Cat. #22; p. 13	
Type 2		Cat. #22; p. 14	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Nolle's Works, Weissenfels, a S., Germany.			
Type 1		Cat. #18; p. 5	
Type 2		Cat. #20; p. 15	
Ward & Gent, Northampton, England.	188C		

Skiving Machine (Tap Skiving, Welt and Rand Splitting).

Victor Shoe Mchy. Co., Boston, Mass.	174C		
James Busfield, Haverhill, Mass.	6F		
Amer. Worsted Mchy. Co., Abington, Mass. (2 Types)	2G–2J		
Gimson & Company, Ltd., Leicester, England.		Cat. 6; p. 100	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; p. 30
Universal Shoe Mchy. Co., Northampton, England.			
Type 1		Cat. 2; p. 13	
Type 2		Cat. 2; p. 71	
Keats & Bexon Company, Stafford, England.			
Type 1		Cat. 4; p. 15	
Type 2		Cat. 4; p. 16	
Type 3		Cat. 3; p. 17	
Job Lee Premier Works, Kettering, England.		Cat. 16; p. 7	
Standard Rotary Machine Co., Northampton, England.			
Type 1			Ex. 320; p. 49
Type 2			Ex. 320; p. 32
Type 3		Cat. 11; p. 8	
Standard Engineering Company, Leicester, England.			
Type 1		Cat. 10; p. 40	
Type 2		Cat. 10B; p. 56	
Moenus Machine Works, Frankfurt, Germany.			Ex. 318; p. 100
Nolle's Works, Weissenfels, a S., Ger.		Cat. 18; p. 34	
Keats Machinery Company, Frankfurt a M., Germany			
Type 1		Cat. 24; p. 47	
Type 2		Cat. 24; p. 47	
Type 3		Cat. 24; p. 49	
Type 4		Cat. 24; p. 52	
Type 5		Cat. 24; p. 89	

Slashing Machine: McKay Welt.

Thos. Bostock & Sons, Brockton, Mass.	21G
A. G. Brewer, Natick, Mass.	105
William Knipe, Ward Hill, Mass.	167

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
James Busfield, Haverhill, Mass.	6G		
Nolle's Works, Weissenfels, Ger.		Cat. 20; p. 6	

Slugging Machine: Heel.

The Boylston Mfg. Co., Boston, Mass.	192C		
Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.	8Q–95N2		
The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	56K		
Gimson & Co., Ltd., Leicester, England.			
Type 1		Cat. #6; p. 50A	
Type 2		" #7; p. 17	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			
Type 1			Ex. 319; p. 111
Type 2			" 319; p. 112
Northampton Mchy. Co., Ltd., Northampton, England.		" #1; p. 5	
Universal Shoe Mchy. Co., Ltd., Northampton, England.		" #2; p. 65	
Timson, Bullock & Barber, Kettering, England.		" #5; p. 23	
Standard Rotary Machine Co., Rushden & Northampton, Eng.			Ex. 320; p. 21
A. T. Ralphs, Leeds & Norwich, Eng.		Loose Leaf 14	
A. Johnson et Ses Fils, Paris, France.			Ex. 317; p. 173
Moenus Machine Works, Frankfurt, Germany.			
Type 1			Ex. 318; p. 147
Type 2			" 318; p. 149
Type 3		Cat. 14A; p. 13	
Nolle's Works, Weissenfels, Germany.			
Type 1		" 18; p. 24	
Type 2		" 18; p. 25	
Keats Machinery Co., Frankfurt, Germany.		" 24; p. 98	

Splitting Machine.

The American Tool & Mch. Co., Boston, Mass.	5A
James Busfield, Haverhill, Mass. (2 Types)	6A–6F
J. S. Wheeler & Co., Boston, Mass.	41A
Seelye Mfg. Co., Boston, Mass.	91C–95V
Quarmby & Hilliker, Lynn, Mass.	10F
American Worsted Mchy. Co., Abington, Mass. (2 Types)	2G
Lacene Mfg. Co., Manchester, N. H.	77

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
The Turner Tanning Mchy. Co., Peabody, Mass.	119		
W. J. Young Mchy. Co., Lynn, Mass.	185		
Gimson & Company, Ltd., Leicester, Eng.		Cat. 6; p. 6 & 95	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; p. 28–31
Universal Shoe Machinery Co., Ltd., Northampton, Eng.		" 2; p. 12 p. 14 p. 15	
Keats & Bexon, Ltd., Stafford, Eng.		" 4; p. 16	
Job Lee Premier Works, Kettering, Eng.		" 16; p. 12	
Standard Rotary Machine Co., Rushden & Northampton, Eng.			Ex. 320; p. 3A p. 30B p. 30
E. Mills & Co., Ltd., Kettering, Eng.		" 17; p. 4	
Standard Engineering Co., Leicester, Eng.		" 9; p. 45	
		" 10B; p. 12 & 13	
A. Johnson et Ses Fils, Paris, France.			Ex. 317; p. 80 & 81
Moenus Machine Works, Frankfurt, Germany.		" 318; p. 37	
		" 14A; p. 5	
Keats Machinery Company, Frankfurt a Main, Germany.		" 22; p. 4	
Keats Machinery Co., Frankfurt a Main, Germany.		" 24; p. 40	
Keats Machinery Co., Frankfurt a Main, Germany.		" 24; p. 40	
Type 4		" 24; p. 41	
Type 5		" 24; p. 41	
Type 6		" 24; p. 41	
Type 7		" 24; p. 41	
Type 8		" 24; p. 42	
Type 9		" 24; p. 43	
Type 10		" 24; p. 88	
Nolle's Works, Weissenfels, a S., Germany.		" 20; p. 6	
Nolle's Works, Weissenfels, a S., Germany.		" 20; p. 8	

STRIPPING MACHINE (Cutting Leather or Leatherboard into Strips).

Quarmby & Hilliker, Lynn, Mass.	10C		
Parsons Mch. Co., Marlboro, Mass.	13		
Seelye Mfg. Co., Boston, Mass.	91E		
Tower Bros., Hudson, Mass.	3E		
W. J. Young Mchy. Co., Lynn, Mass.	62I		
Gimson & Co., Ltd., Leicester, England.		Cat. 6; p. 92	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Standard Engineering Co., Ltd., Leicester, England.		Cat. 10A; p. 8	
Standard Engineering Co., Leicester, Eng.		" 10B; p. 10	
		" 10B; p. 11	
Moenus Machine Works, Frankfurt, Germany.			Ex. 18; p. 10
Nolle's Works, Weissenfels a S. Germany.		" 20; p. 6	

TACKING MACHINE (Tacking Soles and Heel Rands).

Universal Shoe Mchy. Co., St. Louis, Mo.	88–95I		
Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.	193B		
The Louis G. Freeman Co., Cincinnati, Ohio.	7A–95A		
Victor Shoe Mchy. Co., Boston, Mass.	174A		
Gimson & Co., Leicester, Eng.		Cat. #6; P. 28	
Moenus Machine Works, Frankfurt, Ger.			
Type 1			Ex. 318; p. 70
Type 2			Ex. 318; p. 72
Type 3			Ex. 318; p. 74
Standard Rotary Mch. Co., Rushden & Northampton, Eng.			
Type 1			Ex. 320; p. 11
Type 2			Ex. 320; p. 14
Type 3			Ex. 320; p. 14A
Atlas-Werke, Pohler & Co., Leipsic, Ger.			
Type 1			Ex. 319; p. 53
Type 2			Ex. 319; p. 54
Type 3			Ex. 319; p. 65
Type 4			Ex. 319; p. 66
Standard Engineering Co., Leicester, Eng.		Cat. 10A; p. 21	
A. Johnson et Ses Fils, Paris, France			
Type 1	66A		Ex. 317; p. 126
Type 2	66A		Ex. 317; p. 127
Moenus Machine Works, Frankfurt, Ger.		Cat. 14A; p. 12	
Universal Shoe Mchy. Co., Northampton, Eng.			
Type 1		" 2; p. 60	
Type 2		" 2; p. 61	
		" 2; p. 72	
Timson, Bullock & Barber, Kettering, England.			
Type 1		" 5; p. 11	
Type 2		" 17; p. 21	
Nolle's Works, Weissenfels, Ger.			
Type 1		" 18; p. 10	
Type 2		" 18; p. 11	
Type 3		" 18; p. 12	
Type 4		" 20; p. 10	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Type 5		Cat. 20; p. 10	
Type 6		" 20; p. 12	
Type 7		" 20; p. 14	
Type 8		" 20; p. 14	
Keats Mchy. Co., Frankfurt, Ger.			
Type 1		" 24; p. 48	
Type 2		" 24; p. 61	
Type 3		" 24; p. 63	
Type 4		" 24; p. 64	
Type 5		" 24; p. 85	

Thin Edge Machine.

Theo. Ringenbach, Cincinnati, O.	126		

Trimming Machine: Inseam.

A. Johnson & Sons, Paris, France	66C		
The Keighley Co., Inc., Vineland, N. J.	7F–95F		
Standard Engineering Co., Leicester, England.		Cat. #17; p. 25	

Turning Machine: Heel Rand.

Thos. Bostock & Sons, Brockton, Mass.	21E		
Amer. Worsted Mchy. Co., Abington, Mass.	1H		
James Busfield, Haverhill, Mass.	6B		
Gimson & Co., Leicester, England.		Cat. 6; p. 101	
Atlas-Werke, Pohler & Co., Leipsic, Germany			Ex. 319; p. 38
Northampton Machinery Co., Northampton, Eng.		" 1; p. 6	
Timson, Bullock & Barber, Kettering, England		" 5; p. 19	
A. Johnson et Ses Fils, Paris, France.			Ex. 317; p. 162
Nolle's Works, Weissenfels a S., Germany.		" 20; p. 16	

Turning Machine: Lip of Insole.

American Worsted Mchy. Co., Abington, Mass.	1I		
Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.	178A		
Haverhill Shoe Mchy. Co., Haverhill, Mass.	8Z–5C–95Y		
George Knight & Co., Brockton, Mass.	9F		
The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	56L		
Northampton Shoe Mchy. Co., Ltd., Northampton, Eng.		Cat. #1 p 18	
Nolle's Works, Weisenfels a S. Germany		" #20; p. 15	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Keats Mchy. Co., Frankfurt, a M., Germany		Cat. #24; p. 88	
Standard Engineering Co., Leicester, Eng.		" #10A; p. 9	

Turning Machine: Lip Gem Insole.

American Worsted Mchy. Co., Abington, Mass.	1I		
Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.	178A		
Haverhill Shoe Mchy. Co., Haverhill, Mass.	8Z–5C–95Y		
George Knight & Co., Brockton, Mass.	9F		
The R. H. Long Machy. Co., Inc., So. Framingham, Mass.	56L		
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; p. 46
Nolle's Works, Weissenfels a S., Ger.		Cat. 20; p. 16	

Insole Reinforcing Machine.

Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. #319; p. 47
Moenus Machine Works, Frankfurt, a M., Germany.		Cat. #14A; p. 3	

Pegging Machine.

Atlas-Werke, Pohler & Co., Leipsic, Germany.			
Type 1.			Ex. #319; p. 74
Type 2.			" #319; p. 75
Type 3.			" #319; p. 76
Moenus Machine Works, Frankfurt, Germany.		Cat. #14A; p. 6	" #318; p. 116
Gimson & Co., Leicester, Eng.		" #6; p. 47	
Nolle's Works, Weissenfels, Germany.		" #18; p. 49	
Keats Mfg. Co., Frankfurt, Germany.			
Type 1.		" #22; p. 24–25	
Type 2.		" #23; p. 67	
Type 3.		" #24; p. 64–74	

Pounding & Trimming Machine.

Gimson & Co., Ltd., Leicester, England.		
Type 1	Cat. #6; p. 27A	
Type 2	" #6; p. 27B	
Standard Engineering Co., Leicester, England.		
Type 1	Loose Leaf; p. 6	
Type 2	" " ; p. 5	
	Cat. #17; p. 10	
Atlas-Werke, Pohler & Co., Leipsic, Germany.	" #13; p. 61	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Moenus Machine Works, Frankfurt, a M., Germany.		Cat. #14A; p. 4A	
Keats Machine Co., Frankfurt, a M., Germany.		" #22; p. 22	

Screwing Machine: Standard.

Gimson & Co., Leicester, England.		Cat. #6; p. 39	
Nolle's Works, Weissenfels, Germany.		" #20; p. 15	
Standard Rotary Mach. Co., Rushden & Northampton, England.		" #12; p. 15	Ex. #320; p. 15
Keats Mchy. Co., Frankfurt, a M., Germany.		" #24; p. 73	
Universal Shoe Mchy. Co., Northampton, England.		" #2; p. 81	
Moenus Machine Works, Frankfurt a M., Germany		" #14A; p. 11A	
Atlas-Werke, Pohler & Co., Leipsic, Germany.		" #13; p. 72	
Moenus Machine Works, Frankfurt a M., Germany.		" #14A; p. 11	

U. S. District Court, Mass. Dist.
No 301, Eq.
United States
v.
United Shoe Machinery Co. et al.
Deft Exhibit 338
Nov. 4, 1914 [illegible] Special Examiner.

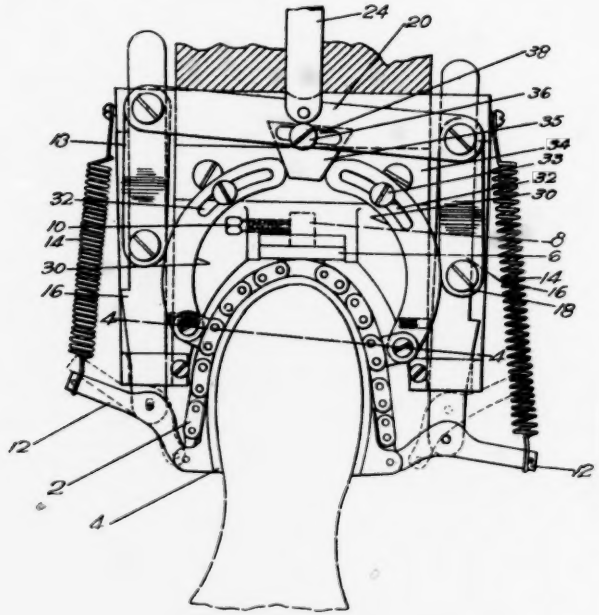
937

S. SNOW.
LASTING MACHINE.
APPLICATION FILED SEPT. 5, 1908.

946,708.

Patented Jan. 18, 1910.
3 SHEETS—SHEET 2.

Fig. 3.



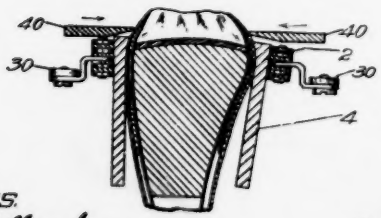


Fig. 4

WITNESSES.
Edith C. Holbrook
Bertha M. Hutchinson.

INVENTOR.
Stephen Snow
by Fish Attorney,
Nelson W. Howard

U. S. District Court, Mass. Dist.
No. 301 Eq.
United States
v.
United Shoe Machinery Co. et al.
Exhibit 339
Dec. 4, 1911

939

E. F. HEFFERNAN.

HOLDDOWN ATTACHMENT FOR LASTING MACHINES.

APPLICATION FILED MAY 18, 1909.

947,818. Patented Feb. 1, 1910.

Fig. 1.

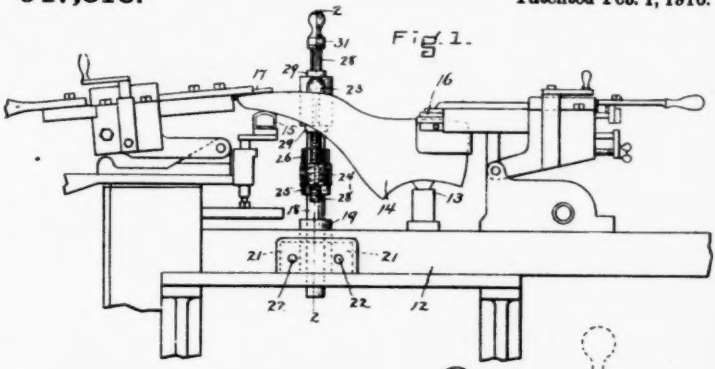
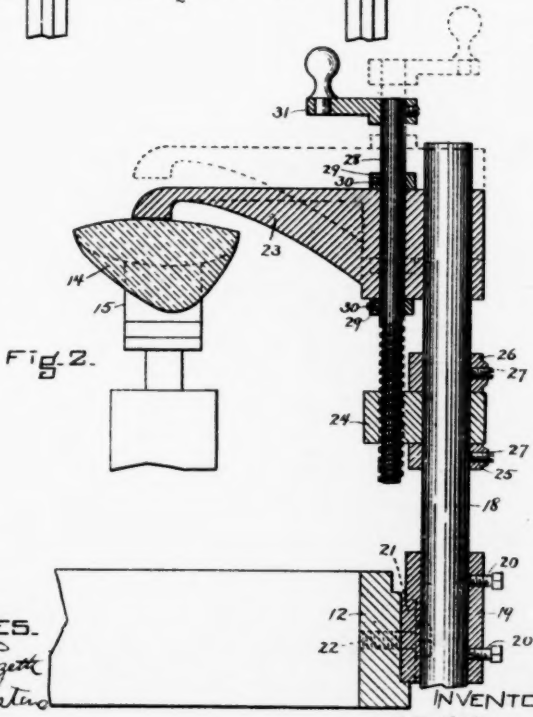


Fig. 2.



WITNESSES.
P. H. Fogarty
F. R. Pinkerton

INVENTOR.
E. F. Heffernan
by Wright Brown Quinby & May
Attys.

DEFENDANTS' EXHIBIT 341.

[Put in Evidence, page 4944.]

PLANT U. S. PATENTS CLAIMING INVENTIONS EMBODIED IN PLANT MACHINES.

UPPER CLICKING MACHINE (Plant catalog page 14)

1,030,621 June 25, 1912 — Stewart. General organization.

LIP CUTTER (Plant catalog page 16)

957,959 May 17, 1910 — Hooper. Cutting diagonal slit in channel lip.

INNERSOLE LIP WETTER (Plant catalog page 18)

957,961 May 17, 1910 — Hooper. Concaved grooved tempering roll.

DOUBLE LIP CHANNEL OPENER (Plant catalog page 20)

940,019 Nov. 16, 1909 — Hooper. Particular structure.

SINGLE LIP INNERSOLE CHANNEL OPENER & EDGE COMPRESSOR (Plant catalog page 22)

940,020 Nov. 16, 1909 — Hooper. Edge compression wheel and lip turning tool.

INNERSOLE LIP CUTTER & MARKER (Plant catalog page 24)

958,028 May 17, 1910 — Stewart. General construction for marking the sole to determine commencement and ending of work.

Appln. Ser. No. 412,391 Jan. 24, 1908 — Plant. Cuts channel lip transversely at heel seat, contours heel seat and marks size.

INNERSOLE FLEXOR (Plant catalog page 26)

871,967 Nov. 26, 1907 — Stewart. General organization.

958,029 May 17, 1910 — Stewart. Commercial form of machine.

871,969 Nov. 26, 1907 — Stewart. General construction including the knife for making transverse and longitudinal slashes.

CLOTH CEMENTING POT & DRYING CREEL (Plant catalog page 28)

957,990 May 17, 1910 — McLeod. Cutting and slitting insole reinforcing strips.

958,284 May 17, 1910 — Plant. Canvas cementer.

WELT INNERSOLE (Plant catalog page 30)

958,013 May 17, 1910 — Ryan. Innersole reinforced by slit canvas.

878,453 Feb. 4, 1908 — Bohr. Consolidated edge.

871,968 Nov. 26, 1907 — Stewart. Sole with transverse incisions oblique to the surface.

INNERSOLE CLOTH PLACER (Plant catalog page 34)

883,837 Apr. 7, 1908 — Stewart. General construction.

965,342 July 26, 1910 — Stewart. Commercial form.

INNERSOLE CLOTH TUCKER & LIP TRIMMER (Plant catalog page 36)

945,348 Jan. 4, 1910 — Stanbon. General construction for tucking reinforcing material into the channel by vibrating tucking tool.

940,690 Nov. 23, 1909 — Hooper. Particular construction.

944,239 Dec. 21, 1909 — Hooper. Guides for controlling movement of work.

SOLE ROUNDER (Plant catalog page 38)

874,505 Dec. 24, 1907 — Heys. Knife movement.

958,024 May 17, 1910 — Stanbon. General construction.

944,386 Dec. 28, 1909 — Stanbon. Knife mounting.

OUTSOLE MARKER (Plant catalog page 40)

958,028 May 17, 1910 — Stewart. General construction.

958,033 May 17, 1910 — Stewart. Commercial form.

OUTSOLE FLEXOR (Plant catalog page 42)

958,285 May 17, 1910 — Plant. General organization.

GRINDER (Plant catalog page 44)

958,030 May 17, 1910 — Stewart. Particular construction.

TACKER (Plant catalog page 48)

957,948 May 17, 1910 — Glass. Two-part raceway.

FAIR STITCH WELT ATTACHER (Plant catalog page 50)

957,987 May 17, 1910 — McLeod. Mechanical construction.

TOP LIFT COMPRESSOR (Plant catalog page 52)

966,485 Aug. 9, 1910 — Stanbon. Top lift compressing and ejecting mechanism.

LASTING BENCH (Plant catalog page 54)

Appln. Ser. No. 524,952 Oct. 27, 1909 — McLeod.

PULLER OVER & TIP MEASURER (Plant catalog page 56)

957,955 May 17, 1910 — Heys. Tip measurer.

Appln. Ser. No. 343,458 Nov. 14, 1906 — Stewart. General organization.

RAPID SIDE LASTER (Plant catalog page 60)

945,291 Jan. 4, 1910 — Seely. General organization.

958,017 May 17, 1910 — Seely. Pincer jaws.

958,286 May 17, 1910 — Plant. Auxiliary lasting devices.

SPEED HAND LASTER (Plant catalog page 62)

958,034 May 17, 1910 — Stewart. Rotary jack.

957,948 May 17, 1910 — Glass. Two-part raceway.

958,002 May 17, 1910 — Phelan. Pneumatic tacker.

TOE & HEEL LASTER (Plant catalog page 66)

958,291 May 17, 1910 — Plant. General organization of grippers (Reissue 13,507, Jan. 7, 1913)

958,280 May 17, 1910 — Plant. General construction.

957,949 May 17, 1910 — Glass. General construction.

957,948 May 17, 1910 — Glass. Two-part raceway.

958,083 May 17, 1910 — Bohr. Hold-down.

888,485 May 26, 1908 — Glass. Hand tacker.

Appln. Ser. No. 529,313 July 5, 1906 — Phelan.

TURN HEEL LASTER (Plant catalog page 70)

958,291 May 17, 1910 — Plant.

(Reissue No. 13,507 Jan. 7, 1913) General organization.

958,280 May 17, 1910 — Plant. General construction.

957,949 May 17, 1910 — Glass. General construction.

957,948 May 17, 1910 — Glass. Two-part raceway.

888,485 May 26, 1908 — Glass. Hand tacker.

924,967 June 15, 1909 — Condon. Heel pad.

STAPLE TACKER (Plant catalog page 72)

883,824 Apr. 7, 1908 — Phelan. Staple forming and driving means.

871,991 Nov. 26, 1907 — Glass. Staple forming and driving means.

McKay Stitcher (Plant catalog page 76)

940,052 Nov. 16, 1909 — Plant. Stopping by reversing.

Heel Seat Nailer (Plant catalog page 78)

958,293 May 17, 1910 — Plant. Mechanical construction.

958,303 May 17, 1910 — Plant. Safety device.

Welt Slasher & Groover (Plant catalog page 82)

966,484 Aug. 9, 1910 — Stanbon. General construction.

Appln. Ser. No. 309,109 Mar. 31, 1906 — Stanbon. Welt guiding.

Tack Puller & Baster (Plant catalog page 84)

940,052 Nov. 16, 1909 — Plant. Stopping by reversing.

958,295 May 17, 1910 — Plant. Mechanism for hand control.

940,691 Nov. 23, 1909 — Hooper. Channel-moistening device.

Appln. Ser. No. 508,436 July 13, 1909 — Plant. General construction.

Welter (Plant catalog page 86)

947,401 Jan. 25, 1910 — Plant. Welt guide.
(Reissue 13,374 Jan. 25, 1912)

946,783 Jan. 18, 1910 — Plant. Thread controller.

958,295 May 17, 1910 — Plant. Hand control.

958,297 May 17, 1910 — Plant. Welt holder.

958,298 May 17, 1910 — Plant. Welt cutting and measuring.

877,858 Jan. 28, 1908 — Plant. Welt and thread cutting mechanism.

877,859 Jan. 28, 1908 — Plant. Welt measuring mechanism.

958,299 May 17, 1910 — Plant. Diagonally moving welt guide.

965,379 July 26, 1910 — Eaton. Wax pot.

940,724 Nov. 28, 1909 — Plant. Feeler back gage.

940,052 Nov. 16, 1909 — Plant. Stopping by reversing.

940,053 Nov. 16, 1909 — Plant. Welt guide and feeler back gage.

1,018,130 Feb. 20, 1912 — Plant. Loop casting.

Welt Beater (Plant catalog page 90)

901,446 Oct. 20, 1908 — Heys. The particulars of structure.

WELT MARKING SNIPPERS (Plant catalog page 92)

885,099 Apr. 21, 1908 — Stewart. General organization.
861,178 July 23, 1907 — Hooper, Welt edge notching.
861,180 July 23, 1907 — Hooper. Method of notching welt.

CUSTOM SOLE LAYER (Plant catalog page 96)

939,372 Nov. 9, 1909 — Woodward. General organization.
966,506 Aug. 9, 1910 — Woodward. General character of jack.
958,057 May 17, 1910 — Woodward. General construction for direct and progressive pressure.
958,301 May 17, 1910 — Plant. Sliding jack support.
958,278 May 17, 1910 — Plant. Jack.
1,041,668 Oct. 15, 1912 — Plant. General organization.
958,283 May 17, 1910 — Plant. General organization.
965,224 July 26, 1910 — Plant. Detachable form.

ROUGH ROUNDER (Plant catalog page 100)

878,478 Feb. 4, 1908 — English. General organization.
871,987 Nov. 26, 1909 — English. General construction.

HEEL SEAT DINKER (Plant catalog page 102)

1,005,545 Oct. 10, 1911 — Heys. Conforming knife to heel seat.
1,005,573 Oct. 10, 1911 — Phelan. Conforming knife to heel seat.

SHOE CHANNELER (Plant catalog page 106)

865,957 Sept. 10, 1907 — Stanbon. General organization.
958,027 May 17, 1910 — Stewart. General construction.

LIP TURNER (Plant catalog page 108)

947,509 Jan. 25, 1910 — Hooper. Tool.

OUTSOLE WETTER (Plant catalog page 110)

957,992 May 17, 1910 — McLeod. Details of structure.

STITCHER (Plant catalog page 112)

940,052 Nov. 16, 1909 — Plant. Stopping by reversing.
940,054 Nov. 16, 1909 — Plant. Presser foot release.
940,055 Nov. 16, 1909 — Plant. Looper guard.
940,725 Nov. 23, 1909 — Plant. Fudge stitch.
940,726 Nov. 23, 1909 — Plant. Stitch set.

958,294 May 17, 1910 — Plant. Fudge stitch.
958,295 May 17, 1910 — Plant. Hand control.
958,296 May 17, 1910 — Plant. Tilt preventer.
940,723 Nov. 23, 1909 — Plant. Fudge stitch.
935,230 Sept. 28, 1909 — Plant. Bobbin winder.
935,263 Sept. 28, 1909 — LaChapelle. Bobbin winder.

REVERSIBLE ROLL CHANNEL LAYER (Plant catalog page 116)
861,179 July 23, 1909 — Hooper. Channel flap layer.

LOOSE NAILER (Plant catalog page 118)
996,065 June 27, 1911 — Cummings. Nail feed.
940,745 Nov. 23, 1909 — Stewart. Jack post.
958,036 May 17, 1910 — Stewart. General organization.
958,040 May 17, 1910 — Stewart. Horn control.

LEVELLER (Plant catalog page 120)
874,504 Dec. 24, 1907 — Heys. Vibrating levelling roll.
939,372 Nov. 9, 1909 — Woodward. General organization.
966,506 Aug. 9, 1910 — Woodward. General character of jack.
958,057 May 17, 1910 — Woodward. General construction for direct and progressive pressure.
958,301 May 17, 1910 — Plant. Sliding jack support.
958,278 May 17, 1910 — Plant. Jack.
1,041,668 Oct. 15, 1912 — Plant. General organization.
958,283 May 17, 1910 — Plant. General organization.
965,224 July 26, 1910 — Plant. Detachable form.

HEEL LOADER (Plant catalog page 122)
947,366 Jan. 25, 1910 — Woodward. Roller raceway.
958,302 May 17, 1910 — Plant. General organization.
958,037 May 17, 1910 — Stewart. Nail assorting and delivering mechanism.
944,389 Dec. 28, 1909 — Stewart. Heel holder.
958,305 May 17, 1910 — Plant. Heel carrier.
958,039 May 17, 1910 — Stewart. Nail assorting and delivering mechanism.
958,289 May 17, 1910 — Plant. Oiling mechanism.
958,058 May 17, 1910 — Woodward. Raceway.

HEEL ATTACHER ON WOOD LASTS (Plant catalog page 125)

958,292 May 17, 1910 — Plant. General organization.
958,281 May 17, 1910 — Plant. Gluing attachment.
958,282 May 17, 1910 — Plant. General organization.
958,041 May 17, 1910 — Stewart. Top lift holder.
958,300 May 17, 1910 — Plant. Commercial form.
958,005 May 17, 1910 — Phelan. Forepart gages.
957,986 May 17, 1910 — McLeod. Gage.
958,306 May 17, 1910 — Plant. Forepart gages.
944,389 Dec. 28, 1909 — Stewart. Centering gage.
958,042 May 17, 1910 — Stewart. Jack.
940,722 Nov. 23, 1909 — Plant. Jack.

HEELER (Plant catalog page 124)

958,292 May 17, 1910 — Plant. General organization.
958,281 May 17, 1910 — Plant. Gluing attachment.
958,282 May 17, 1910 — Plant. General organization.
958,041 May 17, 1910 — Stewart. Top lift holder.
958,300 May 17, 1910 — Plant. Commercial form.
958,005 May 17, 1910 — Phelan. Forepart gages.
957,986 May 17, 1910 — McLeod. Gage.
958,306 May 17, 1910 — Plant. Forepart gages.
944,389 Dec. 28, 1909 — Stewart. Centering gage.

HEEL SLUGGER (Plant catalog page 128)

946,825 Jan. 18, 1910 — Plant. Particulars of structure.
958,303 May 17, 1910 — Plant. Hand control.
958,032 May 17, 1910 — Stewart. Grinder.

HEEL BREASTER (Plant catalog page 130)

958,005 May 17, 1910 — Phelan. Knife arresting means, broadly.
958,306 May 17, 1910 — Plant. Knife arresting means.
Appln. Ser. No. 501,449 June 11, 1909 — Plant General construction.
Appln. Ser. No. 560,239 May 9, 1910 — Plant. Wedge stop for knife.

HEEL SHAVER (Plant catalog page 132)

957,943 May 17, 1910 — Eno. Counter guard.
958,006 May 17, 1910 — Phelan. Knife adjustment.

HEEL SCOURER (Plant catalog page 136)

957,993 May 17, 1910 — McLeod. Heel edge liner.

883,445 Mar. 31, 1908 — Bohr. Heel scourer guard.

EDGE TRIMMER (Plant catalog page 138)

957,960 May 17, 1910 — Hooper. Knife mounting.

965,223 July 26, 1910 — Plant. Dust gatherer.

STITCH INDENTER & BURNISHER (Plant catalog page 140)

860,376 July 16, 1907 — Heys. Stitch impression means.

860,377 July 16, 1907 — Heys. General construction.

EDGE SETTER (Plant catalog page 144)

958,026 May 17, 1910 — Stewart. Particulars of structure.

BOTTOM BUFFING MACHINE (Plant catalog page 146)

958,288 May 17, 1910 — Plant. Dust gatherer.

TOP LIFT SCALLOPER (Plant catalog page 148)

Appln. Ser. No. 524,951 Oct. 27, 1909 — McLeod. General construction.

TWIN BOTTOM CLEANER (Plant catalog page 150)

871,942 Nov. 26, 1907 — Leavitt. Pad.

871,990 Nov. 26, 1907 — Gelzenlichter. Cover applying.

871,964 Nov. 26, 1907 — Stewart. Disk holder.

871,965 Nov. 26, 1907 — Stewart. Pad cover.

871,962 Nov. 26, 1907 — Stewart. Suction valve operated by starting and stopping.

HEEL WAXER & BURNISHER (Plant catalog page 152)

966,471 Aug. 9, 1910 — Plant. Particulars of waxing devices.

966,472 Aug. 9, 1910 — Plant. Particular construction.

SEAT BEADER (Plant catalog page 154)

944,294 Dec. 28, 1909 — Stewart & Hooper. Flexible work presser.

HARD FINISHER & BRUSH CLEANER (Plant catalog page 156)

957,989 May 17, 1910 — McLeod. Brush cleaning means.

TREEING MACHINE (Plant catalog page 160)

957,962 May 17, 1910 — Hooper. General organization.

957,963 May 17, 1910 — Hooper. Particular structure.

957,964 May 17, 1910 — Hooper. Tree foot-piece and operating means.

944,365 Dec. 28, 1909 — Hooper. Stretcher for the upper.

CLEANING AND TREEING LEG (Plant catalog page 162)

958,287 May 17, 1910 — Plant. General organization.

958,304 May 17, 1910 — Plant. Improved construction.

HEEL, EDGE AND BOTTOM POLISHER (Plant catalog page 164)

958,288 May 17, 1910 — Plant. Dust gatherer and trunk.

SHOE RACK (Plant catalog page 166)

957,988 May 17, 1910 — McLeod. Shoe supporting rack construction.

DEFENDANTS' EXHIBIT 342.

[Put in Evidence, page 4944.]

UNITED STATES PATENTS ACQUIRED IN THE PLANT ACQUISITION, THE INVENTIONS OF WHICH HAVE BEEN INCORPORATED IN MACHINES OF THE UNITED SHOE MACHINERY COMPANY.

January 30, 1914.

BEADING MACHINE — MODEL X: HEEL SEAT

944,294 Dec. 28, 1909 Stewart & Hooper

FINISHING & BRUSH CLEANING MACHINE — MODEL X: CLIMAX

957,989 May 17, 1910 McLeod

FLEXIBLE INNERSOLE MACHINE — MODLL X: GOODYEAR

871,967 Nov. 26, 1907 Stewart

871,968 Nov. 26, 1907 Stewart

871,969 Nov. 26, 1907 Stewart

958,029 May 17, 1910 Stewart

GRINDING MACHINE — MODEL H: IMPERIAL

944,238 Dec. 21, 1909 Heys

GROOVING & BEVELING MACHINE — MODEL X: GOODYEAR WELT

966,484 Aug. 9, 1910 Stanbon

INDENTING & BURNISHING MACHINE — MODEL X: GOODYEAR WELT

860,377 July 16, 1907 Heys

Se. No. 631,395 June 5, 1911 Heys & McClure

LASTING BENCH — MODEL X
Se. No. 524,952 Oct. 27, 1909 McLeod Application

LASTING MACHINE: No. 5 U. S. M. Co.
957,949 May 17, 1910 Glass
(Re. 13,505, Jan. 7, 1913)
958,280 May 17, 1910 Plant

LAYING MACHINE — MOD. X: APEX WELT
957,987 May 17, 1910 McLeod

LAYING MACHINE — MODEL X: GOODYEAR CHANNEL
861,179 July 23, 1907 Hooper

LEVELING MACHINE — MODEL B: HERCULES
684,239 Oct. 8, 1901 Heys
707,414 Aug. 19, 1902 Heys

LOADING & ATTACHING MACHINE — MODEL B: MCKAY AUTOMATIC HEEL
958,281 May 17, 1910 Plant
958,282 May 17, 1910 Plant

LOCKSTITCH MACHINE — MODELS K & M: GOODYEAR OUTSOLE RAPID
940,055 Nov. 16, 1909 Plant
940,723 Nov. 23, 1909 Plant
940,725 Nov. 23, 1909 Plant

MOLDING MACHINE: STITCHDOWN UPPER
871,963 Nov. 26, 1907 Stewart
871,966 Nov. 26, 1907 Stewart

NAILING MACHINE: AMERICAN LIGHTNING
958,302 May 17, 1910 Plant
958,282 May 17, 1910 Plant

OPENING MACHINE — MODEL X: GOODYEAR CHANNEL
947,509 Jan. 25, 1910 Hooper

POLISHING MACHINE — MODEL X: CLIMAX
958,288 May 17, 1910 Plant
965,223 July 26, 1910 Plant

PULLING-OVER MACHINE — MODEL B: REX
957,955 May 17, 1910 Heys

ROUNDING MACHINE: GOODYEAR HEEL SEAT

1,005,545 Oct. 10, 1911 Heys (application assigned)

1,005,573 Oct. 10, 1911 Phelan (" ")

ROUNDING & CHANNELING MACHINE — MODEL E: GOODYEAR UNIVERSAL

878,478 Feb. 4, 1908 English

SCOURING MACHINE — MODEL X: HEEL

883,445 Mar. 31, 1908 Bohr

957,993 May 17, 1910 McLeod

SHOE MACHINE — MODEL K: GOODYEAR WELT & TURN

877,858 Jan. 28, 1908 Plant

877,859 Jan. 28, 1908 Plant

958,298 May 17, 1910 Plant

Re. 13,374 Feb. 27, 1912 Plant

1,018,130 Feb. 20, 1912 Plant

SPLITTING MACHINE: RAPID NOISELESS WONDER

844,128 Feb. 12, 1907 Heys

TREEING MACHINE — MODEL H: MILLER TWIN

944,365 Dec. 28, 1909 Hooper

WETTING MACHINE — MODEL X: CREST SOLE

957,992 May 17, 1910 McLeod

WETTING MACHINE — MODEL X ECONOMY INSOLE

957,961 May 17, 1910 Hooper

Total number of patents 43.

DEFENDANTS' EXHIBIT 343.

[Put in Evidence, page 4958.]

Boston, Mass., Nov. 25, 1913.

MEMORANDUM FOR MR. S. W. WINSLOW

Included in the list of machinery in use at the factories of the Commonwealth Shoe & Leather Company, in the column of machines as obtained from the U. S. M. Co., there have been included 114

Auxiliary Devices and Attachments (which should not be listed as machines), and should be deducted from 584, listed as from the United Company, leaving the total 470. These Devices and Machines are as follows:

73 Tackers (9 Chase Tackers, 64 Hand Tackers)
36 Extension Edge Attachments
5 O. S. Welt Beveling Attachments.

In this remaining list of 470, there are 119 machines, which although now sold by the Company, similar machines could have been purchased from several outside machine manufacturers. If these 119 are deducted and transferred to outside machines, it would make the sum total of outside machines 846 and U. S. M. Co. machines 351. Following is the list of 119 machines:

3 Sole & Upper Stampers
1 Tip Punch
4 Rotary Cementers
3 Channel Cementers
1 Bottom Cementer
1 Leveler
5 Heel Seat Rough Rounders
7 Heel Trimmers
1 McKay Heel Trimmer
1 Heel Seat Beader
53 Edge Trimmers
3 Heel Breasters
4 Heel Breast Scourers
3 Top Piece Scallopers
1 McKay Feather Edger
1 Tip Scourer
2 Stampers
2 Heel Breast Scourers
1 Tip Scourer
1 Channeler
1 Sole Rounder
1 Feather Edge & Shank Reducer

1 Tap & Sole Rounder
1 Splitter
3 Splitters
3 Outsole Channelers
1 Hand Flexible Sole Machine
1 Leveling & Flexing Machine
1 Channel Cementer
6 Improved Gearless Sole Cutters
1 Splitter
1 Heel Builder

W. R. SAMPSON.

DEFENDANTS' EXHIBIT 344.

[Put in Evidence, page 4966.]

CHOATE, HALL & STEWART.

Charles F. Choate, Jr.
John L. Hall
Ralph A. Stewart
Frederick H. Nash
Frank W. Knowlton
Joseph Wentworth
Arthur J. Young

Rooms 1017–1031
60 State Street

Branch Exchange Main 6160

Boston, Mass., Feb. 7, 1913.

Hon. George W. Wickersham, Attorney General, Department of Justice, Washington, D. C.

My dear Mr. Wickersham: In 1910 the United Shoe Machinery Company advised its lessees that it proposed to put in effect a plan by which a certain proportion of the royalties should be invested in stock of the corporation, and at the end of a fixed term be distributed to lessees of the Goodyear welting and stitching and turn-sewing machines, who had in all respects observed the obligations of their leases. The period covered by this plan expired December 31, 1912, and the company proposes to make a distribution on or about March 1st, as it is bound to do by its agreement with the customers.

This plan was, I think, fully called to the attention of Mr. Gregg while he was here examining the affairs of the company and as I read the bill in equity filed by the United States against the company, it does not seem that any complaint is made upon this ground. Under

these circumstances, the Company proposes to make the distribution provided for in that plan on the first day of March, or as soon as possible thereafter; and has desired me to call the matter to your attention that the plan may not be carried out without the knowledge of your department.

I send you herewith a copy of the circular of June 10th, 1910, which describes the plan.

Very truly yours,

CHAS. F. CHOATE, JR.

UNITED SHOE MACHINERY CO.
Albany Building, 205 Lincoln Street,
Boston, Mass.

To the Lessees of the United Shoe Machinery Company:—

When the United Shoe Machinery Company was organized in 1899, it adopted this comprehensive policy: "To furnish a better service and equipment year by year at a constantly diminishing expense to its lessees."

To this policy it has consistently adhered in spite of the fact that the world was then entering on a period of high prices which has lasted ever since. While the leather and labor which go into the making of a shoe have grown more and more costly, there has been a steady decline in the cost to manufacturers of the machinery and supplies which the Company has provided.

It has furnished its lessees with the very best equipment attainable.

It has substituted improved machines for those which have become out of date.

It has substantially done away with payments for installation of machines.

It has reduced its rentals and royalties, sometimes directly, sometimes indirectly by furnishing auxiliary machines without additional royalty charge.

It has increased the number of its branch offices and the extent and efficiency of the service and assistance rendered to its lessees by its experts.

In order promptly to meet the requirements of its lessees and so

give them a better service, it has increased its factory facilities from year to year and has just begun to build an addition containing more than two acres of floor space.

By reason of its large expenditures and investments, far in excess of the ability of any small corporation to make, it is to-day serving its customers, and through them the public, more effectively than would have been thought possible at the time of its formation; yet with less expense to manufacturers than ever before in the history of the trade.

The organization of the Company in 1899 resulted almost immediately in the lowering of the average royalty per pair paid by manufacturers who prior to its organization would have leased the same number and kind of machines from the different constituent companies out of which the United Shoe Machinery Company was formed. In no instance since that time have the average rates of royalty been raised, although the Company has expended several million dollars in improving the machines with which its lessees have been supplied and, without additional royalty charge, has placed in factories numerous auxiliary machines. The average royalty direct and indirect now received by the Company for all classes of shoes is less than $2\frac{2}{3}$ cents per pair; and, in fact, an average payment of $2\frac{2}{3}$ cents per pair will cover the entire cost to shoe manufacturers of the mechanical equipment furnished by the Company, including all charges for depreciation, for the constant employment by the Company of the best experts of the world in the care and maintenance of machines and the instruction of operators, and of a large corps of inventors exclusively engaged in developing and improving machines. The Company keeps the entire outfit of the manufacturer at the highest point of efficiency daily and hourly and places at his disposal all its facilities for that purpose.

Every year since its formation the Company has expended from $300,000 to $750,000 in maintaining its corps of inventors in the Experimental Department, and in the purchase and development of new inventions.

Nearly one hundred new machines have been produced by the Company, all of them materially better than the machines formerly

in use and sixteen of them performing operations which, before their introduction, required skilled hand workmen. By the use of these new machines and improved devices, manufacturers can save annually in cost of production an amount greater than the entire amount of royalties paid at the time the Company was organized. The "Ideal Clicking Machine" alone, which has recently been introduced and which does work hitherto done by hand, should enable the manufacturer using it to save a sum equal to the average royalty now paid for the use of all machines leased by him from the Company. The economies in labor resulting from the use of other new machines range from ten per cent to fifty per cent, and usually with a marked improvement in the quality of the work.

Immediately after its formation, the Company was confronted with a proposition to increase to its lessees the price of material used in the machines of the Metallic Department (the profit on which constitutes the rental and royalty received by the Company from the machines in this department) such an increase having been determined upon by one of its constituent companies which made and leased Metallic Machines and which, had it remained a separate organization, would have been compelled to resort to an increase in the price of wire and fastenings in order to meet a marked advance in the price of copper. The United Shoe Machinery Company, relying upon economies in other departments, was able to maintain the existing rates and assumed the increased cost of production without imposing any part of the increase upon its customers. The policy then adopted has been followed consistently ever since, regardless of the market price of materials, and in many individual instances the Company has found it possible to lower its charges. In its General Department alone, for instance, there has been a reduction in the price of seven hundred and fifty-five commodities, comprising findings and shoemakers' supplies, averaging 25.6 per cent.

Thus the shoe manufacturers, and through them the public, have benefitted substantially from the magnitude and great diversity of the Company's business. The fact that several companies of limited scope, each confined in its work to a particular class of operations, were gathered into a single large company of ample range and abundant

facilities capable of supplying to its customers a complete and perfect system of machinery, has been an unqualified advantage to the trade.

Initial charges for the installation of machines were almost universal prior to 1899. Such charges have been gradually abolished; to the obvious advantage of the manufacturer. For example:— Under the lease premium formerly in force, machines of the Goodyear Department, for making five hundred pairs of Goodyear Welt shoes per day, required an initial payment of $2,845.00 for installation. Under the loan lease now in force, this payment has been replaced by a yearly rental of only $106.00. There is a corresponding saving to the manufacturer in equipping his factory with machines of all other departments in which initial payments have been abolished. Substantially the last of these payments was removed recently, when the Company began to offer to its lessees machines of the General Department on rental terms so low as merely to care for the items of depreciation and replacement, without yielding, any return for its services in looking after the machines.

Benefits of a character similar to those enumerated have marked the course of the Company from the very beginning; but it has never been its purpose to confine within limits determined in advance, its ability to enhance the prosperity of the trade. Always recognizning that it has a common interest with its lessees and that its prosperity depends upon theirs, it has long had in contemplation the following plan, which, now that the elimination of initial charges has been effected, it is prepared to put into operation — a plan which is in conformity with its established policy and which it believes will result in the expansion of its own business through the increased business of its customers.

Beginning with January 1, 1910, the Company will create a fund by investing each year, for three years, in the common stock of the United Shoe Machinery Corporation a percentage, increasing each year, of the amounts received from its lessees for the use of its Goodyear Welting, Goodyear Stitching and Goodyear Turn Sewing Machines in the United States, and will add to that fund from time to time the dividends which shall have been paid in the meantime

upon such stock, or shares of the common stock of the Corporation purchased with such dividends. At the end of three years from that date it will distribute the entire amount of stock held in the fund among those lessees who use the Goodyear Welting, Goodyear Stitching and Goodyear Turn Sewing Machines in the United States and who shall have faithfully observed the covenants of their leases; each lessee of these classes of machines to receive a share of the entire fund proportionate to the amounts paid by him for the use of such machines.

The beneficial interest of each lessee in the stock held in the fund, while undistributed, shall not be assignable by his own act or by operation of law, or be subject to attachment on mesne process, execution, or any legal process, and in the distribution thereof the Company will only recognize the lessees and their executors and administrators as entitled to share therein.

In the determination of all questions which may arise concerning the said fund and the distribution thereof, the Company reserves to itself the right of final decision.

Of the amount received from the use of Goodyear Welters and Stitchers in the United States, during the year ending December 31, 1910, not less than 15 per cent will be invested in accordance with the foregoing plan, and of the amount so received from the use of the Goodyear Turn Sewing Machines, not less than 10 per cent will be so invested.

By order of the Board of Directors,

S. W. WINSLOW,
President.

Boston, Mass., June 10, 1910

DEFENDANTS' EXHIBIT 345.

[Put in Evidence, page 4968.]

Pulling Over System [Form A. E. A., 1028.]

LEASE AND LICENSE NUMBER

Pulling Over System

This Lease and Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Ma-

chinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use, subject to the conditions, stipulations and provisions hereinafter contained, the machine or machines designated by number or numbers in the following schedule, viz.:—

SCHEDULE OF MACHINES.

	I.
Class A.	
Rex Pulling Over Machine, No.	$300.
Class B.	
Rex Pounding Machine, No.	125.
Rex Assembling Machine, No.	100.
Rex Toe Gumming Machine, No.	75.
Rex Toe Trimming Machine, No.	50.
Rex Upper Trimming Machine, No.	50.
Rex Upper Trimmer Knife Grinding Machine, No.	25.

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor.

The term the "principal machinery hereby leased" wherever used herein shall be construed to include the whole of the machine or machines hereby leased included in Class A in the foregoing schedule, together with all duplicate parts, extras, mechanisms and devices relating thereto held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee.

The term the "auxiliary machinery hereby leased" wherever used

herein shall be construed to include the whole of the machine or machines hereby leased included in Class B in the foregoing schedule, together with all duplicate parts, extras, mechanisms and devices relating thereto held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee.

The term the "leased machinery" wherever used herein shall be construed to include both the "principal machinery hereby leased" and the "auxiliary machinery hereby leased."

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform:—

ONE. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of unless the lessor shall by an instrument in writing signed by its president, vice-president or treasurer authorize the lessee to remove the leased machinery and to use the same elsewhere. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or exceutes any bill of sale, deed of trust or assignement for the benefit of his creditors, or if a sale, mortgage, lease or unauthorized removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of and licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the lease or license of which is so terminated shall thereupon revest in the lessor fee from all claims and demands whatsoever. The lessor and its agents and employees shall at all times

be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

TWO. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of released machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery, nor interfere with the proper operation of the same.

THREE. The leased machinery shall at all times until the expiration or termination of this lease and license and the redelivery of the leased machinery into the possession of the lessor, as hereinafter provided, be held at the sole risk of the lessee from injury, loss or destruction, and in case any machine or machines hereby leased shall be lost or destroyed by fire or otherwise before such expiration or termination and redelivery, the lessee as partial reimbursement to the lessor for such loss or destruction, shall pay to the lessor in respect to each machine so lost or destroyed the sum set opposite the name of such machine in the column numbered "I" in the schedule of machines hereinbefore contained, and shall forthwith return whatever remains of the machinery so lost or destroyed to the lessor, at Beverly, Massachusetts.

FOUR. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license, upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this Article, to be as-

sessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part, but not wholly, to machinery of the lessor in the possession of the lessee, the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assesssment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

FIVE. The lessee shall use the principal machinery hereby leased to its full capacity upon all boots, shoes, and other footwear or portions thereof made by him in the manufacture of which it is capable of being used, except that the leased machinery shall not nor shall any thereof be used in the manufacture of any welted boots, shoes or other footwear which have been or shall be welted in whole or in part or the soles of which have been or shall be in whole or in part stitched or attached by the aid of any welting or sewing or stitching machinery not held by the lessee under lease from the lessor; or in the manufacture of any turned boots, shoes or other footwear the soles of which have been or shall be in whole or in part attached by the aid of any sewing or attaching machinery not held by the lessee under lease from the lessor; or in the manufacture of any boots, shoes or other footwear which have been or shall be lasted otherwise than by Consolidated Hand Method Lasting Machines held by the lessee under lease from the lessor; or which have been or shall be pegged, slugged, heel seat nailed or otherwise partly made by the aid of any pegging or metallic machinery not held by the lessee under lease from the lessor, or the heels of which have been or shall be compressed

or prepared by the lessee in whole or in part or shall be attached by the aid of any heeling machinery not held by the lessee under lease from the lessor.

SIX. The auxiliary machinery hereby leased shall be used only in the manufacture of boots, shoes or other footwear which have been or shall be pulled over by Pulling Over Machines held by the lessee under lease from the lessor.

SEVEN. The lessee shall pay to the lessor the sum of one (1) cent in respect to each pair of boots, shoes or other footwear or portions thereof made by or for him during the continuance of this lease and license of the kind upon which it is provided in Article Five hereof the principal machinery hereby leased shall be used. Payment as herein provided shall be made on the last day of each calendar month in respect to all such boots, shoes or other footwear or portions thereof made by or for the lessee during the next preceding calendar month: **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the amount due in accordance with this Article hereof for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from the amount so due for such preceding calendar month.** All payments in this agreement provided for are independent of and in addition to all payments provided for in any other leases or licenses or agreements between the lessor and the lessee, excepting, however, that in case at the date of these presents the lessee has under other Pulling Over System lease and license agreements from the lessor one or more "Rex Pulling Over" Machines in addition to the "Rex Pulling Over" Machine or Machines hereby leased, then payment under and in accordance with this Article hereof in respect to any pair of boots, shoes or other footwear shall relieve the lessee from his obligation to make like payment in respect to that pair of boots, shoes or other footwear under the Article of such other Pulling Over System lease and license agreement or agreements corresponding to this Article hereof. The lessee, however, guarantees that the payments made by him in accordance with the terms of this Article hereof or of like terms contained in other Pulling

Over System lease and license agreements between the lessor and the lessee based upon the number of boots, shoes or other footwear of the kind referred to in Article Five hereof made by or for him shall amount, in each calendar year (after deducting all abatements), to at least Twenty Dollars ($20) for each calendar month for each "Rex Pulling Over" Machine held by the lessee under lease from the lessor and at the end of each calendar year the lessee shall pay to the lessor the amount, if any, by which the total of such payments for said year have been less than such guaranteed amount: provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount guaranteed for that year hereunder shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle, but such reduction shall not be made in respect to more than ten (10) months out of any twelve (12) consecutive calendar months.

EIGHTH. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor, the lessee shall pay the lessor (without the right to any discount) the sum of two cents per pair for each pair of boots, shoes or other footwear or portions thereof in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently

of any indicators that may be placed upon the leased machinery, showing the number of boots, shoes and other footwear, or portions thereof, made by or for him of the kind upon which the principal machinery hereby leased is capable of being used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of such boots, shoes or other footwear, or portions thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the principal machinery hereby leased (and also if so requested by the lessor upon the auxiliary machinery hereby leased), or any part thereof, to keep upon blanks or blank-books to be furnished by the lessor accurate daily records of the number of boots, shoes and other footwear, or portions thereof, in the manufacture of which he has used said machinery, or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for, and in case, in any calendar month, any one or more of the machines hereby leased has been entirely idle, the lessee, on or before the fifth day of the next succeeding calendar month, shall send to the office of the lessor in Boston the blank for such machine or machines for said month marked "not in use" and signed by the lessee. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following stipulations and provisions are agreed to:—

NINE. If at any time the lessee shall fail or cease to use exclusively pulling over machinery held by him under lease from the lessor for pulling over all boots, shoes or other footwear made by or for him, which are pulled over by the aid of machinery or which are of the kind upon which the principal machinery hereby leased is capable of being used, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases or licenses

of Pulling Over System machinery, then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all machinery the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever.

TEN. This lease and license shall continue, unless sooner terminated by the lessor as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions, stipulations or provisions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease and license, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, in good order, reasonable wear and tear alone excepted, and shall thereupon pay to the lessor without prejudice to any other rights or remedies of the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee, includiug the cost of all parts replaced at the regular prices established by the lessor therefor. The lessee for himself, his heirs, executors, and administrators, successors and assigns hereby

grants to the lessor, its successors and assigns, full right, power and authority without prejudice to any other rights or remedies of the lessor to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same.

ELEVEN. Upon the expiration or termination of this lease and license or any extension thereof the lessee, in addition to all other payments in this lease and license agreement provided for and without prejudice to any other rights or remedies of the lessor, shall pay to the lessor in respect to each "Rex Pulling Over" Machine hereby leased the sum of two hundred dollars ($200) as partial reimbursement to the lessor for deterioration of the leased machinery, expenses in connection with the installation thereof and instruction of operators.

TWELVE. In case the lessee, at any time, shall have in his factory more machines adapted for doing the same work as any auxiliary machine or machines hereby leased than in the opinion of the lessor are sufficient for performing the work which the lessee has in his factory, based upon the capacity of such machines and the number and kind of boots, shoes and other footwear made by the lessee for any period of twelve (12) consecutive months next preceding, the lessor may, at its option, upon thirty (30) days' notice in writing to the lessee, terminate the lease and license herein contained in respect to such of the said auxiliary machines hereby leased as in the opinion of the lessor are unnecessary. The termination under the provisions of this Article of the lease of or license to use any one or more of the machines hereby leased shall not affect the lease or license herein contained in respect to any other machine or machines.

THIRTEEN. In case at any time any of the leased machinery shall not, in the opinion of the lessor, be in good and efficient working order and condition, the lessor without prejudice to any other of its rights or remedies may give written notice to the lessee to put such machinery in good and efficient working order and condition and to replace all broken or missing parts; and in case the lessee does not within (15) fifteen days from the date of such notice comply with the requirements thereof, as herein set forth, the lessor may cause

such machinery to be put in such good and efficient working order and condition, and may supply such broken or missing parts, and the lessee shall forthwith pay to the lessor the expense of making such repairs and the cost at the regular prices established by the lessor therefor of all parts so supplied.

FOURTEEN. A notice in writing, signed by the president, a vice-president, the treasurer or the assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall be without prejudice to any rights or remedies which the lessor may have for violation of contract, use of machines without right, use of patented inventions without license or otherwise.

FIFTEEN. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof of any of the Letters Patent referred to in the "Schedule of Patents" hereto annexed or any of the inventions of which are now or shall hereafter be embodied in the leased machinery or the title of the lessor thereto. The termination or cesser of this lease and license or any extension thereof shall not in any way affect the provisions of this Article, or release or discharge the lessee from the admissions and estoppels herein set forth.

SIXTEEN. None of the conditions, stipulations or provisions, of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by

instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

SEVENTEEN. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In Witness Whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

By

By

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Fifteen herein.)

429,065	May 27, 1890	701,052	May 27, 1902
483,375	September 27, 1892	731,168	June 16, 1903
569,590	October 13, 1896	791,986	June 6, 1905
663,777	December 11, 1900	855,831	June 4 1907
666,282	January 22, 1901		

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1917.

No. 545.

THE UNITED STATES, APPELLANT,
v.
UNITED SHOE MACHINERY COMPANY OF NEW JERSEY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

MOTION TO ADVANCE.

Now come the appellees above named by their counsel, Charles F. Choate, Jr., and move that this cause be advanced upon the docket of this court and set down for hearing upon some early date to be fixed by this court, upon the following grounds: —

(1) This is a suit in equity brought by the United States, petitioner, against the United Shoe Machinery Company, of New Jersey, and others, under the Act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890. The petition was filed on December 12, 1911. On May 20, 1912, the Attorney General filed with the clerk of the United States District Court for the District of Massachusetts, in which court the petition in this case was then pending, a "Certificate for

Speedy Hearing under the Act of Congress of February 11, 1903", stating "that said suit is in my opinion a case of general public importance", and requesting "that the said case shall be given precedence over other cases in said court and be assigned for hearing at the earliest practicable date before not less than three judges of said circuit, as is provided by the said Act of February 11, 1903". The trial upon the merits was begun May 20, 1913, and was concluded June 5, 1914; the three judges who heard the case filed opinions on March 18, 1915; final decree dismissing the petition was entered May 14, 1915; and this appeal was docketed in this court on or shortly before July 1, 1916.

(2) This cause is one of general public interest and importance, involving the application of the Sherman Anti-Trust Law of July 2, 1890, to the business of manufacturing and dealing in shoe machinery and supplies as carried on for many years and to the relations of shoe machinery makers to their customers and the public throughout the United States.

It affects property and rights of the appellees amounting to over $40,000,000 and established business relations of many years standing between the appellees and over 1,000 shoe manufacturers making over 275,000,000 pairs of shoes a year.

The appellant's contentions raise questions not heretofore decided by this court or presented in any cases now pending before this court, including the right to lease machinery patented and unpatented, and define the terms on which it may be used and the right of an owner of patents to acquire other patents and other important questions.

This cause was on motion of the appellees advanced for argument by order of the court and was argued on March 16th to 20th, inclusive, 1917, and by order of the court on May 21, 1917, was ordered to be reargued.

It is of great importance to the appellees, to shoe manufacturers generally, and to others engaged in the business of

dealing in and using machinery that these questions be decided at an early date if possible.

As the petition attacks the character of the agreements under which the appellees lease their machines, the appellees are and will be greatly embarrassed as to their methods of conducting their business until this suit is determined.

Dated September 25, 1917.

CHAS. F. CHOATE, JR.,
Counsel for Appellees.

The appellant above named consents to this application.

Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 545.

THE UNITED STATES, APPELLANT,

v.

UNITED SHOE MACHINERY COMPANY OF NEW JERSEY ET ALS.

BRIEF OF THE APPELLEES IN SUPPORT OF APPELLEES' MOTION TO ADVANCE.

The reasons suggested by the United Stated in opposition to the motion to advance, the appellees respectfully submit, are not sound, and the result of requiring the appellees to wait the event of the second suit brought by the United States would be quite unfair and very oppressive to the appellees for the following reasons: The case at bar was brought in the District Court for the District of Massachusetts, in which State the appellees have their home office, their books and records and the headquarters of all their officers. This suit had for its primary object the dissolution of the corporation.

The attack upon its methods of doing business was incidental to the main purpose of that suit to dissolve the corporation. The Attorney-General of the United States filed an expediting certificate upon the ground that the case was of public importance and was entitled to preced-

ence. The case was thereupon given precedence and was tried and the trial completed before the passage of the Clayton Act. A very large portion of the time between the date of the appeal of the United States and the docketing of the record in this Court was occupied in reducing the mass of testimony to abstract form as required by the Equity Rules and there was certainly no avoidable delay.

A year after the passage of the Clayton Act the United States began a new suit against the appellees, based upon the third section of the Clayton Act, in the District Court for the Eastern District of Missouri, fifteen hundred miles from the home office and headquarters of the appellees. In that case the parties have not even begun to take testimony; indeed, various important preliminary questions now pending before that court must be argued and determined before it is practicable for the parties to begin taking testimony, and when that point is reached testimony must be taken in many places in various parts of the United States, which the respondents estimate will occupy certainly not less than six months and probably more than a year. The case will then be argued and submitted for decision in the District Court. When such decision has been received there remains the long and difficult task of preparing the record for this Court. No certificate has been filed by the Attorney-General in that case certifying that it is a case of public importance or requesting its expedition under the Expediting Act.

In short, the case at bar is a case aimed at the very life and existence of the appellees' companies. The case pending in the Eastern District of Missouri relates only to certain business practices. The case at bar relates to the original organization of the appellees' corporations and their business and conduct through a period of years from 1899 to the date of the filing of the bill in Decem-

ber, 1911. The case pending in the Eastern District of Missouri arises solely out of a new statute which we respectfully contend is not retroactive in its operation and affects only transactions entered upon after its passage.

To delay the case at bar, which is the original and vastly more important case, to wait the result of the trial of a wholly different and subordinate issue which may be two years in reaching this Court would be, we respectfully submit, a great injustice to these appellees.

With respect to the suggestion of the United States that other cases under the Anti-Trust Act have been docketed earlier than the case at bar, we respectfully reply: With the exception of the Harvester case and the United States Steel Corporation case, we are informed and believe that none were earlier originated than the case at bar and that none have yet been advanced for early hearing except the Harvester case and the Steel Corporation case; that the case at bar affects the interest not only of the appellees but over one thousand shoe manufacturers throughout the United States and through them affects the purchasers of their product.

By their Solicitor,

CHAS. F. CHOATE, JR.

In the Supreme Court of the United States.

OCTOBER TERM, 1916.

THE UNITED STATES, APPELLANT,
v.
UNITED SHOE MACHINERY COMPANY OF New Jersey et al. } No. 545.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

SUGGESTIONS OF THE UNITED STATES RELATIVE TO APPELLEES' MOTION TO ADVANCE.

The United States can not concur in appellees' motion to advance this case for argument at a date to be now fixed, for the following reasons:

1. In one of its principal aspects, this case involves the legality under the Anti-Trust Act of July 2, 1890, 26 Stat. 209, of a system of contracts whereby patented machines are leased to manufacturers of shoes upon the condition, amongst others, that the lessees shall use exclusively the machines, supplies, and other commodities of the lessor. In addition to this suit there is now pending in the United States District Court for the Eastern District of Missouri another proceeding (No. 4489) between the same parties involving the legality of the same contracts

under section 3 of the Clayton Act, 38 Stat. 730, 731, reading as follows:

> SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Although the two cases involve largely the same state of facts, a decision in the case under the Anti-Trust Act would not be conclusive of the case under the Clayton Act. Counsel for the Government in the case under the Clayton Act expect that it will be finally disposed of in the lower court within the next three months, and if their expectations are realized the case could be appealed to this court in time for hearing either during the latter part of the

present or the beginning of the next term. It is respectfully suggested, therefore, that the convenience of the court and of counsel would be served by postponing the argument in the present case until the case under the Clayton Act has reached this court, in order that they may be heard together.

2. There are now pending in this court six cases under the Anti-Trust Act which by reason of priority in docketing are entitled to precedence over the instant case,[1] including the cases against the International Harvester Company and the United States Steel Corporation, which have been set down for hearing on February 26 next, and the case against the Motion Picture Patents Company, which the court is to-day being asked to advance for hearing on the first Monday in April. There appears to be no sufficient reason for giving this case precedence over other cases of like character standing ahead of it on the docket.

JOHN W. DAVIS,
Solicitor General.

DECEMBER, 1916.

---

[1] No. 56, *International Harvester Co.* v. *United States*, docketed January 4, 1915; No. 301, *United States* v. *Great Lakes Towing Co.*, docketed November 30, 1915; No. 370, *Chicago Board of Trade* v. *United States*, docketed February 1, 1916; No. 461, *Motion Picture Patents Co.* v. *United States*, docketed April 22, 1916; No. 481, *United States* v. *United States Steel Corporation*, docketed May 12, 1916; No. 482, *Eastman Kodak Co.* v. *United States*, docketed May 15, 1916.

The instant case was not docketed until June 30, 1916.

○

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 207.

UNITED STATES OF AMERICA, APPELLANT,

v.

UNITED SHOE MACHINERY COMPANY ET AL.

MEMORANDUM SUBMITTED BY DEFENDANTS IN OPPOSITION TO MOTION OF THE ATTORNEY-GENERAL TO CONTINUE ARGUMENT TO NEXT TERM OF COURT.

The United Shoe Machinery Company vigorously opposes the continuance of this cause for argument to the next term of court. Its officers and directors can conceive of no situation that will arise, even if dissolution were decreed, where the financing the company could possibly interfere with the financial operations of the United States. The company has no outstanding bonds or mortgage on its property and has an abundance of quick assets to care for any emergency. Its capital stock is quite small (only $50,000,000) as compared with the capital of the other defendants in anti-trust cases, and its stock is largely held locally, principally where it does business, and is not widely scattered; its credit is good; its customers to whom it leases machines number less than 1100 concerns. Even if dissolution were decreed,

the Court could satisfactorily deal with the situation when the exigency arose, if ever.

The cause is one which was expedited for trial under a certificate of the Attorney-General and was tried before three judges in open court. The entire testimony of all the witnesses and the evidence and all the exhibits were presented in open court to these judges, with the exception of certain technical testimony upon patents which was taken before an examiner. The decision of the Court thus constituted after a trial of this character was in favor of the defendant and all controverted issues of fact were decided in favor of the defendant, particularly controverted issues of fact with reference to the interpretation and effect of its leases with respect to competition of other manufacturers and restraint of trade. The pending appeal is therefore the appeal of the United States.

Shortly after the decision was rendered, namely, in October, 1915, the United States initiated another suit against the defendant in the District Court for the Eastern District of Missouri, claiming that under the provisions of the Clayton Act, so called, certain clauses of leases of the defendant were contrary to the provisions of that law. Whether the clauses of the defendant's leases violate the Clayton Act depends in large measure upon their interpretation and the effect which as a matter of fact they may be found to have upon the trade in shoe machinery.

It is obvious that the decision of this Court in this case wil' be of importance as to many issues in the Clayton Act case, and both court and counsel in that case will be at a great disadvantage in a trial of that case unless they have a decision of this Court upon the issues raised in this case.

Moreover, it is of very vital importance to the defendant to learn authoritatively whether its organization and methods of doing business are open to criticism. It is the owner of about $35,000,000 worth of machinery, which is

in the hands of lessees under the leases which are attacked in this litigation; the royalties paid for the use thereof constitute its principal source of income.

The company in the regular course of business is almost daily called on to furnish machines to its customers and supply new manufacturers; in filling this demand under the lease system it regards certain clauses of its leases objected to by the Government as essential to its reasonable protection. The Government asks in this suit that the company be enjoined from enforcing these clauses but that the machines be left in the hands of lessees, without the protection these clauses afford. The company is in consequence greatly embarrassed in conducting its business, and feels that in fairness its rights should be determined as speedily as possible.

While this litigation is pending, the company and its customers and the trade in general continue in a state of uncertainty as to what the defendant may lawfully do.

The leasing system is one of historical growth and is complicated by many circumstances, and if any change is found by this Court to be required by law, such change will require careful analysis of the conditions and considerable time to work out.

This litigation was begun by a bill in equity filed in December, 1911; the trial of the case began in May, 1913, and was concluded in June, 1914; decision was rendered in March, 1915, and the decree dismissing the Government's bill here appealed from was entered in May, 1915. The preparation of the record, involving the reduction to narrative form of several volumes of testimony in order to comply with the equity rules, involved much time and labor, but the case was docketed in this Court on or about July 1, 1916; was advanced for argument on motion and was first argued in March, 1917. The defendant was advised of the Court's order that the case be reargued in May, 1917; on October 1, 1917, a

motion was presented to the Court that the cause be again advanced for reargument, *which motion the Government did not oppose* though the reasons now presented by the Attorney-General for delay were quite as valid then as now, and the Court assigned the case for argument January 7th. The defendant is ready and desires to submit the case to the Court at that time.

FREDERICK P. FISH,
CHAS. F. CHOATE, JR.,
MALCOLM DONALD,
of Counsel.

COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, SS. DECEMBER 31, 1917.

I, E. P. Brown, being duly sworn, on oath depose and say, that I am president of the United Shoe Machinery Company; that I have read the foregoing memorandum subscribed by counsel for the company, and to the best of my knowledge and belief the facts therein stated are true, and I further depose and say that the United Shoe Machinery Company, as stated in said memorandum, has no outstanding bonds or mortgage on its property; that its stock is largely held in Massachusetts; that it is in possession of a substantial amount of quick assets and its credit is good, and that I can foresee no situation in its financial affairs where, even in the event of dissolution by order of this Court, the carrying out of a decree to that effect would interfere with the Government's financial operations.

E. P. BROWN.

Subscribed and sworn to before me this thirty-first day of December, A. D. 1917.

CHAS. F. CHOATE, JR.,
Justice of the Peace.

MAR 15 1917
JAMES D. MAHER
Clerk

Supreme Court of the United States

OCTOBER TERM, 1916

No. 207

THE UNITED STATES,
Appellant,

v.

UNITED SHOE MACHINERY COMPANY OF NEW JERSEY, ET AL.,
Appellees.

SUPPLEMENTAL BRIEF FOR UNITED SHOE MACHINERY COMPANY ET AL. IN REPLY TO BRIEF OF THE UNITED STATES

FREDERICK P. FISH
CHARLES F. CHOATE, Jr.
MALCOLM DONALD
Counsel for Appellees.

BOSTON
Press of Geo. H. Ellis Co.
1917

Supreme Court of the United States

OCTOBER TERM, 1916

No. 545

THE UNITED STATES,

Appellant,

v.

UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL.,

Appellees.

SUPPLEMENTAL BRIEF FOR UNITED SHOE MACHINERY COMPANY ET AL. IN REPLY TO BRIEF OF THE UNITED STATES

FREDERICK P. FISH
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Counsel for Appellees.

BOSTON
PRESS OF GEO. H. ELLIS CO.
1917

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Supreme Court of the United States

OCTOBER TERM, 1916

No. 545

THE UNITED STATES,
Appellant,
v.
UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL.,
Appellees.

SUPPLEMENTAL BRIEF FOR UNITED SHOE MACHINERY COMPANY ET AL. IN REPLY TO BRIEF OF THE UNITED STATES.

GENERAL CONSIDERATIONS APPLICABLE TO BRIEF OF THE UNITED STATES.

1. The Brief of the United States seriously misstates and misconstrues the evidence. This is especially true in respect to the leases. In the discussion of their character and effect there is hardly a comment or illustration which does not contain some misstatement of fact or unwarranted assumption.

The result is that the argument of the United States is founded upon conclusions and assumptions which have no foundation in the record.

The attorneys for the United States on this appeal did not try the case in the District Court and they are, there-

fore, not as familiar with the evidence as though they had presented it. This may account for the misstatements on which their argument is founded.

2. The Brief of the United States does not discuss at all the questions which stand at the threshold of this case on appeal, viz., whether or not there is evidence to support the findings of the District Court, and if there is such evidence and the findings of the District Court are, therefore, accepted, whether on the basis of these facts the decree of the District Court should be reversed.

3. The Brief of the United States fails to state the issue made by the petition in this case or to consider whether or not the evidence relates to this issue and supports the charges of the United States.

It contains no specification of errors relied upon, nor does it present any precise statement of the questions involved and the manner in which they are raised.

The charge made by the petition is definite and limited. It charges that the defendants planned to extend unlawfully the lawful patent monopolies held by the constituent companies, and to obtain a complete monopoly of shoe machinery, and that for the accomplishment of this purpose they conceived the idea of acquiring the ownership or control of all concerns engaged in the manufacturing of shoe machinery and then to refuse to sell or lease any shoe machinery of the classes defined as essential machines, unless the shoe manufacturer took practically all other machinery from the defendants and that they carried out this plan and thereby acquired a monopoly. (See main brief, p. 10.)

The Brief of the United States nowhere states this issue or discusses the relation of the evidence to this alleged plan.

In fact it is somewhat difficult to determine from the Brief of the United States just what it contends is the issue before this Court.

The United States does not deny that the United Company's machines are patented, nor does it seriously contend that they are not the best machines in the market, and that they are therefore the machines most desired by shoe manufacturers. It contends that the constituent companies in 1899 were manufacturing these machines under patents and did practically all the business of the country in the machines which they furnished which comprise the principal machines as to which it now claims a monopoly.

It further does not deny that the other machines not manufactured by the constituent companies as to which a monopoly is charged, such as, pulling-over, eyeletting and clicking machines, have been developed and invented by the United Company since its formation.

Accepting these admissions on the part of the United States, it would seem that its contention must be reduced to this, viz., (1) That the alleged competition between the Goodyear Company and the Eppler Company in welt machines, and between the Goodyear Company and the Consolidated Company in lasting machines, made the original formation of the United Company illegal; and (2) that competitors of the United Company in some way would have invented machines superior to or as good as the United Company's machines and would have furnished them upon terms and conditions as satisfactory to shoe manufacturers as those offered by the United Company, and, therefore, would have acquired a larger proportion of the business than they now have, had it not been for the United Company's methods of conducting its business.

The record shows how utterly the United States failed to substantiate these issues. But apart from this they are not the issues in the case. The issue in the case is whether the defendants acting through the United Company planned to acquire a monopoly by acquiring all concerns engaged in the shoe machinery industry and then refusing to lease essential machines unless all other machinery was taken, and whether they carried out this purpose and thereby acquired a monopoly. Even had there been competition between the constituent companies, the consolidation of these companies would not have shown an intent to acquire all concerns engaged in the shoe machinery business, and the leases of the United Company, as the District Court found, certainly do not compel a shoe manufacturer taking one kind of machine to take practically all.

COMMENTS UPON THE PORTION OF THE BRIEF OF THE UNITED STATES TREATING OF THE LEASES.

The United States asserts that irrespective of whether the original formation of the United Company or the subsequent acquisitions by that Company were legal or illegal the defendants have adopted and are enforcing a system of leasing which is unlawful in that it directly and inevitably interferes with the free flow of trade in interstate commerce. (See Brief of the United States, p. 146.)

This is not the charge made by the petition. The petition charges that the clauses in the leases objected to by the petitioner were adopted as part of an unlawful plan, of which the formation of the United Company was a part, and that they constituted only a step in carrying out such unlawful plan, the plan being to obtain a monopoly by acquiring all concerns engaged in the shoe machinery industry and refusing to lease essential machines unless the lessee also took practically all other machines.

Furthermore, the United States does not attempt to limit itself to the specific charges made in the petition as to the leases. The allegations of the petition in respect to the leases are (see main brief, pp. 240–242) that the United Company discontinued selling machines and adopted arbitrary and oppressive leases, which were illegal in that they

(1) Required the lessee to covenant to use the United Company's machines, both of the kind leased and of all other kinds exclusively;

(2) Permitted the United Company to cancel its leases of all machines if these covenants were broken; and

(3) Required the lessee to use the leased machinery for seventeen years.

But further than this the entire argument of the United States is based upon inaccurate statements of fact, half-truths and unwarranted inferences, unfounded and misleading illustrations, and a limited and partial reference to the evidence.

There is scarcely a page of the section relating to the leases which does not contain some inaccurate statement of fact or some unwarranted assumption.

These misstatements show a fundamental misconception or misconstruction on the part of the attorneys for the United States of the character and effect of the leases in respect to basic matters. For example:—

1. They show such misconception or misconstruction in respect to the existence or extent of use of the clauses complained of.

2. They show such misconception or misconstruction in respect to the effect of the clauses (*i.e.*, they do not have the inclusive effect attributed to them).

3. They show such misconception or misconstruction in respect to the inter-relation of the clauses (*i.e.*, their cumulative effect).

4. They fail to analyze the leases or the clauses complained of, they omit to state the purpose of the clauses, and they misconstrue their scope and effect.

The conclusions of the United States as to the effect and character of the leases are, therefore, utterly opposed to the facts. The result is that there is no basis stated in the Brief of the United States for a common argument.

For example, the argument of the United States is based on wholly unwarranted conclusions, such as the following:—

> (p. 254) "The United Company is a 'strong manufacturer'—a giant. It refuses to deal with shoe manufacturers who use independent machines."
>
> (p. 125) "No one may use a United lasting machine upon any shoe which has been operated upon by a machine not procured from the United Company, . . ."
>
> (p. 161) "The exclusive use clause, for example, obviously limits the freedom of choice of every lessee as to all his future needs for machines of the kind leased and clearly prevents access to him, as a possible customer for any such machines, of all who seek to compete with defendants as to those machines."

These conclusions, like many others in the Brief of the United States, are utterly without foundation.

In the chart attached to the Brief of the United States as Appendix A, and in Appendices C and D, the petitioner undertakes to set forth in detail the clauses in the various leases. We comment on these in Appendices I, II and III of this supplemental brief. In the brief proper the petitioner confines itself to general statements intended to show the general effect of the leases, which statements it attempts to support by a few illustrations. Practically all of these general statements are unfounded or inaccurate and the illustrations used to support them either do not support them at all or are provisions used in a few leases and do not justify a general statement applicable to all the leases.

The result is that the general statements on which the petitioner bases its argument are unfounded and unjustified.

PETITIONER'S STATEMENTS AS TO EXTENT OF USE OF THE CLAUSES.

The leases of the United Company, as we have shown in our main brief, have been developed gradually from the very beginning of the shoe machinery industry. They, therefore, represent an historical growth. The machines of the different departments, such as Goodyear machines, lasting machines, metallic machines, heeling machines, eyeletting machines, pulling-over machines, insole machines, and General Department machines, are leased on different forms of lease and there are likewise different forms used in each department. The leases are adapted to the different kinds of machines to which they relate, to the particular work which such machines do and to the particular conditions on which the machines are leased. The leases for the different classes of machines were developed by the different constituent companies. Thus, the Goodyear machine leases were originally developed by the Goodyear Company, the lasting machine leases by the Consolidated & McKay Lasting Machine Company, the heeling and metallic machine leases by the Heeling and Metallic companies owned by the McKay Company. At the time of the formation of the United Company the leases of each of these companies differed somewhat in their terms and provisions. The United Company, as we have shown in our main brief, continued these leases for more than a year without any change whatsoever and afterwards it made modifications only from time to time as conditions seemed to require it. The United Company, therefore, never adopted a new system of leases, and its modifications on the whole have been comparatively slight and have

not changed the fundamental basis of the leases. The leases which the United Company has from time to time drawn up for new machines invented by it have necessarily been made consistent with the existing leases so far as possible, and their character has necessarily been determined in large part by the existing lease system. The United Company, as the various forms of leases have for some reason been reprinted, has made certain slight changes to make the lease system consistent, such, for example, as making all the terms of the leases seventeen years instead of having them run for the life of the machine leased, or indefinitely during the life of the patents on the machines or on any improvements thereafter placed on the machines, as in most of the constituent company leases. But it has at no time undertaken to formulate a new system of leases.

The result is that the leases of different machines differ in their terms and character. Because a clause is contained in one lease it does not necessarily follow that it is contained in another. General statements based upon a single lease or the effect of a single lease are, therefore, very misleading.

The petitioner's brief gives the impression that the various clauses are contained in most or all of the leases.

Thus it states (p. 149):—

> "The leases are characterized by the inclusion in them of the tying clauses to which reference has been made. They are called 'tying' clauses because they tie the use of the machine leased to the use of machines not covered by the particular lease."

After giving an illustration the brief continues (pp. 149–150):—

"In addition to these clauses there are certain other clauses which make the tying clauses more effective and give to them their maximum effect as destroyers of the possibility of competition with the defendants.

"Examples of the various tying clauses and other clauses which together give the defendants' leasing system its illegal character are set out below."

There then follow in the brief nine separate headings designated as follows:—

1. The seventeen-year term.
2. The "additional machines" clause.
3. The exclusive use clause.
4. The prohibitive clause.
5. The "right to terminate all leases" clause.
6. The "full capacity" clause.
7. The return charge.
8. "Royalty" charges on work not done on defendants' machines.
9. Discriminatory royalty charges where competitors' machines are used by the lessee.

On page 160 it is stated that all the defendants' leases provide for a seventeen-year term and all contain the "right to terminate all leases" clause and that the varying use of the other clauses noted above appears from the summaries to be found in Appendices C and D. However, the impression left is that all those clauses are contained in all the leases, or at least that they are typical of all the leases, and further in respect to several of the clauses a direct and erroneous statement is made as to their use.

For example, the brief states (p. 163):—

> "This latter field however is closed by the exclusive use clause. *Every lease* has that clause or an equivalent" (italics theirs).

In other words the petitioner's brief states that every lease contains the exclusive use clause or an equivalent clause.

That this is not true is shown by a cursory examination of the leases and by an examination of Appendix D attached to the petitioner's brief.

The purpose of the exclusive use clause is to give the lessor an option to withdraw its machines on which the royalty is based on the use of the machine, if owing to the use by the shoe manufacturer of other machines of the same kind, the lessor finds that its machines are used only occasionally or only on slow or difficult work, or that proper reports of the amount of work done on its machines are not made by the lessee so that the lessor does not receive or has reason to believe that it is not receiving a fair return on its investment. (See main brief, pp. 311–318.)

The clause is, therefore, used only in leases of machines on which a royalty based on the use of the machine is charged. It is not used in the lease of the McKay sewing machine (P.'s Ex. 170, R. Vol. 4, p. 1161). It is applied to leases of Goodyear welters and stitchers, because these are machines on which the royalty for the Goodyear set is based, but it is not applied to the forty-three Goodyear auxiliary machines, because no separate royalty is charged for their use. It is not applied to the leases of General Department machines, because a fixed annual payment or an initial payment and not a royalty based on use is charged for such machines (P.'s Exs. 40, 41, R. Vol. 3, pp. 373–387).

Out of 90,276 machines leased by the United Company on March 1, 1911, over 53,000 were Goodyear auxiliary and General Department machines, as to which the exclusive use cancellation clause was not applicable, nor was any equivalent clause applicable. (See main brief, p. 316.)

The statement in the petitioner's brief that every lease contains this clause is, therefore, grossly inaccurate.

In respect to certain of the other clauses referred to, the following limitations on their use should be noted:—

1. The full capacity clause (referred to in petitioner's brief at page 154), like the exclusive use clause, is intended to protect the lessor in respect to machines leased for a royalty dependent on the use of the machine. (See main brief, pp. 306–311.) Where a machine is leased to be paid for only to the extent it is used, it is obvious that the lessor must require the lessee to agree to use it when the lessee has work which the machine can perform. Where an annual rental or an initial payment and no royalty based on use is charged for the machine the full capacity clause is not necessary, as the lessor will get the same return whether or not the machine is used. For this reason the full capacity clause is not used in leases of General Department machines, in the lease of the McKay sewing machine, or in respect to the Goodyear auxiliary machines. (See main brief, p. 307.)

The result is that it is not used in respect to more than half in number of the machines held under lease.

2. The clause described by the petitioner as the "prohibitive" or "tying" clause (referred to at page 152 of the petitioner's brief) differs very much in the different leases.

In the clause quoted at page 152 the restrictions are that the machine shall not be used except on shoes on which

the United Company's Goodyear welter and stitcher and turn sewer (which is the same machine as the Goodyear welter), its pulling-over and metallic machines are used. Many if not most of the restricted clauses are less inclusive than this. For example, the hand method welt machine is restricted only to use with the Goodyear welter and stitcher.

Furthermore, of course, this clause is employed (except in the case of certain auxiliary machines) only in alternative forms of lease. Thus lessees can obtain the machines of any department on leases which do not restrict them to use with machines of other departments, except in the case of General Department machines, in respect to which the lessee can purchase them outright without any restrictions whatsoever.

3. The clause quoted at pages 150–151 of the petitioner's brief as an example of the "additional machines clause" does not require the lessee to take additional machines at all. It merely provides that if the lessee has additional work *he shall either take additional machines from the lessor* or the *lessor may if it so elects cancel its leases of metallic machinery*. The lessee is free to use a competitor's metallic machinery and is not required to take additional machines from the lessor. The clause merely provides that if the lessee prefers a competitor's machines, the lessor may at its option withdraw its own machines. In other words, the clause quoted has exactly the same effect as the exclusive use clause and does not obligate the lessee to do anything.

This clause quoted at pages 150–151 was contained in only a few of the forms of the leases of the United Company, most of which are now obsolete.

The additional machinery clause used by the Consoli-

dated & McKay Company in many of its leases and by the Goodyear Company in its lease for turn sewing machines, prior to the formation of the United Company, actually required the lessee to take additional machines and thus required an exclusive use of these machines.

The additional machinery clause was continued only to a limited extent by the United Company after its formation, and abandoned in all leases put out after 1907. (See main brief, pp. 323–326.)

4. The clause requiring the lessee to pay a return charge (referred to in petitioner's brief at page 154) is used only in those leases in which an initial payment is not required. If a machine were leased without an initial payment, and for some reason the lease was terminated or the machine returned shortly afterwards, the lessor would have been put to considerable expense for which it would have received no return or no substantial return. This return payment is expressly stated in the clause quoted at pages 154–155 of the petitioner's brief to be,

> "partial reimbursement to the lessor for deterioration of the leased machinery, expenses in connection with the installation thereof and instruction of operators."

5. The clause referred to in the petitioner's brief (p. 155) as royalty charges on work not done on defendants' machines is taken from a lease of Goodyear machines in which the machines are leased without initial payment.

This is only an alternative form of lease. Any lessee can obtain the Goodyear machines on a lease not containing this clause by paying the initial payments required of all lessees prior to 1905 (R. Vol. 1, p. 442, lines 4–12). It is used in no other leases except certain leases of pulling-over machines.

6. Under the heading "Discriminatory Royalty Charges Where Competitors' Machines Are Used By The Lessee" (p. 157), the United States quotes a clause from the United Company's clicking machine lease, under which lease no direct royalty is charged if the machine is used in connection with the United Company's Goodyear welter and stitcher and the United Company's lasting machines, the United Company in such a case getting its return indirectly from the royalties paid for those machines, but a direct royalty is charged where the clicking machine is used with other welters, stitchers, and lasting machines, as otherwise the United Company would get no return for its clicking machine. (For a discussion of this clause, see *infra*, pp. 46–47.)

This clause is employed only in the lease of the clicking machine and in no other lease.

The petitioner's brief, after characterizing the clause, states (p. 158):—

"An example of such a clause is the following,—"

The effect is to give the impression that this clause is employed generally in the United Company's leases.

PETITIONER'S MISSTATEMENTS AS TO THE SCOPE AND EFFECT OF THE RESTRICTED USE CLAUSE.

The petitioner's brief gives a wholly erroneous view of the effect of the restricted use clause and makes statements in respect to it which are utterly without foundation.

The actual effect of the restricted use clause is extremely limited, as we have shown in our main brief. (See main brief, pp. 366–373.)

We shall consider below a few of the misstatements in the petitioner's brief in respect to this clause.

At page 125 of its brief, the petitioner says:—

> "No one may use a United lasting machine upon any shoe which has been operated upon by a machine not procured from the United Company, therefore not upon a shoe operated on by a McKay machine procured outside of the United Company. The lasting machine is virtually, if not absolutely controlled by the United Company. Practically, every shoe manufacturer in the United States must have it. Therefore, every such manufacturer must also procure his McKay machines from the United Company.
>
> "In consequence, the United Company by procuring control of the McKay sewing machine completed its monopoly of every important machine used in bottoming shoes."

The statement made by the petitioner, in other words, is:—

(1) The United Company absolutely controls the lasting machine. Every shoe manufacturer must obtain his lasting machines from the United Company.

(2) Under the United Company's leases lasting machines cannot be used on shoes on which any machines obtained from competitors are operated. If, therefore, a shoe manufacturer uses the United Company's lasting machines, he cannot use any other machines of any kind obtained from competitors.

(3) Lasting machines obtained from the United Company, therefore, cannot be used on shoes on which a McKay machine obtained from a competitor is used.

The petitioner's conclusion, therefore, is that all shoe manufacturers must use and do use the United Company's McKay sewing machines.

Each one of these statements is untrue and the conclusion is likewise untrue.

In the first place, lasting machines can be obtained from other persons than the United Company. (See *infra*, pp. 155–157.)

In the second place, any lessee may obtain lasting machines from the United Company on unrestricted leases which do not restrict their use to use with any machines of any other kind whatsoever.

For example, he may obtain the hand method McKay lasting machine without any restrictions by paying an initial payment of $300. Furthermore, under this lease he is required to pay only ½ of a cent royalty per pair of shoes, while under the restricted lease the royalty is ⅝ of a cent per pair. (See main brief, pp. 288–289.)

He may obtain the hand method welt lasting machine without any restriction as to use with other machines by making an initial payment of $300. Under this lease he pays the same royalty per pair as under the restricted lease. (See main brief, p. 289.)

He may obtain the No. 5 lasting machine, a new type of lasting machine invented and developed by the United Company and first put out about 1908, without any restriction as to use with other machines by making an initial payment of $300. (See P.'s Ex. 22, R. Vol. 3, p. 193, par. Five.) The royalty will be the same as under the restricted lease.

The above-mentioned lasting machines are the machines now in general commercial use, the other types having become practically obsolete.

Even if he does not desire to make an initial payment and therefore takes his lasting machine or machines under

restricted leases, such restricted leases have no such effect as the petitioner states.

The restricted lease of the hand method McKay machine restricts its use only in connection with the Goodyear welter and stitcher and the United Company's metallic machines. As the machine is only adapted for use on McKay shoes, on which the welter and stitcher are never used, the restriction runs only to use with the United Company's metallic machines.

Thus a shoe manufacturer of McKay shoes can take the hand method McKay lasting machine under the restricted lease and use with it any competitor's machines he may desire except metallic fastening machines. In other words, he may use in connection with a competitor's heeling machines, eyeletting machines, pulling-over machines, lacing machines, McKay sewing machines, and General Department machines (of which there are one hundred and seventy different types), button-hole machines, or with any machines not manufactured by the United Company such as machines for sewing the uppers of shoes.

The restricted lease of the hand method welt lasting machine restricts it to use only with the United Company's welter and stitcher, that is, to two machines out of over three hundred manufactured by the United Company. (See main brief, p. 289.)

In other words, a shoe manufacturer making welt shoes can take the hand method welt laster and may use it in connection with any machines whatsoever obtained from a competitor except the welter and stitcher. He may use it with any one of forty-three Goodyear auxiliary machines obtained from a competitor, or with a competitor's pulling-

over, metallic, eyeletting, heeling, lacing, insole and General Department machines, button-hole machines, or machines not manufactured by the United Company such as machines for sewing the uppers of shoes.

The No. 5 lasting machine under the restricted form of lease is restricted to use with the United Company's welter and stitcher, pulling-over and metallic machines.

A lessee taking this machine under the restricted lease may therefore use it in connection with a competitor's Goodyear auxiliary machines (of which there are forty-three), heeling machines, McKay sewing machines, eyeletting machines, lacing machines, insole machines, General Department machines, button-hole machines, and other machines not manufactured by the United Company, such as machines for sewing the uppers.

It will thus be seen how utterly without foundation is the petitioner's statement that

> "No one may use a United lasting machine upon any shoe which has been operated upon by a machine not procured from the United Company. . . . ."

And also its further statement (p. 125),—

> " . . . therefore not upon a shoe operated on by a McKay machine procured outside of the United Company."

It will be noted that not one of these restricted leases of lasting machines restricts the use of the machine to use in connection with the United Company's McKay sewing machines. A shoe manufacturer is absolutely free to take any form of lasting machine put out by the United Company under a restricted lease and use it in connection with McKay machines obtained from competitors.

Therefore, the petitioner's conclusion that shoe manufacturers taking the United Company's lasting machines must necessarily use the United Company's McKay sewing machine is absolutely untrue.

This is shown not only by the leases themselves which we have examined above, but also by the facts in respect to the use of competitors' McKay sewing machines.

For example, in 1909 there were in the principal shoe manufacturing districts 1,488 McKay sewing machines, of which only 308 had been supplied by the United Company and 1,180 had been supplied by others. In the Lynn district there were 59 McKay sewing machines supplied by the United Company and 367 supplied by others (R. Vol. 1, p. 977, lines 16–31; see also main brief, p. 563).

Mr. Jonathan Brown, Jr., a large manufacturer of McKay shoes who used the United Company's lasting machines (Defs.' Ex. 236), testified that he had thirteen McKay sewing machines, of which he owned ten and obtained three from the United Company on lease.

> "The United Company has never caused us any difficulty or interfered with us in connection with our buying McKay sewing machines while we have their leased McKay sewing machines in our factory. We have done as we wanted to absolutely without any interference" (R. Vol. 1, p. 730, lines 25–30).

It is difficult to see how the petitioner can justify itself in making such statements as the foregoing, each one of which is absolutely without foundation.

The foregoing facts also show the utter lack of foundation for the charge made by the petition. That charge is that the United Company used its so-called essential machines,

namely, the Goodyear welter and stitcher, lasting, metallic, and heeling machines, which the constituent companies manufactured, to compel the use by lessees of other machines. One of the most important of such other machines is the McKay sewing machine. The McKay sewing machine was the first important shoe machine ever invented (R. Vol. 1, p. 521, lines 15–17). It was used in uniting the soles to the uppers of nearly forty per cent. of the shoes made in 1910 (Defs.' Ex. 215, R. Vol. 1, p. 424). It was not manufactured by the constituent companies, and when the United Company started to manufacture it, it would obviously, had it had the purpose ascribed to it by the petitioner, have required lessees of some one or more of its so-called essential machines to use them only in connection with its McKay sewing machine. But it has never restricted any of its machines to use with its McKay sewing machine (notwithstanding the statement in the petitioner's brief to the contrary), thus absolutely disproving the contention of the United States.

The assumption (without any foundation in fact) that the restricted use or "tying clauses" restrict the use of each machine or of certain so-called essential machines, to use with all other machines runs all through the petitioner's discussion of the leases.

Examples of other misstatements as to this clause are given below.

For a discussion of its actual scope and effect see our main brief, pages 346–373.

PETITIONER'S ERRONEOUS STATEMENTS AS TO THE UNRESTRICTED OR INDEPENDENT LEASES AND THEIR EFFECT.

As stated in our main brief, the United Company offers not only certain restricted leases, but also offers the machines of each department on unrestricted leases which do not restrict them to use with machines of any other department. (See main brief, pp. 357–364.)

A shoe manufacturer who does not wish to use a team of the United Company's machines, but wishes to use only its machines of certain departments and to use competitors' machines from other departments, can, if the clauses in the restricted leases for the machines he wishes to take from the United Company stand in the way, take unrestricted leases of those machines.

Of course this right absolutely refutes the contention of the United States that shoe manufacturers taking machines of one department are compelled to use machines of any or all other departments.

The petitioner, however, contends that these unrestricted leases are furnished only on prohibitive terms which cannot be accepted by the lessee and that they, therefore, do not constitute a real alternative.

Of this attempt to prove that the charges for the unrestricted or independent leases are exorbitant the District Court said (R. Vol. 1, p. 1166): —

> "But surely, if the argument is made that there is coercion through an excessive price, such an argument can have no weight whatever for any purpose legal or ethical unless the fact that it is excessive affirmatively appears. From such evidence as is presented

in this case as to the amount of initial charges upon independent leases we can draw no support for the charge of coercion through excessive charges."

In practically all of the independent leases the royalty per pair of shoes is the same as that charged for the restricted leases. The only difference is that an initial payment is required under the independent leases. In the case of the independent lease of the hand method McKay lasting machine the royalty is, moreover, less under the restricted form. (See main brief, p. 288.) In the case of the metallic machines, on which the royalty is received by the purchase of material used in the machines, there is an alternative initial payment form of unrestricted lease, under which the charge for material used is the same as under the restricted form, and also an alternative unrestricted form of lease, in which no initial payment is required, but ten per cent. more is charged for the material used than under the restricted form. (See main brief, p. 291.)

The petitioner in making its contention that the initial payment leases are prohibitive is met at the outset by the fact that the initial payments charged by the United Company are no higher than those charged by the constituent companies at the time of the organization of the United Company. A lessee to-day can get a set of machines on independent leases for less cost than he could in 1899, when the United Company was formed. (See main brief, pp. 358–359.) In addition, he gets much improved machines having a far greater capacity than the machines of 1899; he gets more auxiliary machines; and he gets far better service with his machines.

The truth is that the United Company's rates for ma-

chines at retail, that is, on independent or unrestricted leases, have not been increased although its machines and service have been much improved. The distinction between the price for unrestricted leases, under which machines are taken to be used at retail, and the prices for restricted leases, under which the machines are taken to be used at wholesale, has grown up, not by adopting higher prices for machines leased for use at retail, but by adopting reduced rates from time to time in respect to certain machines when taken to be used under restricted leases, *i.e.*, at wholesale.

The petitioner's brief says (p. 179):—

> "Therefore, Winslow has deliberately formulated two classes of leases, and has so framed the so-called 'independent' class that in his judgment it is more beneficial to the lessee to adopt the other class, which ties him hand and foot to the United Company."

The insinuation in this statement that prices for the independent leases have been deliberately formulated to prevent lessees taking machines on such leases is absolutely without foundation. The charges for these leases have merely continued the same in practically all instances.

The attempt of the petitioner to prove that the price or prices charged for the unrestricted leases are prohibitive is based upon misstatements as to the effect and scope of the restricted leases and upon a misconstruction of other evidence.

On page 176 the petitioner's brief says:—

> ". . . a manufacturer must take the independent lease as to every class of machines, in order to be relieved from the restrictions. For illustration, suppose one entering upon the manufacture of welt shoes should

take restricted leases for lasting and metallic fastening machines, but an independent lease for heeling machines. His independent heeling machine lease would avail him nothing, because his lasting machine and metallic fastening machine leases would prohibit the use of such machines in connection with a heeling machine not owned by the United Company. So, if he were to take independent leases for all machines other than lasting machines, *that one lease* would prohibit the use of the lasting machines in connection with either of the *other classes* of machinery. Hence, the manufacturer must take the *entire* independent system to obtain any freedom whatever" (italics theirs).

Let us see if the foregoing statement is true.

It refers to a lessee who takes from the United Company lasting, metallic and heeling machines.

The petitioner first states that if such a lessee takes restricted leases of lasting and metallic machines these leases (p. 176)

> "would prohibit the use of such machines in connection with a heeling machine not owned by the United Company."

There is no foundation whatsoever for this statement.

None of the United Company's lasting machines which are to-day taken by lessees is restricted to use with its heeling machines. The only lasting machine which was ever so restricted is the McKay & Copeland machine, which was used only for heavy brogans and which is now practically obsolete. None of the United Company's metallic machines has ever been restricted to use with its heeling machines.

The result, therefore, is that a lessee can take both

lasting machines and metallic machines from the United Company on restricted leases without initial payment and use them with a competitor's heeling machine.

A shoe manufacturer desiring to use a competitor's heeling machine would of course not take the United Company's heeling machine, as the petitioner apparently assumes he would do. He would therefore not be required to pay an initial payment for such machine to the United Company. The result is that, without its costing him a cent of additional royalty or initial payment, a lessee can use a competitor's heeling machine with the United Company's lasting and metallic machines. So much for the petitioner's first illustration.

The second illustration used by the petitioner is as follows: Its brief states that if a shoe manufacturer took an independent lease of all his machines other than the lasting machines (p. 176)

> "*that one lease* would prohibit the use of the lasting machines in connection with either of the *other classes* of machinery" (italics theirs),

that is, with his heeling and metallic machines, which are the other classes referred to.

We have shown above that the hand method welt lasting machine is restricted to use only with the Goodyear welter and stitcher. A shoe manufacturer, therefore, making welt shoes can take a restricted lease of a hand method welt laster and can use it in connection with a competitor's metallic and heeling machines.

The hand method McKay lasting machine is restricted to use with the United Company's metallic machines. A shoe manufacturer, therefore, can take a restricted lease of this lasting machine and use it with a competitor's heeling machine.

The No. 5 lasting machine is restricted to use with the United Company's welter and stitcher, pulling-over machines and metallic machines. A lessee of this machine can therefore use it in connection with a competitor's heeling machine.

The petitioner's illustration is therefore entirely untrue as respects the use of the hand method welt lasting machine for use on welt shoes, and is only half true in respect to the hand method McKay machine and the No. 5 machine.

Furthermore, the implication in this statement is obviously unsound. It states not only that the United Company's lasting machine is in all cases restricted to use with its metallic and heeling machines, which as shown above is not so, but it implies that a shoe manufacturer desiring to use the United Company's lasting machine with a competitor's metallic and heeling machines must take from the United Company not only lasting machines, but also metallic and heeling machines on independent leases, and therefore make initial payments for all three classes of machines. Of course this is not so. The shoe manufacturer desiring to use a competitor's heeling and metallic machines would not take such machines from the United Company. Even, therefore, if the United Company's lasting machines were restricted to use with both the metallic and heeling machines (which they are not), the shoe manufacturer would be required to take an independent lease only of the lasting machine, the initial payment for which is only $300.

Surely, this is a small charge to pay for the privilege of using the United Company's lasting machine alone. In such case the cost of service for the machine is much greater

to the United Company and the royalty received from the machine when so used with other machines not especially adapted for use with it is smaller.

Only two lasting machines are required to make 250 pairs of shoes a day (Defs.' Ex. 230). Out of 1,150 factories in 1911, 495 made less than 300 pairs of shoes a day (R. Vol. 1, p. 455). In other words, nearly half the shoe manufacturers in the country would be required to pay only $600 to obtain their lasting machines on independent leases.

The writer of the petitioner's brief carefully refrains from going to the leases to support his statement, which we have analyzed above, but in support of it quotes a remark of Mr. Winslow in which Mr. Winslow failed fully to qualify his statement and the writer sets forth that statement apart from its context and apart from the rest of the record as establishing facts which the record, as shown above, clearly shows to be untrue. Mr. Winslow is quoted as saying (p. 176):—

> "Then he could return our heeling machines, place his machines in the other departments upon the independent forms of leases, and continue to use the heeling machines of others."

Mr. Winslow did not mean to say that all the restricted leases of the United Company's machines, or of its principal machines, restricted such machines to use with the United Company's heeling machines. He obviously meant if the lessee did have any machines of the United Company which were restricted to use with the heeling machines of the United Company, those machines could be transferred to the independent form of lease if the lessee desired to use them with heeling machines not obtained from the United Company.

The only case to which this would apply would be in the case of a lessee, happening to have a McKay & Copeland machine (which machine is now practically obsolete) on the lease form set out in Plaintiff's Exhibit 20, pulling-over machines held upon a restricted form of lease, or eyeletting machines held upon such restricted form of lease.

After establishing to his apparent satisfaction the utterly false conclusion arrived at as the result of the statement analyzed above, the writer of the brief says (p. 177):—

> "This means that the shoe manufacturer would have first to find Pettingill heelers enough to satisfy his wants for heelers, and having done this he would then have to place *all his machines* 'in the other departments upon the independent forms of leases'" (italics theirs),

a statement which as we have shown is absolutely contrary to the fact. And he closes oratorically:—

> "He could not be half slave and half free."

After making the foregoing statements, the brief proceeds deliberately to misconstrue and misapply the testimony of Mr. Winslow on pages 432 to 433 of the record in an endeavor to show that it would cost a shoe manufacturer making a thousand pairs of welt shoes per day $8,833.00 "for the privilege of using the Pettingill heeler."

Mr. Winslow in his testimony was comparing the "savings" in the cost of machines used to manufacture Goodyear welt shoes both as to royalty (R. Vol. 1, p. 430, line 3) and initial cost. He uses as an illustration the cost of installing in a lessee's factory in 1899 and in 1911 machinery for making 300 pairs of welt shoes per day (R. Vol. 1, p. 432, lines 23–31) and for making 1,000 pairs of welt shoes per day (R. Vol. 1, p. 432, lines 44–45, and p. 433, lines

1–12). He showed that for a 1,000-pair factory the cost in 1899 was $11,300.50 and in 1911 $2,467.50, a difference of $8,833. He was not, however, comparing the difference in prices charged for restricted and unrestricted leases in 1911. His figures include not only initial payments, but also the purchase price of certain General Department machines which the lessee was required to purchase in 1899 and which he could obtain on lease in 1911 from the United Company and the rentals charged for the first year for General Department and auxiliary machines. The statement was intended to show to what extent the United Company had lowered the cost of installing machines for making welt shoes and thus encouraged their manufacture. It affords no foundation whatsoever for a comparison of the difference in the prices charged for restricted and unrestricted leases.

Furthermore, even if it did afford a basis for such comparison, the conclusion drawn from it by the United States is absolutely without foundation.

Mr. Winslow refers in his statement to the cost of installing the following machines, viz.: Goodyear machines, lasting machines, metallic machines, heeling machines, and General Department machines (R. Vol. 1, p. 432, lines 23–31). Not a single one of these machines (unless the shoe manufacturer wished to use the McKay & Copeland lasting machine, which was used only for heavy brogans and is now practically obsolete) is restricted under any of the United Company's leases to use with the United Company's heeling machines. The shoe manufacturer can therefore take all of the machines referred to by Mr. Winslow on restricted leases and use them in connection with a competitor's heeling ma-

chine. He would not have to pay a cent more for the machines obtained from the United Company than he would if he also used the United Company's heeling machine in connection with them. The statement in the petitioner's brief therefore (p. 177),—

> "In other words, the owner of such a factory would have to pay at the time Mr. Winslow testified about $8,833.00 for the privilege of using the Pettingill heeler,"

is absolutely without foundation.

Furthermore, the greater part of the difference in cost between the price charged in 1899 for installing this machinery and the price charged in 1911 came from the elimination of initial payments on Goodyear machines. The Goodyear machines are not restricted to use with machines of any other department and therefore, no matter what machines of competitors in other departments he desired to use, the shoe manufacturer could take the Goodyear machines without paying an initial payment on them and use them with such competitor's machines.

Finally, the statement assumes that the lessee would be required to take all his machines from the United Company on independent leases. Even if under the restricted leases all machines were restricted to use with all others (which the brief writer assumes, and which is not the fact), the lessee would obviously not take from the United Company those machines which he preferred to take from a competitor. He would therefore be obliged, at most, to take on initial payment leases only such of the United Company's machines as he desired to use and the restrictions on which in the restricted leases forbade their use with such competitor's machines as he wished to use.

Taking the machines of the departments mentioned by Mr. Winslow in the statement referred to by the brief writer, the following illustrations will show the unfounded character of the assumption that a lessee using a competitor's machine of one department must take unrestricted leases of machines of all departments, and therefore pay the initial premiums on all the United Company's machines of all these departments.

(1) If the lessee wishes to use the United Company's Goodyear machines and a competitor's lasting, metallic, heeling, and General Department machines, he can take his Goodyear machines on the non-initial payment basis and use them in connection with the competitor's lasting, metallic, heeling, and General Department machines, without paying a cent more to the United Company for his Goodyear machines than he would pay for them if he used all the United Company's machines exclusively.

(2) If the lessee wishes to use the United Company's Goodyear and lasting machines and a competitor's metallic, heeling, and General Department machines, he can use the hand method welt laster on the non-initial payment restricted lease (which restricts its use only to use with the Goodyear welter and stitcher) and he can use such Goodyear and lasting machines in connection with a competitor's metallic, heeling, and General Department machines, without paying a cent more to the United Company for them than he would pay if he used all of its machines exclusively.

(3) If the lessee wishes to use the United Company's Goodyear, lasting, and metallic machines and a competitor's heeling machines and General Department machines, he can take his Goodyear machines on the non-initial payment basis and his lasting and metallic machines on non-initial

payment restricted leases and use them in connection with a competitor's heeling and General Department machines without paying a cent more to the United Company for his machines taken from them than he would pay if he used the United Company's machines exclusively.

(4) If the lessee wishes to use the United Company's Goodyear, lasting, metallic, and heeling machines and a competitor's General Department machines, he can take his Goodyear machines on the non-initial payment form of lease and his lasting, metallic, and heeling machines on non-initial payment restricted leases and use them in connection with a competitor's General Department machines and not pay a cent more for them than he would pay if he used also the United Company's General Department machines.

In other words, the above illustrations show that there are many combinations in which the lessee can use the United Company's machines of certain departments and competitors' machines of other departments without paying a cent more to the United Company for the use of its machines than if he used the United Company's machines of all departments exclusively.

In other combinations the lessee may have to take certain machines from the United Company on initial payment leases. (See our main brief, pp. 370–372.)

The foregoing will show the utter absurdity of the petitioner's contention

(1) that to use a single machine of a competitor all other machines must be taken from the United Company on initial payment leases, and

(2) that the lessee must pay the full initial payment for

all the United Company's machines, both those he desires to use and those he does not desire to use.

The foregoing will also show that each combination or situation must be regarded and considered separately. No general rule applicable to all the leases, or all combinations of machines is possible. This is due to the fact that the leases were not adopted at one time, nor were the restrictions adopted at one time, but they are the result of an historical growth. The restrictions, for example, have been employed from time to time to meet special conditions.

For instance, the restriction in the metallic lease was adopted in 1900 because the cost of material had advanced and the United Company did not want to advance the price of material to its lessees. By restricting the machines to use with its Goodyear welter and stitcher and its lasting machines the United Company felt it could lease the metallic machines to be used with such other machines as a set without increasing the price of material. (See our main brief, pp. 276–278.) The restriction in the heeling machine leases was adopted late in 1904 as partial compensation for the removal of the initial payments on the Goodyear machines. (See our main brief, pp. 278–279.)

Underlying these modifications, made from time to time, however, was the principle that when the machines were used together as a set the United Company received a greater royalty from each machine of the set and could care for the machines at less cost per machine, and that, therefore, when so used a reduced or wholesale price was proper. (See our main brief, pp. 333–342.)

The brief writer having made the utterly unfounded statement analyzed above (at p. 177), to the effect that it would cost the shoe manufacturer making 1,000

pairs of welt shoes a day $8,833 to install the Pettingill heeler, proceeds to cite instances of what he refers to as "heavy initial premiums." It does not appear that these amounts are unfair or unreasonable. On the contrary, the evidence shows that Leavitt, one of the persons to whom the brief states leases carrying these high premiums were offered, accepted them (R. Vol. 1, p. 873, lines 10–17), thus showing conclusively that he did not consider the terms prohibitive.

In respect to the statement that the cost to the International Shoe Company of putting all its machines on independent leases would be $250,000, the brief fails to state that the International Shoe Company is one of the largest shoe manufacturers in the world, having $25,000,000 capital, that it has twenty different factories, and that the sum of $250,000 would include the purchase outright of all the General Department machines used by the International Shoe Company. (See our main brief, pp. 361–362.)

Petitioner's brief then proceeds (p. 178):—

> "In this regard, it must not be forgotten that after the shoe manufacturer had paid for the privilege of using an independent machine he was required to pay to the United Company the same royalty, for that machine as if he had taken it upon a 'restricted' lease. And in addition he must pay increased royalties upon certain other United machines—clicking, lasting, and metallic fastening machines, . . . Of course, no shoe manufacturer could afford the luxury of an independent lease under such circumstances."

It is not true that the shoe manufacturer under any form of independent lease would be required to pay an increased royalty on his lasting machine. On the contrary,

on the hand method McKay lasting machine he would pay less. (See our main brief, p. 288.)

It is not true that after he had "paid for the privilege of using an independent machine," by which the writer presumably means after making an initial payment for an independent lease, the lessee would be required to pay an increased royalty for his metallic fastening machines. Under the initial payment form of independent metallic lease the royalty is the same as under the restricted form. Only under the non-initial-payment independent form under which no initial payment is made is the royalty ten per cent. more. (See our main brief, pp. 291–292.)

The statement with respect to the clicking machine is also misleading. No direct royalty is charged for this machine when it is used in connection with the United Company's welter, stitcher and lasting machine. Only when it is not so used is a royalty charged. (See *infra*, p. 46.)

Passing over various other inaccuracies, we find on page 180 of the petitioner's brief the following statement:—

> "Apart from losing the rebates and bonuses given by the defendants to obedient manufacturers, a lessee using machines of competitors under the 'independent lease' would not only have to pay the initial premiums but his premiums for pulling over machines would be nearly tripled and his clicking machines would cost him an additional and discriminatory royalty of from one to three cents a pair. On top of all this, he would have to pay ten per cent. extra for any of the defendants' metallic machines which he might have to use."

The "rebates and bonuses" referred to consist of an offer made in 1910 by the United Company to pay to its lessees

of Goodyear machines in stock of the United Company a certain percentage of the royalties received from them on their Goodyear machines provided they "faithfully observed the covenants of their leases." This was not a rebate or bonus in any sense. It was merely a method of reducing the royalty charged on these machines, such reduction being represented in stock instead of by a cash reduction. It applied equally to all lessees. There is absolutely nothing in the record or in fact to suggest that a lessee of the machines under "independent leases" was not equally eligible with the lessee holding machines under restricted leases, or a lessee holding some machines under each of the two ways, to share the benefits. Furthermore, a shoe manufacturer using the United Company's Goodyear machines and a competitor's lasting, heeling, metallic, General Department and pulling-over machines was as fully entitled to this reduction as a manufacturer using all of the United Company's machines. A reading of the offer (P.'s Ex. 146, R. Vol. 5, p. 1067) shows this clearly. (See also our main brief, p. 551.)

The statement "but his premiums for pulling-over machines would be nearly tripled" is absolutely unfounded in fact, and there is not a word in the evidence or in the exhibits which justifies any such statement.

The statement "and his clicking machines would cost him an additional and discriminatory royalty of from one to three cents a pair" is discussed *infra*, page 51.

The brief continues at the bottom of page 180 by assuming a difference of four cents a pair between manufacturing shoes on independent leases and manufacturing shoes on restricted leases and shows a corresponding aggregate amount. The brief might equally well have assumed two

cents and shown half the aggregate amount or eight cents and shown double the amount. In either case it would be of as little value as the assumption made in the brief itself, for it is an assumption contrary to fact and an assumption of fact as a general basis of argument, which would vary constantly and as to which each new case would depend upon a multitude of circumstances.

THE PETITIONER'S MISCONSTRUCTION OF THE EXCLUSIVE USE CLAUSE.

The petitioner's brief lays great stress on the exclusive use cancellation clause and its entire argument is founded upon a misstatement of the clause and its effect.

The brief states:—

(1) That the exclusive use clause forbids the lessee to use machines obtained from others of the kind leased; and

(2) That if the lessee does use such other machines, not only will he violate the lease but the lessor may cancel its leases not only of that particular kind but of machines of all kinds held by him.

Both of these statements are absolutely untrue.

The following quotations from the brief contain the foregoing statements:—

> (p. 161) "The exclusive use clause, for example, obviously limits the freedom of choice of every lessee as to all his future needs for machines of the kind leased and clearly prevents access to him, as a possible customer for any such machines, of all who seek to compete with the defendants as to those machines."
>
> (p. 163) "Without going further, it is apparent that no field of competition is left open except the equipment of entirely new manufacturers and the satis-

faction of new or additional requirements of old manufacturers.

"This latter field however is closed by the exclusive use clause. *Every lease* has that clause or an equivalent. No new demand by an existing lessee of the United Company can be satisfied by a competitor of the defendants without a violation of this clause. The consequences of such a violation need not be repeated. They are the same as those which follow the violation of the full capacity clause. It is enough to say that 'as a practical question' no manufacturer can afford to incur them" (italics theirs).

The brief just previously had stated that upon a violation of the full capacity clause the lessee subjects himself to having all his leases cancelled and all his machinery withdrawn (p. 162). The brief, therefore, clearly states that a violation of the exclusive use clause permits the lessor to cancel the defendants' leases of machines of all kinds.

Before discussing this clause further one word of explanation as to the scope of the clause may be advisable. The exclusive use cancellation clause applies only to the machines of a particular department. Thus as used in a lease of heeling machines the clause permits the lessor to cancel leases of heeling machines held by the lessee if the lessee uses heeling machines obtained from others. It does not permit the lessor to cancel its leases of any other machines, except heeling machines, and it does not permit the lessor to cancel its leases of heeling machines unless machines of the same kind, that is, other heeling machines are used.

The statement in the petitioner's brief that the exclusive use cancellation clause forbids the lessee to use a competitor's machines of the kind leased has no justification. The exclusive use cancellation clause imposes no obligation

whatsoever upon the lessee either to use the United Company's machines or not to use competitor's machines. It merely reserves to the lessor an option to cancel its leases of the machines of a particular department if the lessee wishes to use and does use machines of the same kind obtained from others.

There is all the difference in the world between a clause requiring the lessee to obligate himself to use the United Company's machines of a particular department exclusively and a clause reserving an option to the United Company to withdraw its own machines of that particular department if its machines of that particular kind are not used exclusively.

Under the first provision the lessee is bound absolutely not to use the machines of competitors. Under the second provision no obligation at all is imposed upon the lessee; his right to use the machines of others is recognized; the lessee in no way violates the lease by using such other machines and it is merely provided that the lessor in such case may withdraw its own machines of the same kind if it desires.

The first provision, namely, the provision which the petitioner claims is used, would prevent the use of competitors' machines of the particular kind leased entirely. The second provision, which is the provision actually used, permits the lessee to use competitors' machines as much as he pleases.

The first provision closes the door to competition. The second provision leaves the door open to competitors.

In fact the second provision, namely, the provision actually used, provides a means whereby, if the lessee prefers a competitor's machines of a particular kind, he may be able to escape from any obligation whatsoever to the

United Company in respect to its machines of this kind. As the District Court pointed out (R. Vol. 1, p. 1177):—

> "The cancellation clauses, however, provide a practical means of escape for those who consider the term too long. They may install other machinery and run the chance, and if the machinery so installed is satisfactory they may use it for their full equipment when the machines of the defendants are removed."

The attempt of the petitioner to convey the impression that the exclusive use cancellation clause used by the United Company imposes an obligation on the lessee not to use the machines of others is difficult to understand. Not only does a reading of the clause show its actual effect, but the District Court pointed out the distinction in its opinion, saying (R. Vol. 1, p. 1169):—

> "The legal effect of it [*i.e.*, the exclusive use clause] is merely reservation of a right to cancel the lease in case the lessee should fail or cease to use the defendants' machines exclusively for work of a particular kind. It does not have the legal effect of a contract by the lessee not to use the machines of others. It is merely a limitation imposed by a patentee upon the right to use.
>
> "The reiteration by the United States of the statement that the lessee must use, or is required to use, defendants' machines exclusively is misleading. The distinction between a contract requiring a lessee not to take other machines and a limitation of the right to use the leased machines is very material."

Not only, then, does the exclusive use clause not obligate the lessee to use the United Company's machines of a particular kind exclusively, but it was not inserted in the leases for the purpose of excluding competitors' machines

and there is not the slightest evidence that it has ever been exercised for this purpose.

The right of a lessor to withdraw his own machines because the lessee prefers to use other machines of the same kind is not a right which is adapted to prevent the use of competitors' machines, nor is it a right which could be so exercised as to accomplish that end. By exercising this right the lessor would leave the field open to competitors. A clause which permits the lessor to withdraw its machines is obviously not designed to require that they be used. As the District Court said (R. Vol. 1, p. 1167):—

> "As it is not the purpose of the defendants to take their machines out of factories, but rather to put them in, we must consider those clauses which are designed to induce their installation, rather than those clauses that are designed to prevent a breach of contract, or which reserve a right to terminate the leases upon an infringement of patent rights."

The exclusive use clause was adopted for legitimate business reasons which are fully stated in our main brief (pp. 311–319).

Not only does the exclusive use clause not require that the lessee shall not use a competitor's machines, but if he does use a competitor's machines he is not liable to the consequences stated in the petitioner's brief. When he uses other machines of a certain department, the United Company under the exclusive use clause may withdraw its own machines of that particular kind. It cannot, however, under the exclusive use clause, withdraw machines of any other kind.

Nor can it withdraw its machines of other kinds under the cancellation for breach clause, as the petitioner states.

As the exclusive use clause imposes no obligation upon the lessee, the use by the lessee of other machines does not constitute a violation of any condition or agreement obligatory upon the lessee. The cancellation for breach clause, which permits the cancellation of all leases, can be exercised only where a condition or agreement obligatory upon the lessee has been violated. (See main brief, pp. 329–330.)

PETITIONER'S STATEMENT AS TO CLAUSE REQUIRING PAYMENT OF ROYALTY BASED ON THE TOTAL OUTPUT OF THE LESSEE.

At pages 155–156 the petitioner quotes a clause from one of the United Company's Goodyear leases (P.'s Ex. 24) under which the lessee agrees to pay the lessor for the use of the leased machinery a royalty based on the total number of shoes welted or stitched by machinery whether or not so welted or stitched on the United Company's machines.

The petitioner's brief gives the impression that this clause is a typical clause. We have stated above that it occurs only in certain Goodyear leases and certain pulling-over leases.

The brief designates this clause as a "Royalty Charge on Work not Done on its Machines." It says that if a shoe manufacturer makes 1,000 pairs of shoes of which 500 are sewed on defendants' machines, and 500 on a machine of a competitor, the shoe manufacturer must pay to the defendants royalties both on the 500 pairs made on the defendants' machines and also on the 500 pairs made on the competing machine (p. 156). In other words, it gives the impression that a charge is made by the United Company for shoes sewed on a competitor's machines. This is an unjustified construction.

The charge is made solely for the right to use the United Company's machines. The clause merely provides that where the lessee takes the United Company's Goodyear welter and stitcher without making any initial payment, he shall pay for the use of the patented inventions a price based on his output. A fixed annual payment for the right to use the United Company's Goodyear machines on any shoes the lessee wished to use them on would certainly be beyond criticism. So equally must be this clause which, instead of requiring a fixed payment for such right, requires a payment based on the actual number of shoes on which the lessee is privileged to use the machines. Such a provision is fairer to the lessee than a fixed payment as the amount of royalty depends on the amount of the lessee's business and he is not burdened with a large payment if his business permanently or temporarily falls off.

If the lessee does not wish to be bound by this clause, he can, by paying the same initial payment which was charged all lessees prior to 1905, take a lease of Goodyear machines which does not contain this clause (R. Vol. 1, p. 442, lines 4–12). The petitioner's brief fails to mention this alternative lease.

The District Court said of this clause:—

> "A royalty which has regard both to the capacity of the machines which the lessor furnishes and to the amount of work which the lessee may have to do upon machines embodying the patented inventions, seems beyond reasonable criticism" (R. Vol. 1, p. 1172).

The brief also refers, under this heading, to a provision that if payment of royalty is made in respect to a given pair of shoes under one Goodyear Department lease it need not be duplicated under a second Goodyear Department

lease even though it happens that part of the Goodyear machines used upon that pair of shoes are held under one lease and part under another. This is obviously a provision merely for avoiding duplication of payment.

As to this the brief says (p. 157):—

> "This means that the United Company charges in the first instance for *each* machine what it deems an adequate compensation for *all* the machines of the group described" (italics theirs).

The purpose of the clause, as is amply shown by the record, is simply this: A lessee may have all of his Goodyear Department machines under a single lease instrument or it may so happen that he has taken his machines at different times, and therefore holds various machines of the Goodyear set under different lease instruments. Each royalty lease must, of course, provide properly for its royalty payment. If the lessee has all of the machines which he holds of this set under a single instrument, there is, of course, no complication, but if he holds some of the machines of this set under one lease and others under another and uses machines held under each lease upon the same pair of shoes, there would, in the absence of some such clause, appear to be on the face of the lease an obligation to pay the stipulated royalty twice.

The clause in question is inserted simply to avoid such duplication of payment. It is no more than to say that, if a manufacturer has agreed under two separate agreements to pay a certain sum of money, payment of that sum under one agreement will relieve him from duplicating the same payment under the other agreement.

PETITIONER'S STATEMENT AS TO THE CLICKING MACHINE LEASES.

At pages 157 to 158 of its brief the United States treats of the royalty clause in the clicking machine lease.

It entitles the section under which it treats of this clause "Discriminatory Royalty Charges where Competitors' Machines are used by the Lessee."

It states:—

> ". . . the defendants in many cases make higher demands for compensation where the lessee uses machines of defendants' competitors than where he refrains from such use. . . .
>
> "An example of such a clause is the following, taken from plaintiff's exhibit 44. . . ."

The brief then quotes the royalty provisions in the clicking machine lease.

The clicking machine is treated substantially as an auxiliary machine when used with the United Company's welter, stitcher, and lasting machines. In such case no direct royalty is charged for the machine, but the United Company gets its return indirectly from the royalties received from the use of the welter, stitcher, and lasting machines. The charge for dies used in the machine is not intended to provide an adequate royalty for the use of the machine.

The lease of the clicking machine, however, differs from the lease of the ordinary auxiliary machine in that a lessee is permitted to use it with welters, stitchers, and lasting machines obtained from others. It is provided, however, that if the lessee does use it with such other machines not

obtained from the United Company, he must pay a royalty of 1/2 of a cent net if the machine is used in connection with other lasting machines, 7/8 of a cent net if used with other welt machines on turn shoes, and 3 cents net if used with other welters and stitchers on welt shoes. If these amounts were not charged where the machine is not used with the United Company's welter, stitcher, and lasting machine, the United Company would get no fair return from the use of its clicking machine, either directly on account of the use of the machine, or indirectly from the royalties received from other machines.

The United Company makes no charge for its Goodyear auxiliary machines except a small rental, but restricts their use to use with the Goodyear welter and stitcher, on which it receives a royalty. The petitioner complains because the United Company does not also lease these auxiliary machines for a separate royalty to be used with a competitor's welter and stitcher.

In the clicking machine leases the United Company does just what the petitioner wishes it to do in respect to the Goodyear auxiliaries. It leases the machine without royalty charge where used with its Goodyear welter and stitcher and lasting machines, and if the lessee wishes to use it on shoes operated upon by welters, stitchers, and lasting machines obtained from others he is permitted to do so by paying a separate royalty for the clicking machine. This is the full effect of the clause.

The clicking machine was invented by the United Company and first put out about 1909. (See main brief, p. 575.) It is a very remarkable machine but it is not as yet used by all lessees.

The brief writer says that clauses of this kind are used

"in many cases." This is not true. The clicking machine lease is the only lease put out by the United Company which contains such a clause.

The metallic machine lease (P.'s Ex. 31), which the petitioner's brief (pp. 158–159) also refers to as containing a clause of the same character, is merely an instance of an unrestricted or retail lease. Under this lease no initial payment is charged, but instead ten per cent. more is charged for materials used in the machine, than is charged under the restricted or wholesale lease.

ARGUMENT OF PETITIONER BASED UPON ITS MISCONSTRUCTION OF THE LEASE CLAUSES.

Under the heading "The Effect of the Restrictive Clauses" (at pages 161–166) the writer of the petitioner's brief attempts to show the effect of the clauses upon a shoe manufacturer.

The conclusion reached by the writer is based upon a misconstruction of the various clauses, especially upon a misconstruction of the exclusive use clause and of the restricted use clause.

The writer at page 161 first begins by stating that the various clauses cannot be regarded separately as they have a cumulative effect. As an example of this he gives the following illustration (pp. 161–163):—

If it be assumed, he says, that the full capacity clause standing alone is reasonable and not unduly restrictive, it must be considered in its relation to the other clauses. A lessee having taken a particular machine and agreed to use it to capacity, so far as he has work for it to do, is unable to replace that machine with a competitor's machine; in

other words, having agreed to use this machine he must use it. We admit that this is the intent and purpose of the full capacity clause.

But the writer adds, if he, the lessee, violates this agreement to use the United Company's machine which he has taken he

> "subjects himself to the penalty of cancellation of *all* his leases and the loss of *all* his leased machinery" (italics theirs) (p. 162).

He adds (p. 162),—

> "The practical operation, then, of this clause which to outward seeming is perhaps the most reasonable of all the restrictive clauses is to prevent the displacement by competitors of any of the defendants' machines."

Of course this broad generalization is not true, because, as we have shown, the full capacity clause is employed in respect to less than half of the machines under lease by the United Company (*supra*, p. 12).

But apart from this, the argument of the petitioner apparently is that while it is proper to make the lessee agree to use the leased machine, it is not proper to subject him to a penalty if he violates his agreement.

Can it be seriously contended that the United Company should not have a right to sever its relations with a lessee and withdraw all its machines if such lessee wilfully violates the full capacity clause in one of its leases and thus deprives the United Company of the royalty which it is entitled to on account of such machine?

The brief then proceeds to state that the full capacity clause closes the field of competition except for

> "the equipment of entirely new manufacturers and the satisfaction of new or additional requirements of old manufacturers" (p. 163).

It is somewhat difficult to see just why competitors coming into the field should expect that lessees already holding machines under leases under the terms of which they have agreed to use the leased machines should have a right to violate their leases and discard such leased machinery.

The brief then proceeds (p. 163):—

> "This latter field [that is, the supplying of new manufacturers or additional equipment to existing manufacturers] however is closed by the exclusive use clause. *Every lease* has that clause or an equivalent. No new demand by an existing lessee of the United Company can be satisfied by a competitor of the defendants without a violation of this clause" (italics theirs).

As we have shown above (*supra*, pp. 38–43), the exclusive clause does not forbid a lessee to take machines from a competitor and a lessee does not violate his lease by so doing. It is untrue, therefore, that the exclusive use clause prevents a lessee from obtaining new or additional machines from competitors or even machines to replace the machines of the United Company which he holds.

The brief then proceeds to state that the consequences of violating the exclusive use clause are the same as those which follow a violation of the full capacity clause.

As we have shown (*supra*, p. 40), the exclusive use clause does not constitute an agreement by the lessee, but is merely the reservation of an option to the lessor.

The clause, therefore, is not violated by the lessee when he takes competitors' machines, and the United Company, therefore, in such case acquires no right to cancel all the leases held by the lessee.

The brief writer, having thus, without any foundation in fact, shown to his satisfaction that existing lessees cannot take competitors' machines either to replace their existing machines or for new and additional work, proceeds to endeavor to show that the restricted use clause or, as he terms it, the "prohibitive" or "tying" clause prevents even new shoe manufacturers just entering the field from obtaining any machines from competitors.

The writer says (p. 164) that such a new manufacturer must go to the United Company for his lasting machines. This is not true (see *infra*, pp. 155–157), but even if it were true it does not sustain the writer's conclusion.

The writer then proceeds to state (p. 165) that even if this new manufacturer could obtain lasting machines from others, his payments for pulling-over machines taken from the United Company would be nearly trebled and his payments for clicking machines taken from the United Company would be increased by a "penalty royalty of from one to three cents a pair." As we have stated above, the statement that his pulling-over machine royalty would be nearly trebled is absolutely without foundation. If he desired to use the United Company's clicking machine, his royalty for the use of the clicking machine when used on shoes operated on by a lasting machine not obtained from the United Company would be one-half a cent, not "one to three cents."

The writer then states that this new shoe manufacturer,

having obtained his lasting machines from the United Company, is by reason of the exclusive use clause (p. 165)

> "committed to the defendants for all of his present and future demands for any kind of lasting machine or device."

This is of course not the effect of the exclusive use clause, as we have shown above.

The writer then states (p. 165) that this new shoe manufacturer will not take the independent form of lasting machine lease. As we have shown (*supra*, pp. 22–36), there is no reason why he should not take it.

The writer then states that, having accepted a restricted lease of lasting machines, the lessee cannot use in connection with it a competitor's Goodyear welter, stitcher, pulling-over or metallic machine (p. 166). This, as we have shown (*supra*, pp. 18–19), is true only as to the No. 5 lasting machine. The other lasting machines, which operate on the same kinds of shoes as the No. 5 lasting machines, and which are preferred by some shoe manufacturers, have fewer restrictions.

Even if we accept the conclusion that the writer at this point reaches (which, as we have shown, is not a correct conclusion), it appears that the shoe manufacturer is only restricted to this extent, viz., that if he uses the United Company's lasting machine, it must be used in connection with its Goodyear welter, stitcher, pulling-over and metallic machines. He is free to use in connection with it any other machines obtained from competitors, viz., any Goodyear auxiliaries (of which there are forty-three different kinds), any heeling machines, any McKay sewing machines, any General Department machines (of which there are over one hundred and seventy-two different kinds),

any lacing machines, any button-hole machines, any insole machines, any machines for sewing the uppers of shoes (which constitute nearly one-half the total machines used in a shoe factory) and any other types of machines which he may desire to use.

It is quite evident that most of the different kinds of shoe machinery, he can still take from competitors and use in connection with the United Company's lasting machine. The result, therefore, even on the erroneous assumptions made by the writer hardly seem to justify the following statement with which he winds up this analysis of the effect of the leases (pp. 166–167):—

> " . . . defendants have brought about a situation in which competition with them either as to the existing or the future needs for machinery of existing or future shoe manufacturers has become entirely impossible. The United Company is not merely 'a formidable competitor.' It is absolute monarch of the industry. No competitor can exist unless for its own pleasure or policy it withholds its destroying hand."

Again, at pages 247–248 of the brief, the writer attempts to show that the fact that leases are executed at different times gives them some additional restrictive effect. He says:—

> "All leases made by the United Company run for a period of 17 years. New leases are made from time to time by every shoe manufacturer who deals with the United Company. Each lease is tied to all the earlier leases. It would be hard to imagine a time when a lessee would be free from all such leases in the ordinary course of business. Therefore there is no time when he is at liberty to procure his bottoming, clicking or

> eyeletting machinery where he wills. . . . It may be well said of that system that he who enters it 'leaves all hope behind.'"

The writer then continues as follows:—

> "A system of leases or contracts producing such a situation must be illegal."

Fortunately for the effect of his argument, the writer does not attempt to analyze the situation to which he refers. He is referring, of course, to the effect of the restricted leases. Let us see if there is any truth in his statement.

Let us take the restricted lease of metallic machinery. Under such a lease the machines are restricted to use with the United Company's Goodyear welter and stitcher and lasting machines. (See our main brief, pp. 290–291.) The lessee can only use this machine if he has shoes which have been or are to be operated on by the United Company's Goodyear welter, stitcher, and lasting machines; *i.e.*, if these operations are to be performed and are to be performed by machinery. Assume that the lessee's leases of Goodyear machines and lasting machines expire and he is left with his lease of a metallic machine. Unless he renews his lease of the Goodyear machines and the lasting machines taken from the United Company or obtains new machines of the same kind from the United Company, he will not be entitled to use his metallic machines held by him on restricted lease. He will be under no obligation whatsoever to obtain other Goodyear machines and lasting machines from the United Company.

The fact that his lease of the metallic machines runs longer than his leases of the Goodyear and lasting machines,

therefore, not only does not oblige him to continue to use the United Company's Goodyear and lasting machines, but, unless he voluntarily does renew his leases of those machines, he is actually freed from any obligation to use his metallic machines, since he is not allowed to use them except in connection with these other machines obtained from the United Company.

The effect, then, of his Goodyear and lasting machine leases expiring before his metallic lease expires is, not to oblige him to continue his relations with the United Company, as the United States charges, but, on the contrary, the effect is to relieve him of further liability to use his metallic machines still under lease.

PETITIONER'S ATTEMPT TO PROVE THAT EXORBITANT ROYALTIES ARE CHARGED.

At pages 173 to 175 of the petitioner's brief the writer attempts to show that the royalties charged by the United Company are excessive.

There was no evidence in the record as to the cash value of the machines which the United Company leases and does not sell, nor could there well be as they are patented machines which are unique and which have never been sold in the market.

The writer of the brief, however, finds that under plaintiff's exhibit No. 21, a lease of a No. 5 lasting machine, the lessee is required to pay the lessor $225 if the machine is destroyed by fire. From this he assumes that the machine is worth only $225. Even if $225 would compensate the United Company for the loss of the physical materials in the machine, which does not appear, this would be no

test whatsoever of the value of the machine, which is very valuable because of the patented inventions which it incorporates.

For example, each new model K welter probably saves $800 a year over the previous model. (See main brief, p. 510.) The previous model was the best machine in the market. To assume, as the writer of the brief does, that such a machine may be worth only the cost of its physical materials is on its face absurd.

The pulling-over machine cost $1,000,000 to develop before it was made a commercial success. (See main brief, p. 574.) The cost of this development must be added to the price of the machines in order to enable the United Company to get back even its expenses.

In spite of this, however, the brief writer assumes that the cost of all machines is doubtless $225 apiece (p. 175). He then takes a small factory making the character of shoe which uses the greatest number of defendants' machines and which returns to the defendants its greatest royalty returns (though the brief does not point this out) and states that for the size and character of factory assumed there would be leased "nine principal machines." He omits auxiliary machines and says nothing about the use of patented inventions or service in caring for the machines. He then proceeds to say with reference to the nine machines (p. 175):—

> "Assuming their value to average $225, the defendants have here an investment of $2025."

What could be more absurd than an assumption based upon premises such as these addressed to this court? Yet the brief continues, based upon these premises:—

> "They receive *annually* a return of over 120 per cent. on this investment" (italics theirs);

and then, apparently realizing the absurd nature of the illustration, continues:—

> "This calculation omits both the auxiliary machines, whose value ranges from a small figure to a large one, and the rentals paid by the manufacturers for them";

and having thus built up a situation to his liking, the brief writer continues:—

> "No self-respecting business man would enter into stipulations so offensive and destructive of his liberty unless he was coerced by the circumstances surrounding him."

PETITIONER'S CHARGES OF UNFAIR CONDUCT TOWARD LESSEES.

Under the title "Punitive Action Against Disobedient Lessees" at pages 188 to 198 of the brief, the United States refers to certain transactions which it claims show that the defendants attempted to enforce the restrictive provisions of their leases so as to compel shoe manufacturers to deal with them.

The brief writer relies upon partial statements in an attempt to support his charge.

We have not space to comment on all of these various transactions, but respectfully refer the Court to the finding of the District Court which completely exonerated the defendants, and to the statements in respect to these transactions at pages 88 to 131 of the appendix to our brief, and pages 543-552 of the main brief, where these transactions are taken up together with other alleged

unfair acts specified in the petitioner's bill of particulars.

To show the extent to which the petitioner in treating of these transactions has disregarded all statements favorable to the defendant sand thereby given a wholly false impression, we shall consider briefly the case of *Kimball & Hadley*.

At page 198 of the petitioner's brief the writer refers to this transaction as follows:—

> "Kimball & Hadley, of Lynn, Mass., were making needles and awls. Beginning about January, 1904, they found that they could not sell Universal Slugging Machine awls. Five firms told Hadley personally that the reason they would not purchase was that the use of their needles and awls was in violation of the lease of the United Company; and if they continued to use their needles and awls, the United Company would take its machines away from them" (Hadley, R. Vol. 1, p. 308, line 11).

It is true that Hadley did testify that he could sell no awls and few needles to the factories of the E. E. Taylor, G. D. Barry & Company, Churchill & Alden, and Rice & Hutchins (R. Vol. 1, p. 308, lines 28–31), and that he testified that these concerns stated orally that the use of his needles and awls was in violation of the terms or condition of their leases and if the manufacturers continued to use his awls and needles the United Company would take their machines out of the factories. The defendants' evidence showed, however, that this statement was self-evidently false.

In the first place, all the leases of the United Company have been introduced in evidence and there is not a single lease which requires the lessee to purchase awls and needles

from the United Company. Therefore, on its face it could hardly be true that these concerns made this statement, or that Hadley, who was acquainted with the shoe trade, credited the statement.

In the second place, representatives of these concerns were called as witnesses and absolutely denied making any such statements to Hadley.

In the third place, it appeared that Hadley had sold out his business of making Goodyear needles and awls to the United Company. At the time of the purchase the United Company was not making any Goodyear needles. The purchase price was $4,750. As part of the transaction Hadley covenanted not to engage in the business for fifteen years. He broke this covenant and in a suit brought by the United Company against him to enforce its rights the covenant was held valid and Hadley was enjoined from engaging in the business during the term of the covenant. (*United Shoe Machinery Company* v. *Hadley*, 193 Mass. 351.) The record shows beyond question that Hadley, on account of this litigation, was prejudiced and biased and determined to injure the United Company if he could and that his statements were wholly unreliable. (See Appendix, pp. 111–113; pp. 54–55.)

PETITIONER'S REFERENCE TO OTHER CLAUSES IN THE LEASES WHICH IT IS NOT EXPRESSLY CONTENDED BY THE PETITIONER ARE ILLEGAL.

At pages 146 to 147 of the petitioner's brief the writer refers to certain other clauses in the leases. The purpose apparently is to show either that these clauses are also oppressive, and, therefore, to show the oppressive character in general of the leases, or to insinuate that because these

clauses are in the leases the other clauses objected to by the petitioner as illegal are unnecessary.

The first clause considered is the minimum payment clause.

The brief states (p. 146):—

> "These leases . . . contain every ordinary provision to protect the interests of a lessor. Among these is a clause *which appears in every lease* requiring the payment of a fixed minimum royalty" (italics ours).

And again (p. 147):—

> "And whether the machine is put out on a rental or a royalty basis he [the lessee] is obligated to guarantee a minimum monthly return."

The slightest study of the leases set forth in the exhibits shows that this general statement is not warranted by the facts. Of the forty-nine leases set forth as exhibits a minimum guarantee clause in some form occurs in thirty-one leases. It does not occur at all in eighteen leases. Even in those cases where it does occur it is, in practically every instance, accompanied by a qualification (to which the brief makes no reference) that such minimum guarantee does not apply in respect to any month in which the factory of the lessee is idle.

Such minimum guarantee clause is not used in general in respect to machines installed under leases which require an initial payment. It does not occur in the leases of General Department machines under which 170 different types of machine are supplied. It does not occur in respect to auxiliary machines of the Goodyear Department. It does not occur in respect to clicking machines. It does not occur in respect to eyeletting machines. Defendants'

Exhibit 226, R. Vol. 5, page 424, shows the total number of defendants' leased machines outstanding March 1, 1913, as 98,516. Of these machines more than 73,000 were Goodyear auxiliaries, General Department, eyeletting machines, etc., the leases of which as appear from the Exhibits contain no minimum royalty. 744 were lasting machines whose leases contain no minimum royalty. And as appears from the record, any of the 5,586 Goodyear machines, 3,782 Consolidated lasting machines, 3,716 No. 5 lasting machines, might have been taken on forms of lease which do not contain a minimum royalty clause.

The purpose of the writer in referring to this minimum payment clause apparently is to show that, since the leases contain this clause, no other provisions are needed to protect the United Company in respect to the amount of return it receives, such as the full capacity clause and the exclusive use cancellation clause.

We have shown in our main brief (p. 310) the unsoundness of this contention. If the minimum clause provided for a fair return, it would necessarily be equivalent to a fair rental for the machine; but one of the virtues of the lease system is that the lessee is not required to pay except according to use. The minimum clause in the present leases originated many years ago. It has no relation to a reasonable return on the machines, and, as Mr. Winslow testified, it has never been enforced except for the purpose of making a manufacturer return surplus machines not required by him. (Main brief, pp. 310–311.)

The brief then states (p. 147):—

"The machine is held at the sole risk of the lessee."

And again (p. 147):—

> "If the machinery be destroyed by fire, he [the lessee] must pay for it a sum fixed in the lease."

This is not true as a general statement in the form in which it is made. This provision does not occur in the leases of General Department machines or in general in those leases where the lessee makes an initial payment at the time of the installation of the machines.

In other words, this clause is inserted only in those leases when the machines are installed without any initial payment on the part of the lessee. In such a case if the machine were destroyed by fire, especially if it were destroyed shortly after it was installed, the United Company would get no payment at all for its machine.

The brief continues (p. 147):—

> "Plaintiff's Exhibit 21 (R. III, 182) is in these and other respects a fair sample of the defendants' leases."

It is to be noted that the lease selected as the "fair sample" is one of the two alternative forms of lease for a new type of lasting machine not adopted or put out by the United Company until the year 1908, nine years after the formation of the Company. The alternative form of lease for this very machine, which appears as Plaintiff's Exhibit 22 (R. Vol. 3, p. 193), does not contain either the fixed minimum royalty clause or the sole risk clause or the agreement to pay if the machine is destroyed by fire, which the brief sets forth as contained in every lease, nor any restrictive lease clause, and the Exhibit 21 which the brief sets out as a "fair sample" of the defendants' leases differs from any other lease put out by the defendants (including various

other leases for lasting machines) in that it includes clauses not contained in many of the other leases, and also differs in respect to the scope of the so-called tying clause from such clauses in other restricted leases where they occur to which the Brief of the United States subsequently refers.

Again, at page 172 under the title of "Other Oppressive Provisions of Defendants' Leases" the brief writer refers to the following clauses as "extremely burdensome."

The first clause is a clause forbidding the lessee, without permission from the lessor, to remove a machine from one of his factories.

The machines belong to the United Company. It naturally must know where they are located so that it can see if they are properly cared for and so that, in respect to the machines on which a royalty based on use is paid, it can examine the machines to see if proper payments are being made. The provision that the United Company's own machines shall not be removed from the factories in which they are installed without its permission can hardly be called burdensome without a stretch of the imagination.

The next clause considered by the writer is the clause permitting the lessor at all times to have access to the leased machinery (p. 172),—

> "for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use."

Obviously the United Company must have a right to look at the machinery in order to see if it is properly cared for and to see to what extent it is used so that it may be sure it has been paid its proper royalties. The brief

writer construes this into a right on the part of the United Company to

> "enter the factory of the lessee at any time they please, and put themselves in a position to learn any manufacturing secret the lessee may have."

The brief then proceeds to say (p. 173):—

> "Further, he [the lessee] is required 'at his own expense' to keep the machinery 'in good and efficient working order,' although the machinery belongs to the lessor and the lessee is bound to pay for its use."

Could any argument be more absurd? The petitioner seriously charges that a clause requiring a lessee of machinery to keep it in efficient working order is an improper burden. The writer, of course, omits to state that this work is actually done by the United Company, and that the clause is not enforced. (See main brief, pp. 186–188.)

The writer then refers to the clause requiring the lessee to obtain from the lessor the parts needed for repairs. (See main brief, pp. 298, 301.)

He then refers to a clause requiring the lessee to pay a stated sum in case the machine is destroyed by fire. It is difficult to see how this clause can be burdensome. It may be noted that the clause does not appear in the initial payment leases put out by the United Company which the writer omits to mention.

The writer of the brief then refers to the return charge, which, it is to be noted, occurs in only certain of the leases, and then proceeds to assume a certain cost for the machines and on this assumption to contend that an exorbitant price is charged for the machines. This last contention we have considered *supra*, page 14.

THE RELIEF ASKED FOR BY THE PETITIONER IN RESPECT TO THE LEASES SHOWS THE PETITIONER'S FAILURE TO UNDERSTAND THEIR CHARACTER AND EFFECT.

The petition itself prays that the Court declare the lease and license agreements objected to "illegal and void" (R. Vol. 1, p. 1029), and that the defendants be enjoined from enforcing or attempting to enforce any of the provisions objected to.

In the petitioner's brief the petitioner contends that relief as to the existing leases can be given without making the lessees themselves parties, on the ground that the enforcement of the alleged illegal provisions can be enjoined without depriving the lessees of any rights, and that such action, on the contrary, will only relieve them of burdensome provisions.

On page 259 the brief writer says:—

> "As we have said before, the Government does not attack the leases, but only certain clauses of them. These clauses are, we say, illegal. They impose obligations upon the lessees and are made for the sole benefit of the defendants. The relief sought is a prohibition against the defendants enforcing them. We do not seek in any wise to control the action of the lessees. What we ask would not in the least impinge their rights. Neither would it impose any obligation upon them. On the contrary, it is designed to relieve them from an oppressive and wholly illegal burden."

This statement, we submit, is based upon a wholly erroneous view of the nature and character of the lease provisions.

For example, take the seventeen-year term, which is one of the clauses objected to by the United States. If the United Company is enjoined from enforcing this clause, it means that the United Company cannot compel a lessee to retain its machines for the period of seventeen years, but that the lessee may return them at any time. But if the United Company is so enjoined it must be because the clause is illegal. If so, it clearly follows that the lessee also cannot enforce the clause. The result would be that the United Company could withdraw from its lessees at once all the machines they hold under lease, and either refuse to return them to the lessees or require the lessees to purchase them, or pay large initial payments or fixed rentals. This is not a fanciful suggestion. If the United Company is enjoined from providing for its reasonable protection by means of the clauses it now employs, it would, as we have shown in our main brief (pp. 420–422), be required to sell its machines outright, or charge large initial payments, or fixed royalties, that is, to charge its lessees less favorable terms than at present.

In other words, it is impossible to enjoin the United Company from enforcing this seventeen-year clause except on the ground that it is illegal, and if so, the leases become terminated or terminable at any time at the option of either party. It is therefore clear that the lessees are vitally interested in the decision of this suit and that their rights would be seriously affected if the United Company were enjoined from enforcing the lease provisions, as prayed for by the petitioner.

Again, take the auxiliary restricted use clause. The United Company has thousands of patented Goodyear auxiliary machines on lease. No royalty is charged for the

use of these machines, but they are restricted to use with the Goodyear welter and stitcher and the United Company receives its return indirectly from the royalties received from the welter and stitcher.

But is it possible that the Court could enjoin the United Company from enforcing this restriction, and at the same time hold that the lessee had a right to continue to hold the machines under his lease and use them in connection with any machines he pleased? The result would be that the lessee would continue to hold and use the United Company's machines, without making any royalty payment direct or indirect for them, that is on terms entirely contrary to those agreed upon by the parties.

The auxiliary machines are patented machines. The lease and license agreements under which they are furnished to lessees constitute leases of the physical materials which compose the machines, and also licenses under patents to use the inventions embodied in the machines.

As the United Company owns these patents embodied in the machines, the lessee has no right to use the leased machines unless he holds a license from the United Company to do so. The only license to use the machines which the lessee has is the restricted license contained in the leases authorizing the lessee to use the machines only on certain shoes. The United States contends that this license, that is, the restricted use clause, is unlawful and therefore that its enforcement should be enjoined. But if the license is unlawful, then it necessarily follows that the lessee has no license at all to use the machines. If a patent suit is brought against him by the United Company for an infringement by the use of the machines, the lessee can defend only by

setting up a license, and, of course, it cannot set up an unlawful license.

A patent suit brought by the United Company against the lessee for the use of these machines would not constitute an enforcement of the lease. It would constitute merely an enforcement of the United Company's patents, which give it the right to exclude all other persons from the use of the patented inventions. The United Company in such a suit would not rely upon any agreement by the lessee but solely on its patent, and, as we have stated above, the lessee, if using the machines in connection with a welter or stitcher obtained from some one else, could not set up the license granted by the lease as a defence, first, because such license would not cover the use which he was making of the machines, and second, because such license would necessarily have been held to be illegal if the relief prayed for by the petitioner is granted.

This same result is true in respect to all the other machines leased under restricted leases.

The result is that the restricted use clauses could not be held unlawful, and the United Company enjoined from enforcing them without necessarily depriving the lessees of their right to use at all machines held by them under such restricted licenses.

There is, therefore, no foundation for the statement (p. 259) in the petitioner's brief that:—

> "What we ask would not in the least impinge their [the lessees'] rights."

Again, take the full capacity clause objected to by the petitioner. The machines held under leases containing this clause were leased on an understanding that they

should be used as contemplated by the full capacity clause. If they are not so used, the United Company may get no return, as the royalty is dependent on the use of the machines. This clause goes to the very essence of the contract. If it is held illegal, the whole lease must be illegal, and therefore the lessee can no longer have the right to hold the machines for the term of the lease. To hold otherwise would be to hold that the Court can decree that machines, owned by the United Company, shall be held by a shoe manufacturer on terms not contemplated or agreed to by either party. In other words, it would be to hold that the Court, by its decree, can create a new contract, between the parties which would be totally unfair to one of them, and might deprive it of practically its entire return on its investment.

Consider again the clause contained in some of the Goodyear leases requiring the lessee to pay a royalty for the use of the machines determined by the total output of the lessee. The petitioner strenuously objects to this clause and asks that the United Company be enjoined from enforcing it. This is the only clause in the lease requiring the lessee to pay any royalty to the United Company (except a small minimum payment). This clause goes to the very essence of the contract. If the United Company cannot enforce it, it cannot obtain any compensation for its machines. If it is held illegal, it necessarily follows that the entire lease must be illegal.

APPENDICES "A," "C," AND "D" TO THE PETITIONER'S BRIEF.

Appendix "A" to the petitioner's brief is a chart purporting to show the effect of the exclusive use and "tying" clauses. This chart does not correctly represent the situation, but is inaccurate and misleading. We comment on it in Appendix I to this Supplemental Brief (*infra*, pp. 159–166).

Appendix "C" to petitioner's brief purports to give a synopsis of the lease forms showing the tying clauses contained in each. This also contains ambiguities and various misleading statements. We comment on it in Appendix II to this Supplemental Brief (*infra*, pp. 167–177).

Appendix "D" to the petitioner's brief purports to give a résumé of leases in which the various objectionable clauses appear. We comment on this in Appendix III to this Supplemental Brief (*infra*, pp. 178–179).

REPLY TO THE DISCUSSION IN THE BRIEF FOR THE UNITED STATES OF ALLEGED LASTING MACHINE COMPETITION BETWEEN THE GOODYEAR COMPANY AND THE CONSOLIDATED & McKAY LASTING MACHINE COMPANY.

The Court will find nothing in the Brief for the United States which will raise any question as to the soundness of the findings of the District Court on the facts bearing on this issue. Accordingly, we should not burden the Court with any further discussion of this issue than is contained in the Brief for Appellees (pp. 119–151), were it not for the fact that the Brief for the United States abounds in inaccurate and misleading statements of the evidence, directly at variance with the overwhelming weight of the evidence and frequently at variance with the testimony of the United States' own witnesses, and persistently ignores directly contradictory evidence of defendants' witnesses.

1. PRELIMINARY STATEMENT.

At the very outset the Brief for the United States (p. 18) makes a misstatement which demands immediate correction. It states that "there were on the market, according to Winslow," the Ideal lasting machine and the Copeland rapid lasting machine, both owned by the Goodyear Company. This is to the effect that in 1899 the Goodyear Company was putting out *both* of these machines. *Mr. Winslow made no such statement.* At the point in the record which the United States cites in support of its

statement, he did not even mention the Copeland (R. Vol. 1, p. 399, lines 13–21).

As is explained in the Brief for Appellees (pp. 129–131), the Copeland rapid lasting machine was an old machine formerly put out by the Goodyear Company but which had become out of date with the revolutionary changes in the styles and shapes of lasts about 1895. After that time the Goodyear Company put out the Ideal lasting machine (R. Vol. 1, p. 521, lines 39–40; p. 626, lines 39–43).

This misstatement by the United States is particularly open to criticism in view of the fact that it is introduced (p. 17) by the statement: "*There is no dispute* with reference to the various kinds of lasting machines which were being produced at the time the United Company was formed" (italics ours). Moreover, this misstatement by the United States is inconsistent with its statement (p. 20) that "the Goodyear Company's lasting machine was, as has been said, the Ideal machine, which was a development of its Copeland-Rapid machine."

The United States does not appear to question that, as explained on pages 119–120 of the Brief for Appellees, the following lasting machines being put out by the Consolidated Company in 1899, viz.: the McKay & Copeland, the Chase, and the hand method McKay, were each designed and chiefly used for a particular kind of work, each different from the other; and that the Ideal machine of the Goodyear Company was also designed and chiefly used for still another and distinctly different kind of work.

The United States contends:—

(1) That the experimental hand method welt lasting machine of the Consolidated Company competed with the

Ideal machine of the Goodyear Company in the field of the Ideal, that is, in lasting *women's welt shoes.*

(2) That the Ideal machine of the Goodyear Company competed with the hand method McKay machine of the Consolidated Company in the field of the hand method McKay, that is, in lasting *McKay sewed shoes.* This is a new contention.

(3) That the Ideal machine of the Goodyear Company competed with the Chase machine of the Consolidated Company in the field of the Chase, that is, in lasting *men's welt shoes.*

(4) That the Chase machine of the Consolidated Company competed with the Ideal machine of the Goodyear Company in the field of the Ideal machine, that is, in lasting *women's welt shoes.*

2. THE CONTENTION OF THE UNITED STATES THAT THE EXPERIMENTAL HAND METHOD WELT LASTING MACHINE OF THE CONSOLIDATED COMPANY COMPETED WITH THE IDEAL MACHINE OF THE GOODYEAR COMPANY IN THE FIELD OF THE IDEAL, IN LASTING WOMEN'S WELT SHOES.

The Brief for the United States contends (p. 19) that the problem of adapting the hand method lasting machine for the lasting of welt shoes was "in the way of solution in the fall of 1898"; and that in December, 1898, the Consolidated Company was "offering to the trade the hand method machine as a satisfactory machine for the lasting of welt shoes."

The evidence which the United States relies upon in support of this contention is, first, Mr. Winslow's testimony that, as it is stated by the United States (p. 19), "some

machines were already in shoe factories," that "it was the intention of the Consolidated & McKay Company to perfect the machine so as to make it an efficient welt lasting machine," that it became successful *in 1900*, and that *now* women's welt shoes are lasted very largely upon this machine.

It is upon these statements by Mr. Winslow that the United States bases its assertion (p. 19) that the Consolidated Company "was putting out lasting machines which covered the entire ground." But the United States ignores Mr. Winslow's testimony that

> ". . . while it is true that we had machines out it is true that they were not being accepted by the manufacturers and they were being sent out and coming back. We were trying all the time to keep them going. . . . We were trying to hold them in the field, but *we knew that they were not commercially successful*" (italics ours) (R. Vol. 1, p. 978, lines 2–5, 11–13).

Mr. Winslow's testimony was emphatically corroborated by Mr. Howard (R. Vol. 1, p. 969, lines 4–6).

The practical reasons why the experimental hand method welt lasting machine was not successful until a new invention was incorporated in it in 1900 are fully explained in the Brief for Appellees (pp. 140–144).

The United States further relies (pp. 19, 32) upon advertisements published by the Consolidated Company in December, 1898. But the United States goes too far; it asserts (p. 32) that the advertisements "*claimed the machine would last welt shoes without distinction*" (italics ours), and obviously aims to give the impression that the advertisements claimed that the machine would last any and

all kinds of welt shoes, necessarily including women's welt shoes. This is not justified by the record, which merely states that the advertisements advertised "the Consolidated hand-method lasting machine for lasting welt shoes" (R. Vol. 1, p. 960, lines 27–28). But apart from this the advertisements merely show an attempt by the Consolidated Company to introduce the machine and in no way refute the testimony discussed in the Brief for Appellees (pp. 140–144) proving conclusively that this attempt had failed and that the machine was not commercially successful. Accordingly, there is no warrant for the argument of the United States (p. 33) that "these contemporaneous advertisements should overcome anything which Mr. Winslow and his witnesses said in this law suit, twelve years afterwards." This contention is obviously absurd.

The United States also attempts to support its contention that prior to 1899 the experimental hand method welt lasting machine was offering competition in the field of the Ideal lasting machine, in lasting women's welt shoes, by the testimony of Selz, Welch, Strootman, and Eaton (pp. 28–29). None of these witnesses testified to any use of the hand method welt lasting machine on *women's welt shoes* prior to 1899, and only one, Eaton, testified to *any use* of that machine on any kind of shoes prior to 1899.

Selz's testimony does not bear on the issue. In the summary of his testimony in the Brief for the United States (p. 28) women's *welt* shoes are not even mentioned.

Welch's testimony does not bear upon the issue of lasting machine competition in 1899, despite the attempt of the United States (pp. 28–29) to give the impression that it does (see first paragraph, p. 29). Welch did not

manufacture welt shoes until "along *in 1906*," *seven years after the United Company was formed* (italics ours), and prior to that time had manufactured McKay shoes exclusively (R. Vol. 1, p. 711, lines 19–20, 34).

Strootman did not testify, and the Brief for the United States does not claim (p. 29), either that he was making women's welt shoes prior to 1899 or that he used the Consolidated hand method lasting machine prior to 1899. Accordingly his testimony is irrelevant to this issue.

On the face of the résumé of Eaton's testimony in the Brief for the United States (p. 29), his testimony does not relate to this issue because, as the United States says, before 1899 "he was making men's welt shoes exclusively."

The United States has not called attention to any testimony whatever which could lead this Court to doubt the correctness of the finding of the District Court; on the contrary, it appears that all the testimony was consistent with that finding, which was as follows:—

> "With still another laster [the hand method welt machine] with which the Consolidated Company was experimenting in 1899 for use on welt shoes, we are not here concerned, because, though this laster was afterward further improved, developed, and finally furnished to users by the United Company, it had not been made an article of commerce in any practical sense when that company was formed" (Dodge, J., R. Vol. 1, p. 1130).

3. THE CONTENTION OF THE UNITED STATES THAT THE IDEAL MACHINE OF THE GOODYEAR COMPANY COMPETED WITH THE HAND METHOD MCKAY MACHINE OF THE CONSOLIDATED COMPANY IN THE FIELD OF THE HAND METHOD MCKAY, IN LASTING MCKAY SEWED SHOES.

For the first time since this suit was begun the contention is made by the United States (p. 20) that the Ideal machine was used in the field of the hand method McKay machine in lasting McKay sewed shoes.

In support of that contention the United States relies upon the testimony of only one witness, Mr. Howe. But the United States does not correctly state Mr. Howe's testimony. It says (p. 20) that Mr. Howe testified that "it would frequently happen that McKay shoes would be lasted upon the Ideal machine." What Mr. Howe actually said was:—

> "It would happen sometimes in a shoe factory whose principal work was the manufacture of women's welts that the concern might be making a few McKay sewed shoes, but not enough to have an appropriate lasting machine for them. In that case frequently *they would strain a point* and last their McKay shoes on an Ideal laster, *for which it really was not adapted*" (italics ours) (R. Vol. 1, p. 627, lines 25–31).

So far from being an admission on Mr. Howe's part of competitive use of the Ideal lasting machine in the field of the hand method McKay lasting machine, this testimony merely reinforces the fact abundantly established by the record that uses of the lasting machines outside of their own fields were exceptional and sporadic and in spite of structural inadaptability.

This feeble contention obviously requires no further discussion.

4. THE CONTENTION OF THE UNITED STATES THAT THE IDEAL MACHINE OF THE GOODYEAR COMPANY WAS COMPETING WITH THE CHASE MACHINE OF THE CONSOLIDATED COMPANY IN THE FIELD OF THE CHASE, IN LASTING MEN'S WELT SHOES.

A. Much of the Evidence Relied upon by the United States to show Use of the Ideal Machine on Men's Welt Shoes does not Relate to Use of the Ideal at all but Relates to the Copeland Rapid Laster, a Radically Different Machine which was Practically Obsolete in 1899.

Much of the testimony which is discussed by the United States and which is relied upon to show use of the Ideal machine on men's welt shoes does not relate to the Ideal lasting machine at all, but has to do with the Copeland rapid laster.

In order to justify its reliance upon testimony relating only to the Copeland machine the United States first undertakes to show that the Copeland and Ideal machines were substantially identical (pp. 18, 21). It characterizes the Copeland machine as "the same machine as the Ideal machine except that it was operated by the foot of the workman rather than by power" (p. 21).

But it is shown conclusively by the testimony of both witnesses for the United States and defendants' witnesses (see Brief for Appellees, pp. 129–131), which the United States ignores, that the Copeland machine was *radically different* from the Ideal and was *practically obsolete* in 1899.

Accordingly the testimony of Florsheim and McElroy (Brief for the United States, p. 21), which relates only to

the Copeland rapid laster and does not mention the Ideal machine, is irrelevant.

Likewise, so much of the testimony of Worsencroft (pp. 22–23) and Jordan (p. 25) as relates to the Rapid machine should be disregarded.

B. Evidence as to Alleged Use of the Ideal Machine on Men's Welt Shoes after 1899, largely relied upon in the Brief for the United States, is not Relevant to this Issue.

In reviewing the evidence as to the use of the Ideal machine in the manufacture of men's welt shoes the Brief for the United States fails to distinguish between use *before 1899* and use *after 1899*. As is shown in the Brief for Appellees (pp. 132–136), the slightly increased use of the Ideal machine on men's welt shoes *after 1899* was due to the introduction of a new shape of last and to inventions which made it possible for the Ideal machine to last men's welt shoes made on that last (and see *infra*, pp. 80–82).

It cannot be assumed that defendants in February, 1899, could anticipate either that change in the styles of shoes or the making of those inventions.

Accordingly, a considerable amount of the testimony which is relied upon in the Brief for the United States is irrelevant. For example, Snow (p. 22) testified *entirely* to conditions *after 1899* (R. Vol. 1, p. 896, lines 21–23). The testimony of O'Keefe (p. 26) in regard to use of the Ideal machine related only to conditions *after 1899*. The testimony of Jordan referred to by the United States (p. 25) regarding use of the Ideal in the Douglas and Keith factories related only to conditions *after 1899*. The record does not show whether Murphy was testifying about conditions before or after 1899, so that his testimony (p. 26) has no

probative value. The greater part of the testimony of Heffernan (p. 24) related to use of the Ideal machine *after 1899;* so did much of the testimony of Fletcher (p. 27).

Selz did not testify to any *use* of the Ideal machine. The testimony relied upon by the United States (p. 28) was a mere expression of opinion and the value of that opinion may be judged from the fact that Selz made the ridiculous statement that the machines which he had mentioned—and he had included the *McKay-Copeland* machine, admittedly used only on heavy, nailed shoes such as brogans—could *all* be used in lasting *women's shoes* (R. Vol. 1, p. 142, lines 10–18).

C. The Attempt of the United States to Minimize the Importance of the Improvements which were Made in the Ideal Machine after 1899.

On pages 132–136 of Brief for Appellees, testimony is reviewed which shows that inventions were made *after 1899* which improved the mode of operation of the Ideal machine, although not overcoming the structural defects which made it unadapted for men's welt shoes. The Brief for the United States endeavors to minimize the value of one of those improvements, the "hold-down attachment."

In its summary of Snow's testimony (p. 22) the United States endeavors to give the impression that he testified that the Ideal machine, even before he invented the hold-down attachment, was successful for lasting men's shoes except "men's *heavy* boots, meaning long-legged boots, brogans, and miners' shoes" (italics theirs), and also that after he invented the hold-down it was successful "even for men's *heavy* boots" (italics theirs). On the contrary, Snow testified that "*nothing* could handle those shoes

except the McKay-Copeland machines" (italics ours) and said that before he made his invention the Ideal would not successfully last *even patent leather shoes* (R. Vol. 1, p. 899, lines 38–42; p. 900, lines 17–18). That the statement of Snow's testimony by the United States is entirely unfair is further shown by the quotations from his testimony on pages 129, 133, 135 of the Brief for Appellees. Snow testified that it was the two improvements which he made, one of which was the hold-down, "that changed the machine from an unsuccessful machine into a successful one," and that without those improvements the Ideal would not last men's shoes successfully even if the operation were repeated two or three times (R. Vol. 1, p. 898, lines 35–40; p. 899, lines 38–42; p. 900, lines 12–13).

The United States further endeavors to give a wrong impression in its statement that Snow testified that "the Ideal machines were used *without* the attachment for making the shoes made by the Douglas and Keith Companies" (italics theirs) (p. 22). As to the Douglas factory it is true that Snow testified that during the time he was there and before he put on the hold-downs "the Ideal machines were being used constantly in lasting men's welt shoes"; but he *also* testified that after he went to the Douglas factory:—

> "I put them on as quickly as I could get them on. I don't suppose it was 6 months before I put them on" (R. Vol. 1, p. 900, lines 2–7).

As to the Keith factory Snow testified that he knew nothing about how long Keith had been lasting men's welt shoes on Ideal machines before he went there, that he was there from the spring of 1901 to the spring of 1902, and that while he was there he invented the hold-down and put hold-downs

on all of Keith's machines (R. Vol. 1, p. 896, line 23; p. 897, lines 11–13; p. 899, lines 16–18).

In its discussion of the testimony of Heffernan the United States endeavors to give the impression that Heffernan lasted men's welt shoes successfully for twelve years upon the Ideal machine without any hold-down appliance, but testimony of Heffernan to which the United States does not refer, but which is reviewed on pp. 134–135 of Brief for Appellees, shows that before the hold-down was applied the work of the machine was not satisfactory and that his use of it could not be regarded as successful use.

D. The Use of the Ideal Machine in the Field of the Chase before 1899, on the Showing Made by the United States, was Absolutely Trivial and Insignificant.

The contention of the United States that the Ideal machine of the Goodyear Company was used on men's welt shoes *before 1899* in competition with the Chase machine of the Consolidated Company is supported by the testimony of only five witnesses, showing such use in only three factories. These witnesses were Worsencroft (p. 22), Whitman (p. 23), Heffernan (p. 24), Jordan (p. 25), and Fletcher (p. 27), and the testimony of Whitman, Heffernan, and Jordan, so far as they testified to use before 1899, related to one factory only, the Whitman & Keith factory. The aggregate number of machines, to the use of which these witnesses testified, is eighteen at the most. The Brief for the United States would give the impression (p. 27) that Fletcher said that Cushman had twelve machines before 1899, but he did not so testify (R. Vol. 1, p.

938, lines 28–29, 32–33). Cushman in fact had only six before 1899 (R. Vol. 1, p. 972, line 12).

It is shown by evidence referred to on page 136 of the Brief for Appellees that the total number of lasting machines of all kinds out on January 1, 1899, was between 4,200 and 4,300. The Goodyear Company had put out only 248 Ideal lasting machines altogether, and of that number eighteen at the most, on the United States' own showing, were doing work which could be done by any machine which the Consolidated Company was putting out. That is certainly a meager showing in support of the contention of the United States that the Goodyear Company was competing with the Consolidated Company, particularly in view of the fact that the Goodyear Company had been putting out the Ideal machine for nearly four years. Clearly this trivial overlapping use of the Ideal machine was entirely insignificant and of no importance.

That the Ideal machine also did not offer any potential competition to the Chase machine is proved by the testimony reviewed in the Brief for Appellees (pp. 128–129), where it is shown that the Ideal machine was structurally not adapted for lasting men's shoes.

5. THE CONTENTION OF THE UNITED STATES THAT THE CHASE MACHINE OF THE CONSOLIDATED COMPANY COMPETED WITH THE IDEAL MACHINE OF THE GOODYEAR COMPANY IN THE FIELD OF THE IDEAL MACHINE, THAT IS, IN LASTING WOMEN'S WELT SHOES.

In its efforts to show that the Chase and the Ideal machines competed, the United States apparently contends that the Chase machine was also used in the field of the Ideal for lasting women's welt shoes. But there is no evidence whatever that the Chase machine was ever used in a single instance for lasting women's welt shoes. None of the four witnesses relied upon by the United States, O'Keefe (p. 26), Lemay (p. 27), Springer (p. 27), and Selz (p. 28), testified to any such use, and only two of them, Lemay and Springer, expressed so much as an opinion that the Chase machine could be so used, as is shown on pages 124–125 of the Brief for Appellees.

As to the statement by the United States (p. 26) that O'Keefe said that "the Chase could last successfully *any kind* of shoes except the high toed models which had come into vogue the last three or four years" (italics theirs), O'Keefe did not so testify. He said:—

> "It was just as good as *any other kind of machine* I know of for *regular work*" (italics ours).

The context shows that he meant regular *men's work* (R. Vol. 1, p. 934, lines 41–44).

Selz's testimony does not even mention women's welt shoes, nor does the Brief for the United States in its summary of his testimony. His testimony is therefore irrelevant to this issue.

But not only does the record fail to show that the Chase machine was ever used in competition with the Ideal, in lasting women's welt shoes, but evidence entirely uncontradicted proves, first, that it was never used in lasting women's welt shoes and, second, that it was structurally not adapted for such use. This evidence is reviewed in the Brief for Appellees (pp. 125–126).

The United States relies (p. 33) upon an advertisement of the Chase machine "advertising that machine for the purpose of lasting women's shoes" (R. Vol. 1, p. 960, lines 28–31). But it should be noted that the advertisement did not purport to offer the Chase machine for lasting women's *welt* shoes. Presumably the advertisement had reference to women's McKay shoes on which the record shows a slight use of the Chase machine (Brief for Appellees, pp. 124–125). That use, however, was in the field of the hand method McKay machine of the Consolidated Company and evidence regarding it is not relevant to any issue in this case. But if it be assumed that the advertisement intended to offer the machine for women's welt shoes, it merely shows an attempt to introduce the machine in that field and the complete failure of the attempt confirms the defendants' testimony that the machine was structurally unfitted for such use.

6. THE UNITED STATES HAS CALLED ATTENTION TO NO EVIDENCE WHICH IS INCONSISTENT WITH THE FINDING OF THE DISTRICT COURT AS TO THE ALLEGED COMPETITION BETWEEN THE IDEAL AND CHASE MACHINES.

The District Court, whose discussion of the evidence on this issue is quoted in the Brief for Appellees (p. 139), held, after summarizing the evidence:—

> "I am unable to consider it established that competition in any practical sense was destroyed when the United Company became owner of both machines" (Dodge, J., R. Vol. 1, p. 1130).

So far from establishing that the finding by the District Court is manifestly wrong, the United States has not shown the facts to be otherwise in any respect than was found by the District Court.

REPLY TO ASSERTIONS IN THE BRIEF FOR THE UNITED STATES REGARDING THE ACQUISITION OF THE EPPLER WELT MACHINE COMPANY.

The discussion of the Eppler acquisition in the Brief for the United States (p. 34 *et seq.*) contains serious misstatements of the evidence as well as numerous exaggerated and unfair statements, implications, and half-truths. While the evidence which contradicts those statements has been reviewed in the discussion of the Eppler acquisition in the Brief for Appellees (pp. 152–170), some of the statements made by the United States are so incorrect and misleading that they call for specific answer at this time.

THE CONTENTION OF THE UNITED STATES THAT THE EPPLER COMPANY WAS AN ABLE AND PROSPECTIVELY A VERY DANGEROUS COMPETITOR.

1. The Record does not Support the Claim of the United States that the Difference between the Eppler Welt Shoe and the Goodyear Welt Shoe was a Difference only in Name, and the Record Shows that there was a very Limited Field for the Eppler Welt Machines.

While it is admitted by the United States—as all of the witnesses on both sides testified—that the Eppler machines could not make a Goodyear welt shoe, yet the Brief for the United States gives (p. 34), as the *only* reason, the fact that "'Goodyear welt' was a trade-mark name."

On the contrary, as set forth upon pages 152, 158–159 of Brief for Appellees, the absolutely uncontradicted evidence shows that the difference between the Eppler welt

shoe and the Goodyear welt shoe was not in *name* merely but rather in the actual *structure* of the shoe. As Mr. Howe explained, the Goodyear welt shoe

> "was the hand-sewed shoe, sewed by machinery. The Eppler welt shoe was a shoe made in a different way, different from what a hand workman would make it" (R. Vol. 1, p. 678, lines 25–28).

In the Eppler shoe, the bulky double thread of the inseam lay in a channel in the insole beneath the foot, while in the Goodyear shoe it is laid on the welt outside the surface on which the foot rests.

This bulky double thread in the insole of the Eppler shoe under the bearing surface of the foot had a tendency to raise a ridge on the insole which would cause discomfort to the wearer. This defect in the Eppler shoe, most serious in thinner soles, made it impossible to use the Eppler welt machine for women's welt shoes or for turn shoes. For the same reason the Eppler machines could not be used to make shoes with reinforced insoles, either men's or women's; and about forty per cent. of all welt shoes are made with reinforced insoles (R. Vol. 1, p. 415, lines 41–43; Vol. 2, p. 2494).

On this evidence, entirely ignored in the Brief for the United States, it was found by the District Court that

> "The Eppler machines were adapted to produce men's thick-soled welt shoes only" (Dodge, J., R. Vol. 1, p. 1131).

Accordingly the statement in the Brief for the United States (p. 34) "that there was open to the Eppler Company *a wide field* of possible competition" (italics ours) is contrary to the record. It follows that the statement that

the Eppler Company "was successfully entering that field" (p. 34) is also not supported by the record.

We shall later show (*infra*, pp. 94–95) that the Eppler Company was not successful in the limited field which it was attempting to enter.

2. The Contention of the United States that the Eppler Machines did as Good Work and could be Used for the Same Purposes as the Goodyear Machines.

The testimony of Jones, Selz, McElroy, Florsheim, and Long, witnesses for the United States (four of whom admitted that they were identified with competing shoe machinery concerns), to the effect that the Goodyear and Eppler machines "were used for the same grade of work" (Brief for the United States, pp. 35–40), was contradicted not only by numerous witnesses for the defendants but also by *six witnesses for the United States* whose testimony the United States purports to summarize on the same pages, ignoring, however, testimony of each of those witnesses which is unfavorable to its contention.

Little weight should be given to Long's testimony. His cross-examination (R. Vol. 1, pp. 246–276), including testimony regarding Eppler machines, shows that he was not a credible witness. Reference is made to some of his misstatements on pages 164–165 of Brief for Appellees.

As to the testimony of Smith, a witness for the United States, the Brief for the United States says (p. 36) that he testified that the Eppler machines "could be and were used for the same purposes as the Goodyear welt sewing machine." But Smith *also* testified that he believed that the Goodyear welter was superior to the Eppler because the chain stitch of the Eppler machine was likely to leave

a ridge around the inside of the shoe which would come against the foot and cause discomfort to the wearer (R. Vol. 1, p. 353, lines 4–20).

As to the testimony of Whitman, a witness for the United States, the Brief for the United States says (p. 36) that he testified that the work done by the Eppler welt machine was satisfactory. Mr. Whitman made no such statement. He did say:—

> "I consider the Goodyear welt system the best system; it did better work on the shoe" (R. Vol. 1, p. 916, lines 15–16).

He also testified that his company never had more than one Eppler machine, which they obtained before the United Company was formed and which three or four years later they exchanged for a Goodyear machine (R. Vol. 1, p. 916, lines 11–18).

As to the testimony of Field, a witness for the United States, the Brief for the United States says (p. 37) that Field testified that his company "put in the Eppler machines because they regarded them as the better of the two." But Field also testified:—

> "The Eppler machine sewed a somewhat *looser and weaker seam* than the Goodyear" (italics ours) (R. Vol. 1, p. 931, lines 16–17).

Elsewhere in the record it is clearly shown that a *tight* seam "is indispensable in the inseam of a welt shoe" (R. Vol. 2, p. 2251). The United States also says (p. 37) that Field testified that it was his judgment "that the Eppler machine sewed a flatter seam than the old Goodyear." But this opinion was wrong, as is shown by abundant evidence and specifically by the testimony of Strong, a

witness for the United States, that "you get a flatter seam on the Goodyear welter" (R. Vol. 1, p. 932, line 25).

Other important statements by Field, not referred to by the United States, were that his company had the benefit of the United Company's service, that they had only Eppler welters and used Goodyear stitchers, not Eppler stitchers, and that they had no Eppler auxiliaries. He said:—

> "That is, we had five Eppler welting machines which were assisted and helped out by the Goodyear machines that completed the operation of uniting the sole of a welt shoe to the upper" (R. Vol. 1, p. 931, lines 7–10, 13–14, 23–27, 39–40).

Accordingly Field's testimony relates to *only* the Eppler welter, whereas the proper basis of comparison on this issue is between the Eppler system of machines and the Goodyear system of machines.

As to the testimony of Strong, a witness for the United States, the Brief for the United States says (p. 38) that he testified that "he thinks that the Goodyear welter is a little better than the Eppler welter was" and the United States further states that the United Company's stitcher and welter for which he exchanged his Eppler machines "were developed after the formation of the United Company." Both statements are incorrect. First, Strong did not say "*a little* better" (italics ours). He said:—

> "I think the Goodyear machines do better work than the Eppler machines. Of course, I think the Goodyear welter is better than the Eppler welter was" (R. Vol. 1, p. 932, lines 21–24).

Second, it is not true that machines "for which the exchange was made were developed after the formation of the United

Company" (p. 38). In 1900 the United Company was putting out the same welter and stitcher that the Goodyear Company had been putting out.

As to the testimony of Cunningham, a witness for the United States, the Brief for the United States says (p. 39) that he testified that the Eppler welter was satisfactory, but it does not refer to his statement that he thought "*everything about the Goodyear was better*" (italics ours) (R. Vol. 1, p. 289, line 19). The United States also says that Cunningham testified that the Eppler outsole stitcher "*did not do as good work* as the Goodyear" (italics ours). What Cunningham did say was that the outsole stitcher was *not satisfactory* (R. Vol. 1, p. 290, line 3).

As to the testimony of Fletcher, a witness for the United States, the Brief for the United States says (p. 40) that Fletcher "made no comparison between the Eppler and Goodyear *welter* further than to say that they ran side by side in the same factory" (italics theirs). On the contrary Fletcher testified that

> "with the Eppler machine there was trouble with the loose seam. When you beat out the shoe there would be more or less looseness, which caused a weak seam. It would make a bad shoe" (R. Vol. 1, p. 939, lines 16–19).

As to the testimony of McElroy, a witness for the United States, that the Eppler welter "could have been used on women's shoes" (Brief for the United States, p. 36), the context shows (R. Vol. 1, p. 188) that he meant that it was possible to sew a woman's shoe on the Eppler machine, purely as a mechanical operation, but that he did not mean to express any opinion as to the quality or sala-

bility of the shoe thus sewed. Moreover, McElroy had previously testified:—

> "*Q.* Do you know whether or not it could be used on women's shoes?
>
> "*A.* I do not" (R. Vol. 1, p. 188, lines 2–22).

No other witness even went so far as to express an opinion that the Eppler machine could be used on women's shoes, and for the reasons we have already stated (*supra*, p. 88) it never was used on women's shoes. Furthermore, it appears that the effort to get McElroy to take Eppler machines was unsuccessful (R. Vol. 1, p. 187, lines 33–34).

3. The Contention of the United States that the Eppler Company had a Substantially Complete Line of Auxiliary Machines.

The Brief for the United States says (pp. 38–39) that Mr. Keith, formerly president of the Eppler Company, testified that the Eppler Company "had *a line* of machines for making welt shoes, *except* a rough rounder, and were trying to perfect that" (italics ours). It is plain that the United States intends to give the impression that the Eppler Company had a substantially complete line of auxiliaries, except a rough rounder. Accordingly this statement is absolutely unfair and misleading. Mr. Keith testified that the Eppler Company did *not* have "a full set" and named *only two auxiliaries*, the stitch separator and the rough rounder, stating that the rough rounder was not satisfactory and had never been perfected, and that the stitch separator was not satisfactory (R. Vol. 1, p. 389, lines 19–25; p. 390, lines 37–43; p. 391, lines 39–41).

On the other hand, uncontradicted evidence shows that

the Goodyear Company had thirteen important auxiliary machines for welt work in 1899, including a successful rounding and channeling machine ("rough rounder"). Mr. Warren testified:—

> "The invention of the rounding and channeling machine revolutionized the method of attaching the outer sole" (R. Vol. 1, p. 793, lines 23–24).

4. The Feeble Attempt of the United States to Show that the Eppler Company was Successful.

The United States contends (p. 40) that the fact that the Eppler Company had been in business "some seven years before the consolidation" proves that it was successful, and it also states that the Eppler Company was pressing its business and was advertising "up to the moment of its acquisition by the United Company" and (p. 39) that they had five agents in the field.

But all this goes to prove, not that the Eppler Company was successful, but quite the contrary. The fact that, despite the long time that the Eppler Company had been in business and the efforts it had been making to put its machines into factories, it had succeeded in installing only between thirty and forty welters—of which one-third were in the factory of the president of the company and others in the factories of directors of the company—and a less number of stitchers (R. Vol. 1, p. 288, lines 31 *et seq.;* p. 388, lines 35–39; p. 389, lines 8–11; p. 931, lines 43 *et seq.*), is certainly strong evidence both that the machines were unsatisfactory and that the company's business was not successful. That the Eppler Company had made no money is shown by Mr. Keith's testimony:—

"*Q.* Up to the time of the sale of the Eppler Company to the United Company was the Eppler machine or set of machines commercially successful?

"*A.* Not as a profit maker" (R. Vol. 1, p. 392, lines 9–12).

This evidence also completely answers the arguments of the United States that the Eppler Company offered potential competition (pp. 34–35, 45). Disregarding the bearing upon possible future competition of the facts that the Eppler machines infringed the Goodyear Company's patents and that eight infringement suits had been brought, the evidence that the company after seven years of strenuous efforts had not succeeded in doing more than an insignificant amount of business and had not made any money proves that it did not offer even potential competition. For surely there had been ample time for the development of all the possibilities of competition that existed.

The conclusion is certainly justified that the United States has not shown any ground for questioning the finding of the District Court as to competition, existing or threatened, which was offered by the Eppler Company. That finding was as follows:—

"The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition as rendered it unlawful" (Dodge, J., R. Vol. 1, p. 1131).

THE ARGUMENT OF THE UNITED STATES AS TO THE PRICE PAID FOR THE EPPLER COMPANY.

Although, as pointed out in the Brief for Appellees (p. 167), the report of the Eppler Company to the Commissioner of Corporations of Massachusetts, which is quoted in part in the Brief for the United States (p. 41), was properly excluded by the District Court, it does not appear that, even if it were admissible as urged by the United States (p. 41), it would support any contention that the United States is now making.

This report was obviously made up in such manner that its assets should balance its capital stock and liabilities. Patent rights are carried at $245,853.61, and its machines placed at a figure sufficient to equalize the total liabilities. It does not in any way disprove the testimony of the President of the company that only between thirty and forty welters were outstanding and a smaller number of stitchers, nor is it any test of what the assets of the company were actually worth if sold, or what the stock of this company, admittedly not a "profit maker," was worth, or what was paid for it by the United Company.

The United States lays much stress upon the fact that the officers of the United Company were unable to state the exact amount paid for the Eppler Company, but, as explained in the Brief for Appellees (p. 166) and as set forth in the record (Vol. 1, p. 32, lines 1–13; p. 33, lines 6–17), the amount paid, whatever it was, came out of a fund provided by a syndicate which was used to pay the expenses of the organization of the United Company and the floating debts of all the old companies, and to purchase the stock of the Eppler Company, the International Eppler

Company and the Goodyear Shoe Machinery Company of Canada, and to make the cash payments on the stock of the Consolidated & McKay Company, besides providing $500,000 as working capital for the United Company. It is not surprising that witnesses could not recall, more than fourteen years later, the exact amount of a particular one of these various items.

While the exact amount paid does not seem material, it should be pointed out that there is no warrant whatever in the record for the statement that the price paid was "in the neighborhood of $600,000" (Brief for the United States, p. 45). There is no justification for assuming that much over $100,000 was paid. But even if as much as $350,000 (p. 43) was paid it cannot be regarded as an exorbitant price and justify an inference of unlawful intent since this purchase (1) enabled the United Company to start free from the most extensive litigation that it had inherited from its constituent companies, (2) made it possible to furnish to its customers machines for making a different kind of welt shoe, should a demand for that kind of shoe continue, and (3) secured for the United Company patents which proved to be of substantial value in the development of new machines when combined with its own patents (Brief for Appellees, pp. 165–166).

ERRONEOUS AND MISLEADING STATEMENTS IN THE BRIEF FOR THE UNITED STATES REGARDING THE PENDING PATENT LITIGATION AGAINST THE EPPLER MACHINES.

In its discussion of the infringement litigation pending between the Goodyear Company and the Eppler Company the Brief for the United States (pp. 43–45) is particularly

inaccurate and unfair. The statement that "of the group of cases brought, only one involved a principal machine" and the statement, after referring to Case 248, that "the other cases related to patent infringements in auxiliary machines," are both contradicted by the quotation from Mr. Howe's testimony on the same page of the Brief for the United States (p. 44). As set forth in the Brief for the Appellees (pp. 154–156) there were pending eight suits for infringement, involving *both* the Eppler principal machines, viz., the welter and the stitcher, and also the Eppler auxiliary machines, viz., rounding and channeling machine, stitch separator and welt beating machine.

The statements by the United States regarding the infringement of the Briggs method patent by the Eppler welter are exceedingly misleading. The proposition (p. 44) that "even the Eppler welter, therefore, was not seriously involved" is based upon the following distorted statement (p. 44) of Mr. Howe's testimony: "He further said that if the Goodyear Company had succeeded in the pending patent litigation it would have compelled alterations in the Eppler machines '*except the welt* sewing machine'" (italics theirs). What Mr. Howe actually said was:—

> "It is my opinion that the infringing devices were very material in the construction of the Eppler Company's machines, except the welt-sewing machine, and that the litigation would have compelled alterations, especially in their stitcher and auxiliary machines" (R. Vol. 1, p. 623, lines 31–35).

It is evident that the United States lost sight of the fact that Mr. Howe was testifying specifically about "the infringing devices"; this testimony obviously has no bearing

at all upon the infringement by the Eppler welter of the Briggs *method* patent, which infringement was not by *devices* but resulted from the operation of the machine. What Mr. Howe had to say about that infringement is as follows:—

> "The Eppler welter infringed the Briggs method patent on an invention *which accomplished the sewing of a tight seam.* That method patent and a machine patent *revolutionized* the Goodyear Company's business about 1890, and *rendered the old Goodyear machines out of date. Everybody wanted the new machine embodying the invention of the Briggs patent*" (italics ours) (R. Vol. 1, p. 678, lines 5–10).

As to the effect of the litigation upon the Eppler Company's business the Brief for the United States says (p. 44): "Had the litigation been wholly successful its result might have affected temporarily the Eppler Company's position as a compe itor of the Goodyear Company (Howe, R. Vol. 1, p. 623, lines 29–38) *although this is admitted to have been speculative* (Howe, *ibid.*)" (italics ours). Mr. Howe did not so testify. But he did say, in the very lines of the record cited by the United States to support the statement just quoted from its brief, that the litigation

> "would have temporarily put the company out of business. It is of course *a matter of speculation whether they could have succeeded in making those alterations* and in getting around such decrees as we were likely to obtain" (italics ours) (R. Vol. 1, p. 623, lines 35–38).

That is, Mr. Howe did not say that it was a matter of speculation whether the litigation would have affected temporarily the Eppler Company's position as a competitor, but he said that it was "a matter of speculation" whether the

Eppler Company *could have succeeded in avoiding infringement by alterations;* and said *without qualification* that the litigation, if successful, "would have temporarily put the company out of business."

In a further attempt to minimize the importance of the litigation against the Eppler machines the Brief for the United States refers (p. 45) to Mr. Howe's testimony that the litigation did not "relate to the fundamental patents," but the United States neglects to mention Mr. Howe's explanation:—

> "I meant by that indirect use of the word 'fundamental' that they were not the first patents that were taken out on that class of machines. I think I explained that the old Goodyear patents had expired long ago. And then we obtained fresh patents on *very valuable improvements*" (italics ours) (R. Vol. 1, p. 686, lines 25–29).

One of these was the Briggs method patent which, as we have pointed out (*supra*, p. 99), "revolutionized the Goodyear Company's business about 1890" (R. Vol. 1, p. 678, lines 7–8).

THE CONTENTION OF THE UNITED STATES THAT THE EPPLER ROYALTY WAS LOWER AND THAT IT WAS RAISED AFTER THE ACQUISITION.

The Brief for the United States says (p. 45) that while the royalty for the Goodyear machines was four cents a pair for men's shoes, "its competitor, the Eppler Company, charged only three cents." On the contrary, of the three executed leases of the Eppler machines which are in evidence, two (P.'s Ex. 59, R. Vol. 3, pp. 507, 509, 510 and Defs.' Ex. 269, R. Vol. 5, pp. 716, 718, 719) provided for a royalty

of *four cents* per pair for men's shoes, while the third lease (Defs.' Ex. 44, R. Vol. 5, p. 54, a lease to the R. H. Long Manufacturing Company), as printed, provided (pp. 56–57) for a royalty of four cents, and the provision for the discount was written into the lease in red ink (R. Vol. 1, p. 250, lines 30–35). In the face of this documentary evidence it certainly cannot be successfully contended that the Eppler royalty was lower than the Goodyear royalty. And the testimony is to the same effect.

Mr. Winslow testified:—

> "The regular rate of royalties charged by the Eppler Company prior to 1899 was four cents net for men's shoes and three cents net for women's shoes. I don't remember the others but they were the same as the Goodyear net royalties. There were *sporadic instances* of special rebates given by the Eppler Company, *but their regular rate was the same as the Goodyear*" (italics ours) (R. Vol. 1, p. 417, lines 29–35).

Mr. Howe confirmed this (R. Vol. 1, p. 470, lines 24-29).

By the statement "the United Company after the consolidation raised the royalty on the Eppler machines to four cents" (p. 46) the United States plainly intends to give the impression that after the acquisition the United Company demanded a four cent royalty from all lessees then using Eppler machines. This is not the fact, as is shown by the testimony of Mr. Winslow which the United States cites in support of its statement (p. 46). Mr. Winslow said:—

> "Where the contract with the lessee was a special rate like that, we endeavored to have him adopt the full rate where we felt that it could be done *without violating any absolute agreement of the Eppler Company.*

> Notably Mr. Keith himself, who was a large manufacturer, voluntarily agreed to that. In fact, he changed over his machines very soon after that. That was to make the rate uniform among all users and *gives no special advantages to anybody*" (italics ours) (R. Vol. 1, p. 417, lines 38–45).

Mr. Winslow had previously testified:—

> "We did not disturb anybody who was using Eppler machines or who had a lease of Eppler machines existing prior to 1899" (R. Vol. 1, p. 417, lines 26–27).

That the United Company did not suppress the Eppler machine but continued to put them out at the regular Eppler royalty of four cents per pair is shown by testimony referred to by the United States (pp. 37, 46).

CONCLUSION AS TO THE EPPLER ACQUISITION.

The Brief for the United States concludes its discussion of the acquisition of the Eppler Company by the statement (p. 48) "there can be no doubt as to the real reason why the Eppler Company was absorbed. It was for the purpose of monopolization."

We submit that for the following reasons the Court cannot find that the Eppler acquisition was for the purpose of monopolization:—

(1) We have called attention in the Brief for Appellees (pp. 81–87) to a long line of decisions, concluding with *Adamson* v. *Gilliland*, U. S. Adv. Ops. 1916, p. 169, establishing "the practical rule" that when in the case of conflicting testimony there is any testimony consistent with the finding of the judge who saw the witnesses that finding "must be treated as unassailable" (*Adamson* v. *Gilliland*,

supra). It is clear that the United States has not referred to any evidence which should lead this Court to question the finding of the District Court, after reviewing the evidence, that

> "The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition as rendered it unlawful" (Dodge, J., R. Vol. 1, p. 1131).

(2) But, further, as is shown in the discussion of the Eppler acquisition in the Brief for Appellees (pp. 152–170), the record positively establishes that the Eppler shoe was inferior to the Goodyear shoe; that the Eppler machines were decidedly inferior to the Goodyear machines; that the Eppler Company did not have any satisfactory auxiliary machines; that the Eppler Company in seven years had placed an insignificant number of machines and was commercially unsuccessful; and that if there was competition between the Goodyear and Eppler Companies it was wholly negligible and did not make this acquisition inherently unlawful.

(3) The record further establishes that the acquisition was made for normal and legitimate reasons and that there is no feature of the transaction upon which any inference of unlawful purpose or intent to monopolize can be based.

ATTEMPT BY THE UNITED STATES TO SHOW A WRONGFUL PURPOSE AT THE TIME OF THE FORMATION OF THE UNITED COMPANY.

At page 51 the petitioner's brief lays great stress on a statement by Mr. Howe to the effect that he was opposed to the plan of having a harmonious agreement, a sort of working agreement between the Lasting Machine Company (the Consolidated & McKay Company) and the Goodyear Company, "because I had a sort of indefinite idea that it might be deemed to be a combination in restraint of trade" (R. Vol. 1, p. 629, lines 20–24).

The United States attempts to construe this statement into an admission on Mr. Howe's part of unlawful purpose. It is insinuated that Mr. Howe recognized that the combination of the constituent companies "*would suppress competition* and restrain trade" (italics theirs) (petitioner's brief, p. 52), but that he erroneously believed that a combination in corporate form would avoid the penalties of the Sherman Act.

This construction of Mr. Howe's testimony is entirely unjustified. Mr. Howe explained his meaning further, saying:—

> "By my previous reference to something being in restraint of trade I meant that I had an indefinite fear that if the two companies remained separate but, for instance, had a joint factory and joint branch offices, there might be something in the way of restraint of trade. I insisted for that reason that there should be a complete merger and consolidation.

> "No agreements whatever were entered into either between the Goodyear and the Consolidated Companies, or between any of the individuals connected with them, with reference to limiting or restraining their action or activities" (R. Vol. 1, p. 630, lines 3–12).

Mr. Howe at this point in his testimony was referring to an arrangement between the Goodyear and the Consolidated & McKay Companies which it was first proposed should be consolidated. What he obviously meant by his statement was not that he feared that the end sought to be accomplished, namely, the manufacture of the machines of both companies in a single factory and the furnishing of service by a single organization was unlawful or a restraint of trade, but that an agreement between the two companies whereby they agreed and obligated themselves to conduct their businesses in these ways, even though they were entirely lawful ways, might be held unlawful on the ground that it would restrain the two companies from exercising an independent judgment in the future as to the best method of prosecuting their businesses. For example, a company dealing in locomotive wheels and a company dealing in locomotive bodies can lawfully consolidate, but Mr. Howe had a vague idea that there might be some question whether contracts between them, under which they remained separate and yet obligated themselves to act as though consolidated, might not impose restrictions which independent concerns should not incur.

There is no suggestion in Mr. Howe's testimony that he thought the consolidation of the two companies would eliminate competition or restrain commerce. On the contrary, he testified that there was no actual competition between them.

One of the principal purposes for the formation of the United Company was to have the service for the different machines furnished by a single organization and to have the machines manufactured at a single plant and the various parts of the machines standardized. The petitioner might have argued that this could have been accomplished by agreement between the parties without an actual consolidation. Mr. Howe's testimony was obviously merely intended to show one reason why he thought it inadvisable to attempt to accomplish this result by agreement without consolidation.

The attempt to construe this explanation into an admission of wrongful purpose has no foundation in fact.

At page 53 of its brief the petitioner attempts to insinuate that there must have been wrongful purpose in acquring the McKay Company (which was admittedly non-competing) because the United Company paid eleven dollars in par value of its own stock for each share of McKay Company stock which had been selling in the market for eight or nine dollars a share.

The insinuation of unlawful purpose would obviously not be justified even if it were true that stock of the United Company of a par value slightly in excess of the market value of the McKay Company stock were issued for it.

But the truth is that the stock of the McKay Company was worth eleven dollars a share, the price paid for it. There had been few sales of McKay Company stock. The price of the stock had been eight or nine dollars in the market, but it had advanced shortly before the Company was taken in (R. Vol. 1, p. 533, lines 36–38). The McKay stock "was worth more than the market price" (Winslow, R. Vol. 1, p. 534, line 4). The McKay Company "suc-

ceeded in showing that their business and prospects were worth eleven dollars a share, and accordingly the United Company offered them that amount" (Winslow, R. Vol. 1, p. 633, lines 42–44).

At page 59 of its brief the petitioner lays great stress on a recital of an agency contract made with Peabody & Company of Australia, dated September 11, 1899, under which Peabody & Company were appointed brokers or commission agents in Australia for the United Company (P.'s Ex. 189, R. Vol. 4, p. 1250). This contract in its preamble clause recites that the United Company had acquired control of certain companies therein named, and adds that the United Company "contemplates acquiring the control of other lines of boot and shoe and leather working machinery and boot and shoe findings . . . " The contract was signed by George W. Brown, Treasurer of the United Company.

The petitioner's brief says (pp. 59–60):—

> "That contract was signed by George W. Brown, Treasurer of the United Company. And after Winslow had stated that he was in constant communication with Brown about the various matters affecting the company and its policy, he was asked whether Mr. Brown was correct in the recitals just quoted. He answered with a significant evasion."

The insinuation is that this recital shows an intent on the part of the United Company to acquire competing concerns, and that Mr. Winslow was acquainted with the meaning which the person who drafted this clause had in mind, and, being questioned as to its meaning, evaded an answer.

As a matter of fact Mr. Winslow testified that he was

abroad at the time this contract was made and had been abroad for two or three months. He testified on cross-examination in respect to it as follows (R. Vol. 1, p. 536, lines 5–7, 15–24):—

> "I do not know what Mr. Brown referred to by the recitations in the agreement dated September 11, 1899, between the United Company and Henry W. Peabody & Company.
>
> . . . . . .
>
> "I never saw that contract until long afterwards. I think we were negotiating then for one of the eyelet making companies. I could not say whether eyelets were the only line of shoe machinery or findings that the company contemplated acquiring at that time. I was abroad at the time that contract was made and had been abroad for two or three months. I have no doubt that there was some other concern that they were negotiating with then as to which that language perhaps applied, but I knew nothing about the language or the contract until long after it was made."

This is hardly an evasive answer. Furthermore, Mr. Howe, who drew the contract, testified on direct examination as follows (R. Vol. 1, pp. 672–673, lines 21–22, 35–45, 1–13):—

> "I drew the Peabody contract for an agency in Australia, Plaintiff's Exhibit 189.
>
> . . . . . .
>
> "It should be understood that Peabody & Company were commission merchants in shoe machinery and in shoe findings in Australia, and they wanted an assurance that we should give them enough business to warrant their entering into a contract. It was therefore recited herein, what was true, that we had

acquired control of the business of the corporations therein named. Peabody & Company recognized these corporations, or the manufactures in which they were engaged, by their names. We had then in mind the purchase of some other lines of shoe machinery and findings, and this would tend to increase the business of Peabody & Company in Australia.

"*Q.* What other lines had you in mind?

"*A.* I had in mind especially blackings, cements, and stains which Peabody & Company had previously had difficulty in supplying themselves with.

"*Q.* That recital is understood by the United States to mean that you had in mind the acquiring of all shoe machinery and findings and supplies, or substantially all?

"*A.* There was no such intention.

"That paper was not drafted in accordance with directions of the directors or president of the United Company, and that recital was simply my own draft in connection with Mr. Peabody and one or two of our experts or department managers, whom I don't remember."

The acquisition of additional lines of supplies, which was what the United Company had in mind, or of additional machines, which the United Company did not put out, was wholly proper and lawful. It was additional lines of supplies of machines which Peabody & Company were obviously interested in. They desired to know whether the United Company might furnish such additional supplies which, as Mr. Howe testified, they had previously had difficulty in supplying themselves with. They were not interested in knowing whether the United Company contemplated acquiring competing concerns.

The attempt of the petitioner to construe this recital into an admission of an unlawful purpose to acquire competing concerns merely shows the lack of evidence it found to support its contentions.

REPLY TO THE DISCUSSION IN THE BRIEF FOR THE UNITED STATES OF "ACQUISITIONS OTHER THAN THE PLANT PURCHASE."

Under this heading on pages 60–95 the Brief for the United States discusses thirty-six of the fifty-eight so-called "acquisitions." In respect to no one of these thirty-six transactions does the United States make an adequate statement of the facts established by the record. Specifically, it either ignores much important testimony favorable to the defendants or, when any reference is made to that testimony, the United States either omits any mention of testimony unfavorable to its contentions or fails to state it fairly.

At the start the United States misrepresents the general character of these transactions. It states that "the United Company acquired the *shoe machinery business* and assets of fifty-six individuals, partnerships, and corporations . . ." (italics ours) and that "the result of these acquisitions was to remove certain remains of competition. . . ." (Brief for the United States, p. 60).

Both of these statements are contrary to the record.

As has been shown in the Brief for Appellees (pp. 437–443), by nine of the transactions the United Company did not acquire any tangible property or any business of any kind, and by fifteen other transactions the United Company acquired nothing more than supplies of various kinds which are used by shoe manufacturers; so that by twenty-four transactions it did not acquire any shoe machinery at all. And further, eight other concerns, from whom shoe ma-

chinery was acquired, were doing no business whatever; their machines were only experimental and were far from being adapted for commercial use.

The fact is, then, that instead of acquiring the "shoe machinery business" of fifty-six concerns the United Company did not acquire *any shoe machinery business from thirty-two of those concerns.*

As to the statement by the United States (p. 61) that "covenants were exacted from the vendors," where they were inventors, which "required assignment to the United Company of all inventions made during a period of years" and which were "designed to prevent future competition with the United Company," the District Court found that the covenants actually taken were no broader than necessary, and the necessity for covenants of the character actually used is pointed out on pages 466–469 of Brief for Appellees, and the decisions holding that such covenants are normal and lawful are discussed on pages 470–475.

Following its belated admission (p. 61) that "in some cases what was purchased was patent rights and inventions and not machines," the United States says, "A prospective competitor is none the less such because he has only proceeded to the point of acquiring a valid patent under which to pursue competition at the time he is removed from the field by acquisition."

Of course the assumption that the inventor of an improvement in shoe machinery, who may be and often is a shoe operative or mechanic, is a "prospective competitor" is entirely unwarranted. He is no more a "prospective competitor" than many thousands of his fellow-workers.

On pages 62–94 the United States discusses specifically thirty-six of the "acquisitions."

Throughout its discussion of these transactions the United States follows its usual practice of ignoring entirely the evidence unfavorable to its contentions, which shows that every one of the transactions was a normal and reasonable step in the development of the United Company's business. Particularly in cases where the United Company had a machine of the same name as an acquired machine the United States fails to make any reference to testimony showing that the acquired machine was adapted to do a kind of work which no machine of the United Company could do, or that the United Company's machine was only experimental and needed the acquired inventions in order to make it commercially successful, or that the acquired concern had patents which the United Company infringed or which barred the way to needed improvements in its machines. All such testimony is of course essential to a fair presentation of the facts regarding these acquisitions.

In Appendix IV (*infra*, pp. 180–222) will be found comments on the specific statements which the United States has made regarding these thirty-six transactions. Those comments show that the statements by the United States give a wholly erroneous impression. By ignoring testimony unfavorable to its contentions, by stating half-truths or by making positive misstatements the United States has entirely misrepresented the character of these transactions.

In considering these transactions it should be kept in mind that throughout the entire period, during which from time to time these acquisitions were being made, the United Company was engaged in a remarkable development of the art of shoe machinery. It has improved

practically all its machines by embodying new inventions in them. It is now putting out 172 different General Department machines which it has either developed or acquired since its formation in 1899. It has developed 150 entirely new machines, including 39 machines which perform work previously done by hand or not at all. Nearly all of these machines embody more than one patent; many embody a dozen or more patents on different parts of the machine. The inventions of 421 patents are embodied in the 150 entirely new machines which the United Company has developed.

The patents and machines acquired by the acquisitions were used in building up and perfecting this great number of new and improved machines and in improving patented machines which the United Company already had. Many of the so-called acquisitions involved only the purchase of a single patented invention to be used with a number of other patented inventions produced by the United Company in perfecting some one machine. The acquired machines and patents were of insignificant importance compared with the machines developed and the inventions made by the United Company itself.

REPLY TO THE DISCUSSION OF THE PLANT ACQUISITION IN THE BRIEF FOR THE UNITED STATES.

In its discussion of the Plant purchase (pp. 97–126) the United States fails to show the facts to be otherwise than as found by the District Court. Throughout this discussion, however, as it has been done generally throughout its brief, the United States has quoted or referred only to the testimony favorable to its contentions and has in the main ignored testimony which is unfavorable to its contentions. It has also made many incorrect and misleading statements and has drawn many unwarranted conclusions. It is important that these misstatements be called to the attention of the court.

The Contention of the United States that Plant had a Complete Line of Shoe Machinery.

It is alleged in the Brief for the United States (p. 97) that Plant had "developed a complete line of shoe machinery for manufacturing welt, turn, and McKay shoes."

McElroy, whose testimony is referred to by the United States in support of this allegation, does not mention turn shoes in connection with the Plant machinery. There is no testimony which shows that Plant had developed any machinery for making turn shoes, or that turn shoes were made by the Thomas G. Plant Company, the shoe manufacturing concern.

Moreover, in McElroy's testimony, quoted on page 105 of the Brief for the United States, his statement that

Plant's machinery was "a full line" is qualified by the statement "consisting of lasting, welting, stitching and leveling machines." He further admits in effect that he examined only "the essential bottoming room machinery."

And further, McElroy's testimony is discredited by Plant's own statement to McGaffee that

> "he didn't have any rough rounding machine" (R. Vol. 1, p. 781, lines 2–3).

Warren testified:—

> "The invention of the rounding and channeling machine [rough rounder] revolutionized the method of attaching the outer sole" (R. Vol. 1, p. 793, lines 23–24);

and that

> "Every manufacturer that I know of is using . . . the rounding and channeling machine" (R. Vol. 1, p. 793, lines 30–31).

And again, Plant had produced no pulling-over machine (R. Vol. 1, p. 792, lines 10–11), another of the "machines for preparing and attaching the bottoms to the uppers of shoes," the class of machines to which the United States has limited its charge of monopoly.

Eight other Plant machines, including important machines such as the heel seat dinker, stitch separator, and side laster, were either unfinished or regarded by Plant himself as experimental and the Plant shoe company was getting along in one way or another as best it could without these machines (R. Vol. 1, p. 791, lines 34–45; p. 792, lines 1–33; p. 814, lines 1–7. See also Brief for Appellees, pp. 484–486.)

The Contention of the United States that Plant was Successfully Operating his Machines.

It is alleged in the Brief for the United States (p. 97) that Plant "was successfully operating his machines at the factory of Thomas G. Plant Company."

This allegation is entirely unsupported by the record. On the contrary, the record establishes beyond a doubt that the Plant machines were not successfully operating in the Plant shoe factory. In the Brief for Appellees (pp. 486–490) testimony is quoted and referred to that the machines in that factory were crude and really only experimental; that they were constantly breaking down; that they broke a great number of lasts; that it was necessary to employ a large number of men to repair shoes that were defective on account of the poor work of the machines; that it cost three and a quarter cents per pair more to make shoes on them than it cost on the United Company machines; that the profits of the Plant shoe business after the Plant machines were installed were one-half less than they had been when the United Company machines were used; that the machines could not be used for manufacturing shoes according to the methods universally followed by other shoe manufacturers; and that after the purchase the managers of the shoe factory, Plant's former associates, found it impracticable to continue the manufacture of shoes with Plant's machines and of their own volition discontinued the use of those machines and substituted United Company machines.

Typical of this testimony is that of McGaffee, vice-president and general manager of the Plant Shoe Company, who for seventeen years had charge of all the manufacturing

part of the business and looking after the machine end of the business (R. Vol. 1, p. 773, lines 6–9), as follows:—

> "There was a force of machinists taking care of the machinery all the time" (R. Vol. 1, p. 773, lines 32–34). "I was absolutely satisfied that the Wonder Workers wouldn't stand up . . . the longer they ran the weaker they got . . . I was not able to get out the work . . . *I couldn't make the shoes with the Wonder Worker*" (italics ours) (R. Vol. 1, p. 774, lines 15–16, 23–24, 40–41).

McGaffee further stated that the lack of an extension edge organization on the Plant stitcher "was a great hindrance to the quality made on that machine" and that *it resulted in the shoes ripping* (R. Vol. 1, p. 775, lines 34–35, 43–45).

The testimony referred to above and that reviewed on pages 486–490 of the Brief for Appellees is also a complete answer to the argument made in the Brief for the United States (p. 103) with reference to the use of the Plant machines in the Plant shoe factory.

The Contention of the United States that Plant had Contracts with Factories where his Machines could be Made in Large Quantities.

It is alleged in the Brief for the United States (p. 97) that "Plant also had contracts with factories where such machines could be made in large quantities," and an allegation to the same effect is made on page 102.

The evidence fails to show that Plant had contracts with any factory for building any complete machine. He had merely made arrangements with a number of scattered machine shops for building parts of his machines.

As stated by Mr. McGaffee:—

> "The parts were built in about every city where there was a machine shop, because *Plant did not have any factory big enough to build his own parts . . .*" (italics ours) (R. Vol. 1, p. 773, lines 25–27).

The Contention of the United States that Plant was Offering to Equip Other Manufacturers.

It is alleged in the Brief for the United States (p. 104) that Plant had offered to install his machines in the factories of the Commonwealth Shoe & Leather Company, the W. H. McElwain Company, and the Endicott-Johnson Company and "was prepared to furnish his machines to shoe manufacturers generally."

As shown in the Brief for Appellees (p. 481) Plant's offer to install his machines in the factories of the Endicott-Johnson Company and the Commonwealth Shoe & Leather Company was made with the ulterior motive of forcing the United Company to buy him out, and it was so found by the District Court, which held (Dodge, J., R. Vol. 1, p. 1142):—

> "There is uncontradicted evidence of declarations by Plant in 1909 that his intention was to equip these two other factories and his own with his new machines and then sell out to the United Company. That the effecting of such a sale, and not any actual competition in the market with machines then in use, was his real purpose, is hardly left doubtful by the history of his subsequent negotiations with the defendants."

There is no proof of an offer of machines to the W. H. McElwain Company.

Plant would not even permit Hazzard, a large shoe manufacturer, to look at his machines. (See Brief for Appellees, p. 482.)

The Contention of the United States that the Plant Machines were "Efficient Competitors of the United Machines in the Opinion of Experts."

In support of its allegation (p. 104) that in the opinion of experts the Plant machines were "efficient competitors of the United machines," the United States relies first upon the testimony of McElroy, Florsheim, Selz, and Jones, and then upon an unfair statement of the testimony of Warren and Howe.

But the testimony of McElroy, quoted by the United States (p. 105), and its summary of Florsheim's testimony show that both of those witnesses testified as to the quality of the *shoes* operated upon by Plant's machines and that neither of them testified that the *machines* were efficient. The Brief for the United States says (p. 106) that Selz expressed the opinion "that the machines were capable of being used in the manufacture of men's welt shoes" and that Jones testified that Plant's machines were adapted for the manufacture of men's shoes as well as women's.

But on cross-examination Selz testified that he questioned the strength of the Plant machines for making men's shoes and that he had never seen them used for men's shoes (R. Vol. 1, p. 155, lines 33–45; p. 156, lines 1–3). And McElroy on cross-examination testified:—

> "To the best of my information those machines had never made any men's shoes for the market. I questioned the strength of those machines for making men's shoes. . . . If his machines had been used commercially on men's shoes the frames should have been stronger" (R. Vol. 1, p. 193, lines 16–18, 22–24).

Jones' testimony is discredited by the testimony of Reed, the treasurer of Jones' Company, who has charge of the manufacturing of the shoes. He testified that he thoroughly examined the Plant machines in 1910, considered the question of equipping his factories with the machines and decided not to take them. He said:—

> "We thought that it would be too much of a risk, and that we should have to lower our standard of shoemaking" (R. Vol. 1, p. 720, lines 12–13).

Furthermore, Florsheim was a member of the Shoe Manufacturers' Alliance, and Selz and Jones were both stockholders in the Boylston Company, a competing shoe machinery concern. Testimony showing in detail their prejudices is reviewed in the Brief for Appellees (pp. 494–496).

Moreover, it is established by overwhelming evidence which is reviewed in detail in the Brief for Appellees (pp. 484–492), some of which we have already referred to (supra, pp. 116–118), that Plant's machines made shoes by obsolete methods and could not be used for making shoes according to the methods universally followed by other shoe manufacturers; that even for making shoes according to Plant's obsolete methods the machines were not commercially satisfactory in his own factory where women's shoes only were made; and that Plant's machines could not have been used on men's shoes.

The United States quotes (p. 107) the testimony of Mr. Warren and Mr. Howe in support of this contention that the Plant machines were "efficient competitors of the United machines."

The quoted testimony of these experts on its face related to the value of the Plant *inventions*, not the Plant machines.

Warren testified:—

> "Generally speaking they were of such construction that they would break and get out of order" (R. Vol. 1, p. 794, lines 17–18).
>
> "And in looking over all these Plant machines we found by a careful examination that they were *faulty in construction, light in weight in places, and badly designed*" (italics ours) (R. Vol. 1, p. 790, lines 28–31).
>
> "These machines of Mr. Plant's, built as they were, in my opinion *would not have been commercially successful* to do work under the varying conditions under which machines have to be supplied to shoe manufacturers" (italics ours) (R. Vol. 1, p. 790, lines 15–18).

Mr. Howe testified that the Plant machines were

> "too light to stand commercial use for making men's work . . . were not strong enough for continuous use, in my judgment, on his own manufacture, women's welts" (R. Vol. 1, p. 688, line 44; p. 689, lines 8–9).

The conclusion is certainly justified that the United States has not shown any ground for questioning the finding of the District Court as to the character and capacity of the Plant machines. This finding also specifically answers the allegation of the United States (p. 232) that

> "the record clearly shows that the Plant machines were right at the threshhold of extended competition with the United Company's machines."

That finding was as follows:—

> "Whatever the merit of Plant's inventions, these machines in which he had first embodied them are not shown by the evidence to have been commercially

successful in September, 1910, or to have been capable of such success in their then stage of development. They are shown to have been lightly built, not adapted to produce men's shoes, and by no means satisfactory in making women's shoes, the kind of work to which the Plant factory was devoted. The evidence is uncontradicted that, while operated there, they fell behind the United Company's machines, which they had supplanted, in efficiency—that breaking down and defective work was more frequent with them—and the cost per pair of making shoes with them distinctly greater. Though some of them, as later developed and improved by the United Company, proved to have merit, the most that can be fairly said of them in 1910, on the evidence, is that they were more or less promising experimental machines. There was no complete set of them for combined operation; for that purpose several important machines were yet to be developed. In the state in which the United Company took them over, they were not found capable of profitable use. *Nothing is found in the evidence which affords reasonable support for the petitioner's contention that they were 'right at the threshhold of extensive competition with the United Company'*" (italics ours) (Dodge, J., R. Vol. 1, p. 1143).

The Contention of the United States that the Defects in Plant's Machines could have been Easily Remedied.

It is alleged by the United States (p. 108) that "There is, however, nothing in the record to indicate that the defects [in the Plant machinery] were of such character as not to be easily remedied by the alterations and adjustments common in the practical working out of a project like Plant's."

There is no evidence in this record to support this asser-

tion, but, on the contrary, there is a great deal of evidence, which is reviewed in the Brief for Appellees (pp. 496–500), which shows what a tremendous undertaking it is to transform experimental machines into successful, commercial machines.

The Contention of the United States that the Subject of Negotiation was Plant's Entire Line of Machinery rather than his Inventions.

In the Brief for the United States it is alleged (p. 108) that "during the entire negotiations nothing was talked of but the buying of Plant's *entire* line of machinery," as distinguished from the particular inventions.

There is no evidence in the record in support of this assertion and it is specifically contradicted by Mr. Winslow, who testified:—

> "During these negotiations nothing except Plant's *inventions and patents* was the subject of discussion" (italics ours) (R. Vol. 1, p. 481, lines 12–13).

If the United States is endeavoring on page 108 of its brief to argue that the United Company should have bought only the inventions which it knew would be of value, it should be borne in mind, first, that particular improvements could not have been singled out *during the negotiations* for the reason stated by Mr. Winslow:—

> "As to whether anything was said in our negotiations with reference to the purchase of those particular improvements, I didn't know what his improvements consisted of, as I have already stated. *I didn't know what he had or the value of his inventions* until I went up and examined them in September and had my experts examine them" (italics ours) (R. Vol. 1, p. 559, lines 28–33);

and, second, that the United States loses sight of the fact that the *United Company could only buy what Plant wished to sell.* It is quite obvious that Plant wished to sell all, and not a part only, of his inventions (R. Vol. 1, p. 486, lines 2–6; p. 487, lines 11–16).

The Contention of the United States that Negotiations with Plant were Affected by Western Manufacturers.

The United States alleges (p. 112) that "it is fair to conclude that Winslow and his associates were well aware that negotiations were going on between Plant and the shoe manufacturers, and that unless the United people were prompt in closing the bargain the shoe manufacturers would obtain the Plant machines and establish a vigorous rival of the United Company."

The United States points out (p. 111) that Endicott knew "as far back as June, 1910," that the Western manufacturers were coming to examine Plant's machines and that as "a leading figure in the defendants' negotiations, [he] must have informed Mr. Winslow" (p. 112). This evidence merely shows that Endicott knew in June, 1910, that these Western manufacturers proposed to or might examine Plant's machines. It does not show that there were any negotiations pending between the Western manufacturers and Plant for the purchase of his machines and, as a matter of fact, no such negotiations were pending. It shows at most that Plant had arranged or hoped to arrange to have these shoe manufacturers look at his machines, whether for the purpose of inducing them to use some or all of them, or for the purpose of selling them his patents, or for the purpose of getting their advice or criticism does not appear.

The evidence further shows that no attention was paid to the Western manufacturers, because the unquestioned evidence shows that after "Endicott knew" that they might examine the machines, Mr. Winslow, on four separate occasions, broke off negotiations which had been initiated by Plant, viz.: on June 23rd (R. Vol. 1, p. 577, lines 12–14), on June 27th (R. Vol. 1, p. 483, lines 11–12), on July 5th (R. Vol. 1, p. 484, lines 16–21) and on September 16th (R. Vol. 1, p. 486, lines 1–44).

Mr. Winslow testified:—

> "Mr. Plant had told me, I think on the evening of the 20th, that he was expecting the Western people in Boston. . . . I did not pay much attention to it because it did not affect me one way or the other" (R. Vol. 1, p. 488, lines 18–23).

This was the evening on which the Plant purchase was practically agreed upon, not the day prior as stated by the United States (p. 111). So far as appears this was the first information Mr. Winslow had that the Western manufacturers intended to examine the Plant machines. There is not the slightest intimation, however, that Plant then told Winslow that any negotiations were pending for a sale to the Western manufacturers, and as a matter of fact none were pending. Plant had not made any offer to them, so far as appears. His first proposition to them to sell was made after he had agreed to sell to the United Company, when he made them a proposition which he knew they could not accept. If they came to Boston for the purpose of purchasing the Plant patents, it was for the purpose of examining the machines, and opening negotiations, not for the purpose of closing any pending negotiations.

The United States has not shown any ground for questioning the finding of the District Court that the Western Manufacturers had no effect upon the negotiations. That finding was as follows:—

> "It [the evidence] does not charge the defendants with any knowledge, at the time they came to terms with Plant, of any negotiations between him and the manufacturers referred to. No reference appears to have been made to them or their doings during the defendants' negotiations with Plant, and no reason is found to believe that apprehension lest he might conclude some arrangement with them induced in any degree the defendants' final agreement with him. Were it important, it might be added that so far as the evidence can be said to show anything regarding Plant's intentions toward them it shows that he never really meant to enter into any arrangement with others if he could get the defendants to take off his hands everything which he desired to sell; and no purchase so extensive as this appears to have been at any time contemplated by the manufacturers mentioned in the petition" (Dodge, J., R. Vol. 1, p. 1144).

The Attempt of the United States to Discredit Endicott's Testimony.

Under the heading "Endicott's Strange Story" (p. 114) counsel for the United States discusses the participation of Mr. Endicott in the negotiations of Plant with the United Company and asserts "Endicott's maneuvers are difficult to understand. His story excites curiosity and suspicion."

That the United Company was much pleased to welcome to its board of directors a man whose ability had created the greatest shoe manufacturing business in the world was

perfectly natural. The insinuations which the United States makes against a man of Mr. Endicott's standing are not creditable to the United States. They need no answer, but they are answered by Mr. Endicott's testimony, which is clear and straightforward throughout and which is corroborated by Mr. Winslow (R. Vol. 1, pp. 479–487), Mr. Herrick (R. Vol. 1, pp. 602–615), and Mr. Howe (R. Vol. 1, p. 683, lines 9 *et seq.;* p. 686, lines 34 *et seq.*).

The Contention of the United States that Defendants Showed Anxiety to Secure the Plant Machines.

The United States alleges (p. 113) that "the whole history of the transaction shows that the defendants were keenly alive to the importance of removing from their path so dangerous a competitor and were exceedingly anxious" to secure Plant's machines.

The record proves the contrary to be the fact. The evidence clearly shows that throughout the negotiations Mr. Winslow never made any offer to Plant, but that the negotiations were begun by Plant and renewed by him several times after Winslow had definitely broken them off (R. Vol. 1, p. 559, lines 16–18). The negotiations are reviewed in the Brief for Appellees (pp. 525–534).

All the evidence on the history of the negotiations proves conclusively, not that Winslow was exceedingly anxious to get Plant's machines, but that Plant was exceedingly anxious to have Mr. Winslow get them.

In support of its contention the United States alleges (p. 114) that "defendants hastened to give Mr. Plant a check for $500,000," and finds significance in the fact that at the time the check was delivered "not a document

had been drawn." The evidence shows that, as Mr. Winslow testified:—

> "It was a part of the arrangement with Mr. Plant that if we accepted his proposition he was to be paid $500,000 and then the papers would be drawn" (R. Vol. 1, p. 488, lines 2–4).

Mr. Herrick testified,—

> "On the morning of the 22d a check for $500,000 payable to my order was given to me, and a couple of hours later I handed my check for $500,000 to Mr. Carr, Mr. Plant's attorney. This payment was made because Mr. Plant insisted that there ought to be something paid on account, and Mr. Carr, as I remember it, named the figure" (R. Vol. 1, p. 607, lines 5–10).

The Contention of the United States that Suits were Brought to Compel Plant to Sell.

The United States says (p. 117), referring to the suits brought by the United Company against Plant and the Thomas G. Plant Company (P.'s Ex. 162), that "These suits, no doubt, were intended in part at least as spurs to induce Plant to sell and hence certainly tend to show that the United Company believed Plant to be a dangerous competitor."

There is no ground for this conclusion. By reference to Plaintiff's Exhibit 162, a physical exhibit not reproduced, it will be seen that the prayers of the bill were in substance that injunctions be issued restraining the Plant Company from using machinery in violation of its lease and license agreements with the United Company and that Plant, the individual, be enjoined from supplying the Plant Company during the terms of said agreements with shoe

machinery "in substitution for" the United Company's machines leased on said agreements. In other words, this suit was brought merely for the purpose of enforcing certain contracts that the Plant Company, the shoe manufacturing concern, had made with the United Company.

The infringement suits were brought for the purpose of restraining infringement of the United Company's patents. This was a proper and normal step for the owner of patents to take in the enforcement of rights under the patents.

It would appear, however, that if defendants had been anxious to continue negotiations with Plant they would not have risked interrupting them by these suits.

The Contention of the United States that the Plant Improvements were of Little Use to the United Company.

The United States alleges (p. 118) that "defendants' own witnesses show that however valuable the Plant improvements were to him as a present and prospective competitor of the defendants, they were of little use to the United Company."

There is absolutely no evidence from defendants' witnesses, or any other witnesses for that matter, to the effect that the Plant improvements were of little use to the United Company. The evidence is all to the contrary. For example, Mr. Warren testified:—

> "I later told Mr. Winslow that the improvements on the welter and stitcher were worth all he gave for the entire property, and that was my opinion" (R. Vol. 1, p. 788, lines 8-10; p. 813, lines 6–9).

Appellees' Brief (pp. 506–513) contains a full statement of the evidence of practical shoemakers as to the value

of the stitcher and welter improvements. It is there shown conclusively that these improvements resulted in machines which operate faster, turn out more work, do work of better quality, are more economical for the shoe manufacturer, and enable the operator to earn higher wages.

The United States quotes (p. 119) Mr. Howard's testimony with reference to the stopping mechanism of the Plant stitcher as follows:—

> "... five different inventors employed by the United Company were put to work upon the *problem* of providing a *commercially satisfactory* stopping mechanism. ..."

What Mr. Howard really said is this:—

> " ... five different inventors employed by the United Company were put to work upon the problem of providing a commercially satisfactory stopping mechanism which could be incorporated in the organization of the model K out-sole stitcher, which was then the standard commercial machine of the United Company" (R. Vol. II, p. 2297).

The United States concludes, from the fact the United Company put a large number of inventors at work in order to remedy the defects in the mechanical constructions in which Plant had embodied his valuable inventions and to adapt the welter and stitcher improvements to the United Company's machines, that these improvements, in themselves, were not of great value.

Possibly the explanation of this curious argument by the United States is that it may have been prepared by counsel not familiar with inventions and patents. Of

course the fact that the particular mechanical constructions in which Plant had embodied his extremely valuable inventions were crude and defective has not the slightest bearing upon the value of his inventions. But the commercial advantages of those inventions could not be realized until they had been embodied in satisfactory commercial form. That was one of the problems with which the United Company's inventors had to deal. The other problem was the development of mechanical organizations which would fit the United Company's own machines. That in doing this work the United Company's inventors should make still further improvements was natural and to be expected.

The extended use which the United Company has made of the Plant inventions and their great value to the United Company are shown by the evidence reviewed in the Brief for Appellees (pp. 500–514).

The United States has not called attention to any evidence which should lead the Court to question the finding of the District Court as to the value of the Plant inventions, which was:—

> "The agreement to take the patents and inventions was not made until after a careful examination and report as to their merits. The belief thereon founded that, used as above, they would be worth acquiring upon the terms proposed, is shown to have been justified by the result, and the acquisition cannot be criticised so far as it was occasioned by that belief. As developed and added to its own machines by the United Company, some of the inventions acquired have proved to be of a value such as fairly justifies their claim that the patents acquired were the controlling feature of the purchase" (Dodge, J., R. Vol. 1, p. 1145).

The Argument of the United States that the Shoe Machinery Art would have been Advanced by the Sale of Plant's Machinery to a Group of Manufacturers.

The United States contends (p. 118) that all that was necessary in order that the shoe machinery art might be benefited by the Plant improvements was "to permit the shoe manufacturers who were ready and anxious to purchase an interest in Plant's machinery to carry through their design."

There is uncontradicted evidence that there were 708 distinct cases of infringement of the United Company's patents of 37 Plant machines (Defs.' Ex. 273, R. Vol. 5, p. 733).

The sale of an interest to the shoe manufacturers mentioned would have in no way avoided such infringements. Furthermore it would not have permitted the combination of the United Company's patents with the Plant patents, and the consequent advance in the art of shoe machinery which was the object and the result of the acquisition.

The Contention of the United States that the Avoidance of Litigation was not a Motive in the Plant Purchase.

In the Brief for United States it is alleged (p. 120) "that the avoidance of litigation was in fact an actuating factor in the transaction does not appear. In no part of the negotiations was it suggested that the defendants should buy out Plant in order to avoid litigation."

On the contrary, that both parties had in mind the avoidance of litigation and that it was a factor in the negotiations is shown by the fact that *formal releases were exacted by both parties.* On September 23, 1910, the United Company agreed to deliver to Plant releases "providing

for the dismissal or discontinuance . . . without costs . . . of the suit now pending in the Supreme Judicial Court of Massachusetts . . . and suits now pending in the United States Circuit Court against said Plant . . . and . . . general releases including any and all claims . . ." (P.'s Ex. 132, R. Vol. 4, p. 935).

On the other hand on September 30, 1910, Plant executed a formal release to the United Company of all claims, referring specifically to "certain suits" which he had planned to bring against the United Company (P.'s Ex. 137, R. Vol. 4, p. 1037).

The allegations of the United States are directly contradicted by the testimony of Mr. Howe and Mr. Winslow. Mr. Howe testified:—

> "Then another consideration for the purchase was this avoidance of litigation, either by ourselves against him [Plant], which would have cost a great deal of money and would have annoyed the trade very much, the shoe manufacturers, and also the cost and annoyance of having to be sued by Plant" (R. Vol. 1, p. 877, lines 41 *et seq.*).

Mr. Winslow testified:—

> "The confusion and conflict in the patent situation of my own company and of Mr. Plant, the chaos which might result from conflicting claims and constant litigation, was a substantial consideration in my mind . . . and when Mr. Plant offered to me the patents at a price which to my mind was less than their value . . . it might be said to be a controlling factor" (R. Vol. 1, p. 862, lines 24–31).

The United States finds it significant that (p. 117) "Defendants' witnesses talk of counter infringements by their machines. ***But no litigation was begun by Plant.***"

It cannot be doubted that if Plant had kept on he would have enforced his rights under his patents and would have brought suits on account of infringement by the United Company's machines; indeed, as we have just stated, his intention to bring suits is asserted over his signature in a release signed by Plant on September 30, 1910:—

> "I . . . have made certain claims against the United Shoe Machinery Company . . . and have planned to bring certain suits against said United Shoe Machinery Company" (P.'s Ex. 137, R. Vol. 4, p. 1037).

Mr. Winslow and Mr. Howe fully expected that Plant would bring suits against the infringing machines of the United Company (R. Vol. 1, p. 862, lines 25–26; p. 877, lines 27–30; p. 878, lines 1–2).

Another important fact is that Plant had already defeated the United Company in six interferences. Twenty-three interferences had been declared in the Patent Office between patent applications owned by Plant and applications owned by the United Company. In six of these Plant had secured favorable decisions (R. Vol. 1, p. 846, lines 14–17; Defs.' Ex. 272, R. Vol. 5, p. 730).

The United States alleges (p. 121) with reference to infringement suits against Plant that "it does not appear that if any or all of them had been sustained it would have been fatal to the line of machinery owned by him."

A complete answer to this allegation is found in the 708 distinct instances of infringement of United Company patents by 37 Plant machines, as set forth by Mr. Howard in Defs.' Ex. 273 (R. Vol. 5, p. 733). No testimony was introduced by the petitioner to refute these instances of infringement (R. Vol. 1, p. 394, lines 40–43).

That these instances of infringement were serious is apparent from the fact that it was the *general organization* of at least six Plant machines which infringed the patents of the United Company and in respect to two other machines Mr. Howard testified:—

> "The patents infringed by the Plant Heeler and the Plant Heel Attacher on Wood Lasts covered both these machines so thoroughly that by no possibility could they have been changed to avoid infringement. Plant's only course would have been to junk the machines and begin over again" (R. Vol. 5, p. 746, lines 27–31).

The conclusion is certainly justified that the United States has not shown any ground for questioning the finding of the District Court that the purchase resulted in relieving the United Company of a burden of litigation threatening interminable controversy. That finding was as follows:—

> "The evidence shows also, without serious contradiction, that one result of the bargain made with Plant was to relieve the United Company from an amount of litigation, then pending or in prospect, which would otherwise have burdened and hindered it . . . And between Plant or concerns wherewith he was identified and the United Company there were pending interferences, claims of infringement on both sides, and pending infringement suits, raising questions relating to his or its patents, so numerous, complicated, and important as to threaten interminable controversy" (Dodge, J., R. Vol. 1, p. 1145).

The Contention of the United States that the Plant Stock was of Comparatively Little Value in the Transaction.

It is alleged (p. 123) that "the evidence does not show that the stock of the Plant Company was specially valuable."

The evidence shows that the earnings of the Plant Company for the four years preceding its acquisition had averaged $738,000 annually. Plant owned and sold sixty per cent. interest in the stock of the company. It is shown in the Brief for Appellees (pp. 523–524) that sixty per cent. of the average earnings for the past four years amounted to $442,800 annually and that capitalized at ten per cent. this would show a value of $4,428,000 for the stock.

In addition to this the balance sheet showed net quick assets amounting to ~~$2,183,227.22~~ 3,128,947.96 and a factory and equipment valued at ~~$2,184,500.~~ 1,270,380. these items alone giving to the sixty per cent. stock an equity of ~~$2,820,631.33~~ 2,639,398.78 (P.'s Ex. 132, R. Vol. 4, pp. 1014–1015). That the good-will and trade-marks, including the trade-mark "Queen Quality," were of great value cannot be doubted.

The District Court held (Dodge, J., R. Vol. 1, p. 1144):—

> "That it was of great value is shown beyond question by the dividends then and afterward paid on the stock acquired by the United Company."

The Contention of the United States that by the Plant Acquisition Control of Welters and Stitchers was Secured.

The United States alleges (p. 124) that by the Plant acquisition the United Company "again acquired substantial control of welters and stitchers."

The evidence relied upon in support of this contention of the United States proves that on the contrary a number of other concerns were actually engaged in putting out welters and stitchers, all of which were in business in 1910. These concerns are named in the Brief for Appellees (pp. 564–565).

The Contention of the United States that the United Company Secured Control of the McKay Sewing Machine by this Transaction.

The United States alleges (pp. 124–125) that by the acquisition of the Stanley Company through the Plant transaction the United Company secured complete control of the McKay sewing machine, further alleging that Winslow "was wholly unable to name any other concerns which manufacture it in competition with the United Company." This is not a fair statement of Mr. Winslow's testimony. He said that he could not "remember them off hand" and referred to a list which had already been filed (R. Vol. 1, p. 564, lines 29–31).

That many manufacturers and dealers are prepared to furnish McKay sewing machines is shown in Brief for Appellees (p. 563).

The United States alleges (p. 125) that "no one may use a United lasting machine upon any shoe which has been operated upon by a machine not procured from the United Company, therefore not upon a shoe operated on by a McKay machine procured outside of the United Company." This statement, and therefore the conclusions drawn from it, are totally untrue, as we have shown *supra* (pp. 16–20).

CONCLUSION AS TO PLANT PURCHASE.

It is submitted that the United States has called attention to no evidence which should lead the Court to question the findings of the District Court on the facts of the Plant purchase (Dodge, J., R. Vol. 1, pp. 1142–1146). In its extended discussion of the evidence relating to the Plant purchase the District Court found that the defendants' "claim that the patents acquired were the controlling feature of the purchase" was fairly justified, and that the settlement of the

> "pending interferences, claims of infringement on both sides, and pending infringement suits, raising questions relating to his or its patents, so numerous, complicated and important as to threaten interminable controversy,"

was "a further normal, natural and powerful inducement to the agreement made with him," and then held:—

> "The above reasons, none of them open to any charge of illegality, seem to me to have been the really operative reasons which must have induced the defendants to enter in the Plant bargain upon the terms which he finally offered them. They appear so adequate as legitimate business reasons for doing this as in my opinion to leave no reasonable ground for holding, against the defendants' denial, that it was really a purchase to suppress competition. No such competition or prospect of competition at the time is proved as would justify such a conclusion" (Dodge, J., R. Vol. 1, pp. 1145–1146).

PETITIONER'S CONTENTIONS AS TO MONOPOLY AND AS TO THE NUMBER OF MACHINES PUT OUT BY SHOE MACHINERY MANUFACTURERS OTHER THAN THE UNITED COMPANY.

The petitioner contends that the United Company furnishes practically all of certain types of machines used in bottoming shoes.

The petitioner nowhere in its brief contends that the United Company's machines are not patented or that they are not the best machines made. Nor does it anywhere contend that any other machinery manufacturer furnishes service of the character furnished by the United Company.

There is not the slightest evidence that shoe manufacturers desire to obtain machines of these types as to which a monopoly is claimed from other shoe machinery manufacturers who are offering better machines and are prevented from doing so by the United Company.

There is therefore not the slightest evidence to dispute the following finding of the District Court:—

> "That the degree of success obtained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the *superior efficiency* it has developed in its *patented machines* for work in combination with each other together with the superior facilities it affords as above for their most efficient use, must be regarded *as shown beyond question*. It is not disputed that

> when the petition was filed, its machines represented in number and amount, *the highest development ever reached in the art* to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason" (R. Vol. 1, p. 1137) (italics ours).

It, therefore, seems immaterial whether the United Company furnishes all or only a small portion of the types of machines in which it specializes.

Furthermore, the petitioner itself contends that the constituent companies which composed the United Company did at least as large a business in the kinds of machines which they manufactured as the United Company does today. It is admitted, therefore, that the United Company has not acquired a monopoly in these machines, except by taking over the business of the constituent companies, which, since they were essentially non-competing, the United Company was entitled to do as held in *United States* v. *Winslow*, 227 U. S. 202.

As to the other machines put out by the United Company since its formation, such as the pulling-over machines, clicking machines, eyeletting machines, and various new Goodyear auxiliary machines, it is not denied that they are machines created and developed by the United Company under patents, and that these machines have been in existence only a very short time. Whatever business the United Company has in these machines is presumably due to the fact that the United Company has created these machines and no one else has invented machines equally good. We submit that there is nothing in the evidence to refute this presumption that the business done by the

United Company in these machines has been acquired lawfully.

While, therefore, the comparative amount of business done by the United Company and its competitors would seem to be immaterial, as we have stated, nevertheless, the petitioner's contention that the United Company does practically all the business in machines of these various types, and the facts on which it attempts to justify this contention are in many cases so erroneous and unwarranted that we wish to call them to the Court's attention.

The petitioner has attempted to prove its contention in three ways:—

1. By showing the total number of shoe manufacturers in the country and the number of such shoe manufacturers with whom the United Company does business.

2. By the testimony of certain shoe manufacturers who testified that they use some or all of the United Company's machines and by assuming that those shoe manufacturers are typical of all shoe manufacturers.

3. By the testimony of certain shoe manufacturers as to their knowledge of the machinery market, and the testimony of a number of shoe machinery manufacturers as to the kinds of machines which they manufacture and as to the number of machines which they have put out.

The petitioner seems to have assumed that it was for the United Company to prove that it did not have a monopoly of all machines. The United Company introduced in evidence certain exhibits consisting of catalogues and correspondence with various shoe machinery manufacturers showing what machines they manufactured and lists drawn from such catalogues and correspondence and other sources

showing the kinds of machines which other shoe machinery manufacturers furnish. These lists did not purport to be exhaustive.

The United States in rebuttal called the representatives of a number, but by no means all, of the shoe machinery manufacturers mentioned in these lists. It had also called a few shoe machinery manufacturers in presenting its direct case. From statements made by these witnesses as to the number of machines they had put out, the petitioner has attempted to draw up a schedule purporting to show the total number of machines of certain kinds put out by the United Company compared with the total machines put out by its competitors. (See page 142 of Petitioner's Brief.) Not only is this schedule made up from the evidence of only a portion of the shoe machinery manufacturers referred to by the United Company, but it further contains many inaccurate statements which the record itself refutes. We shall comment on this schedule below.

The Attempt of the Petitioner to Prove that the United Company Deals with Most of the Shoe Manufacturers in the Country.

The writer of the brief says at page 132, after referring to the testimony of certain shoe manufacturers, that they used certain machines of the United Company:—

> "Evidence of this kind might have been indefinitely multiplied but even the foregoing was hardly necessary in view of the defendants' admission that they are in business relations with 1,033 shoe manufacturers in the United States (Donham, R. I, 26, 1. 39). When the testimony in this case was closed in 1914, there were, according to the census figures in all 1,090 such

> manufacturers. The census of 1910 showed that in 1909, there were in the neighborhood of 1,300 manufacturers."

Later in the brief the writer calmly assumes that the fact is proved that the United Company does business with 1,033 out of 1,090 shoe manufacturers in the country. For example, at page 227 the writer says:—

> "Not only this, but they occupy such a position that every shoe manufacturer of consequence in the United States must deal with them. Out of 1,090, big and little, they do business with more than 1,033. . . . Those with whom they do not have business relations must be insignificant."

The actual facts are as follows:—

The petition states that there are "about 1,300" concerns manufacturing boots and shoes by machinery (R. Vol. 1, p. 991). The evidence showed that the United Company in 1911 did business with 1,033 lessees who were shoe manufacturers (R. Vol. 1, p. 26, lines 38–40). As to the number of shoe manufacturers in the United States the only evidence was the testimony of Mr. Donham as follows:—

> "As to how many shoe manufacturers there were in the United States at that time, [viz. 1911] I don't find that any two calculations agree or that any one of them agree with the census. From what data I have I should say there were somewhere between 1,300 and 1,500. I haven't the figure of the census of 1910 with me. It was somewhere in the neighborhood of 1,300 as I recall it" (R. Vol. I, pp. 26, 27, lines 41–2).

The foregoing evidence, being the only evidence in the record, would entirely refute the contention of the petitioner that every shoe manufacturer must deal with the United Company for it would clearly show that there are between 267 and 467 shoe manufacturers in the country with whom the United Company does no business at all. The writer of the brief, therefore, calmly goes to the census for 1914, states that by that census it is shown that there were 1,090 shoe manufacturers in the country in 1914 and compares this figure with the number of lessees which the United Company had in 1911, three years previously.

These census figures for 1914, of course, were not in evidence and were not prepared until after the evidence was closed in the lower court. Furthermore, the census does not purport to give the total number of shoe manufacturers in the country. It only purports to give the list of establishments from which "returns were received." *Non constat* there may be hundreds who did not make returns and it is most likely that there were a great many who did not make returns.

We pass over the question of whether a census report of this kind can be referred to when not introduced in evidence and also whether such a report can be used as evidence of such a fact as that here in question.

But we must call to the attention of the Court that the petitioner has misquoted the census for 1914. Instead of stating that there were 1,090 shoe manufacturers in the country, it actually states that "returns were received from 1,355 establishments in 1914." (See Census Bureau's Summary concerning the manufacture of footwear for 1914.) Using, therefore, the method employed by the

United States for determining the number of shoe manufacturers who do not deal with the United Company, we find that there are 322 such shoe manufacturers.

Petitioner's Table Purporting to Show the Number of Machines of Certain Classes put out by the United Company and the Number of Machines of the Same Kinds put out by Competitors.

Upon page 142 of the petitioner's Brief appears a tabulation purporting to indicate

> "the number of principal bottoming machines together with eyeletting and clicking machines which the United Company had out March 1, 1911, and the number which all other concerns had out at that time."

It is stated that this is a summarization of Appendix B, Part 1, of the Government Brief, aided by Defendants' Exhibit 228.

It is attempted to use this summary as a basis for the assertion that the United Company controls all the clicking, all the pulling-over, all the pegging, and all the standard screw machines, and about ninety-six per cent. of the total number of bottoming machines in use, upon which to predicate the conclusion that the defendants now monopolize the fie'd which they "have pre-empted by combination and acquisition."

The summary is not justified by the record, and the conclusion attempted to be deduced is erroneous. While the statement of the number of machines put out by the defendants is substantially correct (because of the use made of the Defendants' Exhibits), it does not appear from any affirmative testimony in the record that the number

of machines put out by all other concerns on March 1, 1911, is as therein stated. The impression is sought to be conveyed that Appendix B, Part 1, is a condensed statement drawn from uncontradicted testimony and undisputed sources indicating positively the number of machines put out by other concerns. But the witnesses whose "uncontradicted evidence" is referred to were, as stated in the Government's Brief on page 134, representatives only of a number of manufacturers advertising machines in competition with the defendants' machines, and testified only as to the actual character and amount of business of their principals. In other words, the United States produced as witnesses representatives of *some* of the concerns referred to by the defendants, who testified as to the output of their respective businesses and nothing more, and the aggregate of the machines so testified to is asserted by the summary to be the total amount of machines put out by *all* other concerns. Whatever may be the total of the machines actually put out by all other concerns, it certainly cannot be demonstrated by showing the number of machines put out by a part only of such concerns.

But the inferences and conclusion sought to be deduced from the summary are still more misleading.

The intimation, for example, is that the defendants have a monopoly of the clicking machines, which they have secured by "combination and acquisition."

There is, however, no suggestion that this clicking machine is itself the development of the United Company, and a very remarkable invention which probably saves more money for the shoe manufacturers than any other machine ever produced and which was not put into use until 1908 or 1909 (R. Vol. 1, pp. 425–426). It is a pat-

ented machine embodying thirteen patents and under these patents the United Company has the exclusive right of making, vending, and using. And it is *this* machine which is asserted by the United States to be a part of the field which the defendants have unlawfully "pre-empted by combination and acquisition."

Again, the pulling-over machine, of which it would appear from the summary the defendants have a monopoly is an invention of the United Company's, developed at vast expense, doing operations previously done by hand exclusively, and first put out in 1902. This machine is protected by nineteen patents (R. Vol. 2, pp. 2542 *et seq.*).

It is suggested by the summary that the defendants have a monopoly of the standard screw machines, of which there appear to be put out by the United Company 409. No reference is made to the fact, however, which appears in the Defendants' Exhibit 226, that the number of standard screw machines which the United Company had out on lease was 826 in 1900 but dwindled to a few more than 400 in 1911. This means, of course, that the manufacture of standard screw shoes had fallen off, and the steadily diminishing market for such machines would naturally not be very attractive to competitors.

The same observations can be made in regard to pegging machines, and to the conclusion sought to be suggested by the summary.

The dependability of the summary as a basis for any just conclusion as to the monopolization of the field by the defendants is well tested by consideration of the figures as to eyeletting machines and McKay sewing machines.

The summary indicates that the United Company had out 4,472 eyeletting machines and all other concerns 150.

Defendants' Exhibit 228 shows of the total 4,472, 2,435 are power machines and the balance are foot power eyeletters and miscellaneous machines of Eyelet Department.

It appears clearly in the testimony of Mr. Winslow (R. Vol. 1, p. 451, lines 38 *et seq.*) that the defendants lease eyeletting machines to harness makers, trunk makers, corset manufacturers, and others, and this total includes machines so leased as well as machines leased to shoe manufacturers.

The total of 150 eyeletting machines asserted by the summary to be the number of eyeletting machines put out by all other concerns is simply the number testified to by the witness Hall, called by the Government as representative of the American Worsted Company, as the number of machines put out by his concern (R. Vol. 1, p. 953).

Muther, representative of the Peerless Manufacturing Company, one of the concerns referred to, was called by the Government, and his testimony is disposed of in the Appendix thus: "Output not stated but we may assume that if it was large enough to be significant it would have been stated, by the defendants," and the number of machines put out by his concern is represented in the Appendix as zero. Muther testified that his concern manufactured eyelet setting machines, skiving machines, hook setting machines, etc.

> "We sell our eyeletting machines outright or loan them without charge to people who buy eyelets from us. . . . Our eyeletting machine is the Peerless rapid eyelet machine. It will insert any kind of eyelets in shoes. They are put out on loan leases and we ask customers to buy all their eyelets from us—but they don't. . . . We supply six or eight different kinds of

> eyelets, mostly japanned, which we buy and resell. We buy our japanned eyelets from the United Company and the Atlas Tack Company. . . . We can buy and sell all we want—all our customers require. . . . We sell more Atlas than United eyelets and our customers are altogether shoe manufacturers. . . . Our machines are sold to shoe manufacturers who use other machines obtained from the United Company. . . . Our machines and theirs are sometimes used side by side in the same factory. Manufacturers use either they want—or both" (R. Vol. 1, pp. 303–304, lines 13–14).

The output of eyeletting machines thus described is designated by the United States as "None."

In the summary the number of McKay sewing machines put out by the defendants is set at 898 and the number put out by all other concerns is stated to be 8.

The surprising inaccuracy of this statement is illustrated by the fact that in 1909 in the principal shoe manufacturing districts there was a total of 1,488 machines outstanding, of which only 308 had been supplied by the United Company. In the Lynn district there were 59 McKay sewing machines supplied by the United Company, and 367 supplied by others. See main brief, p. 563.

And yet in the face of this evidence the Petitioner's table shows only 8 McKay machines supplied by others than the United Company, because the only machinery manufacturer who testified that he manufactured these machines said he had put out 8.

These considerations would seem to indicate the absolute worthlessness of the summary as a statement of fact and to demonstrate the unsoundness of the reasoning premised upon it.

One further fact is noticeable with respect to this table which the petitioner uses to show monopoly. It refers to only 13 types of machines out of the hundreds of different types manufactured by the United Company.

The Petitioner's Table at Page 142 of its Brief Disproves the Petitioner's Own Contention.

However, even assuming that the table given at page 142 of the petitioner's Brief, showing the number of machines furnished by the United Company as compared with the number of machines furnished by all other shoe manufacturers, were correct, it would disprove the petitioner's own contention.

The petitioner's contention cannot be that the United Company is an unlawful monopoly merely because its patented machines are generally or even universally used by all shoe manufacturers.

The contention of the United States must be that the United Company has acquired such proportion of the business as it holds either by buying up competitors and thus suppressing competition or by the restrictive provisions in its leases.

But looking at the table at page 142 it clearly appears that as to certain of these machines, in respect to which it is alleged that the United Company has a complete monopoly, it cannot be contended either that the United Company has bought up competitors making these machines or that its leases have compelled shoe manufacturers to take them. For instance, take the eyeletting machines. The United Company did not acquire, nor has it maintained its business in eyeletting machines by buying out competitors. Furthermore, the United Company does

not put out a single lease which restricts the use of any of the more than three hundred machines which it puts out to use with its eyeletting machines. In other words, a shoe manufacturer can take any one or all of the machines which the United Company puts out and use a competitor's eyeletting machine in connection with them. Self-evidently, therefore, even accepting the petitioner's view as to the unlawful character of the lease provisions, they cannot either compel or induce a shoe manufacturer to take eyeletting machines from the United Company. Yet the table shows that the United Company has furnished substantially as large a proportion of the total eyeletting machines in use as it has of any other class of machines, and that it furnishes a much larger proportion of such machines than it does either of welt sewing or outsole stitching machines.

Take the clicking machine. The United Company did not acquire, nor has it maintained its business in clicking machines by acquiring competitors who manufactured this machine. It invented that machine itself and first put it out about 1909. The United Company does not require a lessee of any of its machines to use them in connection with its clicking machine. It, therefore, cannot in any way by its leases induce or compel lessees to take its clicking machine. There is absolutely nothing in the record even to suggest that the United Company has acquired its business in clicking machines for any reason except the merits of the machine. Yet, according to the petitioner's contention, the United Company does the entire business in clicking machines. It must be self-evident that the machine is used because it is a patented machine, because it is useful to shoe manufacturers, and

because no other person furnishes an equally valuable machine.

Take also the pulling-over machine. As to this, the petitioner's table also alleges that the United Company has a complete monopoly and that competitors furnish no machines whatsoever. Yet it has not acquired this business by buying up competitors who were putting out the machine, and not a single machine which the United Company furnishes is restricted to use with the pulling-over machine, except the No. 5 lasting machine, which was particularly designed for use with the pulling-over machine. The fact that this particular type of lasting machine is restricted to use with the pulling-over machine cannot compel shoe manufacturers to take the pulling-over machine, because a shoe manufacturer can obtain either the hand method welt machine or the hand method McKay machine, both excellent machines, preferred by some shoe manufacturers to do work which the No. 5 machine would normally do.

It, therefore, is self-evident that the leases of the United Company do not induce or compel lessees to take the United Company's pulling-over machine. Its success in supplying pulling-over machines must be due solely to the fact that its pulling-over machine is a useful patented machine which lessees desire in their factories and that no other machinery manufacturer produces an equally useful machine.

As to the United Company's success in furnishing three of the machines as to which monopoly is charged, the record, therefore, shows that neither the restrictive clauses in the United Company's leases nor its purchases of competing concerns had the slightest effect. This being true,

it is only fair to assume that the same is true of the ten other machines referred to in the petitioner's table at page 142. As regards all the machines shown in the table, the United Company is putting out improved patented machines and each is just as useful in its field as the eyeletting machine is in its field, or the clicking or pulling over machines in their fields.

The Petitioner Admits that there is a Large Field of Shoe Machinery not Occupied by the United Company at all or in which there are Competitors Actively Engaged in the Business.

In the first place, the petitioner does not deny that the United Company does not manufacture at all machines for sewing the uppers to shoes. It does not deny that the United Company furnishes only from thirty to fifty per cent. of the number of machines used in the ordinary shoe factory. (See our main brief, pp. 557–560.)

Thus in Hazzard's factory where most of the machines furnished by the United Company and suited for his work are used, out of a total of 746 machines in the factory only 327 were obtained from the United Company, or less than forty-four per cent., and, deducting General Department machines which may be bought outright, only 296 machines, or less than forty per cent. In Jonathan Brown & Son's factory, a typical McKay shoe factory, in which United Company machines are used, out of a total of 424 machines only 128, or thirty per cent., were obtained from the United Company, and, excluding General Department machines, which may be bought outright and as to most of which the United States does not claim a monopoly, only 64 machines, or fifteen per cent. of the total, were obtained from the

United Company (see main brief, p. 558). Furthermore, the petitioner does not deny that in the classes of machines which are furnished by the United Company there are a very large number of competitors.

The petitioner's own brief states at page 134 that

> "85 representatives of a number of these manufacturers were, however, called by the Government (R. I, 882–960 and elsewhere) and testified as to the actual character and amount of the business of these companies."

At pages 132 to 156 of the Appendix to our brief is summarized the testimony of about *fifty competing shoe machinery manufacturers* who were called by the United States. Their testimony establishes that they do a business which taken altogether is substantial and which cannot be dismissed as insignificant.

A number of these manufacturers are prepared to furnish complete lines of shoe machinery for manufacturing all kinds of shoes. Thus Hamel testified that he has a complete set of machines for making turn shoes and a complete set of machines for making welt shoes. (See main brief, p. 564.) J. J. Doidge, manager of the R. H. Long Machinery Company, testified that his company is ready to supply a full line of machinery for welt or turn shoes. (See main brief, pp. 564–565.) Edwin A. Webster, a director of the Haverhill Shoe Machinery Company, testified that his company undertakes to fill the requirements of a manufacturer whatever they are:—

> "We advertise that we furnish any manufacturer a full line of all kinds of shoe machinery, whether it is for welts or McKays, or turns or pegs or anything else" (R. Vol. 1, p. 301, lines 5–9; see also our main brief, p. 565).

The foregoing, being the admitted evidence, it would seem that the brief writer was indulging in exaggeration when he said (p. 167):—

> "It [the United Company] is absolute monarch of the industry. No competitor can exist unless for its own pleasure or policy it withholds its destroying hand."

Shoe Manufacturers may Obtain a Complete Set of Machines without taking any from the United Company. If they take the United Company's Machines it is because they prefer them.

Machines can be obtained by any shoe manufacturer from competitors of the United Company. While, as stated above, the record does not show the number of machines of various kinds furnished by all the competitors of the United Company, it does affirmatively show that a complete set of machines may be obtained by any shoe manufacturer from a number of different shoe machinery manufacturers and that no shoe manufacturer is obliged to come to the United Company for any of his machines.

Thus, as we have stated above, C. A. Hamel, the R. H. Long Machinery Company, and the Haverhill Shoe Machinery Company each offer a complete line of machines. (See main brief, pp. 564–565.)

The petitioner's brief founds a number of its arguments on the contention that practically every shoe manufacturer must come to the United Company for his lasting machines (Petitioner's Brief, pp. 125–164). Apparently the petitioner admits that shoe manufacturers can get their other machines from other shoe machinery manufacturers.

But they can also get their lasting machines. Thus the manager of the R. H. Long Machinery Company testified that the Company was ready to furnish the trade with twenty-five lasting machines (R. Vol. 1, p. 345, lines 41–42). The Company would, of course, build more as fast as they were needed. The Haverhill Company is ready to furnish lasting machines manufactured by Gimson & Co. and the Standard Rotary Co. of England (R. Vol. 1, p. 300, lines 40–42). Mr. Webster of that Company testified:—

> "It takes about 20 to 25 days to get them from England. I am in hopes to improve on that" (R. Vol. 1, pp. 300–301, lines 45, 1–2).

Any machine shop can build for any shoe manufacturer who desires them lasting machines of the character put out in 1899 when the United Company was formed on which the patents have expired. One of the reasons that it is difficult, as shown by the record, to check up the exact number of machines placed on the market by competitors and also the exact number of competitors, is because almost any small machine shop can turn out shoe machinery which it is possible to use on shoes. No large plant or factory is required and the ordinary machine tools are practically all that is necessary.

In addition to the American companies furnishing machines there are a considerable number of foreign companies which furnish full lines of machines. (See main brief, p. 565.) The petitioner endeavors to belittle these foreign concerns because it says that they have not done business in this country to any appreciable extent (Petitioner's Brief, p. 135). The petitioner, however, does not and cannot refute the fact that there are large foreign

manufacturers who do furnish complete lines of machines, that they would be glad to furnish their machines to any shoe manufacturer in this country who desired to use them, and that any shoe manufacturer in this country can order machines from them if he wishes.

The record shows that an average of sixty-two new shoe manufacturers engage in business each year and that an average of twenty-two new firms succeed old firms. (See Defs.' Ex. 223, R. Vol. 5, p. 390.) These shoe manufacturers are not in any way under obligations to the United Company. They are free to obtain their machines from Long, from the Haverhill Company, or from Hamel, who are all, as they testified, anxious to furnish them with full lines of machines. They can obtain their machines from any one of several large shoe machinery manufacturers abroad. If they do not choose to do so, it is clearly because they want the best machines on the best terms and with the best service, and, therefore, prefer to take their machines from the United Company.

Respectfully submitted,

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APPENDIX I.

COMMENTS ON APPENDIX A TO PETITIONER'S BRIEF BEING A CHART PURPORTING TO SHOW THE EFFECT OF THE EXCLUSIVE USE AND "TYING" CLAUSES.

The Brief for the United States, at page 166, states:—

> "A chart illustrative of the practical effect of the tying clauses in these restrictive leases is submitted herewith as Appendix A. This chart has been criticised by the defendants, but all the criticisms are trivial and none of them is based upon fact. It will be observed that this chart relates to provisions in 'restrictive' leases and not to leases generally, and it will be found that every statement made in it is supported by the provisions of the leases to which reference is made therein."

Notwithstanding the statements of the United States, the chart does not correctly represent the situation, but is inaccurate and misleading. As a graphic it does not correctly set forth the situation, and a great many of the statements made therein are not supported by the provisions of the leases to which reference is made. The chart, upon its face, purports to cover only what counsel for the United States are pleased to call the restrictive forms of leases. It, therefore, admittedly sets forth but a part of the whole story, and even as to that part presents a picture which is not substantiated by the leases themselves. Appendix A

is an exact copy of the chart in the Brief for the United States filed in the District Court, and is substantially a copy of Exhibit 23 attached to the petition, which it was agreed should be disregarded, as the United States did not claim to have proved it.

Some of the respects in which the chart is inaccurate and misleading are as follows:—

1. It attempts to combine in the one chart machines used in the manufacture of different kinds of shoes, *e.g.*, welts, turns, McKays, metallic fastened, pegged; and where such machines are adapted to be used upon different kinds of footwear, and the leases accordingly being general forms contain some restrictions which apply to one class of footwear and other restrictions which apply to other classes of footwear, the chart by indicating all of these ties in the one graphic has the effect of indicating a multiplication of tying which would never exist in any factory as a practical matter. For example, the heeling machines are shown as tied to the Pegging Machine Department and to the Goodyear Department where as a matter of fact this tie would simply be to the Pegging Machine Department upon pegged shoes and to two machines of the Goodyear Department upon welt shoes, and to but one machine of the Goodyear Department upon turn shoes.

2. The chart indicates a requirement in many instances that the lessee "must use exclusively lessor's machines for certain operations," whereas the requirement is not in any such positive form, but is simply a reservation of the right to the lessor, if the lessee does not elect so to use the lessor's machines for all of his work of that kind, to have the option to terminate its leases of machines of that particular kind.

3. The effect of the tying is made to appear greater than it really is by combining in various of the tables various machines for performing the same or similar operation only one of which would be used in any one particular case, or in showing in the same table different forms of lease for the same machine. For example, in Table 6, there is the enumeration of several different types of lasting machine; in Table 2 the list includes several forms of heel attaching machines and several forms of heel trimmers; in Table 3 there are two kinds of eyeletting machine listed; in Table 4 there are different forms of lease for the same machines of the General Department; in Table 8 there are different forms of lease for the same Goodyear machines. The arrows in the chart would appear to indicate that all the machines in one group are tied to all of the machines in another group, whereas the tie would actually exist, as a practical matter, only between certain se'ected machines of one group and certain selected machines of the other group.

The following are some of the instances of inaccurate or misleading indications in the various tables:—

Table 1. Pulling-over System.

1. The arrow indicates a tie to the machines of the Pulling-Over System from Table 6 (Lasting Machine Department). This Lasting Machine Department Table 6 shows seven sub-divisions and only one of these sub-divisions, *i.e.*, the No. 5 laster, has any tie whatever to the Pulling-Over System and that to the pulling-over machine only.

2. This table indicates "must use exclusively lessor's machines." The lease contains no such provision.

3. A tie is shown from this table to the machines of Table 6 (Lasting Machine Department). Table 6 includes not only several forms of lasting machine, but also includes tacking machines and the Ensign lacing machine, to which there is no tie.

4. A tie is shown from this table to the machines in Table 8 (Goodyear Department). Such tie, so far as it exists, is to the Goodyear welting and stitching machines only. Table 8 shows leases not only for the welting and stitching machines, but also includes the Goodyear auxiliary machines and the Economy insole reinforcing set and the Gem insole set. There is no tie from the Pulling-Over System under any form of lease or from any other department to either the Goodyear auxiliary machines or to the Economy set or the Gem set.

Table 2. Heeling Machine Department.

1. A tie is shown from this table to Table 6 (Lasting Machine Department). Such tie as exists is for the lasting operation only, while Table 6 includes not only several forms of lasting machines, but also includes tacking machines and Ensign lacing machines, to which there is no tie.

2. A tie is shown from this table to Table 8 (Goodyear Department). Such tie as exists is to the welting and stitching machines only, while Table 8 includes leases which cover not only the welter and stitcher, but also Goodyear auxiliary machines, Economy and Gem machines, to which there is no tie.

3. This table states that the lessee "must use exclusively lessor's machines" for certain work. There is no such provision.

Table 3. Eyeletting Department.

1. This table also shows a tie to Table 6 (Lasting Machine Department). Such tie as exists is to the lasting operation only, while Table 6 includes machines for other operations to which there is no tie.

2. A tie is shown from this table to Table 8 (Goodyear Department). Such tie as exists is for the welting and stitching machines only, while the table includes leases not only for these machines, but for other machines as well to which there is no tie. (See above.)

Table 4. General Department.

1. This table indicates two forms of lease for General Department machines, a lease for McKay sewing machines, a lease for Ideal clicking machines, and a lease for the Miller twin shoe treeing machine. The arrows indicate a tie to Table 5 (Pegging Machine Department), Table 6 (Lasting Machine Department), Table 7 (Metallic Department), and Table 8 (Goodyear Department). Only the first two of the leases set forth in Table 4 (which are alternative forms) and the lease for the Miller treeing machine tie in this way, and the indicated ties to Table 6 (Lasting Machine Department) and Table 8 (Goodyear Department) are open to the same criticisms as above indicated in respect to Tables 1, 2, and 3.

2. This table indicates that the lessor's clicking machines are to be used exclusively. There is no such requirement.

3. This table indicates that royalty is to be paid "for using dies not furnished by lessor." This is not true. The royalty is paid for the use of the machine.

Table 5. Pegging Machine Department.

1. The arrows from the Pulling-Over, Heeling, Eyeletting and General Departments indicate ties to the Pegging Machine Department, also ties to the Goodyear Department. Of course the tie to the Pegging Machine Department would apply only to pegged shoes, and to the Goodyear Department only to two machines for welts and one machine for turns.

2. A tie is indicated by the arrow from the Pegging Machine Department to Table 6 (Lasting Machine Department). Such tie as exists is to the lasting operation only, whereas Table 6 includes other operations, as indicated above.

3. Table 5 indicates that the lessee "must use exclusively lessor's pegging machines." There is no such provision.

Table 6. Lasting Machine Department.

1. A tie is shown from this table to Table 1 (Pulling-Over System). As a matter of fact, only one of the several machines included in Table 6 is under any form of lease tied to *any* machines of the Pulling-Over System. That one is No. 5 lasting machine on the restricted form of lease only, and is tied to the pulling-over machine alone and not to any other machines of the Pulling-Over Department.

2. Various ties are shown to this table from other tables which misrepresent the actual conditions as set forth in various other tables. (See comments on other tables.)

3. A tie is shown from this department to Table 8 (Goodyear Department). Such ties as exist are to the welting and stitching machines only,—not to the other machines set forth in Table 8.

4. A tie is shown from this department to Table 7 (Metallic Department). Such tie exists only as to certain (not all) of the machines included in Table 6, and then only under certain alternative forms of lease.

5. A tie is shown from this department to Table 2 (Heeling Department). As a matter of fact only one lasting machine (and that an old and obsolete machine, several years ago superseded by later and improved machines) ties to the heeling machine.

6. The statement that the lessee "must use exclusively lessor's lasting machinery and tacking mechanisms" is not correct. There is no such provision.

7. The Boston lasting machine is not a lasting machine at all, but merely, as appears from the record, a *tacking* device for tacking on rands and similar parts, and the machine is specifically leased for use "other than for lasting."

Table 7. Metallic Department.

1. The form of lease set forth in Exhibit 30 is an early form, and the "Schedule of Machines" contains different types of machines for performing the same operations. There were really only five or six distinct operations and the current form of metallic lease enumerates only the current forms of machines—some six machines. Ties are shown to this Table 7 (Metallic Department) from various other departments, and it appears, upon the face of the table, as though the tie was to a large number of machines of the Metallic Department. As a matter of fact, no lessee would have anything like that number of different types of metallic machines.

2. A tie is shown from this machinery to Table 6 (Lasting Machine Department) and to Table 8 (Goodyear Department). The ties are only to the lasting and to the welting and stitching operations, not to the other machines referred to either in Table 6 or Table 8.

3. Table 7 states that the lessee "must use exclusively lessor's metallic machines." That is not a correct statement.

Table 8. Goodyear Department.

1. This table includes two forms of lease for the Goodyear welting and stitching machines, and also a lease for the auxiliary machines of the Goodyear Department. This table also includes Economy insole set and Gem set. Although various other tables are shown as tied to Table 8, it is the fact that no lease of the United Company ties to any of the auxiliary machines of the Goodyear Department, to the Economy set or to the Gem set.

2. This table states that the lessee "must use exclusively lessor's machines" for certain operations. There is no such provision in the leases.

APPENDIX II.

COMMENT ON APPENDIX C TO PETITIONER'S BRIEF PURPORTING TO GIVE A SYNOPSIS OF THE LEASES SHOWING TYING CLAUSES.

The ambiguities and half-truths which cloud the brief throughout extend also to Appendix C. For example—note the title to the Appendix, the contents, and the statement to be found on page 160 of the Brief for the United States.

Furthermore, in summarizing the several leases enumerated in Appendix C the United States has deemed it advisable, as to some leases, to refer to clauses which same clauses, as to other leases, it has apparently considered of no importance and has therefore omitted.

Leases have been summarized which, as appears from the record, have long since ceased to be active, either because the machines covered thereby have been superseded by other and improved types, as in the case of Chase, Ideal, and McKay & Copeland lasting machines, or by later leases, as in the case of the heeling machines, Goodyear full set and other leases.

Inaccuracies and misstatements occur throughout so that so far as serving any useful purpose Appendix C might well have been dispensed with, and it is respectfully suggested that the Court will save time and obtain an accurate knowledge of the provisions of the leases only by a careful examination of the instruments themselves.

The following are some of the instances of inaccurate and misleading statements:—

1. Lasting Machines.

(*a*) Consolidated Hand Method.

i. Non-Initial Payment.

Attention is not called to the fact that Exhibit 16 is for a lease covering the machine for use in the manufacture of McKay sewed or metallic fastened footwear; that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

ii. Attention is not called to the fact that Exhibit 14 is for a machine adapted for lasting McKay sewed footwear; that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee; that there is no obligation on the part of the lessee to pay any amount of "minimum royalty"; that the provision in the lease is that if the machine does not earn in any calendar year royalty amounting to $75 per annum the lessor may terminate, but only upon repaying to the lessee a part of the lease premium theretofore paid. It is not obligatory upon the lessor to exercise this right nor can the lessor exercise its right without first making payment.

(*b*) Chase Lasting Machine.

It omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee; that the minimum royalty is abated in respect to each month the lessee's factory is idle.

(*c*) McKay & Copeland Machine.

It omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee; it is a misstatement to say that there is a minimum royalty of $125 per annum. There is no obligation on the part of the lessee to make this

payment. The provision is merely a reservation to the lessor that if the machine shall not earn $125 per annum the lessor may terminate the lease, but must first repay to the lessee one-third of the lease premium theretofore paid. There is no requirement that the lessor exercise this option.

(*d*) Ideal Lasting Machine.

It omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee; it is a misstatement to say that there is a minimum royalty of $75 per annum. There is no such obligation on the part of the lessee. The provision is the same as in the McKay and Copeland lease *supra*.

(*e*) No. 5 Lasting Machine.

i. It misstates the date the lease was adopted. The record shows that the lease was adopted "six or seven" years prior to 1914, the time of Mr. Donham's testimony, which would make the adoption date 1907 or 1908. It omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

ii. It omits to state the adoption date which appears from the record was the same as in the case of *i supra*. It fails to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

2. Welt and Turn Sewing Machines and Outsole Stitching Machines and Auxiliaries.

i. It omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee. It misstates the machines to which it says the exclusive use clause applies. There is no such machine as the "welt stitching machine." Undoubtedly what is meant is welt-

ing and outsole stitching machines. It fails to make clear the extent claimed for the prohibitive clause. It states that the clause applies "to the same machines," but it leaves it open to argument that the word "same" includes not only welt and turn sewing and outsole stitching machines, but also the auxiliaries. The note is inaccurate and misleading in its statement that the lease provides for royalties to the defendants "upon shoes made upon machines supplied by competitors of the defendants." There is no such provision.

In referring to Exhibit 25, the lease for the Goodyear auxiliary machines only, it omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

There is no reference in the clause to inseaming machinery.

The statement with reference to the prohibitive clause is open to the same criticism as stated above. It is inaccurate in the statement that the lease provides for an annual rental amounting to about $184 per annum. The lease covers many different machines and several machines for the same operations. In no factory would a lessee have all of the machines. The amount stated was apparently determined by adding Column II of the Schedule of Machines. The annual rental is the amount set opposite each machine varying from $1 to $35 per annum, according to the machine leased.

The note conveys a wrong impression. There is no restriction in the lease to the use of the auxiliaries upon welted footwear operated upon by independent welt lasting or other machines used in the manufacture of welt shoes. The only restriction is to footwear operated upon by the United Company's welt sewing, sole stitching, and turn sewing machines.

ii. It omits as to Exhibit 23 to call attention to the fact that the exclusive use clause is merely a reservation of a

right to the lessor and not an obligation on the part of the lessee.

The prohibitive clause is open to the same criticism as stated above, and the same statements apply to Exhibit 26.

The note is inaccurate in the statement that the lessee "must agree" that he will not use "at any time" in his factory independent welt sewing or outsole stitching machines. There is no such provision in the lease.

3. Heeling Machines.

i. Although Appendix D states that Exhibit 27 contains both full capacity and additional machinery clauses, no reference to the same is made therein. It inaccurately states the minimum royalty. The lease does provide for the payment of minimum royalty to the lessor dependent upon the number and kinds of machines leased. The particular executed lease, of which Exhibit 27 is a copy, contained machines calling for a minimum royalty of $230 per annum. This is not the minimum royalty for any one machine as is the inference to be drawn from the statement in Appendix C.

With reference to Exhibit 28 the Appendix omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

The statement in the note is inaccurate and misleading and the occasion for the preparation of Exhibit 28 was fully and accurately stated by Mr. Winslow (R. Vol. 1, p. 546, lines 26 *et seq.*).

4. Metallic Fastening Machines.

i. Although it has been considered of importance to state the royalty with reference to Exhibit 30, apparently the same importance was not attached to Exhibit 29, as the synopsis contains no reference thereto.

It inaccurately states, with reference to Exhibit 30,

that the royalty is the purchase of not less than four hundred pounds of material per annum in that it omits to call attention to the fact that the lease provides for a deduction of thirty-three pounds for every month the lessee's factory may be idle.

With reference to Exhibit 31 it is misleading in the statement that the lease contains a clause permitting the removal of machines deemed by the lessor unnecessary for the lessee's business. This is not a correct statement. The provision is that, in case in any period of three *consecutive* months the lessee shall fail to use the machinery to at least three-quarters of a fair day's work, the lessee shall return the machinery not needed.

The provision for payment for material is not correctly quoted. The word "the" has been omitted before the word "prices" in the second line, the word "required" has been substituted for "established" in the same line, and in the sixth and eighth lines the word "or" has been changed to "and." Other dissimilarities of a minor character will also be noted.

The statement as to provision for minimum use of four hundred pounds of material per annum is inaccurate in that it omits to make any reference to the deduction of thirty-three pounds for every month that the lessee's factory is idle.

With reference to Exhibits 32, 33, 34, and 35, criticisms herein made with respect to other metallic fastening machine leases apply in so far as the United States alleges that such Exhibits are similar to the other metallic fastening machine Exhibits.

5. Pegging Machine.

i. It omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee. It is misleading in the statement that the minimum royalty is $10

per month in that it omits to state that there is no minimum royalty for each month that the factory remains idle.

ii. It omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

6. Pulling-over Machines.

i. It is misleading in the statement that the minimum royalty is $15 per month in that it omits to call attention to the fact that there is no minimum royalty for any month in respect to which the factory of the lessee is idle.

In respect to Exhibit 37 it omits to call attention to the fact that this lease has long been superseded by a later form.

It omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

It is inaccurate in its statement with reference to the additional machines clause. The clause does not have the effect stated in the appendix.

It inaccurately states the minimum royalty in that it fails to call attention to the fact that there is no minimum royalty in any month in which the lessee's factory may be wholly idle but not more than ten months in any twelve consecutive months. The same criticisms apply to Defendants' Exhibit 345.

With respect to Exhibit 38 it omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

ii. It omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

It inaccurately states the minimum royalty in that it fails to call attention to the fact that in any month in which

the lessee's factory may be idle no minimum royalty is required to be paid, but that such reduction shall not be made in respect to more than ten months out of any twelve consecutive months.

The note confuses Exhibit 38 and 39. It is not correct that the lease calls for a further payment of one-quarter cent for the use of each of the six or eight auxiliary machines. No lease would cover all these machines. Some are for use on one type of shoe and some on another and some duplicate the operation of others. At the most, but two or three of the auxiliaries would be used, so that in no case would the total payment be two cents, as stated in the Appendix.

The provision of the lease is not that the royalty shall not be more than three-quarters cent per pair. The provision is that the lessee shall pay one-half cent gross (one-quarter cent net) with respect to each pair of shoes pulled over plus one-quarter cent for each auxiliary machine which may be used (one-eighth cent net—having in mind that but two or three auxiliaries can be used) with the proviso that under certain conditions the maximum royalty shall not exceed three-quarters cent gross (three-eighths cent net) upon *all* shoes *lasted; i.e.,* factory output. It may very well be that the lessee would prefer to pay according to the one-quarter and one-eighth cent provisions rather than according to the three-eighths cent provision; as, for example, the lessee might last many more shoes than he would pull over by machinery.

The note is inaccurate in the statement that "their price for it is three-quarter cent a pair to those who aid them to obtain a monopoly in lasting machines and two cents a pair to those who do not." This is not the fact. The royalty is set forth in the lease and is as just stated. The lessee has the option, under certain conditions, as to which rate he will pay.

The note is further inaccurate in the statement that the

lessee could not have in his factory a competing pulling-over machine. There is no such obligation on the part of the lessee. He may have any and as many other pulling-over machines as he desires.

The note, with reference to Exhibits 39, is inaccurate in stating that the lessee must pay an initial payment amounting to "about the value of the machine." There is no evidence in the record as to the value of these machines and the United States has no ground upon which it can base its assumption that the initial payment in any way represents the value of the machine.

The note is further inaccurate in saying that the royalty is one cent a pair straight. The royalty is one cent per pair gross (one-half cent net) for the use of all the machines of the Pulling-Over System. The statement "The net result is for lasting and pulling over under Exhibit 39, the so-called Independent lease, the lessee has to pay one cent a pair while under Exhibit 38 he pays only three-eighths cent a pair" is grossly inaccurate and misleading. In the first place, the comparison is between a gross royalty and a net royalty and in the second place, it clearly appears from an examination of the leases that the three-eighths cent provision under Exhibit 38 is three-eighths cent *in excess* of the *total* lasting royalty.

7. General Department Machines.

The statement with reference to Exhibit 40 that the lease contains the "right to terminate all leases clause" is inaccurate. There is no such clause in the lease.

The statement in the note to the effect that the only charge made is payment of the lease premium except that the lessee was bound to purchase repair parts, creates the inference that the provision as to repair parts is peculiar to this lease and Exhibit 41 only, and that it is inserted for the purpose of obtaining additional revenue. Such is not

the fact. The duplicate parts clause in the General Department leases is, as in the other leases, merely a protection to the lessor, the owner of the machinery, in order that the machinery may not become out of order or be permitted to deteriorate by reason of the insertion of improper or poorly-made duplicate parts. Furthermore, it is not true that this lease was used as an inducement to manufacturers to take other machines. The lessee had the option to take his machines on lease or to purchase them outright, and he exercised his option according as his business judgment indicated.

The same criticism applies to Exhibit 41 as to Exhibit 40.

8. Eyeletting Machines.

i. Although Appendix D includes Exhibit 43 as one of the forms of lease containing the full capacity clause, the United States has omitted to enumerate the clause in the Appendix C. This is inaccurate.

ii. This Exhibit, like Exhibit 43, contains a full capacity clause and the exhibit is referred to in Appendix D as containing the full capacity clause. The omission of the clause from Appendix C is inaccurate.

The note that the purchase of eyelets is *further* compensation is inaccurate. An examination of the leases clearly indicates that it is the sole means of compensation for the use of the machine.

9. Clicking Machines.

The United States has omitted to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

The note is inaccurate and misleading throughout. For example, it states that "it also provides that one cent per pair is to be paid for footwear lasted on lessor's ma-

chines." There is no such provision in the lease. The machine having been developed by the United Company there was, of course, no obligation on the part of the United Company to put the machine out other than upon a revenue producing basis. It was considered that if the machine were used in the manufacture of footwear subsequently operated upon by lasting machines of the United Company and in respect to which the United Company received its lasting machine royalty (or subsequently operated upon by its welting or sole stitching machinery in respect to which it was receiving a royalty) the United Company could, as a business proposition, accept the compensation from the sale of dies—otherwise it would receive its compensation direct.

The note is inaccurate in stating that the lessee who uses independent lasting or welting or stitching machines is penalized. The royalty provided is a charge for the use of the machine and it is not correct to state that its true purpose and effect is as a destroyer of competition.

APPENDIX III.

COMMENT ON APPENDIX D TO PETITIONER'S BRIEF PURPORTING TO GIVE A RÉSUMÉ OF THE LEASES IN WHICH THE VARIOUS CLAUSES OBJECTED TO APPEAR.

The inconsistency as to the purpose of Appendix C persists in Appendix D. In neither the title nor in the brief is there agreement as to the contents and purpose of the Appendix. See page 160 (third and sixth sentences of the first paragraph) and page 351.

Appendix D is almost word for word a copy of the table appearing at pages 134 to 146, both inclusive, in the Brief for the United States in the District Court and was therefore before the Judges of that Court.

It is inaccurate and misleading and should not be relied upon even should this Court be able to determine just what it is intended to show.

Some of the inaccuracies and misstatements are the following:—

In "Second" the statement "all the leases contain the 'right to terminate all leases' clause" is inaccurate.

In "Third" (16), Exhibit 31 is not equivalent to an initial payment lease for metallic machines, and it is inaccurate to so state. The lease does not call for any initial payment.

"Fourth" is inaccurate in that it fails to make clear that the Exhibits were not active current leases, but is intended to create the inference to the contrary. It does not call

ıtion to the uncontradicted evidence that the additional
ıines clause had been abandoned as early as 1907.

Fifth" is inaccurate and misleading in that it fails to
that the exclusive use clause is merely a reservation
right to the lessor and not an obligation on the part of
lessee.

ıe article contains inaccurate statements in divisions
1, 12 and 13 referring to Exhibits 23, 24, 26 and 25 re-
tively, in that the statement occurs that the clause
uires" the exclusive use of certain lessor's machines or
the clause "excludes" use of all but certain lessor's
hines.

Sixth" is misleading in that it fails to call attention
ıe fact that the machines referred to are for operation
different kinds of shoes and creates the wrong infer-
that the clause has a much broader effect than it
d, as a matter of fact, have in any given factory.

(7), Exhibit 23, of the same article, the statement is
e that "this lease does not tie the leased machines to
r than Goodyear machines." It might be inferred
this that there was a tie to *all* Goodyear machines, and
ıerefore misleading. In so far as the lease covers aux-
y machines, the use of such machines is only restricted
Goodyear welt sewing and sole stitching machines on
footwear and to turn sewing machines on turn foot-
r. The auxiliaries are not restricted to use with each
r or with any machines in any other department. In
ar as the lease covers Goodyear turn sewing machines
e is no restriction as to the use, and in so far as the lease
ers Goodyear welt sewing and sole stitching machines
restriction is only to Goodyear sole stitching or Good-
welt sewing machines respectively.

APPENDIX IV.

COMMENTS ON STATEMENTS BY UNITED STATES AS TO THE VARIOUS ACQUISITIONS.

Goddu Sons Metal Fastening Company (Brief for the United States, pp. 62–65).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 3–7.)*

The Brief for the United States says (p. 62) that "The Goddu Company was engaged in *perfecting and manufacturing* nailing machines, slugging machines, tacking machines and standard screw machines—all important metallic fastening machines" (italics ours). This statement is not supported by the record. There is no testimony even suggesting that the Goddu Company was either "perfecting" or "manufacturing" any machines whatever.

The United States further says (p. 62) that the United Company "was putting out machines for doing the work for which the Goddu machines were *adapted*" (italics ours); and in support of the statement Mr. Howard's testimony is cited (R. Vol. 1, p. 42, line 1). What Mr. Howard actually said was:—

> "The United Company was putting out *commercial machines* for doing the work for which the Goddu

(* NOTE.—The record references for the statements made in the following discussions, where not given, will be found in the statements in the Appendix to Brief for Appellees, to which reference is made in connection with each discussion.)

> Company machines were *intended*" (italics ours) (R. Vol. 1, p. 42, lines 1–3).

The record clearly shows that the Goddu machines were in fact not practically *adapted* for doing any work.

After quoting (inaccurately) a portion of the finding of the District Court, the Brief for the United States (pp. 62–63) makes the statement: "In any event, it appeared that the very thing the Goddus were doing was the perfection by all necessary reconstruction of their machines."

There is not the slightest evidence that the Goddu Company was making any effort whatever to perfect or to reconstruct its machines.

The Brief for the United States says (p. 62) that "the Goddu machines, according to Winslow, were not yet in a condition to be placed in the hands of manufacturers for continuous operation 'but they were in a state of development where some of them could have been, without extensive changes, made operative.'"

The context gives an entirely different impression from that which the United States aims to give. Mr. Winslow testified:—

> "Their machines were in a state of development and *none* of them, to the best of my judgment, was in condition to be placed in the hands of manufacturers for continuous operation. As I knew the situation, they were in a state of development where *some* none?] of them could have been, without extensive changes, made operative" (italics ours) (R. Vol. 1, p. 436, lines 28–33).

This quotation is copied verbatim from the District Court record. In the light of the first sentence it seems

obvious that in the second sentence, quoted in part by the United States (p. 62), the reporter substituted *some* for *none*, the word which Mr. Winslow used in the preceding sentence.

The Brief for the United States entirely ignores the uncontroverted testimony of defendants' patent expert, Mr. Howard, who qualified also as a practical expert (R. Vol. 2, pp. 2239–2241) and who spent a week in 1898 in examining the machines of the Goddu Company, to the effect that the Goddu machines were "entirely impracticable." Mr. Howard stated in detail the reasons for his conclusions, and testified that remedying the defects

> "would have involved *entire reconstruction* of the machines, and *the machines so reconstructed would have been entirely different* from the machines as actually built by the Goddu Company" (italics ours) (R. Vol. 2, p. 2099).

It is submitted that the District Court was entirely justified in the finding, characterized in the Brief for the United States (p. 62) as "the *contention* of one of the judges below" (italics ours) which (correctly quoted) reads:—

> "nor is the evidence sufficient for a belief that without reconstruction, radical in character, anyone could have used them as competing machines" (Dodge, J., R. Vol. 1, p. 1140).

The District Court's finding is quoted in full in the Appendix to main brief (p. 6).

The Brief for the United States says (p. 63) that the reason given by Mr. Winslow for this acquisition "was

the disposal of patent litigation to which the United Company had succeeded as *plaintiffs*" (italics theirs). The United States ignores the testimony (Appendix to main brief, p. 4) showing that some time before the United Company was formed a suit had been brought by the McKay Company on Louis Goddu's contracts against Louis Goddu, his sons, and Albert Van Wagenen to compel a transfer of the Goddu Sons' patents to the McKay Company.

Louis Goddu, father of the "Goddu sons," had been employed as an inventor for many years by predecessors of the McKay Shoe Machinery Company; he had invented practically all of the metallic machines of that company and had been paid continuously for his exclusive services. Several years before the United Company was formed Louis Goddu, all his sons, and Albert Van Wagenen all left the employ of the McKay Company and started the Goddu Sons enterprise, and the pending suit charged that they conspired to have Louis Goddu invent metallic machines, communicate such inventions to his sons, permit them to apply for patents and transfer those patents to the Goddu Sons Company. That suit had been vigorously contested and the claims of the McKay Company had been developed and substantiated before the acquisition. The Brief for the United States ignores this litigation and refers only to the infringement litigation. It asserts (p. 63): "The disposal of such litigation could hardly be worth $150,000 to the defendants. The removal of an able competitor might well have been worth that amount." In view, however, of the large amount of litigation shown to have been both existing and prospective, and the very great expense which would undoubtedly have been involved as well as the great amount of time

which would have been required of Mr. Winslow and his associates during the period when the United Company was just getting started, it is submitted that the consideration, for the objects stated, was not unreasonable. Winslow testified that he appreciated the time which would be required and the difficulties which would be encountered in establishing by the pending suit that the Goddu Sons' patents belonged to the United Company. He said he "had had considerable experience in that sort of litigation" and that

> "That arrangement was entered into on my part because of the fact that I very much desired to start the United Company free from all serious litigation" (R. Vol. 1, p. 435, lines 39–41; p. 437, lines 3–7).

The United States lays great stress (pp. 63–64) upon the testimony of Mrs. Converse, the daughter of Albert Van Wagenen (R. Vol. 1, p. 311, lines 32–40; p. 312, lines 1–13), who was associated with Louis Goddu and his sons in the Goddu Sons enterprise and who was one of the defendants in the pending suit which charged a conspiracy, as above explained (*supra*, p. 183).

It should be noted, however, that in the statement which Mrs. Converse testified that Mr. Winslow made he said that the Goddu Company "had no business and no machines . . . they couldn't raise money to go on with the business, and no manufacturers to take them" (Brief for the United States, p. 64).

Mrs. Converse also testified:—

> "He said to me that they hadn't anything, they weren't doing any business, they weren't a factor at all" (R. Vol. 1, p. 312, lines 40–42).

Obviously inconsistent with these statements is Mrs. Converse's testimony that Mr. Winslow said that he bought the Goddu Company to get rid of competition. And Mr. Winslow in his testimony specifically denied that he made the purchase to get rid of any competition, and also expressly denied that he made such a statement to Mrs. Converse. He testified:—

> "*Q.* Did you acquire the Goddu Sons Company for the sake of getting rid of any competition?
>
> "*A.* I did not.
>
> "I never stated to Mrs. Converse that we acquired the Goddu Sons Company for the sake of getting rid of competition" (R. Vol. 1, p. 437, lines 8–12).

With reference to the statement by the United States that Mrs. Converse's testimony was "supported by a copy of a contemporaneous memorandum" (p. 64), she testified that the memorandum was made "*about 1900 or 1901, I think*" (italics ours), and she also testified:—

> "I made memoranda of my conversation with Mr. Winslow while he was out of the room, *which I afterwards destroyed*" (italics ours) (R. Vol. 1, p. 312, lines 30–32; p. 313, lines 13–14).

It is submitted that in the light of Mrs. Converse's complete testimony her statement as to the remark of Mr. Winslow in regard to the purpose of eliminating competition is entitled to no weight; and, as pointed out, Mr. Winslow emphatically denied both that he made any such statement and that he had any such purpose.

The statements in the Brief for the United States (p. 64) that "the Goddu Company ceased to do business" and

that "by this initial acquisition the prospective opportunity of shoe manufacturers to obtain metallic machines elsewhere than from the defendants was removed" (p. 64) are not supported or justified by the record. The Goddu Company did not *cease* to do business because they were not doing any and never had done any. "The prospective opportunity of shoe manufacturers to obtain metallic machines elsewhere than from the defendants" was not removed because there was no such prospective opportunity. The uncontroverted evidence which we have reviewed and which is set forth in more detail in the Appendix (pp. 3–7) shows conclusively that the Goddu machines were entirely unfit for commercial use and that to have adapted them for commercial use would have required entire reconstruction, so radical that if it had been effected the machines would have been entirely different.

We respectfully submit, therefore, that no reason has been shown why this Court should not accept as conclusive the finding of the District Court:—

> "the metallic fastening machines acquired by purchase of a controlling interest in the company were none of them in the hands of users; their then state of development does not appear to have been such as made them capable of commercial use, whatever the merit of the inventive ideas they sought to embody; nor is the evidence sufficient for a belief that without reconstruction, radical in character, anyone could have used them as competing machines" (Dodge, J., R. Vol. 1, p. 1140).

Winkley and Phillips (Brief for the United States, p. 65).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 20–21.)

The Brief for the United States says (p. 65) that the United Company acquired from Winkley and Phillips "their inventions and improvements relating to 'sole leveling machines,'" and further says that defendants' witness Howard "testified that at the time of acquiring the above inventions or improvements the United Company was engaged in putting out sole-leveling machines, but that they were not of the same type as those covered by the inventions and improvements acquired."

The United States aims to give the impression that the only difference between the acquired machine and that which the United Company had before was that they were "*not of the same type*" (italics ours); that, however, they could be used for the same work; and that accordingly the United Company by this transaction acquired a potentially competing machine. With this purpose it has distorted Mr. Howard's testimony.

What Mr. Howard actually said was:—

> "Prior to the acquisition of these patents from Winkley and Phillips the United Company *was not engaged in putting out sole leveling machines for McKay work. It was putting out leveling machines for Goodyear shoes*, known among the trade as the Goodyear automatic sole leveling machine" (italics ours) (R. Vol. 1, p. 48, lines 9–13).

The United States also ignores the testimony which explains the practical reasons why McKay shoes and Good-

year shoes require entirely different kinds of leveling machines, as set forth in the Appendix to main brief (p. 21).

The foregoing, in connection with other facts set forth in the Appendix to main brief (pp. 20–21), shows that by this transaction the United Company was acquiring, not a competing machine, but a machine for performing work which could not be performed by the machine which the United Company had.

Swain-Fuller Manufacturing Company (Brief for the United States, p. 66).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 29–30.)

The Brief for the United States says (p. 66) that Mr. Howard testified that the "Star leveling machine" acquired in this transaction was "used *practically* exclusively on turn shoes" (italics ours) and that "the United Company was manufacturing and putting out a leveling machine, but *he claimed* that the United Company's machine was not adapted for leveling turn shoes" (italics ours). The United States apparently desires to give the impression that the Star leveling machine could be used on other work than turn shoes and also that Mr. Howard merely made a claim that the United Company's machine was not adapted for doing the work of the acquired machine.

What Mr. Howard said was that the Swain-Fuller Company was putting out "the Star leveling machine for turn shoes," that

> "the Star machine *could not be used* with success or with commercial profit on other work" (italics ours) (R. Vol. 1, p. 53, lines 14–16, 21–23),

and that

"At this time the United Company was not putting out turn leveling machines, and *it would be impossible to use any machine that the United Company then had on turn shoes*" (italics ours) (R. Vol. 1, p. 53, lines 19–21).

The United States ignores other testimony to the same effect, for example:—

"The Star machine was a very light machine and was *adapted and used only for leveling turn shoes*, which, owing to the fact that they have but one sole, require and will stand a less degree of pressure than other types of shoes" (italics ours) (Howard, R. Vol. 2, p. 2063, Int. 1533).

Again, the United States refers (p. 66) to Mr. Winslow's testimony that by this transaction the United Company also acquired a "Single sole-molding" machine, but it neglects to quote Mr. Winslow's statement in the next paragraph and on the same page of the record that

"Neither of these machines was in competition with any machines then being made by the United Company" (Defs.' Ex. 231, R. Vol. 5, p. 455).

Carver Cotton Gin Company (Brief for the United States, pp. 66–67).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 68–71.)

The United States says (p. 67) that "Howard testified that among the machines obtained from the Carver Cotton Gin Company were the Acme leveling machine, a vamp skiving machine, and a machine known as the Davis leather-board skiver," and that at the same time "the United

Company was putting out the Goodyear automatic leveler and the Emerson skiving machines, but that the acquired machine did not do the work *in the same way.* Even though this be admitted *the result accomplished was the same"* (italics ours).

The United States clearly intends to have it understood that at the time of this acquisition the United Company had machines which, while they did not do the work in the same way, would accomplish the same results.

This is entirely contrary to the facts. Mr. Howard testified that the United Company had no machines for performing the operations performed by any of these Carver machines.

Accordingly, instead of acquiring competing machines which would accomplish the same results although not in the same way, as alleged by the United States, by this acquisition the United Company was merely extending its line by adding machines which performed operations for which it previously had no machines.

At the end of its discussion of the acquisition of the Carver Cotton Gin Company the United States says (p. 67):—

> "By these three acquisitions, the defendants acquired control of a machine needed in manufacturing all kinds of shoes. The leveling machine used in welt shoes is *now* put out only as an auxiliary machine. (Dft.'s Ex. 231, V, 457.) It can not be obtained for use with welt machinery supplied by any competitor of the defendants. (R. I, 468, l. 34; 544, l. 10.)" (Italics ours.)

The obvious purpose of the United States is to have it understood that by these three acquisitions the defendants ac-

quired control of all the leveling machines and that as a result of these acquisitions the United Company is "now" following the practice of putting out its leveling machine for welt shoes "only as an auxiliary machine."

This is entirely unfair. The leveling machines acquired by these three transactions were all put out by the United Company through its General Department (Defs.' Ex. 228, R. Vol. 5, p. 436) and, therefore, have at all times been offered for sale, although until recently they could also be taken on lease if the manufacturer desired; and the leveling machine for welt shoes has always been put out by the United Company in the same manner that it was always put out by the Goodyear Company, except that the United Company discontinued the initial payments. It should further be noted that the dates of these transactions were, respectively, March 16, 1900, February 2, 1901, and April 30, 1908.

That the United Company did not acquire any monopoly of leveling machines by these three transactions is shown by the lists of machines of competitors furnished for leveling McKay, welt, and turn shoes, which will be found in Defendants' Exhibit 235 (R. Vol. 5, pp. 587, 625, 664).

Seaver Process Lasting Company (Brief for the United States, p. 68).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 19–20.)

The United States alleges (p. 68) that the United Company acquired the business and assets, including Letters Patent, of the Seaver Process Lasting Company "engaged in manufacturing *lasting* machines and *pulling-over*

machines" (italics theirs), and that the Seaver Company was then insolvent. The United States further alleges that "The Seaver Company was the only company putting out lasting machines in 1899, except the Goodyear and Consolidated Companies," that "It had also a pulling over machine; as had the United Company," and that no other pulling-over machine except the United Company's pulling-over machine is now offered by any American manufacturer.

The United States concludes (p. 68): "The result of this acquisition, then, was to remove the final vestige of competition in lasting machines, and to shake off the possibility of competition in pulling over machines."

The United States ignores the testimony showing that the Seaver Company's pulling-over machine was experimental and unsuccessful, but that it embodied inventions indispensable to a successful pulling-over machine and which have always since been embodied in the United Company's pulling-over machines; that the Seaver patents barred the way to further development of the United Company's experimental pulling-over machine upon which hundreds of thousands of dollars had already been spent; and that that was the reason for the purchase.

The Seaver Company's lasting machine infringed two of the United Company's patents, and suits were pending. It was "unable to continue its business or to pay its debts" (P.'s Ex. 75, R. Vol. 3, p. 591). In all respects the machine was inferior to the United Company's lasting machines. Obviously, any competition which the Seaver lasting machine offered or promised was entirely negligible.

The only important fact is that the United Company acquired the valuable inventions which prevented further development of its experimental pulling-over machine.

Corrugated Wire Fastening Company (Brief for the United States, pp. 68–69).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 9–10.)

The United States alleges (p. 69) that the United Company acquired a majority of the capital stock of the Corrugated Wire Fastening Company "engaged in the manufacture and sale of a tacking machine and corrugated wire." It further states that "Howard testified that the United Company had a machine for performing the *same* character of work as the one obtained from the Corrugated Company," but that "the machine was 'out of date'" (italics theirs). The United States says that this is discredited by Howard's further statement that the United Company continued to supply wire and parts for those machines and have parts in stock to-day. In other words, the United States aims to give the impression that the Corrugated Company was competing with the United Company.

But the United States does not fairly state the evidence. Mr. Howard testified that the Corrugated Company had formerly put out a tacking machine, but

> "had not put out any of the machines for some years because it was completely out of date,"

and that

> "there was no longer any demand for the machines, so that no business was done and no business could be done with that machine";

and further that

> "the only business that was left when the Corrugated Company was acquired was the supplying of wire and spare parts for the machine" (R. Vol. 1, p. 42, lines 15–16, 28–33).

The fact that the United Company was still keeping in stock parts for that old machine was simply due to their practice of keeping spare parts on hand for old machines so long as there is one of them in use anywhere.

The business of the Corrugated Company was characterized by the District Court as "making wire and spare parts for use in an obsolete metallic-fastening machine" (Dodge, J., R. Vol. 1, p. 1138).

Globe Sewing Machine Company (Brief for the United States, pp. 69–70).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 30–31.)

The United States says (pp. 69–70) that the Globe Company was manufacturing a welting machine, an outsole stitching machine and an experimental rough rounding machine, and that "by this acquisition a possible competitor in welt method machines was removed." The United States also refers to the fact that the absence of a rough rounder is claimed by defendants to have been a weakness in Plant's line of machines.

The facts were that the Globe Company's machines were not successful; that they all infringed United Company's patents; that infringement suits were pending and that the Globe Company was in debt to an amount over $90,000. The United States omits to mention any of these facts.

The United States also ignores the evidence that the purposes of this transaction were to acquire control of patents which prevented development of one of the United Company's machines, to settle the existing patent litigation and to avoid further patent litigation.

The United States says that Mr. Howard testified that the Globe Company was *manufacturing* its machines. The record shows that that company was not doing any manufacturing and that such machines as they had put out had been built by others under contract. It is entirely clear from the record that the business of the Globe Company was negligible and that its unsuccessful machines did not offer even potential competition.

Ross-Moyer Manufacturing Company (Brief for the United States, pp. 70–71).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 25–28.)

The United States aims to give the impression that the United Company was putting out machines for performing the same operations as the machines of the Ross-Moyer Company and that the Ross-Moyer Company was a competitor.

The fact is that with a single exception the United Company had no machines for doing the same work as the nineteen machines acquired from the Ross-Moyer Company.

The United States omits any reference to evidence showing that the nineteen machines acquired from the Ross-Moyer Company were the foundation of the United Company's General Department and enabled the United Company for the first time to put out machines for performing the work done by the Ross-Moyer machines.

The United States also omits any reference to the evidence showing that an important reason for this transaction was the desire of the United Company, in extending its service

and establishing its own agencies, to do the fair thing by the Ross-Moyer Company which had formerly been agent for the United Company and its predecessor companies in Cincinnati and Chicago. Instead of taking that business away from the Ross-Moyer Company the United Company acquired that company and established its agencies in the Ross-Moyer offices.

The record also shows that an additional reason for this acquisition was to secure for the United Company the services of Mr. Ross to represent its interests in the middle west. After the acquisition Mr. Ross became the company's general agent in the West.

Edwin Theophilus Freeman (Brief for the United States, pp. 71–72).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 13–14.)

The United States obviously desires to have it understood that Freeman was engaged in the business of manufacturing and putting out nailing machines, in competition with the United Company.

The facts are that Freeman had constructed an experimental machine known as a "slugging machine" which "was intended to insert the slugs or ornamental fastenings which are driven around the edge of a top lift of a heel for ornamental and wear resisting purposes" (R. Vol. 1, p. 44, lines 26–29); that Freeman had not put out any machines, had no factory and was doing no business.

One of the United Company's machines infringed one of Freeman's patents, and there was an interference in the Patent Office between applications owned by the respective

parties, while, on the other hand, the Freeman machine infringed the United Company's patents.

The purpose of the acquisition was to clear up these serious patent complications and to enable the United Company to improve its machines without infringing Freeman's patents. Freeman's inventions have since been embodied in three different machines put out by the United Company.

Albert G. Brewer (Brief for the United States, p. 72).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 15–16.)

While in its statement about this transaction the United States sets forth that Brewer's machine was only experimental, that the United Company had an experimental machine which was not commercial, and that Brewer's inventions were subsequently embodied in the United Company's machine, it omits to mention the evidence that the United Company's experimental machine was not successful until after the Brewer invention had been embodied in it and that the Brewer mechanism was much superior to that which the United Company was using before.

That no potential competition was offered by the Brewer machine is shown by the fact that Brewer's experimental machine infringed fourteen claims of a broad patent owned by the United Company.

American Sole Laying Machine Company (Brief for the United States, pp. 73–74).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 38–40.)

This transaction took place after that with the Boot & Shoe Sole Laying Company, although the United States discusses it first.

The United States sets forth (pp. 73–74) that the American Company was engaged in putting out sole laying machines and that Howard testified that "the United Company was engaged in manufacturing and putting out machines for laying the soles of boots and shoes, although he claims that the United Company's machines were inferior to those of the American Sole Laying Company."

The United States evidently wishes it to be understood that the object of this transaction was to remove competition.

The United States omits any reference to the evidence that the United Company was then putting out a sole laying machine which operated upon only one shoe at a time, while the American machine was a double form machine which operated upon two shoes, rights and lefts, at the same time, and that the American Company had patent rights which prevented the United Company from making a double machine which would be twice as fast as the machine it then had.

The American Company's patents also prevented the United Company from adopting a satisfactory pad for its sole laying machine and further prevented necessary development of the Atlas leveling machine.

Immediately after this acquisition the United Company combined its sole laying machine and the American machine, making a better machine than either, which operates twice as fast as its old machine.

Boot & Shoe Sole Laying Company (Brief for the United States, p. 74).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 8–9.)

This transaction preceded the American Company transaction last discussed and it took place in June, 1899, not in May, 1901, as stated by the United States.

The United States sets forth (p. 74) that the Boot & Shoe Sole Laying Company was engaged in manufacturing and putting out a sole laying machine and says (p. 74) that Howard testified that "the United Company was then engaged in putting out a machine for doing *similar* work, although he claims that the United's machine was inferior to the machine acquired" (italics theirs). Apparently the United States would give the impression that there was competition between the sole laying machines of these companies and that the object of this transaction was to remove that competition.

The facts are that the United Company's machine, which was of a different type, was very unsatisfactory because it was continually breaking down and because it was only adapted for large factories. It was discarded after this acquisition, and the machine of the Boot & Shoe Sole Laying Company was thereafter put out by the United Company as its standard commercial machine.

A further reason for this acquisition was that the United Company wished to use a pressing form which it had produced, but that form infringed a patent owned by the Boot & Shoe Sole Laying Company. After the acquisition it used that form in connection with the acquired machine.

The record further shows that the business of the Boot &

Shoe Sole Laying Company was very small, and that such machines as it put out were manufactured for it by others.

Accordingly it is clear that the United Company made this acquisition to obtain a machine for performing an operation for which it did not have a satisfactory machine and to enable it to use an improved mechanism without infringement,—and for no other purpose.

J. K. Krieg & Company (Brief for the United States, pp. 74-75).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 46–48.)

The United States says (p. 75) that "Howard testified that the Krieg Company was engaged in putting out a heel-seat rounding machine, a Louis heel-scarfing machine, and two or three types of embossing machines; that the United Company at that time was putting out a heel-seat rounder and a scarfing machine *of different types;* that the United Company was also engaged in putting out embossing machines" (italics ours). The United States adds that Winslow testified "that the Krieg Company had also been agent for some of the old companies that became a part of the United."

This statement by the United States is misleading in its plain implication that the principal business of the Krieg Company was putting out the three machines named and in its characterization of the United Company's machines as merely "of different types."

The facts are that J. K. Krieg & Company had been local agents for parts and supplies for the United Company's machines except the Goodyear machines, having previously been agents for the Consolidated and the McKay Companies, and their business in the two or three machines

which they had was very small and merely incidental to their business as agents for the United Company.

The important reason for this transaction was that in following its policy of greatly improving its service the United Company desired to establish its own agency in New York and in so doing to treat the Krieg Company fairly. This is explained in the discussion of the Ross-Moyer Company (*supra*, pp. 195–196) and more fully in the Appendix to main brief, pages 26–27.

As to the heel seat rounder and scarfing machine "of different types," which the United States says the United Company was putting out, the heel seat rounder was merely an edge trimmer with a larger cutter, which wasted leather. The Krieg machine, specially designed for heel seat rounding, saved the pieces of leather which it removed and thus effected a considerable economy. The United Company "had no machine of that kind before" (R. Vol. 1, p. 93, lines 7–8).

The Louis heel scarfing machine of the Krieg Company and the spring-heel scarfing machine of the United Company were specially constructed for entirely different uses, and neither could possibly be used for the work of the other (R. Vol. 1, p. 60, lines 35–41; p. 93, lines 11–21).

The Krieg embossing machines were simple machines for ornamenting upper stock or stamping the inside of the upper of a shoe. They were of no importance, and the real effect of this transaction, as regards the merely incidental acquisition of machines, was clearly the acquiring of machines for doing work for which the United Company had no machines.

Joseph P. Curtis (Brief for the United States, pp. 75–76).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 48–49.)

The United States sets forth that by this transaction the United Company acquired the business of Curtis relating to cementing machines and says that Howard testified that the United Company was putting out a cementing machine, but for performing an entirely different operation.

The facts are that Curtis was not engaged in business, and that the United Company acquired from him nothing but certain patent rights relating to a machine for cementing a piece of fabric to an upper. The United Company had no machine which could be used for that work, nor could the Curtis machine be used for the same work as that performed by any machine of the United Company.

The George A. Smith Machinery Company (Brief for the United States, p. 76).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 42–43.)

The United States says (p. 76) that "Howard testified that the Smith Company at the time of its acquisition was putting out a spring-heel scarfing machine, and that at the time the United Company was not putting out a machine for doing similar work. He further testified that the Smith Company had also been acting as agent prior to 1899, for certain of the companies that made up the United Company."

This statement alone shows that this transaction was perfectly normal and lawful, but even at that the state-

ment does not give a correct picture of the transaction. The Smith Company had a store in Philadelphia; it employed one man repairing second-hand machinery; and the one machine which it put out, the Boss spring-heel scarfing machine, was manufactured for it in outside machine shops. The United Company had no machine for doing the work which that machine of the Smith Company would do.

Also Smith, like the Ross-Moyer and Krieg Companies, had formerly been agent for the United Company, and the real purpose of the transaction was to make a fair arrangement with him in connection with extending the United Company's service and establishing its own agency in Philadelphia, as is fully explained in the Appendix to main brief, pages 42–43. The acquisition of the one machine was merely incidental to that arrangement.

Arnold Machine & Supply Company (William B. Arnold (Brief for the United States, p. 77).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 55–56.)

The United States sets forth (p. 77) that the Arnold Company was manufacturing and putting out cementing machines and says that Howard testified that "the United Company was engaged in putting out *cementing* machines, but he claimed that they were not adapted for work similar to that of the Arnold machine" (italics theirs). This statement is inadequate and is obviously intended to give a wrong impression. Mr. Howard testified that the Arnold machine had to be specially constructed for its particular use and that it was not useful for any other

operation, while the United Company had no machine which could possibly be used for performing the operation of the Arnold machine (R. Vol. 1, p. 64, lines 43–46; p. 65, lines 7–14).

By this transaction, accordingly, the United Company was merely entering a new field.

The United States says (p. 77) that Arnold made a covenant that he would convey to the United Company "any inventions relating to shoe machinery he might make." This is a gross misstatement. The covenant was limited to "cementing machinery or devices," that is, the subject-matter of the transaction, and it was also limited to a period of fifteen years (P.'s Ex. 113, R. Vol. 4, pp. 816, 817).

Booth Brothers (Brief for the United States, pp. 77–79).

(The facts of these transactions are set forth in the Appendix to main brief, pp. 57–58, 63–65.)

The United States has discussed under this heading two separate transactions which are set forth in the petition (R. Vol. 1, pp. 1015, 1016) as separate transactions.

(1) The United States sets forth that in October, 1904, the United Company acquired the business of Booth Brothers relating to perforating machines. (The consideration is stated (p. 77) as $24,000 and a royalty; in fact, it was $2,400 and a royalty.)

The United States says (p. 78) that "Howard testified that the United Company was engaged in putting out a *perforating* machine which could be used for the same operation as the Booth machines, although he claimed that it was not *intended* for the same operation" (italics

theirs). This is a distorted statement of Mr. Howard's testimony. He said that the United Company's machine was a gang machine adapted for perforating tips and that it could not be used to do the work done by the Booth machine, which was a single-tool, step-by-step machine, adapted and used for perforating the edges of vamps (R. Vol. 1, p. 65, lines 26–42).

It cannot be questioned that by this transaction the United Company was merely entering an entirely new field by acquiring a machine for performing an operation for which it had no machine before.

(2) The United States sets forth that in November, 1907, the United Company acquired the entire remaining business of Booth Brothers and says (pp. 78–79) that Howard testified that the United Company then acquired "a fudge edge-making machine, a *wheeling* machine, a stitch burnishing machine, an upper-shaping machine and a *beating* machine" (italics theirs), and that "he further testified that the United Company at that time had a *wheeling* machine and an upper-beating [beading] machine" (italics theirs).

This statement is obviously intended to convey the impression that the United Company was competing with Booth Brothers in respect to two of the four machines acquired, namely, wheeling machine and upper beading machine. But the United States has told only a part of the story. Mr. Howard testified that the Booth wheeling machine was used on Goodyear work and that the United Company's machine was adapted only for use on McKay sewed shoes with a mock welt (R. Vol. 1, p. 84, lines 24–29). Mr. Howard further testified that the United Company's upper beading machine "was satisfactory on heavy work,

but not for light or medium work," and that the Booth Brothers machine "was a much better machine for light work" (R. Vol. 1, p. 69, lines 12–13; p. 84, lines 42–44). Mr. Howard also testified that the United Company had no machines for doing the work of the other two Booth machines (R. Vol. 1, p. 69, lines 13–14).

Accordingly by this transaction the United Company merely entered a new field by acquiring machines for performing operations for which it previously had no machines.

Fred H. Perry (Brief for the United States, p. 79).

(The facts of this transaction are set forth in the Appendix to main brief, p. 49.)

The United States sets forth (p. 79) that Perry made an agreement by which he "agreed to convey to that company all inventions which he should make relating to shoe machinery for a period of five years from the termination of his employment by the United Company."

The United States fails to explain that Perry had previously been employed by the United Company as a machinist, that at his own request he was given the opportunity to enter the inventive department of the company, and that the agreement made with him was merely an employment contract with an inventor.

That covenants to assign future inventions in contracts employing inventors are normal and legal is established by the decisions discussed on pages 472–474 of the Brief for Appellees.

Boston Shoe Tool Company (Brief for the United States, pp. 79–80).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 12–13.)

The United States alleges (p. 79) that the United Company acquired the business of Timothy A. Bresnahan, "engaged in manufacturing and putting out machines, tools, and appliances used in the manufacture of shoes, together with the entire capital stock of the Boston Shoe Tool Company."

The failure of the United States to indicate the nature of the business in which the Boston Shoe Tool Company was engaged is significant. It was, in fact, manufacturing and selling an edge trimming machine and an edge setter, both machines of General Department type, and it was making and selling cutters for use on the edge trimming machine and edge setting irons for use on the edge setter. At this time the United Company was not manufacturing any edge cutters or any edge setting irons, and it had no machines for doing the work of either machine acquired from the Boston Shoe Tool Company.

It is plain that by this acquisition the United Company was merely enlarging its field.

Globe Shoe Tool Company (Brief for the United States, pp. 80–81).

(The facts of this transaction are set forth in the Appendix to main brief, p. 17).

The United States sets forth (p. 80) that the Globe Company was "engaged in manufacturing and putting out edge cutters and irons used in the manufacture of shoes."

It is true, as stated by the United States, that the Boston Shoe Tool Company, previously acquired, was also putting out "edge cutters and irons."

But the United States does not refer to other important testimony regarding this transaction. The record shows that this concern was acquired at the earnest solicitation of the partners and because the United Company desired to obtain the services of one of the partners, Mr. Loomer, as the head of its department for manufacturing such tools. Plaintiff's Exhibit 72 (R. Vol. 3, p. 581) recites that employment by Loomer had been agreed upon "as an inducement to the United Company to take over said business and to purchase the property and assets of said partnership."

Also, the Globe Company was infringing two of the United Company's patents.

It is further important to note that after this acquisition very large reductions were made by the United Company in the prices of tools such as the Globe Company was making. Details are stated on page 17 of the Appendix to main brief.

In respect to the covenants in the agreements with Loomer and Perkins which the United States sets forth, it is important to note that *both* Loomer and Perkins entered the United Company's employ, and that *no covenants* were taken from the other three partners, who did not enter the employ of the United Company.

John Ritchie, and John Ritchie Company (Brief for the United States, pp. 81–82).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 18–19.)

The United States alleges (p. 81) that the United Company acquired "all the business of John Ritchie, and John Ritchie Company, a corporation, relating to the manufacture of standard screw machines, slugging machines, tacking machines," etc.

It is obviously the intention of the United States to give the impression that John Ritchie and John Ritchie Company were engaged in the *manufacture* of metallic fastening machines. That is not the fact.

The facts shown by the record are: The Ritchie Company was not engaged in *manufacturing machines* but was engaged in the manufacture of *boots and shoes*. It had one machine for the manufacture of *wire*. The metallic fastening machines which are referred to in the agreement relating to this transaction were being *used* by the Ritchie Company, and they were immediately leased back to them by the United Company (R. Vol. 1, p. 46, lines 15–30; P.'s. Ex. 74, Vol. 3, pp. 586, 587, 589, 590; Defs.' Ex. 231, Vol. 5, p. 475).

Again, the United States alleges (pp. 81–82) that "the purpose of defendants to force shoe manufacturers to deal exclusively with the United Company" is well illustrated by Mr. Winslow in Defendants' Exhibit 231 (R Vol. 5, p. 475) where it states that the reason for this transaction "was to prevent manufacturers who held Metallic Machinery under lease from the United Company (and who had agreed to purchase their metallic fastening material from the United Company), violating their leases and contracts by purchasing material from Ritchie."

The United States does not refer to the evidence that the John Ritchie Company had one machine for making standard screw wire and that they were selling wire to

lessees of the United Company's metallic machines who had agreed to buy fastening material from the United Company in payment of royalty for the use of the machines; that in such cases of course the United Company got no return for the use of its machine; and that the purpose of the transaction was to remove that dishonest situation.

It should further be noted that the United States has not raised any question in this suit as to the propriety or legality of the provisions of the metallic leases providing for payment for use of the machines through purchase of fastening material.

Stanley Manufacturing Company (Brief for the United States, pp. 82–83).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 21–23.)

On the face of the statement by the United States, the United Company simply acquired certain machines, parts and supplies which the Stanley Company, engaged in business at Lawrence, Massachusetts, had on hand at Frankfurt, Germany.

The United States omits any reference to testimony showing that the United Company had no machines for doing the work of any one of the miscellaneous General Department machines which the Stanley Company was putting out and that the agreement amounted simply to an agency contract.

The United States quotes at length the covenant made by the Stanley Company not to compete in foreign countries, but it omits to refer to the covenants in the same agreement (P.'s Ex. 78, R. Vol. 3, pp. 621–622) which provided:—

(1) "that the said United Company shall use its best endeavors to sell in foreign countries, machines made by the said Stanley Company . . .;"

(2) that in case the United Company should discontinue the purchase from the Stanley Company and sale

> "of any of the machines, parts or supplies made by the said Stanley Company . . . the said Stanley Company may then and thereafter sell such machines, parts or supplies thus discontinued to any and all persons without respect to the country to which they are to be sent;"

and

(3) "That the said Stanley Company may advertise and create and maintain in all proper business ways a demand for its machines in any and all countries in the world."

The United States (p. 83) characterizes as "a somewhat similar transaction" the agreement with W. J. Young. This transaction was similar only in the respect that it related solely to business in foreign countries. The facts of the Young transaction are set forth in full on pages 40–42 of the Appendix to main brief.

Bay State International Shoe Machinery Company (Brief for the United States, p. 83).

(The facts of this transaction are set forth in the Appendix to main brief, p. 28.)

The United States sets forth that the United Company acquired for its French and German companies "the property and good will for the Continent of Europe of the Bay

State International Shoe Machinery Company" for $25,000 in preferred stock of the United Company. It further states that Howard testified that the Bay State Company "'had a welter and stitcher and I think *a rough rounder*' but that he did not know whether it 'was shipping machinery from the United States to foreign countries'" (italics theirs).

The United States omits to state that after further investigation Mr. Howard testified that the machines of the Bay State Company were manufactured in Montreal, Canada; none whatever in this country. Other important facts, as shown by the record, which the United States does not mention, are that the machines of the Bay State Company were very different in construction from and distinctly inferior to the United Company's machines; that it had done business only in England and had put out only ten sets of its machines in England; that its machines infringed the United Company's English patents; and that the purchase was made at the earnest solicitation of the people interested in the company, who were also customers of the United Company, as the cheapest way to dispose of the litigation.

George W. Emerson & Company (Brief for the United States, pp. 83–84).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 43–45.)

The United States says (p. 84) that Howard testified that the United Company acquired from the Emerson Company a power spring-heel scarfer and a heel burnishing machine and that at that time the United Company

was "putting out a heel-burnishing machine but of a different type from that put out by the Emerson Company, and that the United Company was also putting out a spring-heel scarfing machine to be operated by hand."

The United States omits to make any reference to the following important facts:—

The principal business of the Emerson Company was manufacturing and supplying lasts and forms to be used for sole leveling machines of the "Giant" type, and the United Company was developing a leveling machine on which lasts and forms were used.

The Emerson Company had a tip scourer used in repairing the tips of patent leather shoes. The United Company had no tip scourer (R. Vol. 1, p. 58, lines 24–25; p. 95, lines 1–3).

The Emerson heel burnishing machine was of a different type and performed its operation in an entirely different way from the United Company's machine. Some manufacturers insisted upon one type of machine and others upon the other type. The Emerson Company's machine infringed numerous important claims in two patents controlled by the United Company.

An important object of the transaction was to obtain the services of William R. Sampson, the active man in the Emerson concern.

Another object was to settle the pending litigation.

Joseph W. Leary (Brief for the United States, pp. 84–85).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 49–50.)

The United States sets forth that the United Company ac-

quired from Joseph W. Leary, of Lynn, Massachusetts, "his business of manufacturing and dealing in shoe machinery."

This statement is very misleading. Leary was doing no manufacturing of any kind. He employed no men and had no factory. He was principally engaged in retailing cements and blackings, and he also dealt in a very small way in second-hand sewing machines for sewing together the parts of shoe uppers.

Leary was also local agent for the United Company's Amazeen skiving machine. He was extremely capable and successful as salesman, and the United Company desired to obtain his services in a wider field. He stated that he would enter its employ if the company would buy his stock of cement and second-hand machinery, and he was paid $3,052 for the small stock that he had.

The United States alleges (p. 85) that Leary "agreed to convey to the United Company all improvements which he should make within 10 years from the date of the termination of his employment with the United Company."

In fact, Leary made no covenant whatever to assign any future improvements. On the contrary, the Leary agreement (P.'s Ex. 108, R. Vol. 4, p. 768) specifically provided that Leary should "not be required to disclose his secret formulæ for making cements, blackings or stains."

Zachary Taylor French (Brief for the United States, pp. 85–86).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 53–54.)

The United States alleges that the United Company "acquired the business of Zachary Taylor French, Boston,

Mass., engaged in the development of machines designed and used in the manufacture of boots and shoes."

The testimony to which the United States then refers shows that the United Company did not acquire any "*business*" from French but that the transaction was merely an agreement commuting obligations to pay royalties which would become due under various existing contracts.

The United States omits to explain that these contracts had all been made with the Goodyear Company prior to 1899 and that the agreement was made because French desired to have his royalty contracts placed upon a definite basis of annual payment.

Kimball & Hadley (Brief for the United States, pp. 86–88).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 54–55.)

The United States sets forth that Kimball & Hadley were "engaged in manufacturing and marketing *awls*, *needles*, drivers, supplies, etc." (italics theirs) and states (p. 86) that Howard testified that "the United Company was engaged in manufacturing and putting out *awls and needles*, except curved needles for the Goodyear sewing machine, and that the United Company was making awls for the use of its own machines" (italics theirs).

This statement by the United States is inaccurate and misleading. Howard did not testify that the United Company was putting out needles. He explained that the awls that it was making were for its metallic machines and were "straight awls, which make a straight hole for a nail, and bear no resemblance to the curved awl used in a welter or stitcher" (R. Vol. 1, p. 64, lines 18–20).

The United States further alleges that Kimball & Hadley were forced to sell out by reason of the United Company's leasing system and that its lessees were obliged by the terms of their leases to take needles from the United Company. Neither of these statements is supported by the record and both are untrue.

(1) In the suit brought by the United Company to enforce the covenants made by Kimball & Hadley not to engage in similar business within fifteen years the Supreme Court of Massachusetts approved the finding of the lower court "that they made the sale voluntarily" (*United Shoe Machinery Co.* v. *Kimball et al.*, 193 Mass. 351, 354, 357).

(2) Lessees of the United Company's Goodyear machines are *not* required by the terms of their leases to take the needles from the United Company. Needles are not machine parts.

Hadley's testimony as to statements made to him by shoe manufacturers that they could not buy his needles because if they did the United Company would take out its machines was specifically denied by all the manufacturers or employees in the factories which Hadley named who had anything to do with buying needles, as is fully set forth in the Appendix to main brief (pp. 111–113).

In its statement that Kimball & Hadley again engaged in the awl and needle business and that "the United Company brought suit to enjoin them, upon the ground that they were violating their agreement of June 11, 1904," the United States neglects to state that the Supreme Court of Massachusetts held that the covenant was reasonable and valid and approved the granting of an injunction enforcing it (*United Shoe Machinery Co.* v. *Kimball et al.*, supra).

Leopold J. Courteau (Brief for the United States, pp. 88–89).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 56–57.)

On the face of it the statement by the United States (p. 88) that the United Company acquired from Courteau "all his inventions and devices, including letters patent, relating to machines and mechanisms for holding the linings of shoes during the process of pasting the outer leather to the lining" shows that that transaction is of no importance in this suit.

It should, however, be pointed out, first, that the statement is erroneous in saying that the United Company acquired "devices." The United Company did not acquire any devices; it acquired merely an invention. Second, the United States omits to refer to the testimony showing that the United Company had no machine for performing this operation.

Brockton Supply Company (Brief for the United States, p. 89).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 58–59.)

In its statement regarding the tack pulling machine which was acquired from this concern the United States says (p. 89) that "Howard testified that at the time of acquiring the business of the Brockton Supply Company the United Company was engaged in developing a machine for pulling lasting tacks, but that none had been put out."

The United States omits to refer to testimony showing that the United Company's experimental machine infringed a patent of the Brockton Supply Company and that the

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Brockton Company's machine infringed the United Company's patent applications.

Zotique Beaudry (Brief for the United States, pp. 89–90).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 62–63.)

The United States sets forth (pp. 89–90) that the United Company acquired from Beaudry his inventions and improvements relating to machines for burnishing and finishing the heels of shoes and that Howard testified that at this time "the United Company *had* a heel burnishing machine" (italics theirs).

The United States omits to refer to testimony showing that Beaudry's business was not acquired and that all the United Company did acquire was his experimental heel burnishing machine and the patents on that machine; that the acquisition was made because it was believed that the Beaudry inventions, which embodied an entirely new idea, would greatly improve the United Company's machines; and that Beaudry's machine infringed many claims of one of the United Company's patents.

The statement by the United States (p. 89) that Beaudry made a covenant "that all inventions which he should thereafter make should be disclosed" is not supported by the record. That covenant was specifically limited to "heel finishing machinery, methods or devices," the subject-matter of the transaction (P.'s Ex. 120, R. Vol. 4, pp. 850, 853, 854).

Richardson Shoe Machinery Company (Brief for the United States, pp. 90–91).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 65–68.)

The United States sets forth that the Richardson Company was manufacturing and putting out McKay sewing machines and clicking machines and it says that Howard testified that the United Company was then manufacturing and putting out McKay sewing machines.

The United States omits to refer to testimony showing that a very important feature of the United Company's McKay sewing machine infringed one of the Richardson Company's patents; that the Richardson machine was a great deal better than the United Company's; that it was believed, and it eventually proved, that a better machine than either could be constructed by using inventions owned by both companies; and that improvements broadly claimed in two Richardson patents are embodied in the United Company's new Model M outsole stitcher.

The allegation of the United States that the Richardson Company was also manufacturing and putting out clicking machines is not supported by the record.

Harry L. Rice and Fred LaChapelle (Brief for the United States, pp. 91–92).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 71–72.)

The United States omits to refer to any testimony showing that the Rice and LaChapelle welting machine, embodying the inventions which were acquired, was only experi-

mental and far from being commercial, and that it was believed that these improvements would not only strengthen the inseam of a welt shoe, but would effect substantial economies.

In the statement by the United States of the covenant not to compete, which was made by Rice and LaChapelle, the United States omits to state that the covenant was limited to a period of ten years.

The Wentworth Company (Brief for the United States, pp. 92–93).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 73–75.)

The United States sets forth that by this transaction the United Company acquired a machine for beating heel seats and a shank sticking machine. It says (p. 93) that Howard testified "that the United Company at that time was manufacturing a machine for beating heel seats, and that the United was experimenting with the shank sticking machine."

The United States omits to refer to testimony showing that the United Company's machine for beating heel seats was similar only in name, that the two machines operated in entirely different ways; that the United Company's machine was discarded after this acquisition; that the patent on the Wentworth shank sticking machine prevented the United Company from developing a machine; and that the Wentworth shank sticking machine infringed one of the United Company's patents.

That the Wentworth heel seat beating machine could not possibly offer any competition is shown by the fact that it infringed many claims of two of the United Com-

pany's patents; that those claims had been held to be valid and infringed; and that they covered indispensable features of the Wentworth machine so that the Wentworth Company could no longer put out the machine.

Adam H. Prenzel (Brief for the United States, pp. 93–94).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 75–76.)

The United States sets forth (p. 93) that the United Company acquired from Prenzel his inventions and patents "relating to certain machines used in the manufacture of turn shoes."

Important facts to which the United States fails to refer are that Prenzel, who was a shoe manufacturer, had made valuable inventions relating to turn shoes and special machines for making them and that the United Company had no such machines.

M. V. Bresnahan & Company (Brief for the United States, pp. 94–95).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 77–78.)

The United States says that the testimony shows that by this purchase the United Company acquired an experimental lasting machine and a heel burnishing machine and that the United Company was then putting out lasting machines and heel burnishing machines.

The United States does not refer to testimony showing that the United Company's machines would not accomplish the same results as the Bresnahan machines and that there was a great amount of pending litigation, largely infringement suits, between Bresnahan and the United Company in

some of which Bresnahan was defendant and in others the United Company. The agreement for purchase specifically discharged the United Company from all claims and demands covered by the suits which had been brought against it (P.'s Ex. 144, R. Vol. 4, p. 1058).

With reference to the statement by the United States (p. 95) that the schedule attached to the agreement "gives a list of many different machines together with supplies acquired from the Bresnahan Company," it should be noted that the machines are nearly all machine-shop machines and that the few shoe machines named, one or two of a kind, are obviously second-hand machines such as dealers in shoe machinery usually have on hand.

Charles P. Stanbon & Company (Brief for the United States, p. 95).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 78–81.)

The United States says (p. 95) that Howard testified that the United Company acquired from Stanbon "a channel-cementing machine, a folding machine, perforating machine and a channel-opening machine, and that the United Company at that time *was* putting out an inferior channel-cementing machine and a perforating machine" (italics theirs).

The United States omits to refer to testimony showing that the United Company's channel cementing machine was inferior *because* the United Company had been obliged to take off improvements which infringed Stanbon's patents; that the United Company's perforating machine and the Stanbon machine are used in distinct and different fields, and that the Stanbon machine would do work which the United Company's machine could not do.

In the Supreme Court of the United States.

OCTOBER TERM, 1916.

UNITED STATES OF AMERICA, APPELLANT,
v.
UNITED SHOE MACHINERY COMPANY ET AL. } No. 545.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

MEMORANDUM.

A more thorough examination of appellee's supplemental brief, a document of 222 pages, discloses that substantially all the criticisms made therein fall under two heads: (*a*) our interpretation of the tying clauses of the leases, and (*b*) our construction of the testimony. Our brief is supported by detailed references to the record. It is almost impossible to aid the court further in that regard without disobeying its admonition to avoid any further argument.

For example: The defendants challenge the statement that the United Company will not permit a lessee to have a part of his machines on "independent leases" and part of them on "restricted leases." (Our brief, p. 176, Dfts. Supp. Brief, pp. 28, 29.) Our statement is predicated upon the direct testimony of Mr. Winslow (I, 443, line 2), and defendants,

though contending that Mr. Winslow did not mean what he said, point to no explanation or qualification of his testimony as it appears in the record. They attempt to support their contention by an intricate statement of what the defendants could do within the limits of their leasing system.

The question, however, is not what they could do, but what they actually do. As to that, Mr. Winslow's statement is perfectly clear. And the position taken by him appears to be in complete harmony with what the record shows as to the practice of defendants in this respect. (Record I, 180, 181, 217, 873.)

The validity of some of the specific criticisms of defendants may, however, be easily determined.

On page 126 of their brief they assert that we were wrong in saying that Plant told Winslow on the day prior to the purchase of his property that he expected the western manufacturers in Boston; and follow it with a statement that "there is not the slightest intimation, however, that Plant then told Winslow that any negotiations were pending for a sale to the western manufacturers." But in their quotation from Winslow's testimony on the same page the defendants replace with asterisks the words which show we were right and they are wrong; also that the trial judge, whose decision is quoted by the defendants on their page 127, was wrong. (See I, 488, lines 18–23.)

On pages 111–114 it is suggested that we have suppressed the fact that some of the machines acquired after the combination did not compete with machines of the defendants, and that we do not call attention

to certain claims as to patent infringements. We invite the Court's attention to page 96 of our brief where these matters are discussed.

On page 117 the defendants say, without referring to the record, that after the installation of the Plant machines, the Plant Shoe Company's profits were reduced one-half. They do not point out that the record (I, 778, lines 6–23) shows that this was said only of the year immediately following that installation, and that in that year $400,000 was paid for machinery, apparently out of earnings, as there was no surplus account to which the payment was charged. (I, 778, line 22.)

Defendants restate on page 150 certain figures as to McKay sewing machines. These are figures of 1909. It has been made clear that our statement (brief, pp. 124, 125) is that they acquired control of this machine in 1910. As to the alleged competition in 1911, we have elsewhere called attention to the testimony of Maloy (I, 301, lines 26–30), Bulmer (I, 908, line 28), Hall (I, 953, lines 21, 32–34), Spencer (I, 884, line 41) and others as to the facts with respect to this alleged competition by the concerns named in their list. See also our brief, pages 301, 302.

In this connection reference was made by us in passing to the effect of the defendants' leasing system in strengthening the defendants' control of this machine. (Our brief, p. 125.) This incidental reference is severely criticized by the defendants. The statement of what we believe to be its justification would require too elaborate an analysis of various

clauses of defendants' leases to be attempted here under the restrictions placed upon us by the court. But even if this criticism were valid, it would be immaterial so far as the merits of this case are concerned, in view of the demonstrated fact that the McKay machine is controlled by the United Company.

Defendants repeat (p. 179) the statement of their main brief that the additional machines clause had been abandoned as early as 1907. We call attention to Exhibit 34, which Donham testified (I, 11, lines 24–28) is the *current* form of lease for metallic machines. In paragraph 3 (III, p. 317) will be found the additional machines clause word for word as it appears in our brief at page 150.

It is obviously impossible to deal with all the criticisms of the defendants without expanding this statement nearly to the limits of our original brief and without disregarding the expressed desire of the court. But we venture to think that the table which we print below will be of assistance to the court in finding in the different leases therein referred to the tying clauses which are the subject of discussion, and that examination of these clauses will settle any questions which may arise as to the proper interpretation and effect of the challenged provisions of the defendants' leasing system.

Table giving paragraphs in which the tying clauses appear in the lease specimens referred to in Appendix C of our brief; also in Exhibit 170.

Lease form.	Exhibit.	Additional machinery clause.	Paragraph.	Exclusive-use clause.	Paragraph.	Prohibitive clause.	Paragraph.	Right to terminate clause.	Paragraph.	Full-capacity clause.	Paragraph.	Remarks.
Lasting	14			Yes	7			Yes	8	Yes	4	
Lasting	15			Yes	7	Yes	4	Yes	8	Yes	4	
Lasting, McKay	16			Yes	7	Yes	4	Yes	8	Yes	4	
Lasting	17			Yes	7			Yes	8	Yes	4	
Lasting, Ideal	18			Yes	7	Yes	4	Yes	8	Yes	4	
Lasting, Chase	19			Yes	7	Yes	4	Yes	8	Yes	4	
Lasting, McKay-Copeland	20			Yes	7	Yes	4	Yes	8	Yes	4	
Lasting, No. 5	21			Yes	8	Yes	5	Yes	9	Yes	5	
Lasting, No. 5	22			Yes	7			Yes	8	Yes	4	
Goodyear	23			Yes	7	Yes	4	Yes	8			
Goodyear	24			Yes	8	Yes	5	Yes	9	Yes	5	
Auxiliaries	25			Yes	9	Yes	5	Yes	10			
Full set, init. pay	26			Yes	7	Yes	4	Yes	8			
Heeling	27	Yes	3					Yes	6	Yes	3	
Heeling	28			Yes	10	Yes	5	Yes	11	Yes	5	
Metallic	29	Yes	3					Yes	6	Yes	3	
Metallic	30	Yes	3			Yes	3	Yes	6	Yes	3	
Metallic	31	Yes	6					Yes	7	Yes	6	
Metallic	32	Yes	3					Yes	7	Yes	3	
Metallic	33	Yes	3					Yes	6	Yes	3	
Metallic	34	Yes	3			Yes	3	Yes	7	Yes	3	Current form.
Standard screw	35	Yes	3			Yes	2	Yes	7	Yes	2	
Pulling over	36	Yes	4			Yes	4	Yes	7	Yes	4	

Table giving paragraphs in which the tying clauses appear in the lease specimens referred to in Appendix C of our brief; also in Exhibit 170—Continued.

Lease form.	Exhibit.	Additional machinery clause.	Paragraph.	Exclusive-use clause.	Paragraph.	Prohibitive clause.	Paragraph.	Right to terminate clause.	Paragraph.	Full-capacity clause.	Paragraph.	Remarks.
Pulling over	37	Yes	5	Yes	9	Yes	6	Yes	10	Yes	5	
Pulling over	38			Yes	8	Yes	5	Yes	9	Yes	5	
Pulling over	39			Yes	8	Yes	5	Yes	9	Yes	4	
Gen'l dept	40					Yes	4	Yes	7			See note.
Gen'l dept	41					Yes	5	Yes	9			
Eyeletting	42							Yes	7	Yes	4	
Eyeletting	43					Yes	5	Yes	8	Yes	5	
Clicking	44			Yes	9			Yes	10	Yes	5	Extra charge.
Pegging	45			Yes	8	Yes	5	Yes	8	Yes	5	
Pegging	46			Yes	8			Yes	9	Yes	5	
McKay	170					Yes	4	Yes	7			
Total	34	10		20		23		34		28		

NOTE.—Exclusive use or additional machinery clause in all leases of *bottoming* machines except McKay sewing machines (Ex. 170).
Donham describes the character of the various leases and the differences between them (I, 5–15).
Leases without prohibitive clauses are the so-called "independent" leases.

Our general contention with respect to the leases is:

That the United Company, having, lawfully or unlawfully, it matters not, acquired by combination, development, and subsequent acquisition control of all clicking machines, all eyeleting machines, all pulling-over machines, and about 96 per cent of all bottoming machines, has adopted a system of leases which, whether entirely original with them or not, excludes other shoe machinery manufacturers from the trade by compelling, or inducing as defendants say, substantially all shoe manufacturers, as a condition of obtaining necessary machines of defendants, to agree—for such is the necessary effect and manifest purpose of the tying clauses, no matter what defendants contend—that they will not use the machinery of competitors of defendants.

The fact, if fact it be, that there are patents upon certain features of defendants' machines gives them no right to enter into a combination to destroy competition between their machines and other machines, patented or unpatented, and thereby to restrain trade. The owners of competing patented machines have no more right to form combinations in restraint of trade than the owners of unpatented machines.

Finally, the defendants and the shoe manufacturers have, through the leases, brought into existence a combination (in which the latter enter, we say, under coercion) which in effect is as much a boycott of independent shoe machinery dealers as was the

boycott of Loewe by the Danbury hatters. (See our brief, pp. 244 to 249.)

Respectfully submitted.

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Special Assistants to the Attorney General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1916.

No. 545.

THE UNITED STATES,
Appellant,

v.

UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL.,
Appellees.

REPLY TO MEMORANDUM FILED BY THE UNITED STATES AFTER ARGUMENT.

The petitioner's Reply Memorandum * purports to be a reply to our Supplemental Brief. It utterly fails to answer our criticisms or to show that we are in error in pointing out the respects in which the petitioner's brief has ignored important testimony and made statements and assumptions which are without foundation. It only attempts to answer a few of our criticisms, and most of the matters to which it refers have little bearing on the material issues of this case.

1. The Reply Memorandum first attempts to substantiate a statement made in the petitioner's main brief as

* NOTE.—The petitioner's Reply Memorandum was served on us Wednesday, March 28, 1917.

to the effect of the restricted leases. At pages 176–177 of its main brief the petitioner said that a shoe manufacturer "must take the independent lease as to every class of machines, in order to be relieved from the restrictions."

As an illustration the petitioner said that if a shoe manufacturer took restricted leases for lasting and metallic machines,—

> "his lasting machine and metallic fastening machine leases would prohibit the use of such machines in connection with a heeling machine not owned by the United Company" (p. 176).

Referring to the effect of the restricted leases upon a shoe manufacturer desiring to use a Pettingill heeler put out by a competing company the petitioner said (p. 177):—

> "This means that the shoe manufacturer would have first to find Pettingill heelers enough to satisfy his wants for heelers, and having done this he would then have to place *all his machines* 'in the other departments upon the independent forms of leases.'"

The foregoing statements, as we have shown in our supplemental brief (pp. 24–29), are absolutely without foundation.

There are no restrictions in any lease put out by the United Company restricting the use of the leased machines to use with the United Company's heeling machines, except the lease of the McKay & Copeland lasting machine, which machine is now practically obsolete (R. Vol. 1, p. 454, lines 8–9), the leases of the pulling-over machines, and the leases of the eyeletting machines.

The result is that a shoe manufacturer may take on any lease the United Company puts out and use in connection

with a competitor's heeling machine the United Company's welter and stitcher, its 43 Goodyear auxiliaries, its No. 5, hand-method welt, and hand-method McKay lasting machines, its McKay sewing machines, its metallic machines, its insole machines, its clicking machines, its 172 General Department machines, and any other machines it puts out, except the machines above mentioned, viz., the McKay & Copeland lasting machine (now practically obsolete), the pulling-over and eyeletting machines, which three kinds of machines, if they are to be used with a competitor's heeling machine, must be taken on the independent lease.

The petitioner's statement, therefore, in its main brief (p. 177) that a lessee must place "*all his machines*" in other departments on unrestricted leases in order to use them with a competitor's heeling machine, is without foundation. (See our supplemental brief, pp. 24–29.)

The petitioner in its Reply Memorandum (pp. 1–2) undertakes to substantiate the above statement made in its main brief by a reference to Mr. Winslow's testimony quoted in its main brief (p. 176) to the effect that a shoe manufacturer desiring to use a Pettingill heeler,—

> "could return our heeling machines, place his machines in the other departments upon the independent forms of leases, and continue to use the heeling machines of others" (R. Vol. 1, p. 443, lines 5–8).

As pointed out in our supplemental brief (pp. 28–29) Mr. Winslow obviously meant that if the shoe manufacturer had any machines under restricted leases which prevented their use with the Pettingill heeler he could place such machines on independent leases. He obviously did not mean and could not have meant, in view of the leases which speak

for themselves, that the shoe manufacturer must place all his machines on independent leases, even though there was no restriction in the leases of such machines, preventing their use with the Pettingill heeler.

The petitioner's Reply Memorandum (p. 2) says that the question is not what lessees could do, but what they actually do. In other words, it implies that lessees do take independent leases of all machines if they wish to use a competitor's heeling machine, even though they are not required to do so. There is no foundation for this statement and no evidence that the United Company imposes any restrictions other than those set forth in its leases.

2. On page 111 of its main brief petitioner said:—

> "Winslow states that on the evening of September 20th, the day *prior* to the meeting when Winslow practically agreed to buy the Plant property, Plant advised him that he was expecting the 'western people,' and that if he traded with Winslow, he would have to put up a proposition to the western people that they could not accept, or words to that effect."

We pointed out in our supplemental brief (p. 126) that the evening of the 20th, when Plant told Winslow that he was expecting the western people, was not "the day *prior* to the meeting when Winslow practically agreed to buy the Plant property," but that it was on that very evening of September 20 that Winslow practically agreed to make the purchase.

Petitioner's discussion of this issue on page 2 of its Reply Memorandum is somewhat confused, but apparently it takes the position that the statement in our supplemental brief was wrong. The issue, accordingly, is what the record

shows. (See R. Vol. 1, p. 487, lines 1–44; p. 581, lines 38–45; p. 605, lines 34–44; p. 606, lines 1–33.)

Petitioner also takes issue (p. 2) with the statement in our supplemental brief (p. 126):—

> "There is not the slightest intimation, however, that Plant then told Winslow that any negotiations were pending for a sale to the Western manufacturers."

The petitioner states that in our quotation of Mr. Winslow's testimony (p. 126 of our supplemental brief) we replaced with asterisks words which showed that the petitioner was right and that we and the court below were wrong. These omitted words were correctly paraphrased by the petitioner at page 111 of its main brief in the sentence which we were answering and which naturally was to be read in connection with our criticism. The petitioner's paraphrase was as follows:—

> "and that if he traded with Winslow, he would have to put up a proposition to the western people that they could not accept, or words to that effect."

But in that statement there is no proof that any negotiations were pending for a sale to the western manufacturers, or that Plant had made any offer to them (see also our main brief, p. 535).

The testimony reviewed on page 535 of our main brief and on pages 125–126 of our supplemental brief supports completely the finding of the District Court as to the facts regarding the western manufacturers (R. Vol. 1, p. 1144).

3. To our criticisms (supplemental brief, pp. 111–114, 180–222) of the inadequate and unfair statements regard-

ing the acquisitions which are contained in petitioner's main brief (pp. 60–95), the only reply which the petitioner makes is the following (pp. 2–3):—

> "On pages 111–114 it is suggested that we have suppressed the fact that *some* of the machines acquired after the combination did not compete with machines of the defendants, and that we do not call attention to certain claims as to patent infringements. We invite the Court's attention to page 96 of our brief where these matters are discussed" (italics ours).

It should first be noted that this statement contains an unfair implication that only a small proportion of the acquired machines "did not compete with machines of the defendants."

This statement is evidently made with reference to one sentence only on page 113 of our supplemental brief, which is as follows:—

> "Particularly in cases where the United Company had a machine of the same name as an acquired machine the United States fails to make any reference to testimony showing that the acquired machine was adapted to do a kind of work which no machine of the United Company could do, or that the United Company's machine was only experimental and needed the acquired inventions in order to make it commercially successful, or that the acquired concern had patents which the United Company infringed or which barred the way to needed improvements in its machines."

These criticisms were plainly directed specifically to the few transactions "where the United Company had a machine of the same name as an acquired machine." We

suggest that in order to determine whether our criticisms were justified the Court examine our comparison of the statements in petitioner's main brief with the facts shown by the record in respect to the following transactions (references are to pages in our supplemental brief): Winkley and Phillips (p. 187); Carver Cotton Gin Company (p. 189); Seaver Process Lasting Company (p. 191); Albert G. Brewer (p. 197); American Sole Laying Machine Company (p. 197); Boot & Shoe Sole Laying Company (p. 199); Booth Brothers (p. 204); Brockton Supply Company (p. 217); Richardson Shoe Machinery Company (p. 219); The Wentworth Company (p. 220); Charles P. Stanbon & Company (p. 222).

It is submitted that there is nothing on page 96 of petitioner's main brief which answers our criticisms or which justifies or mitigates petitioner's inadequate and unfair statements of the facts regarding the transactions above named or, indeed, any of the other transactions.

In this connection we ask permission to refer briefly to the discussion of the infringements by the acquired concerns, including the Eppler Company and Plant, which is contained on pages 280–286 and is referred to on page 96 of petitioner's main brief. Petitioner said with reference to the appellees' testimony regarding such infringements:—

> "The defendants have attempted to prove such infringements. We deny that this may be done in an action under the Anti-Trust Act, because it would constitute a collateral attack upon the novelty and utility of the patent. Every patent issued is *prima facie* valid" (petitioner's brief, p. 280).

In these statements and in the discussion which follows petitioner has confused the question of the *validity* of the

patents owned by the vendors and the question of *infringement* of the United Company's patents *by* the vendors' machines. This confusion and the irrelevancy of petitioner's discussion seemed so obvious that we did not refer to that section of petitioner's brief in our supplemental brief. Since, however, petitioner's counsel repeated these statements in oral argument we desire to point out that appellees, in proving that the United Company's patents were infringed, were in no way attacking the validity of the vendors' patents. On the contrary, the United Company admitted that the vendors' patents were valid and wanted those patents because they were valuable.

Of course it is unnecessary to explain to this Court that the validity of the patents owned by the vendors and the infringement of the United Company's patents by the vendors' machines are two distinct and unrelated issues and that the validity of the vendors' patents is in no way involved in or inconsistent with claims that the vendors' machines infringed. Accordingly, it is submitted that the entire discussion on pages 280–286 of petitioner's main brief is irrelevant.

4. Petitioner undertakes to criticise (p. 3) one statement only in our summary of the testimony showing that the statement in petitioner's main brief (p. 97) that Plant "was successfully operating his machines in the factory of Thomas G. Plant Company," was entirely unsupported by the record (supplemental brief, p. 117). This is the statement

> "that the profits of the Plant shoe business after the Plant machines were installed were one-half less than they had been when the United Company machines were used."

Petitioner asserts (p. 3) that the record shows that

> "this was said only of the year immediately following that installation, and that in that year $400,000 was paid for machinery, apparently out of earnings, as there was no surplus account to which the payment was charged."

Petitioner's implication is answered by Mr. McGaffee, general manager of the Plant Shoe Company, who, after testifying that the profits for the first year after the Plant machines were installed were reduced one-half, said:—

> "*That was not due to the purchase of the Plant machines;* it was due to the great amount of bother and trouble we had with the Wonder Worker [Plant] machines" (italics ours) (R. Vol. 1, p. 778, lines 10–12).

See also Mr. McGaffee's comparison of the cost of making shoes on the Plant machines during the last year of their use with the cost of making shoes on the United Company's machines which were substituted for them (R. Vol. 1, p. 775, lines 7–16; p. 776, lines 17–22; p. 778, lines 38–41).

5. At page 142 of its main brief the petitioner gives a table purporting to show the number of machines of certain classes "which the United Company had out March 1, 1911, and the number which all other concerns had out at that time" (petitioner's brief, p. 141).

We pointed out in our supplemental brief that this table was not a correct representation of the facts, as the record contained no evidence showing all the machines which were outstanding in the hands of shoe manufacturers on that date. (See our supplemental brief, pp. 146–147.)

To illustrate the inaccuracy of the table we pointed out (see our supplemental brief, p. 150) that the record showed that in 1909 there were outstanding in the principal shoe manufacturing districts 1,488 McKay sewing machines, of which the United Company had supplied only 308, and that in spite of this evidence (which was the only evidence showing the number of McKay machines outstanding) the petitioner's table showed only 8 McKay sewing machines which other manufacturers had out.

In its Reply Memorandum (p. 3) the petitioner in answer to our criticism does not deny the facts stated in our supplemental brief, but merely says that it has made clear in another portion of its brief that the United Company acquired control of the McKay sewing machine in 1910.

Even if it were true that all machines sold or leased after 1910 came from the United Company, this would not justify the inaccurate statement in the table as to the number of machines outstanding on March 1, 1911, but furthermore, the record abundantly shows that the United Company does not control the McKay sewing machine. There are always plenty of these machines in the market and any one can manufacture them (Winslow, R. Vol. 1, pp. 858–859, lines 39–21; pp. 564–565, lines 25–15; Howe, R. Vol. 1, p. 680, lines 21–35; Brown, R. Vol. 1, p. 757, lines 17–29; Bulmer, R. Vol. 1, p. 908, lines 38–41).

6. The petitioner's main brief at page 125, after stating (erroneously, as we have shown above) that the United Company acquired "complete control" of the McKay sewing machine, attempted to show that on account of the United Company's leases no competitor can sell or lease McKay machines to shoe manufacturers. The brief said (p. 125) erroneously (see our supplemental brief, p. 157)

that the United Company virtually, if not absolutely, controls the lasting machine, and said:—

> "No one may use a United lasting machine upon any shoe which has been operated upon by a machine not procured from the United Company, therefore not upon a shoe operated on by a McKay machine procured outside of the United Company."

At pages 15–21 of our supplemental brief we showed that this statement is absolutely without foundation since (*a*) any shoe manufacturer may take an unrestricted lease of lasting machines; (*b*) not a single one of the United Company's leases of lasting machines restricts their use to use with all other machines put out by the United Company; and (*c*) no lease of lasting machines restricts their use to use with the McKay sewing machine, nor is any other machine put out by the United Company restricted to use with the McKay sewing machine.

In other words, the petitioner's argument that our leases of other machines compel a use of the McKay machine is based on a statement which has no foundation whatever.

In its Reply Memorandum the petitioner says (pp. 3–4) (1) that it would take an elaborate analysis to substantiate its statement; and (2) that the statement is immaterial anyway since the United Company controls the McKay machine.

If any lease of the United Company restricts its lasting machine or any other machine to use with its McKay sewing machine this fact can be shown by a simple reference to the lease. But there is no such lease. Furthermore, as shown (*supra*, p. 10), the United Company does not control the McKay machine.

In passing, we should like to correct a statement made in the course of argument. In answer to a question of the Court, petitioner's counsel said that all of the United Company's machines were patented except the McKay sewing machine. While most of the McKay machines in use are not patented, the United Company puts out a patented type (R. Vol. 1, p. 83, lines 9–15; P.'s Ex. 170, Vol. 4, p. 1161). The United Company sells its McKay machines outright if the shoe manufacturer prefers to purchase them (R. Vol. 1, p. 29, lines 25–35).

7. The petitioner's Reply Memorandum (p. 4) again asserts that the "additional machines clause" is still in use in one lease. This is a question of what is meant by the "additional machines clause."

A number of the leases of the constituent companies (prior to the formation of the United Company) contained a clause obligating the lessee to take and use additional machines (see our main brief, pp. 323–324). This is the clause referred to in our main brief as the "Additional Machinery Clause." As pointed out in our supplemental brief (pp. 13–14) and in our main brief (pp. 323–326) the United Company continued this clause so used by the constituent companies only to a limited extent and eliminated it from its leases entirely in 1907. In order to avoid misunderstanding we pointed out in our supplemental brief (pp. 13–14) that the clause referred to in the petitioner's main brief (pp. 150–151) as the "Additional Machines Clause," and which, as stated in the petitioner's Reply Memorandum, is still contained in *one form of lease of metallic machines*, does not obligate the lessee to take additional machines but merely provides that if he does not take them the United Company may cancel its leases

of machines of that particular kind or department. In other words, it imposes no binding obligation on the lessee to take additional machines, as did the "Additional Machinery Clause" used by the constituent companies and eliminated in 1907.

8. The table on pages 5–6 of the petitioner's Reply Memorandum merely refers to certain paragraphs of certain leases. To understand the clauses and their effect the leases themselves must be examined.

We merely wish to point out here that this table includes reference to a number of leases which have been superseded, and furthermore that unless the leases themselves are referred to the table may be misleading. For instance, the lease of the Goodyear auxiliaries (Exhibit No. 25) is referred to as containing the Exclusive Use Clause. This clause, however, permits cancellation of the lease of the Goodyear auxiliaries only if the United Company's welter and stitcher are not used exclusively. It does not permit such cancellation if auxiliary machines obtained from others are used.

9. The record shows that in 1911 the United Company did business with 1,033 shoe manufacturers operating 1,150 different factories (R. Vol. 1, p. 454, lines 45–46; p. 455; p. 26, lines 38–40). The only evidence as to the total number of shoe manufacturers in the country in 1911, or at any other time, was Mr. Donham's testimony that he should say there were in 1911 between 1,300 and 1,500 and that the Census for 1910 showed in the neighborhood of 1,300 as he recalled it (R. Vol. 1, pp. 26–27, lines 41–2).

In its main brief the petitioner stated (p. 132) that the Census for 1914 showed a total of 1,090 shoe manufacturers and the petitioner used this figure to prove that the United

Company did business with 1,033 out of 1,090 shoe manufacturers in the country.

In our supplemental brief we pointed out that the Census for 1914 was not in evidence; that the number of shoe manufacturers in 1914 could not properly be compared with the number of shoe manufacturers with whom the United Company did business in 1911; and further that the petitioner had misquoted the Census for 1914, which showed 1,355 shoe manufacturing establishments which reported to the Census Bureau, and not 1,090 shoe manufacturers. (See our supplemental brief, pp. 143–146; see also Census of Manufactures for 1914, p. 8, and also Census Bureau Publication entitled "Manufacture of Footwear. Census Bureau's Summary Concerning the Industry for 1914.")

At the argument before the Court the petitioner produced a mimeographed (not printed) sheet issued by the Census Bureau entitled "Census of Manufactures, 1914. Preliminary Statement on the Manufacture of Boots and Shoes, including Cut Stock and Findings." This statement read in part as follows:—

	Boots and Shoes
Number of establishments	1,355
Persons engaged in the manufacture . .	210,348
Proprietors and firm members	1,090
Salaried employees	17,703
Wage-earners (average number)	191,555

The petitioner contended that the title "Proprietors and Firm Members," the number of which was given as 1,090, meant the total number of concerns engaged in shoe manufacture in 1914.

In case the Court should deem this question material, we wish to point out that counsel for the petitioner were incorrect in their contention.

On its face the phrase "Proprietors and Firm Members" means only the number of individual proprietors or owners and members of unincorporated firms who were engaged in the industry. It does not include corporations or the officers of corporations, the latter being included under the next title, viz., "Salaried Employees."

Inquiry at the Census Office confirms this interpretation and shows that the expression "Proprietors and Firm Members" does not include or refer to 686 establishments operated by corporations or their employees.

As a rule the term "establishment" as used in the Census Reports means a separate factory, but where two or more factories operated under a common ownership are situated in one city they are counted as a single establishment. (See Census of Manufactures. General Totals for the United States by Geographic Divisions, States and Industries, p. 2.) Thus the Census Report shows that there were more than 1,355 separate shoe factories doing business in 1914. It does not show the exact number of different concerns which owned these factories.

Thus it appears that more than 1,355 factories were doing business in 1914, while the United Company at the last available date, viz., 1911, did business with only 1,150 factories operated by 1,033 lessees. The record further shows that it did not furnish a complete line even of its principal machines to all of the lessees with whom it did do business. For example, see the testimony of Webster, a witness for petitioner (R. Vol. 1, p. 299, lines 4–45).

10. The petitioner's argument, at page 7 of its Reply Memorandum, that the United Company's leases compel or induce substantially all shoe manufacturers, as a condition of obtaining necessary machines, to agree that they will not use the machinery of competitors, is fully answered by the facts found in respect to the leases by the District Court (see our main brief, pp. 62–65, 77–80) and by the statement in our main brief in respect to the leases and their effect (see our main brief, pp. 298–422).

11. The petitioner's misconception of the United Company's lease system is shown by its comparison (p. 7) of this lease system with the conspiracy held unlawful in *Lawlor* v. *Loewe*, 187 Fed. 522; 235 U. S. 522.

In *Lawlor* v. *Loewe* there was a conspiracy or agreement for the direct purpose of intimidating Loewe's customers by threats of boycott and forcing them to cease dealing with Loewe. In the case at bar we find leases voluntarily entered into by shoe manufacturers containing provisions which, as the District Court found as a fact (R. Vol. 1, pp. 1159–1160) were not designed to exclude competitors, but which were designed to enable the lessor to offer remarkably favorable terms to lessees and at the same time afford the lessor reasonable protection in respect to the compensation for and care of the leased machines.

12. The petitioner's Reply Memorandum ignores most of the statements made in our supplemental brief as to the erroneous statements and assumptions contained in the petitioner's main brief, and, as we have shown above, fails to answer the few to which it does refer.

We desire to call the Court's attention especially to the erroneous statements or assumptions in the petitioner's main brief which are referred to in the following portions of our supplemental brief:—

(1) Misstatements in petitioner's brief as to the scope and effect of the Restricted Use Clause. (See our supplemental brief, pp. 15–21.)

(2) Petitioner's erroneous statements as to the unrestricted or independent leases and their effect. (See our supplemental brief, pp. 22–38.)

(3) Petitioner's misconstruction of the Exclusive Use Clause. (See our supplemental brief, pp. 38–43.)

(4) Petitioner's argument based upon its misconstruction of the lease clauses. (See our supplemental brief, pp. 48–55.)

(5) Petitioner's contentions as to monopoly. (See our supplemental brief, pp. 140–158.)

We also call the Court's attention to the misconception of the leases shown by the relief asked for by the petitioner. (See our supplemental brief, pp. 65–69.)

Respectfully submitted,

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In the Supreme Court of the United States.

OCTOBER TERM, 1916.

No. 545.

UNITED STATES OF AMERICA, APPELLANT,

v.

UNITED SHOE MACHINERY COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR THE UNITED STATES.

INTRODUCTORY STATEMENT.

This is an appeal from a decree of the District Court for the District of Massachusetts, dismissing a suit brought by the United States under the Sherman Act against the United Shoe Machinery Company of New Jersey, certain affiliated or subsidiary corporations and certain individuals who were officers or directors of the corporate defendants.

The petitioner protested against an order providing for a private hearing before an examiner.

(R. I, 1062.) The Court overruled the protest and directed that—

> The examiner will not, without the consent of both parties, allow the attendance of persons other than those mentioned in Rule 67. (R. I, 1070.)

Later, the Attorney General having previously filed an expediting certificate under the statute (32 Stat., 823; 36 Stat., 854), the order was vacated and the case set down for trial before two circuit judges and a district judge.

THE PLEADINGS AND THE SUBJECT MATTER.

I. THE NATURE OF THE PROCEEDING.

The object of the suit is to forbid and prevent the defendants further making, maintaining or engaging in certain unlawful combinations, contracts and agreements hereafter described, and from continuing to monopolize a part of the interstate and foreign commerce of the United States in machines used for the manufacture of shoes, as hereafter defined.

The relief sought is a decree adjudging the corporate defendants to be combinations in restraint of trade and to have acquired and to be maintaining and extending a monopoly of the commerce in question and enjoining the further continuance of such illegal combinations and such monopolization; and, especially, forbidding the continued making or enforcement of certain provisions of certain leases or contracts under which the defendants have put out and are putting out machines.

The defendants, other than certain corporations as to whom at the opening (R. I, 1061) a discontinuance was entered, are—

United Shoe Machinery Company of New Jersey.
United Shoe Machinery Corporation.
United Shoe Machinery Company of Maine.
United Xpedite Finishing Company.
O. A. Miller Treeing Machine Company.
W. W. Cross & Company.
Ross-Moyer Manufacturing Company.
J. K. Krieg & Company.
Booth Brothers Company.
Ellis Lacer Company.
United Shoe Repairing Company.
Sidney W. Winslow, and twenty-one other individuals all of whom were officers or directors of the corporate defendants above named or of some of them.

The answers of the various defendants are not identical, but the answer of the United Shoe Machinery Company of New Jersey embraces substantially all the defenses set up by them. A brief outline of it is, therefore, sufficient.

It denies every allegation of the petition not specifically admitted; admits that it acquired the business, assets, and letters patent of the companies named in the petition (R. I, 1043); claims that those companies were non-competing at the time of their acquisition; that the machinery owned by each was covered by letters patent of the United States; and that the acquisitions were made with the

expectation of economies in administration and cessation of patent litigation between the companies purchased. It also alleges that the greater part of its business consists in the manufacture under letters patent of shoe machines and in the leasing of those machines to shoe manufacturers under the letters patent. It denies that it restrains or monopolizes interstate or foreign trade and commerce or ever attempted so to do, but alleges that if it has any such monopoly it is valid and legal as derived under the letters patent owned by it. It also sets up the statute of limitations. (R. I, 1042–1046.)

Replications were filed to the answers. (R. I, 1058).

II. DESCRIPTION OF THE DEFENDANTS.

The United Shoe Machinery Company of New Jersey is a corporation of that State. It was organized February 7, 1899, (R. I, 1, l. 32; 633, l. 4)[1] and was a consolidation of the business and properties of the following competing companies which were taken over as going concerns:

Goodyear Shoe Machinery Company.
International Goodyear Shoe Machinery Company.
Consolidated & McKay Lasting Machine Company.
McKay Shoe Machinery Company.
Davey Pegging Machine Company.
Eppler Welt Machine Company.

[1] References to the record are by volume, page, and line. Thus the reference (R. I, l. 32; 633, l. 4) is to the Record, volume I, page 1, line 32, and page 633, line 4.

International Eppler Welt Machine Company.

(Answer, R. I, 1043.)

Many of the principal owners and managers of these companies became officers and directors of the new company. Its main factory is in Beverly, Massachusetts. (R. I, 35, 423, l. 41.) In addition it maintains stations "throughout the country covering all the principal shoe manufacturing centers." (R. I, 553, l. 34.) It has been engaged, ever since its formation, in manufacturing at its Beverly plant, and in selling, leasing, and shipping to shoe manufacturers all over the United States shoe machines, supplies, and related things. (R. I, 35; l. 32; 423.)

The authorized capital of the United Shoe Machinery Company of New Jersey is $25,000,000.

United Shoe Machinery *Corporation* was organized in 1905. It also is a corporation of New Jersey. Its business appears merely to be that of a holding company. (Plff's Exs. 164–7, R. IV, 1126–37.) Upon its organization, it acquired "substantially all of the capital stock of the United Shoe Machinery Company of New Jersey." (Morton, R. I, 358, l. 28.)

Assuming that the stock issued at the organization of the United Shoe Machinery Company represented no more than the fair value of the properties acquired, the defendants in twelve years, as shown by dividends and surplus, have earned in excess of $50,000,000 upon a total investment in cash or its equivalent of about $20,000,000. (Morton R. I, 358–360.)

The United Shoe Machinery Company of Maine is, since a change in 1902, the present name of the old Goodyear Shoe Machinery Company. All its stock—$3,000,000—is owned by the United Company which acquired it when that company was organized. Its present business is the leasing of machines manufactured by the United Company of which it is merely a department. (Donham, R. I, 34, l. 40.)

The other corporate defendants do not require particular description.

The combined activities of the various corporate and individual defendants so far as they relate to the subject matter of the present action are commonly referred to in the record and are here referred to as those of the "United Company" except where clearness requires a more specific designation.

Of the individual defendants, Sidney W. Winslow is the president of all the corporate defendants and is their chief executive officer. He was the principal witness for the defence. The other individual defendants are, or were at the time when the bill was filed, directors or officers of the United Shoe Machinery Company or of the United Shoe Machinery Corporation. In most cases they were connected with both these companies as well as with others of the corporate defendants. (Plff's Exs. 186, 167, R. IV, 1231, 1137.)

III. DESCRIPTION OF THE SUBJECT MATTER OF THE ACTION.

A. IN GENERAL.

The end which avowedly was sought by the organizers of the United Company was "the control in one corporation, both in the United States and in foreign countries of the efficient types of shoe machinery." (Statement to the Stockholders of the Goodyear Shoe Machinery Company, February 8, 1899. Plff's Ex. 152, R. I, 140.) The business in which the defendants are engaged is that of supplying machines used in the manufacture of shoes. The interstate and foreign trade in certain, though not all, of such machines (*infra*, p. 13) is that which defendants are charged with having restrained and monopolized. The subject matter of the action, therefore, is the effect of the things done by the defendants upon the trade between manufacturers of machines used in the manufacture of shoes and the manufacturers of shoes.

B. THE BUSINESS OF SHOE MANUFACTURING.

To understand, therefore, the nature and importance of the questions presented by this case, it is necessary to have in mind certain facts regarding the manufacture of shoes and the relations thereto of the use of machinery and its supply.

According to the Census of Manufactures, issued by the Department of Commerce, 1090 American firms, individuals and corporations were engaged in 1914 in manufacturing shoes. In 1909, the latest year

for which figures are available, 285,000,000 pairs of shoes, in round numbers, were made in this country, as against 175,000,000 in 1899. (Winslow, R. 414, l. 38.) Shoes are made in practically every State in the Union. It is obvious that supplying machines for an industry of this size and geographical distribution must be an exceedingly important part of the interstate trade and commerce of the United States.

C. EXTENT OF THE USE OF MACHINES IN THE MANUFACTURE OF SHOES.

The making of shoes was almost wholly a handicraft until about 1860. At about that time the first practical machine for performing an important shoe making operation began to attain wide use. Other machines followed.

When this suit was brought, and indeed at the formation of the United Company in 1899, the industry had become almost wholly a machine industry. Of the 175,000,000 pairs of shoes produced in this country in that year, according to defendants' figures, (Dfs.' Ex. 215, R. I, 424) only 197,000 are described as hand made, and Mr. Winslow testified, (R. 869, l. 37–39) that 110,000,000 were of kinds which never had been made by hand and could not be so made. The record shows that to-day hand work has been superseded by machine work even as to the simplest and least expensive operations. (R. I, 91, ls. 26–30.) For the most part it persists only for incidental work in connection with the use of machines. (e. g. R. I, 497.) No shoe manufacturer attempting to do business on any considerable scale can to-day exist in

competition with other manufacturers without having in his factory a substantially complete line of machines. In order to compete with any hope of success he must obtain his machinery upon a basis of cost not substantially above that upon which his competitors obtain their equipment.

D. THE MANUFACTURE OF SHOES BY MACHINERY, METHODS AND MACHINES.

The mysteries of the shoemaker's art and the variations between different methods of making shoes are not within the knowledge of the ordinary purchaser nor do they enlist his interest. To him shoes are shoes, except as they differ in appearance, comfort, wearing qualities and price. For his approval all shoes which approximate his size may be said to compete and the factors which govern that competition are those noted rather than the details of their manufacture.

In the industry, however, shoes are classified according to the manner in which the outsole, what we call the sole, is attached to the upper, and this classification is helpful in understanding the application and importance of various facts which will be brought to the attention of the Court.

Shoes, then, are divided into welt shoes, turn shoes, stitch-downs, McKay sewed shoes, McKay welts, fairstitched shoes, pegged shoes, standard screw shoes, loose nailed shoes. (Dfts. Ex. 215, R. I, 424.) In all but the last three varieties the bottom is attached to the upper by a seam of thread. Pegged

shoes are shoes in which the sole is attached to the upper by means of wooden pegs. In standard screw and loose nailed shoes the sole is attached by wire slugs or nails. Such shoes are therefore sometimes called "metallic fastened" and the machines which insert the fastenings are among those classified in the trade and by the defendants as "metallic machines." (R. I, 5, l. 5.)

Welt shoes derive their name from a narrow strip of leather known as the "welt" which is first sewed to the upper and insole by a machine called a "welt sewing machine" or "welter" and is then sewed to the outsole by a machine known as an "outsole stitcher" thus attaching the upper and bottom together, the welt serving as a kind of link. Welt sewing, outsole stitching, and certain other machines used in making welt shoes are hereinafter sometimes called welt method machines.

The sole of the turn shoe is sewed to the upper by the welt sewing machine, adapted for the purpose by the removal of an attachment. Turn shoes are lighter, as a rule, than those made in other ways. They derive their name from the fact that the upper is turned inside out during the process of attaching the sole.

The bottom of the "McKay sewed" shoe is attached to the upper by a seam passing directly through the outsole, insole, and upper. A "McKay sewing machine" is used for this operation.

As was said, the pegged shoe is a shoe in which the sole is attached by wooden pegs. These are inserted by a "pegging machine."

The sole of the "standard screw" shoe is attached by slugs of wire. These are inserted by a "standard screw machine."

The sole of the nailed shoe is attached to the upper by nails made for the purpose. A "loose nailing machine" is used. This machine also is used in the manufacture of substantially all kinds of shoes for attaching to the upper that part of the shoe to which the heel is in turn attached. That is to say, in shoes which are sewed, as distinguished from shoes in which the sole is "metallic fastened," only the part of the sole forward of the shank is attached by the seam of thread. The heel part of the sole, the "heel seat," is nailed on by the loose nailing machine.

McKay welts, fairstitched and stitch-down shoes, mentioned above, are all produced in such relatively small numbers as to be unimportant in comparison with the great classes of welt, turn, McKay sewed and metallic fastened shoes which have just been described. (Dfts. Ex. 215, R. I, 424.)

Despite these radical differences as to the particular manner in which the bottoms of various kinds of shoes are attached, the general process of manufacture of all shoes is substantially the same. In every case, the parts of the uppers must be cut out and assembled, the linings fitted, the upper, counter and insole assembled, the shoe "lasted," i. e., the upper stretched and shaped over the last, the out-

sole shaped and attached, the sole "leveled" or made to conform to the bottom of the last, the heel prepared and attached and the shoe "finished" by polishing, smoothing, and burnishing the edges and bottom of the sole and heel. It follows that "according to general usage, certain names are given by shoe manufacturers to certain parts of their factories in which certain work is done." These are the cutting room where the uppers and linings are cut out, the stitching or fitting room where the uppers, linings and trimmings are assembled and stitched together, the lasting room, the bottoming room, the finishing room, and the sole leather room. (Winslow, R. I, 859, l. 39 et seq.)

In all the foregoing rooms in every factory machines are used. Besides the machines used for the major operations of attaching the sole to the upper, there are used in the bottoming of McKay shoes thirty-two different types of machines. (Dfts. Ex. 236, R. V, 671.) A shoe manufacturer possessing only a McKay sewing machine would therefore be a long way from the necessary equipment for that one department of his factory. For bottoming welt shoes, a larger number of different types of machines is required. (Plffs. Ex. 279, R. IV, 1557.)

E. THE PART OF THE INTERSTATE AND FOREIGN COMMERCE OF THE UNITED STATES IN MACHINES USED IN THE MANUFACTURE OF SHOES WHICH DEFENDANTS HAVE RESTRAINED AND MONOPOLIZED.

When the petition was filed, the defendants did not manufacture machines used in the fitting room, above mentioned, in which the previously cut and prepared

parts of the uppers and linings are assembled. As to certain other machines necessary to the manufacture of shoes, the defendants had not at that time acquired a monopoly. At the trial, therefore, the claim of the United States as to the part of the trade in machines used in the manufacture of shoes which the defendants *actually* had restrained and monopolized was defined as the business of supplying—

> all the [principal and auxiliary] machines used for preparing and attaching the bottoms of shoes to the uppers, and clicking and eyeletting machines. (R. I, 837–839, *passim*. R. I, 192, l. 15–19, R. I, 414, l. 21.)

"Principal machines" and "auxiliary machines" are phrases taken from the practice of the defendants in leasing machines. The defendants class as "principal" the welting, lasting, pulling over, slugging, heeling, standard screw and loose nailing machines. (Winslow, R. I, 537, l. 12 et seq.) A number of other machines are called "auxiliary" machines. This is justified in a measure because in one sense some of the auxiliary machines "prepare the work" for the operation of some of the machines called "principal." (R. I, 537, l. 12 et seq.) In the main, however, the reason for the distinction is rather arbitrary. Mr. Winslow says:

> We call [them] principal machines because they perform operations which are treated as measuring operations for the entire set of machines and because their operations preceded in most cases the development of the auxiliary machines. The auxiliary machines in many

> instances did work that had been done by hand and their development succeeded the development of what have been termed the principal machines. (R. I, 537, l. 14 et seq.)

A list of auxiliary machines, including only the machines classed by the defendants as "Goodyear auxiliaries," i. e., auxiliaries used in the manufacture of welt shoes is to be found in Plffs. Ex. 270 (R. IV, 1446). Inspection of it will show something of the number and variety of the "auxiliary" machines. *These machines are, however, in no sense mere attachments to the principal machines. The operations performed by them are wholly independent.* "That is true with reference to every one of the auxiliary machines. There are no two that operate on the same shoe at the same time. The operations are as separate and distinct as the lasting operation and the welting operation, only they are not so far removed from each other." (Winslow, R. I, 537, l. 7 et seq.)

The uses of some of these "principal" machines, namely, the welting, standard screw machines, and loose nailing machines have already been noted. (*Supra*, pp. 10, 11.) Pulling over machines stretch the upper over the last, preliminary to the process of shaping it or lasting it. Lasting machines shape the upper over the last and secure it there temporarily or permanently according to the process of manufacture which is to follow. Heeling machines attach the heel to the shoe. Slugging machines which are included in the foregoing list of principal machines are used for inserting slugs or nails around the perimeter

of the heel. Clicking machines are used for cutting out the parts of the upper. Eyeletting machines insert eyelets in the uppers.

In the record (I, 495–502) is an enumeration of some of the machines used in the bottoming of welt shoes, with a description of their functions. The nature of the relations between "principal" and "auxiliary" machines, *supra*, appears from what is there said. The distinction, while convenient for the understanding of certain leases of the defendants, *infra*, pp. 145–213, is of no real importance in the Government's view of this case.

F. THE IMPORTANCE, AS A MATTER OF SHOE MANUFACTURING, OF THE MACHINES, THE TRADE IN WHICH DEFENDANTS HAVE RESTRAINED AND MONOPOLIZED.

The processes of lasting, of preparing the bottom and the heel, of attaching them to the upper are necessary processes in the making of every shoe and constitute the "bottoming" of the shoe. The use of machines in these processes is universal. Shoes can not as a commercial proposition be made without them. This is, perhaps, sufficiently established by what has already been said. It may, however, be added that nearly two score shoe manufacturers testified in the case as witnesses either for the Government or for the defendants. These manufacturers represented concerns whose output ranged from 500 pairs daily (Burt, R. I, 739, l. 4) to well over forty thousand pairs (Johnson, R. I, 170, l. 33, Endicott, R. I, 575, l. 31). Their product comprised all varieties of shoes. Every one

of them used machines for the processes named. In substantially every case, for reasons which will be noted, they used the machines of the defendants exclusively.

The process of cutting out uppers, for which the clicking machine was designed, was at the time of filing the petition still performed by hand in a considerable but decreasing number of factories. The clicking machine had been on the market only since 1908, and therefore had only been out about three years at the time when the petition was filed—the time to which testimony was limited by the Court (R. I, 201, l. 42). The importance of this machine and its practical necessity to shoe manufacturers is indicated by Mr. Winslow's appreciative remarks about it. In his opinion (R. I, 426, l. 19), according to his experience in the shoe art, "no machine has accomplished so much for the art as the clicking machine." The saving by its use is estimated at as much as three cents a pair *in leather alone* (R. I, 431, l. 22), aside from the advantages of machine over hand operation with respect to the cost of labor, speed, etc. The familiar effect of the introduction of such machinery upon the supply of hand operators also is to be considered. The importance to a shoe manufacturer of possessing such a machine is obvious. The manner in which the defendants use their control of it to extend their monopoly of other machines is noted. (*Infra*, pp. 158, 165.)

THE FACTS IN THE CASE STATED AND ARGUED.

I. CONDITIONS IN THE SHOE MACHINERY INDUSTRY AT THE FORMATION OF THE UNITED COMPANY.

The principal companies which were combined in the organization of the United Company were, as heretofore observed, the Goodyear Shoe Machinery Company, Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, and Eppler Welt Machine Company. (*Supra*, p. 4.)

A. THERE WAS EXISTING AND POTENTIAL COMPETITION BETWEEN THE GOODYEAR AND THE CONSOLIDATED & McKAY COMPANIES IN LASTING MACHINES.

Before the organization of the United Company, lasting machines of the following types had been at some time in use, namely, the McKay and Copeland, Chase, Copeland-Rapid, Consolidated Hand Method, Seaver, Sinning, and Ideal lasting machines. There may have been others. (Jones, R. I, 106, ls. 23–30; Selz, R. I, 141, l. 43.) In addition there were the Continental and Boston machines which, however, are described by Mr. Winslow as "tacking machines" rather than lasting machines. (R. I, 521, l. 32.) Some of these machines had apparently disappeared prior to the organization of the United Company.

There is no dispute with reference to the various kinds of lasting machines which were being produced at the time the United Company was formed.

At that time there were on the market, according to Winslow, the following:

McKay & Copeland, Chase, Consolidated hand method	Owned by Consolidated & McKay Co.
Ideal, Copeland-Rapid	Owned by Goodyear Co. (R. I, 399, l. 13.)

The Ideal lasting machine was a development of the Copeland-Rapid laster. (R. I, 107, l. 38; 526, l. 45; 914, l. 3.) The only substantial difference between these two machines was that the latter was operated by the foot of the workman while the former was operated by power. (R. I, 914, l. 3; l. 918, l. 3.)

Mr. Winslow testified (R. I, 526, l. 36) that at the time of the formation of the United Company the Consolidated & McKay Company and the Goodyear Company were the only companies putting out lasting machines except the Seaver Company, as to which he stated that it was putting out some machines but was not doing a successful business. (R. I, 526, ls. 28–34.) It was acquired by the United Company less than a year after the formation of that company in 1899. (R. I, 526, l. 33.) It had no plant, and only one witness testified to any use of the Seaver machine. (R. I, 289, l. 25.)

There is no dispute that the McKay & Copeland laster was used chiefly upon heavy shoes. The Chase machine, according to Mr. Winslow, was used chiefly for lasting men's welt shoes but it was offered by its makers as a machine for lasting women's shoes as well. (R. I, 960, ls. 29–30.)

The Consolidated hand method machine as originally designed was adapted principally for lasting McKay sewed, pegged, and metallic fastened shoes. These types of shoes are lasted in the same manner. At first it could not be used successfully for lasting welt shoes, but the problem of adapting it for such use was in the way of solution in the fall of 1898. In December, 1898, the Consolidated & McKay Lasting Machine Company was offering to the trade the hand method machine as a satisfactory machine for the lasting of welt shoes. (R. I, 960, l. 27.)

Mr. Winslow was not willing to testify that the machine was completely successful for that purpose, despite the fact of his company's offering the machine to the trade, but admitted that some machines were already in shoe factories. (R. I, 524, l. 7, 8.) He also admitted that it was the intention of the Consolidated & McKay Company to perfect the machine so as to make it an efficient welt lasting machine, and that in 1900, about a year after the formation of the United Company, it had become, even in his present opinion, a commercially successful machine. (R. I, 524, l. 28.) He added (R. I, 526, l. 11) that women's welt shoes are now lasted very largely upon this hand method machine.

It appears, then, upon Mr. Winslow's testimony, that the Consolidated & McKay Company was putting out lasting machines which covered the entire ground. Taking at face value his statements as to the kind of work for which the various machines were peculiarly fit, the McKay-Copeland covered the heavy

field, the Chase, men's welt shoes, and the hand-method machine, all McKay shoes, and in its improved form, women's welt shoes.

The Goodyear Company's lasting machine was, as has been said, the Ideal machine, which was a development of its Copeland-Rapid machine. It was said by Mr. Winslow (R. I, 527, l. 3) that it was used practically altogether on women's welt shoes, that is to say, in the field in which the hand-method machine owned by the Consolidated & McKay Company before the organization of the United Company has now been so successful. Mr. Winslow declined to attempt to state any reasons why the Ideal machine could not last men's welt shoes as well as women's welt shoes, thus bringing it into direct competition with the Chase lasting machine, put out by the Consolidated & McKay Company. In response to the question whether the Ideal could have easily been developed into a machine which would have lasted men's welts, successfully, he stated that he did not know anything about it. (R. I, 527, l. 24.)

Mr. Howe, testified (R. I, 627, l. 29) that while each machine had a fairly well defined field, it would frequently happen that McKay shoes would be lasted upon the Ideal machine.

Even if the work of the Ideal machine had been confined to women's welt shoes, that was the field which the Consolidated and McKay Company was entering with its adapted hand-method machine.

In addition, however, to the testimony of Mr. Howe as to the use of the Ideal machine for lasting McKay *lasted* shoes (which include standard screw and loose-nailed shoes as well as McKay *sewed* shoes) there is abundant testimony as to the possibility of the use, and as to the actual use of the Ideal machine owned by the Goodyear Company, for lasting men's shoes in direct competition with the Chase machine owned by the Consolidated & McKay Company. The testimony shows also that the Ideal was in direct competition with the latter company's hand-method machine.

Milton J. Florsheim testified that his company was engaged at the time of the formation of the United Company in the manufacture of men's welt shoes, and at the time they were using three Copeland-Rapid lasters (the same machine as the Ideal machine except that it was operated by the foot of the workman rather than by power, *supra*) and several Chase machines; that the Chase and Rapid (Copeland-Rapid) machines did the same class of work, and that "when the shoe was done, you could not tell on which machine it was lasted;" that there was no difference in the quality of the work, and if there was any difference in the rapidity, the advantage was with the Rapid. (R. I, 158, 159, l. 32.)

Warren F. McElroy also testified that the Hamilton-Brown Company, of St. Louis, made men's shoes on the Rapid machine in 1899, and continued to use them until they were exchanged for the new machine brought out by the United Company after its formation. (R. I, 187, l. 15, 189 l. 26 et seq.)

Stephen Snow testified that he was employed by the William L. Douglas Company which made about ten thousand pairs of shoes a day, and that company, which made only men's shoes, both McKays and welts, used only the Consolidated Hand Method and Ideal lasting machines; that he, the witness, had charge of the Ideal machines, of which there were more than a dozen, and the company had no other types of lasters than those mentioned, and did its work upon them; (R. I, 895, 896) that he had previously worked for George E. Keith Company, which also made men's McKay and welt shoes, with an output of about ten thousand pairs daily, and that company had no lasting machines except the Ideal machines, and that there were "about a dozen of them." (R. I, 896, l. 11.) Mr. Snow spoke of difficulty in using the Ideal machine on men's *heavy* boots, meaning long-legged boots, brogans, and miners' shoes (R. I, 900, l. 15) but stated that he had invented an attachment which held the last down, and that with that attachment added it was successful, even for men's *heavy* boots, (R. I, 899 l. 7) but that the Ideal machines were used *without* the attachment for making the shoes made by the Douglas and Keith Companies which was "about a four dollar shoe which was as heavy as they generally make in those factories." (R. I, 896, l. 16.)

Thomas Worsencroft testified that in 1890 he was employed to instruct men to operate the Rapid lasting machine; (I., 913) that the only difference between the Rapid and the Ideal was that the Rapid worked

by foot power and the Ideal by steam power; (R. I, 914, l. 3) that he was employed from 1897 to 1901 by the Duquesne Shoe Company, of Pittsburgh, Pa., which made men's welt shoes; that that company used five Ideal lasting machines for lasting those shoes, and no other lasting machines; that, previously, he had worked for S. A. Crooks Company of Hopkinton, Mass., where the Rapid machine was used on men's McKay shoes, and, in 1891 and 1892, in the factory of John Hanan & Sons of New York City where high priced welt shoes were lasted on the Rapid machines, and at George Snow's factory at Brockton in 1893 where welt shoes were made both on the Rapid and the Chase machines. (R. I, 914, l. 33.) He thought that the Ideal machine did better work on men's welt than the Chase machine and was equally rapid. (R. I, 914, l. 23.)

William P. Whitman testified that he had been manufacturing shoes since 1883, and that he had obtained Ideal machines from the Goodyear Company, and was still using six or seven of them at the time of his testimony; that he made men's welt shoes and never had made any other kind. (R. I, 915, 916.) That he has also now some Number 5 lasting machines [the latest development by the United Company, R. I, 397, l. 38, now offered as the successor of the Chase machine, R. I, 453, l. 25] but he sees very little difference in quality or rapidity between the work of the Number 5 machine and that of the Ideal. (R. I, 916, ls. 4–10.) Referring to the necessity of the hold-down attachment for the Ideal machine he said it

became necessary when the high toed shoe began to come in "which was about ten or twelve years ago." (R. I, 916, l. 38.) He was testifying in 1914 and therefore the date referred to was two or three years after the formation of the United Company.

Edward F. Heffernan testified that he had been employed in the factory of the witness just mentioned for seventeen or eighteen years, and for six years had had charge of the lasting department (R. I, 917, ls. 38–43) and he had operated an Ideal machine for twelve or fourteen years; that there was no substantial difference between it and the Rapid machine; (R. I, 918, l. 3) that he lasted men's welt shoes for twelve years upon Ideal machines without any hold-down appliance; that he had invented such an appliance which improves the operation of the Ideal, and that anything which is lasted on a Number Five [the United Company's successor to the Chase machine, (R. I, 453, l. 25)] can be lasted on an Ideal; (R. I, 918, ls. 30, 31). That the Whitman firm is still using seven Ideal machines; that they have also been using the Number 5 lasting machine for three years and he has observed its operation; that the same operator will get as much work off the Ideal as he can off the Number 5 and, in his opinion, probably a little more; that he can run both machines himself, and considers the Ideal is a little faster; that the character of the work depends on the operator, a good operator being able to do equally as good work on one machine as on the other; and as to whether or not heavy

welt shoes can be successfully lasted on the Ideal machine, everything that can be lasted on the Number 5 can be lasted on the Ideal just the same—they make no distinction; that while the Number 5 is a heavier, stronger machine, yet there is no reason why the Ideal could not be made just as strong, and that by a stronger construction it could last any kind of shoes. (R. I, 918, ls. 1–33.) He said that about four years ago he was given his choice between the Number 5 and the Ideal and took two Ideals. (R. I, 919, l. 41.)

It will be remembered that Whitman & Keith were manufacturers of *men's* welt shoes. Therefore, it is demonstrated in practice that the Ideal without the Snow attachment or any other attachment but as it was in 1899 was capable of lasting men's welts as well as women's, and therefore was a competitor of the Chase machine.

John Jordan testified (R. I, 932, l. 31) that he had been a laster for 25 years and he had lasted *men's* high-grade welt shoes on the Chase machine for two years, on the Rapid for three or four years, and on the Ideal for about ten years; that in his opinion the Ideal did better work than the Chase; that the Ideals at the time he worked on them did not have the hold-down attachment referred to by the other witnesses (R. I, 933, l. 18, 19); that the Ideal was used at the W. E. Douglas factory for lasting *men's* shoes without any hold-down attachment (R. I, 933, l. 30); that such an attach-

ment was put on but was taken off after a short time.

John N. Murphy testified that he had been an operator on lasting machines for about twenty-three years; he testified further that he also operated an Ideal machine both at Whitman & Keith's factory and at Douglas's factory upon *men's* high-grade welt shoes. (R. I, 933, l. 43, 934, l. 5.)

He said he had also operated the Number 5; that the quality of the work of the Ideal was about the same and that the Ideal was a little faster. (R. I, 933, l. 13, 15.)

Francis O'Keefe testified that he was now foreman of the lasting room of Stacy-Adams Company and had been engaged in lasting shoes for about eighteen years. He testified further (R. I. 934, l. 20 et seq.) that James A. Banister & Company, makers of *men's* fine welt shoes, were lasting such shoes on six Ideal machines, and that the Chase and Ideals did about the same amount of work. He also testified that that company was at the same time using Chase machines for work of like character. On cross-examination he testified that L. Boyden & Company by whom he was first employed in 1896 successfully used the Chase machine for lasting women's shoes. (R. I, 935, l. 20.) He added that the Chase could last successfully *any kind* of shoes except the high toed models which had come into vogue the last three or four years.

The Chase owned by the Consolidated & McKay Company and the Ideal owned by the Goodyear

Company were, therefore, competitive machines when the United Company was formed.

Ira Fletcher testified that he was superintendent of F. M. Hoyt Shoe Company of Manchester, New Hampshire, that he was employed by W. L. Douglas from 1902 to 1910, and that during that period the Douglas Company which was making *men's* welt shoes only was lasting them on Ideal lasting machines, of which, in 1902, 54 were in use. (R. I. 938, l. 11); that Douglas preferred the Ideal to the Chase (ibid, l. 36). He further testified that he had been previously employed between 1894 and 1901 by Cushman & Company of Auburn, Maine; that that company made *men's* welt shoes and lasted them upon Ideals, of which they had twelve; that they had no other kinds of lasting machines in the room in which he was working.

Joshua LeMay testified that he is foreman of Rice & Hutchins' lasting department, and that in that factory the Chase machine was used on both welt and McKay work, indiscriminately, and that in 1897 or 1898 women's McKay shoes were lasted upon the Chase machine. He stated that he had worked on the Chase machine for eight years and that he knew of no reason why the Chase machine could not be used on women's welt shoes, the same as men's. (R. I, 947, ls. 23–37.)

Walter C. Springer (R. I, 947, l. 43) testified that he has worked for Rice & Hutchins about twenty-one years, and was, when his evidence was given, assistant superintendent of the Curtis factory, and at times

had partial charge of the lasting room. Before the "No. 5" came out they used the Chase machine, on men's, boys', and youths' McKay and welt shoes. They also used it successfully on *women's* shoes, and he knows of no reason why it can not be used on women's welt shoes, the same as on men's. He had never heard of anything wrong with the lasting of the women's shoes done on the Chase machine. (R. I, 949, l. 29.)

Emanuel F. Selz, general manager of the manufacturing department of Selz, Schwab & Company for more than twenty years, testified that his company's factories had a capacity of fifteen thousand pairs of shoes per day (R. I, 141, l. 16); that just before the establishment of the United Company the Rapid, the Chase, the Consolidated hand-method, Ideal and Boston machines were in use. They could *all* last *men's* and *women's* shoes (R. I, 142, ls. 14–19); that he got the Chase in 1891 and used it up to a few years ago and that his company still has the Boston and some of the Consolidated hand method machines (R. I, 148, ls. 22, 32); that they have lasted both men's and women's shoes on the Chase and on the Consolidated (R. I, 148, l. 40); that they now use the Consolidated laster principally for *women's* shoes and men's McKay shoes (R. I, 149, l. 5).

Martin E. Welch, a man of forty-seven years experience as a shoe manufacturer, twenty-five of which were spent in business for himself, testified that "when we started the welts we began with the Consolidated hand method machines and we are still

lasting all our welt shoes on that machine. We make women's shoes altogether and have never made any men's welt shoes." (R. I, 712, ls. 2–7.)

The foregoing testimony shows that the Consolidated hand method machine, owned by the Consolidated & McKay Company, was in competition with the Ideal, owned by the Goodyear Company, in the lasting of women's shoes at the time the combination was formed.

John Strootman (R. I, 742, l. 41) testified that he was engaged in manufacturing *women's* shoes, one half of which were McKays and the other half turns and welts. He said, "We lasted by hand until we got the Consolidated hand method machine and we are still using improved machines of that type. Formerly we lasted our shoes *entirely* on that machine, but now we last the toes on the Number 5 machine and the sides on the Consolidated hand method." (R. I, 744, l. 28.)

Charles A. Eaton, (R. I, 751, l. 18) engaged exclusively in the manufacture of men's welt shoes, except a few ladies' and boys' shoes, testified that he had been in the manufacturing business since 1879; that between 1892 and 1899 he was making men's welt shoes exclusively (R. I, 755, l. 6) that he used the Consolidated hand method, the Chase and the Seaver machines, replacing the Chase by the Seaver on the better grade of work, and doing the cheaper work on the hand-method machine (R. I, 755, ls. 2–7); that the Seaver was put out by the Seaver Lasting Machine Company acquired by the United Company soon after

its organization. (*Supra*, p. 18.) The Seaver, owned by one company, and the Chase, and Consolidated Hand Method machines, owned by another, were therefore in competition at the time the United was formed.

The defendants made no effort to meet the foregoing testimony directly, but while contending that each type of lasting machine was better on some kinds of work than others, conceded that there was "some overlapping." (Winslow, R. I, 527, ls. 1–27, Howe, 627, ls. 18, 19.)

Mr. Howard, the patent attorney for the Company, gave certain technical testimony (R. I, 966–973) which is intended to show by reference to patent drawings the unsatisfactory character of the Ideal lasting machine for men's work. *He admitted that he had never lasted a pair of shoes* and does not pretend to any knowledge qualifying him to contradict the direct statements of the witnesses as to the actual use of these machines.

He stated that his testimony must be taken "as technical information" only (R. I, 971, l. 32). He admitted that "it is pretty hard to identify the Ideal machines used before 1899 because the records of the Goodyear Company (the owner of the Ideal) were not nearly as complete as those of the Lasting Machine Company owner of the Chase and other machines. (R. I, 973, l. 35.) His testimony is therefore of little value when confronted with the foregoing testimony of practical and disinterested witnesses.

The same may be said of the testimony of Mr. Winslow (R. I, 975, l. 42) relative to the number of Ideal machines out January 1, 1899, and the work done upon them. This, too, can be based only upon the records, which Mr. Howard tells us "were not nearly as complete as those of the Lasting Machine Company." Besides, the relative number of machines in use would have little if any tendency to prove whether or not they were competitive. The greater number in use of the one might be due to better management, more capital, or any one of a number of causes having nothing to do with the competitive character of the machines.

It appears also from the testimony of Mr. Winslow that prior to 1898 the Goodyear Company was accustomed to put out the Ideal machines "on a large initial payment and no royalty." (R. I, 978, l. 24.) This being so, the company would have no record of the number of shoes operated upon by the Ideal.

In addition to the foregoing facts, as to the active competition existing between the lasting machines put out by the Goodyear Company on the one hand and those controlled by the Consolidated & McKay Company on the other and as to the prospect of increasingly sharp competition between those machines, some one of which was necessary to the making of every shoe, it is further to be noted that the Goodyear Company, though possessing only a single type of lasting machine, had the great advantage of being able to offer also welt sewing and outsole

stitching machines and auxiliaries to those machines. It was able therefore to make its lasting machine help its welt machine, and *vice versa*. At the same time, the Consolidated Company was retaliating by requiring the use of its lasting machines to full capacity and insisting upon the requirement that if the lessor should have work for lasting machines requiring additional machines, such machines should be taken from the Consolidated & McKay Company. (Plffs. Exs. 6–10, R. III, 45–82.)

This is in effect an admission that Mr. Winslow's Company, the Consolidated & McKay Company, believed that its own laster was capable of lasting men's and women's shoes, and was, therefore, in direct competition with the Ideal machine as to both classes of shoes.

The Government's testimony on this point is strongly sustained by certain advertisements which appeared in the Hide & Leather Reporter, a trade paper. On December 3, 17, and 31, 1898, about two months before the combination was formed, the Consolidated & McKay Lasting Machine Company published an advertisement stating that the Consolidated hand method lasting machine was adapted to the lasting of "welt shoes" and offered it to the trade for that purpose. The advertisements made no distinction between men's and women's welt shoes but claimed the machine would last welt shoes without distinction. (R. I, 960, l. 24.)

On December 22, 1897,[1] about a year and two months before the consolidation, the Chase laster, also put out by the Consolidated & McKay Company, of which Mr. Winslow was the chief managing officer (R. I, 522, l. 21, et seq.), was advertised in the same paper as a machine "for lasting women's shoes." (R. I, 960, ls. 29–30.)

The evidence afforded by these contemporaneous advertisements should overcome anything which Mr. Winslow and his witnesses said in this law suit, twelve years afterwards. If the advertisements were warranted, and of course they were, the Consolidated hand method and the Chase, both owned by the Consolidated & McKay Company prior to the organization of the United Company in 1899, were adapted to the lasting of *women's* welt shoes, as well as men's, and therefore as to these shoes also were competitors of the Ideal laster, owned by the Goodyear Company, which is conceded by all hands to have been thoroughly fitted for the lasting of *women's* welt shoes.

The foregoing testimony clearly shows that the purchase of the Consolidated & McKay Company and of the Goodyear Company by the United Company, February 7, 1899, destroyed an existing and vigorous competition between lasting machines.

That with the development of the industry this existing competition between powerful corporations must have become increasingly sharp is, it is respectfully submitted, not open to doubt.

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[1] The date is stated in the record as 1907, an obvious misprint.

B. THERE WAS EXISTING AND POTENTIAL COMPETITION BETWEEN THE GOODYEAR AND EPPLER COMPANIES IN WELT SEWING AND OUTSOLE STITCHING MACHINES AND AUXILIARIES.

The characteristic feature of the welt method of making shoes is, as has already been said (*supra*, p. 10) the use of a strip of leather called the welt which is employed as a connective between the upper and the outsole, both of which are sewed to it. Before the consolidation the Eppler Welt Machine Company and the Goodyear Shoe Machinery Company were each putting out machines for performing the operations involved. They laid the stitch of the seam which attached the welt to the upper in different ways. Each also put out outsole stitchers and the two companies were therefore in competition as to these machines also. (Howe, R. I, 469, l. 36.) Undoubtedly many more machines had been put out by the Goodyear Company which had twenty years priority in the field. The statement made in the lower court that the Eppler machines could not produce "Goodyear welt" shoes is, however, only warranted when understood literally, and when so understood is of absolutely no significance. Eppler machines could not produce "Goodyear welt" shoes because "Goodyear welt" was a trade-mark name for shoes produced on Goodyear machines. (R. I, 22, l. 3, 625, l. 44.) But Eppler machines could and did produce merchantable shoes made by the welt method and the shoes so produced possessed the advantages of that process. (*Infra*, pp. 35–40.) That there was open to the Eppler Company a wide field of possible competition, that it was successfully entering that field

and that in all human probability it must have become at least a dangerous and annoying competitor of the Goodyear Company are circumstances which, if true, are not lessened in significance by the contention of the defendants that the competition when ended by the illegal combination had not yet threatened the dominance of the Goodyear Company. Neither are they affected by the *belief* on the part of some, even if such a belief were warranted, that after all was over, the Goodyear machines would have demonstrated a superiority which the Eppler interests could not have offset either by improvement of their machine or by concessions of price. That the Eppler Company was in fact an able and a prospectively very dangerous competitor is shown by the following evidence:

C. H. Jones testified (R. I, 108, l. 42) that when the United Company was formed the Goodyear Company and the Eppler Company were both putting out welting, sewing, and outsole stitching machines, and he knows of his own personal knowledge that the welters and outsole stitchers produced by the Goodyear and Eppler companies were used for the same grade of work (R. I, 111, l. 16).

E. F. Selz testified that immediately before the United Company was organized there were on the market the Goodyear and the Eppler stitchers and inseam sewing machines (inseam machine is the same as welting machine) and that they were doing exactly the same work, the only difference between the Eppler and the Goodyear being in the formation

of the stitch, but so far as he knew, and he had used both machines, there was no difference in the rapidity with which the work was done. (R. I, 143, l. 22 et seq.)

Warren F. McElroy, an expert of wide experience, (*infra*, pp. 104, 136) testified that in 1897 or 1898 the company with which he was working was solicited by an agent of the Eppler Machine Company, and that the witness went to a factory and looked at the machines and the class of work they were doing. They were working on men's medium and fine grade welt shoes, and from his observation it appeared that the work of the Eppler was equally as good as the work done by the Goodyear machine and that it could have been used on women's shoes. (R. I, 187, l. 32 et seq.)

Charles S. Smith testified that the Eppler Company began business in 1893, and put out the welting machine, and began putting out the outsole stitching machine in 1893 or 1895. The witness had sewed shoes on the Eppler machines as an expert (R. I, 352, l. 43) and they could be and were used for the same purposes as the Goodyear welt sewing machine (R. I, 352, l. 20).

William P. Whitman testified that he installed an Eppler welt machine before the formation of the United Company and operated it for several years. The work done by the machine was satisfactory. (R. I, 916, l. 11.)

Fred F. Field testified that he was President of the Fred F. Field Company, of Brockton, and vice pres-

ident of Field Brothers & Gross, of Auburn, Maine. The Fred F. Field Company, of which he has immediate charge, manufactures men's welt shoes, and they at one time had in their Brockton factory as many as *eight* Eppler welt machines. At the same time they had *two* Goodyear welters. He thinks they obtained the first Epplers probably in 1902 or 1903, and kept five or six of the machines until about a year ago (This witness testified February 5, 1914). During that entire time he was using both Eppler and Goodyear welters, and it was the witness' judgment that the Eppler machine sewed a flatter seam than the old Goodyear, hence the shoe did not require so much filling in the bottom, which he regarded as some advantage, and he does not think there was much difference between the old Goodyear and the Eppler as to the amount of work which could be done. They put in the Eppler machines because they regarded them as the better of the two, and kept them until the United put out its Model K. (R. I, 930, l. 15, 24 et seq.)

George Strong testified (R. I, 931, l. 42) that he has been making men's welt shoes for thirty years; that he began the use of the Eppler outsole stitcher about 1892, when they were then sewing the inner seam by hand, and they got along with the stitcher very well. About 1895, they took two Eppler welt machines and used them until about 1900, when they made a trade with the United Company and took Goodyear machines. They did this because their Eppler machines were "practically gone" and they

had a chance to turn them in to the United Company for the new rapid stitchers and welters, and he thinks that the Goodyear welter is a little better than the Eppler welter was. (R. I, 932, l. 23.) It may be added that the *new* machines for which the exchange was made were developed after the formation of the United Company.

Milton S. Florsheim testified that when the United Company was formed, he had Goodyear welters and stitchers, and had installed one line of Eppler welters, stitchers and rounders (R. I, 159, l. 7); that the Epplers were being used by others and he wanted to find out whether he could not use them and thus save one cent per pair royalty, the Eppler people charging that much less than the Goodyear (Ibid., 169, l. 22). And he said that in his opinion the work performed by the Eppler welters, stitchers and auxiliaries was as well done as that performed by the Goodyear machines, and that the best shoes made at that time, or as good as any made, were made on the Eppler machines. His company then made a high-grade shoe, but they were not as high priced as the shoes it is now making, which retail from $4 to $6 per pair. (R. I, 935, l. 30 et seq.)

George E. Keith, formerly president of the Eppler Company, and now a director of the United Company (R. 385, l. 21) admits that the Eppler Company had put out about thirty or forty welters, but not so many stitchers; that they had been attempting to install welters after 1892, and stitchers after 1894 or 1895, and that they had a line of machines for making welt

shoes, except a rough rounder, and were trying to perfect that, and had put five agents in the field (R. I, 389, l. 6 and 26).

R. H. Long (R. I, 224, l. 31) testified that he engaged in shoe manufacturing for himself in 1886 and was so employed at the time the United Company was formed; that his factory had a capacity of six thousand pairs a day; that at the time the United Company was formed he was engaged exclusively in the manufacturing of welt shoes, and was using the Eppler welt machine principally (R. I, 225, l. 10) and that he continued to use that machine long after the formation of the United Company; (R. I, 226, l. 3) that finally he surrendered the Eppler and took the Goodyear, which performs exactly the same class of work (R. I, 227, l. 41). There is considerable testimony as to why he made the surrender, but that is immaterial. We are only concerned with the fact that he had successfully used the Eppler for many years.

James H. Cunningham (R. I., 288, l. 31) testified that he had been superintendent of Stacy Adams Company for 30 years, which company has a daily capacity of about 1,200 pairs, welt shoes, exclusively; that his company commenced the use of the Eppler welter about 1892 and continued it until two or three years after the United Company was formed; that it was used for performing the same kind of work as the Goodyear machine; and that the *welter* was satisfactory, but the outsole stitcher did not do as good work as the Goodyear (R. I, 290, l. 3).

Ira E. Fletcher (R. I, 937, l. 36 et seq.) superintendent of F. M. Hoyt Shoe Company, said that he worked for W. L. Douglas from 1902 to 1910; that Mr. Douglas used the Eppler and Goodyear welt machines, had about *twelve* of the former and *eight* of the latter; *that the two classes of machines ran side by side in the same factory.* The shoes made on the Eppler and Goodyear machines were both put on the market *as welted shoes.* Douglas was using the Eppler stitcher as well as the welter, he said. The witness considered the Goodyear *stitcher* better than the Eppler, but he made no comparison between the Eppler and Goodyear *welter* further than to say that they ran side by side in the same factory.

Mr. Keith, just mentioned, testified that the Eppler welter was put out in 1892 and the stitcher in 1894 or 1895; (R. I, 389, l. 11). The Eppler company, then, was in business some seven years before the consolidation. This proves that it was a successful competitor or else it could not have lived that length of time.

It was shown that the Eppler Company was pressing its business and was advertising its product up to the moment of its acquisition by the United Company. (R. I, 361, l. 37.) It was a valuable property. In the Court below, the Government sought to prove its value by reports of the Company made as required by statute to the Commissioner of Corporations for Massachusetts covering the years 1896, 1897, and 1898. Copies of these reports, duly certi-

fied by the Secretary of the Commonwealth, were rejected by the Court on the ground of incompetence. (R. I, 362, l. 5, 388, l. 45.) Mr. Keith, president of the Eppler Company at the time it was absorbed, and a director of the United Company when he testified swore to the originals of the reports, in one case before a notary who duly attested the fact under his seal according to the certified copies. Asked whether he knew of the reports at the time they were made, Keith said, "I suppose I must have had knowledge of that." And further answered, when asked if the reports contained a correct copy of the assets owned by the company at the times covered by them, "I suppose it must have been. It must have been reported that way," but insisted that he had no present recollection of it. (R. I, 386, l. 42, 387, l. 41.)

The reports were sworn to and filed in pursuance of law. Hence properly certified copies of them were, under the circumstances, at least *prima facie* evidence of what they purported to disclose, and should have been admitted.

The report made March 30, 1898, less than a year before the United Company was formed, shows:

Machinery	$19,977.03
Cash and debts receivable	10,421.09
Patent rights	245,853.61
Machines in factories	287,010.09
Miscellaneous	17,713.16

and the admitted testimony shows, despite an extraordinary and unexplained reticence, ignorance, and forgetfulness upon the part of the former officers

of the Eppler Company and upon the part of the officers of the United Company (Winslow, R. I, 531, l. 37, 842, l. 20 et seq., Keith, R. I, 385–7, Howe, 675, l. 42, 676, l. 1–39), that there was paid for the stock of the Eppler Company some $6.00 (Arnold, R. I, 952, l. 24) or $6.50 (Brackett, R. I, 949, l. 40) a share. The par of the stock was $10.00 and its issued capital stock was $600,000. At this rate there was paid in the interests of the United Company from $360,000 to $390,000 for the business of this Company which, according to the defendants' evidence then had only thirty or forty machines out in shoe factories, and these largely in the factory of its president. (*Supra*, p. 38.) Mr. Howe was certain that the Eppler people would not take $100,000, but as to whether they got as much as $500,000 he did not know. (R. I, 676, l. 27.) Although the officers of the United Company, when asked to do so by the United States, could find no records showing what was paid for the Eppler Company they were able to find without any apparent difficulty a letter which passed between R. H. Long and the Eppler Company and a lease executed by that company and him before the consolidation. (R. I, 32, l. 33; 251, l. 6.)

The value placed upon the Eppler Company by the purchase shows that in the opinion of the defendants, the Eppler Company was a real and dangerous competitor.

The testimony above quoted as to the actual use of the Eppler machines and their possibilities of competition with the Goodyear machines is substan-

tially corroborated by Mr. Winslow himself. He said that both machines were being used in the manufacture of welt shoes, and that the machines were intended to perform the same operation but they did it in distinct and different ways. (R. I, 530, l. 37, et seq.; 531, l. 14.) And he added,

> It is true that in obtaining the Eppler Company we did not broaden our field, because it was embraced in the Goodyear Company's machines.
>
> Q. I believe you claim the Eppler machine was not hardly as good as the Goodyear welting machine?
>
> A. It wouldn't make as good a shoe; no.
>
> Q. But it was being put on the market?
>
> A. It was in use.
>
> Q. At that time, in the same territory in which the Goodyear machine was being put on the market?
>
> A. It was in use at that time and they were manufacturing Eppler welt shoes with it. (R. I, 531, l. 22–33.)

There should here be noticed the reason given for this acquisition made secretly through Henry B. Endicott, (who will again appear in connection with an even more important acquisition) at a cost of over $350,000. (Winslow, R. I, 530, l. 4.) The reason according to Mr. Winslow was to get rid of existing litigation. He insists there was no other purpose. (R. I, 531, l. 34.) This litigation the Goodyear Company which was going into the United Company was confident of winning (Howe, R. I, 470, l. 21) and it

was all litigation brought *by* the Goodyear Company, not against it. It was, moreover, litigation in which the plaintiff was apparently not very keenly interested. Of the group of cases brought, only one (Case 248, *Goodyear Shoe Machinery Company* v. *Eppler Welt Machine Company*) involved a principal machine. (Howe, R. I, 471, l. 27, 673, l. 34.) Mr. Howe says, "Excepting the suit under the Briggs patent on the *welting* machine and three suits on the *outsole stitcher* on the improvement in *shuttles*, all these suits related to auxiliary machines." (R. I, 674, l. 33.) He further said that if the Goodyear Company had succeeded in the pending patent litigation it would have compelled alterations in the Eppler machines "*except the welt* sewing machine." (R. I, 623, l. 29.) Even the Eppler welter, therefore, was not seriously involved.

Case 248 was brought in April, 1892. When the United Company was formed in 1899, the evidence, if any had been taken, had never been turned into court and no hearing had been had. (R. I, 470, l. 16, 472, l. 1.) The other cases related to patent infringements in auxiliary machines. (Howe, R. I, 471.) All were pending when the United Company was formed. Had the litigation been wholly successful its result might have affected temporarily the Eppler Company's position as a competitor of the Goodyear Company (Howe, R. I, 623, l. 29–38) although this is admitted to have been speculative (Howe, ibid), and as pointed out above, the chief machine, the

welter, of the Eppler Company was not seriously involved. Nor did the litigation, according to Howe (R. I, 679, l. 15) relate to the fundamental patents.

The only advantage which defendants suggest that the United Company could obtain by "getting rid" of this inactive litigation brought by one of its constituent companies against a competitor was that it escaped controversy with customers of the Eppler Company who were customers also of constituent companies of the United Company other than the Goodyear Company. Brief consideration will suggest the number of ways in which this might have been accomplished other than by the purchase of the competitor, without spending in the neighborhood of $600,000.

The question whether the purchase was legal even if it were assumed that the real purpose was merely to end this litigation is later discussed. (*Infra* p. 242.)

Other facts of importance in their bearing upon the position of the Eppler Company as an actual and prospective competitor and the purpose behind its acquisition are these:

The Goodyear Company asked and received a royalty of four cents a pair for each pair of men's shoes made on its machine. Its competitor, the Eppler Company, charged only three cents (Florsheim, R. I, 159, l. 24–27, Long, 249, l. 43, Advertisement, Eppler Welt Machine Company, R. I, 960, l. 31–35.) This very usual competitive situation is

to be borne in mind when one is asked to consider the competitive disadvantages of the Eppler machines with respect to the number of auxiliary machines, etc.

The United Company after the consolidation raised the royalty on the Eppler machines to four cents. (Winslow, R. I, 417, l. 36–45.) It refused to give Eppler machines at three cents to Florsheim who testified that some time after the United was formed, "I desired to trade in my Goodyear machines on which I was paying four cents a pair royalty for Eppler machines, for which, under my understanding with the Eppler Company, I would have had to pay only three cents a pair. Mr. Wilson [an officer of the United Company] would not make the trade." (R. I, 159, l. 24–28.) None the less, a demand for the Eppler machine continued, even after the consolidation.

Frederick G. King (R. I, 696, l. 30) called by the defendants testified that he was manager of the Goodyear Department of the United Company; that since the United Company was formed it had put out more than *forty* Eppler welters and more than *twenty* Eppler stitchers, but that he did not recollect that any auxiliary machines were put out; also that the last Eppler machines were received back by the United Company about December, *1912*. (Ibid. 702, ls. 9–15.)

After all the preponderant cause is found in the following:

There was a circular letter sent by the directors of the Goodyear Company to the stockholders of that

company announcing the organization of the United Company and inviting their participation. That statement (Plff's Ex. 152, R. I, 140) was drawn by defendant witness Howe (R. I, 630, l. 18). It contained the following:

> The great advantages to be secured by the control in one corporation, both in the United States and foreign countries, of the most efficient types of shoe machinery have been for several years recognized by the officers of the principal shoe machinery companies. For more than a year your directors and large stockholders have been in negotiations to accomplish this end.
>
> The United Company will also from time to time acquire other shoe machinery properties, either by direct ownership or by purchase of shares of their stock.

When asked about the meaning of the paragraph first quoted above, Howe said (R. I, 630, l. 18 et seq.):

> I drew the circular letter to the stockholders of the Goodyear Company, which is Plaintiff's Exhibit 152. As to what I had in mind in making the statement in the first sentence in that circular, when this circular was issued, we had acquired the Eppler Welt Machine Company. * * * Therefore we had then the most efficient types of shoe machinery—perhaps I should have said protected by patents—in that we had the Goodyear welt and turn sewing machines and a long line of auxiliaries, which were the only system or set of machines which would make the Goodyear

> welts. * * * If any manufacturer wanted to make Eppler welts, we had the only system that would make them. Therefore, that seemed to my mind at that time—the United Shoe Machinery Company did—to represent the control in one corporation of the most efficient types of shoe machinery.

and he added:

> We didn't know whether the manufacturers would prefer, if there were no litigation at all between the two companies, whether the trade would prefer Eppler welts or whether they would prefer Goodyear welts. (R. I, 630, l. 43, 631, l. 1–3.)

This statement of the chief managing officer of the Goodyear Company (R. I. 466, l. 34 et seq.) that those concerned in the organization of the United Company did not know "whether or not the trade" eventually "would prefer the Eppler" machines to the Goodyear machines demonstrates that the Eppler Company was an important actual and even more important potential competitor of the Goodyear Company with which it was combined in the organization of the United Company. Taking this fact in conjunction with his explanation that the purpose of himself and associates was to place in the control of one corporation "the most efficient types of shoe machinery," there can be no doubt as to the real reason why the Eppler Company was absorbed. It was for the purpose of monopolization.

C. THE CONSOLIDATED & McKAY COMPANY HAD A MONOPOLY IN PEGGING MACHINES.

Formerly at least three types of pegging machines had been in use. (R. I, 534, l. 34–39.) At the time of the organization of the United Company, however, only the Davey Pegging Machine Company then owned by the Consolidated & McKay Company was putting out such machines. Pegged shoes had become an increasingly negligible factor in the industry. Of the 173,000 pairs of shoes made in 1899, only 7,475,000 were pegged. Of the 279,000,000 pairs made in 1910, only 3,000,000 were pegged. (Dfts. Ex. 215, R. I, 424.)

D. THE McKAY SHOE MACHINERY COMPANY HAD A SUBSTANTIAL MONOPOLY IN METALLIC AND HEELING MACHINES.

At the time of the formation of the United Company in 1899, the McKay Shoe Machinery Company was not a competitor of either the Eppler, the Goodyear, or the Consolidated & McKay Company. It did not produce either a welter, laster, or outsole stitcher. But it had a substantial monopoly of the more important metallic machines.

Mr. Winslow said, referring to metallic machines,

> As regards different kinds or makes of machines there were not a great many in 1899 and practically all were being made by the McKay Company which was putting out a large number of those machines. My best information is that the McKay Company was putting out all the heel attaching machines that were being put out in 1899, and that no

> other company had put out any heel attaching machines for quite a number of years prior to 1899. When I speak of a heeling machine, I mean a heel attaching machine always. (R. I, 851, l. 23, et seq.)

As to metallic fastening machines other than heeling machines, Mr. Winslow said,

> I think the Metallic Association * * * the stock of which was owned by the McKay Company were putting out nearly all the metallic fastening machines that were being made in the United States. (R. I, 532, l. 6, et seq.)

The acquisition of this company by the United Company did not, in itself, destroy existing competition. It did, however, remove the possibility that this powerful corporation engaged in a cognate line of business might some day become a competitor of the United Company. The acquisition, moreover, had a much more important result. As will appear, it completed the defendants' fabric of monopoly in important bottoming machinery and made fully effective the system of leasing which will be set out. (*Infra*, pp. 145–213.)

II. THE ORGANIZATION OF THE UNITED SHOE MACHINERY COMPANY IN 1899.

It has already been stated that the United Shoe Machinery Company of New Jersey was incorporated February 7, 1899. The circumstances which led up to its formation were related in considerable detail both by Mr. Winslow and Mr. Howe who appear to

have been the prime movers of the project. (Winslow, R. I, 406, l. 35, Howe, R. I, 627, l. 44, 8, l. 1, 2.)

Mr. Winslow was the principal man in the Consolidated & McKay Company. (R. I, 406, l. 25, 522, l. 20.) That company, as has been noted, put out a line of lasting machines which substantially covered the field, and it owned the Davey Company, which was the only company then putting out pegging machines. Mr. Howe was the principal executive officer of the Goodyear Company (R. I, 466, l. 34) which had a large business in welt method machines, and a considerable business in lasting machines. The competition betweea these two companies has been noted above. (*Supra*, pp. 17–34.)

The discussions between Mr. Winslow and Mr. Howe covered several months. The date was 1898. Mr. Howe was a lawyer of wide experience in patent and corporation law, having come to the bar in 1878. (R. I, 466, l. 28.) Mr. Winslow was not a lawyer. Mr. Howe was "opposed to the plan of having a harmonious agreement, a sort of working agreement between the Lasting Machine Company [the Consolidated & McKay Co.] and the Goodyear Company because (he) had a sort of indefinite idea that it might be deemed a combination in restraint of trade." (R. I, 629, l. 20.) He evidently thought, however, as did a good many other lawyers at that chronological stage of the interpretation of the Sherman Law, that it was enough to escape the penalties of the statute to give the combination a corporate form. He insisted, therefore, "that there should be a complete

merger and consolidation." (R. I, 630, l. 7.) This idea "led to the formation of the United Company instead of carrying out the matter in the other way." (Howe, R. I, 675, l. 13.) Mr. Howe added, "I think it was under my advice." (Ibid.) Mr. Winslow says he was in accord with the general policy outlined by Mr. Howe upon this point. (R. I, 535, l. 14.)

In addition to being a lawyer, Mr. Howe was a practical business man, for he says that the management of the Goodyear Company "fell very largely upon" him. (R. I, 466, l. 34.) He knew whether or not the welter, stitcher and auxiliaries which his company was putting out competed with the welter, stitcher and auxiliaries of the Eppler company and he knew whether the lasting machines put out by the Consolidated & McKay Company were competitors of the lasting machine put out by his company. Because of what he knew, he also knew that the *combination of the companies would suppress competition* and restrain trade. His error, not then uncommon, in supposing that a *combination in corporate form* could suppress competition and escape the penalties of the Sherman law, is discussed *infra*, pp. 214–221.

The plan was thereafter expanded to include the McKay Shoe Machinery Company which had a monopoly of its particular field, and had not yet extended its activities to the point of competition with the Consolidated & McKay or the Goodyear Companies, *supra*. The only reason given by Mr. Howe for the inclusion of the McKay Shoe Machinery Company was the opportunity to consolidate its agencies with

those of the Goodyear Company. (R. I, 633, l. 27.) Mr. Winslow, however (R. I, 409, l. 29), apparently did not think very highly of the agencies of the McKay Company. He suggests as a reason for the inclusion of the McKay Company that its managing director, Mr. Brooks, was an old man, and wanted to retire, (R. I, 406, l. 41) and his final statement was that he believed that by adding the metallic and heeling machines to the lasting and welt method machines they could give better service, get a better product from the machines, and get better results to the manufacturers and themselves. (Winslow, R. I, 529, l. 27 et seq.) This is the customary justification for monopoly. And he must have had a belief approaching certainty that a far reaching monopoly would result. Whatever the reason, the fact was that the McKay Company was acquired at a price of eleven dollars a share for stock which was selling on the market at eight or nine dollars (R. I, 533, l. 40) and the original offer was raised from nine to eleven dollars in order to get it. (Howe, R. I, 633, l. 41.) There is no ambiguity about the monopolistic result. (*Infra*, p. 54.)

It was decided also to acquire the business of the Eppler Welt Machine Company. The business of that company in welt machinery has been described. (*Supra*, pp. 34–49.) It is insisted that this company was taken in only to avoid the litigation above described. (Winslow, 531, l. 34.) The facts as to this litigation have been noticed. (*Supra*, pp. 43–45.) For some reason best known to the parties concerned, this

stock was treated differently from that of the other companies. Instead of an offer to exchange the stock of the United Company for the stock of the Eppler Company, the stock of the latter company was purchased quietly by Mr. Endicott and later turned over to a syndicate which took it for the United Company and turned it over to that company. (Winslow, R. I, 528, l. 42; 529, l. 1–3; 530, l. 1 et seq.)

III. CONSEQUENCES OF THE FORMATION OF THE UNITED COMPANY AND THE SUPPRESSION OF PRESENT AND POTENTIAL COMPETITION.

The formation of the United Company brought under a single control every company actively putting out or planning to put out lasting, pegging, welt sewing and outsole stitching, heeling and the more important metallic fastening machines in the United States. (Jones, I, 112, l. 22; Selz, I, 142–145; Winslow, I, 537, l. 32, 851, l. 19 et seq.; Howe, I, 630, l. 24 et seq.)

The immediate results were:

(1) The suppression of the actual and of the potential competition in lasting machines theretofore existing between the Consolidated & McKay Company and the Goodyear Shoe Machinery Company. (*Supra*, pp. 17–34.) It created a monopoly in lasting machines.

(2) The suppression of the actual and of the potential competition between the Goodyear Shoe Machinery Company and the Eppler Welt Machine Company. (*Supra*, pp. 34–49.) It created a monopoly of welting and outsole stitching machinery.

(3) The absolute prevention of future competition between the McKay Shoe Machinery Company, the Goodyear Shoe Machinery Company, the Eppler Welt Machine Company, and the Consolidated & McKay Company.

(4) The creation of an absolute and complete monopoly in lasting, pegging, welting, outsole stitching, heeling and metallic fastening machines.

(5) The creation of an organization with vast resources whose control of many different types of machines necessary to the shoe manufacturing industry gave it a power to extend and intrench its monopoly which none of its constituent companies, however successful, could approach.

A simple illustration makes this clear. Before the consolidation, the McKay Company had a monopoly of metallic machines. (*Supra*, p. 49.) But a shoe manufacturer, though obliged to go to it for such machines, was free to choose welt machinery where he could find it. The leases of each of the constituent companies dealt only with the machines made by it. In the case put, therefore, a competitor of the Goodyear Company would not be affected by the McKay Company's monopoly. After the consolidation, however, it became possible for the United Company to say to a manufacturer seeking metallic machines that he could have them on acceptable terms only if he used also United Company's welt machinery, lasting machinery, and so on through the list.

From the formation of the United Company, therefore, it became possible to that company to destroy any competitor who had only one or two types of machines to offer, no matter what the excellence of those machines. It acquired the power, by using an appropriate leasing system, to eliminate and forever exclude all competitors and to maintain a monopoly of all the lines of machines made by it.

The manner in which exactly this was accomplished under the system of leases devised and enforced by the United Company to transform into fact the possibilities of monopoly afforded by the circumstances of its organization appears *infra*, pp. 145–213.

The effect of the consolidation of those companies was precisely the same as if they had remained *separate* but had entered into a written agreement vesting in Winslow and the other persons who became officers of the United Company the power to refuse the machines of one company to any shoe manufacturer who would not agree to operate them only in connection with the machines of the other companies.

Even Mr. Howe recognized the illegality of such a plan. The device of corporate organization was accordingly resorted to. (*Supra*, p. 51.) Such an artifice is not a way of escape from the prohibition of the Sherman Law. (*Infra*, pp. 214–221.)

Control of the McKay Shoe Machinery Company was necessary to the success of a design to exclude competition in the manner just outlined. That is,

as was suggested, a sufficient and, it is submitted, the true reason for taking in that company.

(6) The creation of a corporation so powerful that it could raise royalties, e. g. by increasing the royalty on welt machines established by the Eppler Company at three cents to four cents (*supra*, p. 46); bring about a manufacturer's giving up machines to which he had title, and substituting machines for whose mere use he must pay royalties by refusing to supply repair parts (McElroy, R. I, 189, l. 39); compel an association of manufacturers to accept leases to whose terms they made earnest objection (*infra*, p. 198); and generally to become an overlord of the industry.

IV. THE EXPRESSED PURPOSE OF THE CONSOLIDATION.

The evidence establishes that it was the purpose of the combiners to create and perpetuate a monoply in the lines of shoe machinery then put out by the companies entering the combination and to extend it to other lines.

This purpose was expressed. When the organization of the United Company had been determined upon the directors of each of the constituent companies sent out as we have shown an address to its stockholders; and in the first paragraph of the address to the stockholders of the Goodyear Shoe Machinery Company, dated February 8, 1899, it was said:

> The great advantages to be secured by the control in one corporation, both in the United States and in foreign countries, of the most

> efficient types of shoe machinery have been for several years recognized by the officers of the principal shoe machinery companies. For more than a year your directors and large shareholders have been in negotiation to accomplish this end. * * *
>
> The United Company will also from time to time acquire other shoe machinery properties, either by direct ownership or by purchase of shares of their stock. (Plff's Ex. 152, R. I, 140.)

Mr. Winslow was confronted (R. I, 535, l. 22) with this statement of which Mr. Howe admitted authorship (R. I, 630, l. 18). He did not deny that the original purpose of the United Company was that set forth in the above quotation. And it is very significant with respect to the purpose actuating the combination that 20 days after its organization, the United Company bought out the Goddu Company, a competitor. (*Infra*, pp. 62–64.)

Speaking of that acquisition, Mrs. Converse, formerly Miss Van Wagennen, daughter of the treasurer of that company, testified to a conversation with Mr. Winslow on February 3, 1900, about the purchase of the stock of that company in which he said, "Miss Van Wagennen, I bought them out to get rid of them, to have no more trouble or *competition* with them." (R. I, 311, l. 32; also 312, l. 11.)

Mr. Winslow at first denied this, although he admitted the conversation with her, and then said, "I do not remember any talk about competition." (R. I, 437, l. 17.) But Mrs. Converse supported her

statement by producing a copy of a memorandum of the conversation made at the time. (R. I, 313, l. 13.)

Other instances showing that it was Winslow's purpose to suppress competition by the purchase of competing companies appear later on. (*Infra*, pp. 60–126.)

A contract entered into on September 11, 1899, between the United Company and Henry W. Peabody & Company wherein Peabody & Company were made agents of the United Company in Australia, contains the following:

> Whereas the United Company have acquired control of the boot and shoe and leather working machinery made by the following named corporations doing business in said Boston, namely:
>
> Goodyear Shoe Machinery Company,
> Consolidated & McKay Lasting Machine Company,
> McKay Shoe Machine Company,
> Eppler Welt Machine Company,
> Goddu Metal Fastening Company,
> Gordon Staple Lasting and Tacking Co.,
> Davey Pegging Machine Company,
> Gem Flexible Insole Company,
> Boot & Shoe Sole Laying Company,
>
> and contemplates acquiring the control of other lines of boot and shoe and leather working machinery and boot and shoe findings, except leather, linings, lasts, and finished boots and shoes. (Plff's Ex. 189, R. IV, 1250.)

That contract was signed by George W. Brown, Treasurer of the United Company. And after Winslow had stated that he was in constant communica-

tion with Brown about the various matters affecting the company and its policy, he was asked whether Mr. Brown was correct in the recitals just quoted. He answered with a significant evasion. (R. I, 536, l. 3.)

There is no doubt that the organization of the United Company accomplished exactly the purpose of combining "in one corporation the most efficient types of shoe machinery" most of which before the combination were competitive. (Plff's Ex. 152, *supra*.) The recitals of the contract quoted above show that the United Company contemplated exactly the expansion of that company which in fact took place. The inevitable results upon interstate commerce have been noted and will be the subject of further comment. In the face of these facts, literal denials of specific intent to restrain trade are of no significance.

V. SUBSEQUENT ACQUISITIONS MADE BY UNITED COMPANY FOR PURPOSE OF DESTROYING COMPETITION AND EXTENDING ITS MONOPOLY.

A. ACQUISITIONS OTHER THAN THE PLANT PURCHASE.

In the record (pp. 37–105) are set out contracts of purchase and bills of sale under which the United Company acquired the shoe machinery business and assets of fifty-six individuals, partnerships, and corporations, not including the properties of Thomas G. Plant, which are dealt with separately hereafter. The result of these acquisitions was to remove certain remains of competition, to give the United Company control of a number of machines used in the manu-

facture of shoes previously freely obtainable in the open market, and so to intensify the possibilities of domination already noted as an effect of the original consolidation. They emphasize and make clear the intent to monopolize which underlay defendants' course of action. In many instances covenants were exacted from the vendors designed to prevent future competition with the United Company where the vendors were inventors. These covenants required assignment to the United Company of all inventions made during a period of years.

The general attitude of the defendants with respect to these acquisitions is vividly exemplified by the testimony of C. H. Krippendorf. The witness was a director of the National Boot & Shoe Manufacturers' Association. Testifying with regard to Mr. Winslow's statements at a conference with a committee of that body, Krippendorf said:

> After discussion, he said, in substance, "We in order to prevent competition, have to buy out competing machines, and we have endeavored to create a condition under which we don't have to pay more money for those machines than they are worth." (R. I, 214, ls. 35–39.)

It is also a fact that in some cases what was purchased was patent rights and inventions and not machines. This difference would seem to be of no importance. A prospective competitor is none the less such because he has only proceeded to the point of acquiring a valid patent under which to pursue

competition at the time he is removed from the field by acquisition.

For example, the first of the acquisitions proved was that of the Goddu Company. This was consummated less than a month after the organization of the United Company and was deemed by defendants of sufficient importance to warrant inclusion in the recitals of the Henry W. Peabody contract. (*Supra*, p. 59.) The Goddu Company was engaged in perfecting and manufacturing nailing machines, slugging machines, tacking machines and standard screw machines—all important metallic fastening machines. No other concern except the United Company was engaged in this field. The United Company, as successor to the McKay Company was putting out machines for doing the work for which the Goddu machines were adapted. (R. I, 42, l. 1.) The Goddu machines, according to Winslow, were not yet in a condition to be placed in the hands of manufacturers for continuous operation "but they were in a state of development where some of them could have been, without extensive changes, made operative." (R. I, 436, l. 28.)

In view of this testimony there would seem to be no warrant for the contention of one of the judges below that "the evidence is not sufficient for a belief that without reconstruction, radical in character, anyone could have used them as competing machines." In any event, it appeared that the very thing the Goddus

were doing was the perfection by all necessary reconstruction of their machines. The contention referred to is made as a basis for the proposition that, if a competitor is likely to become so important that his removal after his competition had become actual would be illegal, illegality is escaped by removing him before he develops to that point. This is ingenious, but it is not the law. (*Infra*, p. 231–234.)

In the particular case the reason given by Mr. Winslow for the acquisition, at a cost of about $150,000 (Plff's Ex. 60, R. III, 514), was the disposal of patent litigation to which the United Company had succeeded as *plaintiffs*. Howard testified that all the alleged infringements were on the part of the Goddus. (R. I, 849, l. 4.) The disposal of such litigation could hardly be worth $150,000 to the defendants. The removal of an able competitor might well have been worth that amount. The testimony of Mrs. Converse, previously referred to, shows this reason to be the true one. Her father had been a stockholder and was treasurer of the Goddu Company from its organization in 1897. (It had been in existence less than two years when acquired.) The actual purchase by the defendants was of the stock belonging to the Goddus, who possessed inventive ability (R. I, 436, l. 42) as the witness's father apparently did not. When the Goddus sold out they left her father and others in (R. I, 312, l. 25). Mrs. Converse testified to a subsequent conversation with Mr. Winslow to which reference has previously been made

and which was supported by a copy of a contemporaneous memorandum. She said:

> We had discussed a long while. I said to Mr. Winslow, "If you say what is true, that they had no business and no machines and no money in the treasury and no money—they couldn't raise money to go on with the business, and no manufacturers to take them—they couldn't put them on the market then," I said, "Mr. Winslow, why did you buy them out—because they would have gone to the wall—they would have had to if you say what is true—they could never have competed with you, a rich, powerful trust; why didn't you leave them alone and let them die a natural death, which they would have done? Why did you buy them out?" And he said: "Miss Van Waggenen, I bought them out to get rid of them, to have no more trouble or competition with them." (R. I, 312, l. 1.)

The Goddu Company ceased to do business. The Goddus under the contract agreed to assign any and all inventions which they should thereafter make within a period of ten years and agreed that thereafter they would not during a period of ten years engage directly or indirectly in the business of making or selling any invention relating in *any* way to machinery useful in the manufacture of boots and shoes. (Plff's Ex. 60, R. III, 518, par. 1.)

Thus, by this initial acquisition the prospective opportunity of shoe manufacturers to obtain metallic machines elsewhere than from the defendants was removed, and the defendants were enabled to say to

a shoe manufacturer in need of such machines, "You may have metallic machines on acceptable terms only if you are willing to use them upon shoes upon which other operations are performed by our lasting and other machines."

It is unnecessary to review in detail all of the fifty-six acquisitions set out in the testimony. Some may, however, be noted as having special significance in the aspects already shown.

Among these are the following transactions:

1. WINKLEY AND PHILLIPS.

On March 16, 1900, the United Company acquired from Erastus E. Winkley and Benjamin Phillips their inventions and improvements relating to "sole leveling machines," agreeing to pay to Winkley and Phillips a royalty of $20 for each made or sold, leased or otherwise disposed of. (Plff's Ex. 77, R. III, 615, par. 3.)

It took covenants from Winkley and Phillips that all inventions or improvements in sole-leveling machines or sole-pressing machines which they should *thereafter* make or acquire should be conveyed to the United Company. (Plff's Ex. 77, R. III, 615, par. 7.)

Howard, defendant's patent attorney and expert (R. I, 41, l. 27), testified that at the time of acquiring the above inventions or improvements the United Company was engaged in putting out sole-leveling machines, but that they were not of the same type as those covered by the inventions and improvements acquired (R. I, 48, l. 11).

2. SWAIN-FULLER MANUFACTURING COMPANY.

On February 2, 1911, United Company acquired the business and assets, including the letters patent, of Swain-Fuller Manufacturing Company, Boston, Mass., a Maine corporation engaged in manufacturing shoe machines, paying therefor $13,201.98, part in cash and part in preferred stock of the United Company. (Plff's Ex. 88, III, 660, par. 1; Dft's Ex. 231, V, 454.)

Howard testified that the Swain-Fuller Company was manufacturing and putting out, among others, a machine known as the "Star leveling machine," used practically exclusively on turn shoes, and that the United Company was manufacturing and putting out a leveling machine, but he claimed that the United Company's machine was not adapted for leveling turn shoes. (Howard R. I, 53, l. 20.)

Winslow testified that by this purchase they also acquired a "Single sole-molding" machine. (R. I, 459, l. 28. Dft's Ex. 231, V, 455.)

3. CARVER COTTON GIN COMPANY.

On April 30, 1908, the United Company acquired for $16,883, cash, the shoe machinery business of the Carver Cotton Gin Company, a corporation engaged in the business of manufacturing and putting out machines and devices used in the manufacture of shoes. (Plff's Ex. 127, IV, 893.)

The United Company took from the vendors covenants that they would not within 15 years directly or indirectly enter into or assist any other

concern in entering into or carrying on any business relating to manufacturing or dealing in any machinery or devices used in the manufacture of shoes, or any other business which would *in any way interfere* or *compete* with the business of the United Company with respect to such machines or devices. (Plff's Ex. 127, IV, 895.)

Howard testified that among the machines obtained from the Carver Cotton Gin Company were the Acme leveling machine, a vamp skiving machine, and a machine known as the Davis leather-board skiver. (R. I, 71, l. 1.)

He further testified that at the time of this agreement, the United Company was putting out the Goodyear automatic leveler and the Emerson skiving machines, but that the acquired machine did not do the work in the same way. (R. I, 70, l. 37.) Even though this be admitted the result accomplished was the same.

Since the acquisition of its shoe machinery business, the Carver Cotton Gin Company has continued with its cotton gin business.

By these three acquisitions, the defendants acquired control of a machine needed in manufacturing all kinds of shoes. The leveling machine used in welt shoes is now put out only as an auxiliary machine. (Dft's Ex. 231, V, 457.) It can not be obtained for use with welt machinery supplied by any competitor of the defendants. (R. I, 468, l. 34; 544, l. 10.)

4. THE SEAVER PROCESS LASTING COMPANY.

On January 30, 1900, the United Company acquired for $38,000 (Capital stock $600,000) the business and assets, including all letters patent of the Seaver Process Lasting Company, a corporation engaged in manufacturing *lasting* machines and *pulling-over* machines used in the manufacture of shoes. (Plff's Ex. 75, R. III, 591.) The Seaver Company was then insolvent. (R. I, Winslow, 456, l. 30.)

Suits had been brought by the Consolidated & McKay Company against the Seaver Company. The record does not show that the suits were ever prosecuted to a final determination.

The Seaver Company was the only company putting out lasting machines in 1899, except the Goodyear and Consolidated Companies. (*Supra*, p. 18.) It had also a pulling over machine; as had the United Company. (Howard, R. I, 47, l. 8.) The development of the latter machine was continued. It is now put out by the United Company and is a successful machine. No other pulling over machine is now offered by any American manufacturer of shoe machinery. (Dft's Ex. 235, V, 585 [72].)

The result of this acquisition, then, was to remove the final vestige of competition in lasting machines, and to shake off the possibility of competition in pulling over machines.

5. CORRUGATED WIRE FASTENING COMPANY.

On June 30, 1899, defendant Hurd, in behalf of the United Company acquired for $12,750 from Silas

Pierce and John M. Kingsbury, a majority of the capital stock of the Corrugated Wire Fastening Company, Boston, a corporation, engaged in the manufacture and sale of a tacking machine and corrugated wire used in the manufacture of boots and shoes. (Plff's Ex. 62, R. III, 530–531; Donham, I, 37, l. 43; 38, l. 1; Dfts. Ex. 231, V, 474.)

Howard testified that the United Company had a machine for performing the *same* character of work as the one obtained from the Corrugated Company. (R. I, 42, l. 17.) He says, the machine was "out of date," (R. I, 42, l. 16) but this is discredited by the further statement which he makes, viz: "The United Company continued to supply wire and parts for those machines. They have parts in stock today." (R. I, 42, l. 34.)

The Corrugated Company was discontinued as a going concern and its business transferred to the factory of the United Company. (Dft's Ex. 231, R. V, 475.)

6. GLOBE SEWING MACHINE COMPANY.

On February 15, 1901, the United Company acquired control of the stock of the Globe Sewing Machine Company, Boston, a corporation engaged in putting out sewing machines used in the manufacture of shoes, paying therefor $20,000. (Plff's Ex. 89, R. III, 662.)

Howard testified that at the time of acquiring stock control of the Globe Company that company was engaged in manufacturing a *welting* machine, an *outsole stitching machine*, and an experimental *rough*

rounding machine. The business of the Globe Sewing Machine Company was discontinued. (Howard, R. I, 53, l. 36.)

By this acquisition a possible competitor in welt method machines was removed. It is noteworthy that the Globe Company had an experimental rough rounder. The absence of such a machine is said by defendants' witnesses to have been a weakness in Mr. Plant's effort to produce a complete line of independent shoe machinery. (R. I, 776, l. 29.)

7. ROSS-MOYER MANUFACTURING COMPANY.

On September 20, 1900, the United Company acquired for $86,580 all the business of the Ross-Moyer Manufacturing Company, Cincinnati, engaged in manufacturing and putting out *edge setters, edge trimmers,* heel scourers, buffing machines, rolling machines, etc., used in the manufacture of shoes. (Dft's Ex. 231, R. V, 451, 454.)

On the same day an employment agreement was made by the United Company with Simon Ross, under the terms of which he contracted that in consideration of the purchase of the Ross-Moyer Company, and the agreement to employ him, he would not during a period of *ten* years engage in the manufacture of, or deal in, machines, tools, or appliances in *competition* with said United Company and would convey to the United Company any invention relating to shoe machinery which he then owned, or which he should thereafter, during the period of ten years, invent. (Plff's Ex. 87, R. III, 658.)

Howard testified that at the time of the acquisition of the Ross-Moyer Company, the United Company was engaged in putting out *edge-setters* and *edge-trimmers*. (R. I, 52, l. 44.)

The Ross-Moyer Company (issued capital stock $197,400—all owned by the United Company) now acts as agent for the United Company. (Plff's Ex. 187, R. IV, 1235.)

Defendant Winslow is also president of the Ross-Moyer Company (Plff's Ex. 188, R. IV, 1242) and he and Howe are on its board of directors (Plff's Ex. 188, R. IV, 1247).

8. EDWIN THEOPHILUS FREEMAN.

On October 9, 1899, the United Company acquired from Edwin Theophilus Freeman, Boston, all of his business, including machinery and letters patent of the United States, relating to nailing machines used in the manufacture of shoes, for $11,000, $500 in cash and $10,500 in preferred stock of the United Company, and in addition thereto $500 per year as royalties for a period of eight years. (Plff's Ex. 68, R. III, 568.)

The United Company took from Freeman, for the same consideration, covenants that he would not *thereafter* engage in the manufacture of, or deal in, or directly or indirectly aid, assist, or encourage anyone to engage in the manufacture of, or to deal in boot and shoe or leather-working machinery, in *competition* with said United Company, or the corporations owned or controlled by it and an additional covenant from

Freeman that he would "convey to said United Company any and all improvements or inventions in or relating to shoe machinery, which he has made, nor which he shall hereafter make." (Plff's Ex. 68, R. III, 570, par. 3.)

Howard testified that when the above agreement was entered into with Freeman the United Company already had a nailing machine for performing operations *similar* to the operations performed by the Freeman machine. (R. I, 44, l. 37.)

It is claimed by the defendants that there were cross infringements of the United's machines by Freeman and of the Freeman patents by a machine that the United Company was developing, although no infringement suits had been brought (Dfts. Ex. 275, V, 757.)

9. ALBERT G. BREWER.

On October 11, 1899, the United Company acquired from Albert G. Brewer, Hopkinton, all of his inventions and improvements in machines used in the manufacture of boots and shoes known to the trade as "heel-breasting machines" for $250 in cash and $5 royalty on each machine thereafter marketed by the United Company. (Plff's Ex. 70, R. III, 576.)

It took also from Brewer an assignment of "all inventions which he may hereafter make relating to machines for breasting heels on the last."

Howard testified that Brewer had built an experimental heel-breasting machine, and that the United Company, prior to the acquisition of Brewer's machines, had been experimenting with a machine for

performing *similar* operations, but that it was not upon the market as a commercial machine; that Brewer's inventions were subsequently embodied in the United's machines. (R. I, 45 l. 14.)

The defendants claimed that Brewer's machine infringed one of the United's patents, but there is no evidence that the United's machine infringed Brewer's patents.

Six hundred and ninety-eight power heel-breasting machines alleged to have embodied the Brewer inventions, were subsequently made and put out by the United Company. (Dft's Ex. 275, R. V, 759.)

10. AMERICAN SOLE LAYING MACHINE COMPANY.

On September 25, 1902, the United Company acquired for $5,200 from Arthur Fuller, all the property and assets, including letters patent of the American Sole Laying Machine Company, Boston, a corporation, engaged in manufacturing and putting out machines designed and used for laying or leveling shoes. (Plff's Ex. 98, R. IV, 705.)

The United Company took from Fuller covenants that he would not become interested, directly or indirectly, for a period of ten years in the business of manufacturing machines adapted for use in the operation of laying or leveling the soles of boots and shoes. (Plff's Ex. 98, IV, 708, par. 9.)

Howard testified that at the time of the acquisition of the business of the American Sole Laying Machine Company, the United Company was engaged in manufacturing and putting out machines for laying

the soles of boots and shoes, although he claims that the United Company's machines were inferior to those of the American Sole Laying Company. (R. I, 56, l. 19.)

11. BOOT AND SHOE SOLE LAYING COMPANY.

On May 25, 1901, the United Company acquired for $45,000 cash, the property and business of the Boot & Shoe Sole Laying Company, Boston, a corporation, engaged in manufacturing and putting out machines designed and used for laying the soles of boots and shoes. (Plff's Ex. 90, R. III, 666.)

Howard testified that, at the time, this Company was engaged in manufacturing and putting out a sole-laying machine known as the "Boston sole layer," and that the United Company was then engaged in putting out a machine for doing *similar* work, although he claims that the United's machine was inferior to the machine acquired. The acquired company was discontinued as a going concern and its business taken over by the United Company. (R. I, 54, l. 20 et seq.)

12. J. K. KRIEG & COMPANY.

On May 6, 1903, the United Company acquired for $97,056.52 the property and assets of J. K. Krieg & Company, New York, engaged in manufacturing and dealing in shoe machinery, etc. (Plff's Ex. 104, R. IV, p. 746, also Ex. 105, R. IV, 752.) The United Company took from the vendors covenants that they would not engage for a period of 15 years except as employees of said United Company or some one of its controlled corporations, in any business relating

in any way to the manufacture of or dealing in shoe machinery, or in any business which would in any way interfere with or *compete* with said United Company. (Plff's Ex. 104, R. IV, 750, par. 8.)

Howard testified that the Krieg Company was engaged in putting out a heel-seat rounding machine, a Louis heel-scarfing machine, and two or three types of embossing machines; that the United Company at that time was putting out a heel-seat rounder and a scarfing machine of different types; that the United Company was also engaged in putting out embossing machines. (R. I, 60, l. 28.)

Winslow testified that the Krieg Company had also been agent for some of the old companies that became a part of the United. (R. I, 419, l. 31.)

13. JOSEPH P. CURTIS.

On October 20, 1903, the United Company acquired from Joseph P. Curtis, Everett, Mass., all of his business, including letters patent and applications relating to cementing machines for $500 in cash and the balance in royalties until the total should amount to $5,000. (Plff's Ex. 106, R. IV, 756.)

The United Company took from Curtis conveyances of all inventions and improvements which he should *at any time thereafter* make relating to cementing machines, and all letters patent and interest therein. (Plff's Ex. 106, R. IV, 755.)

Howard testified that at the time of entering into the above agreement with Curtis, the United Company was engaged in putting out a cementing ma-

chine, but for performing an entirely different operation from that performed by the Curtis machine. (Howard, R. I., 61, l. 12.)

14. GEORGE A. SMITH MACHINERY COMPANY.

On November 20, 1902, the United Company acquired for $38,790.79 from George A. Smith all the assets and business of the George A. Smith Machinery Company, a corporation "engaged in the business of manufacturing devices and supplies used by manufacturers and dealers in boots and shoes, and by others." (Plff's Ex. 100, R. IV, p. 721, 2nd par.)

The United Company took from the vendor covenants that he would not at any time within 10 years enter into or be engaged in or assist any other person in entering or carrying on any business relating to the manufacture or sale of any machinery intended or adapted for use in the manufacture of boots or shoes, or *compete* or interfere with any business carried on by said United Company, or by any company of which it is the owner of the majority of the capital stock. (Plff's Ex. 100, IV, 723, par. 4.)

Howard testified that the Smith Company at the time of its acquisition was putting out a spring-heel scarfing machine, and that at the time the United Company was not putting out a machine for doing similar work. (R. I, 58, l. 3.) He further testified that the Smith Company had also been acting as agent prior to 1899, for certain of the companies that made up the United Company. (R. I, 57, l. 42.)

15. ARNOLD MACHINE & SUPPLY COMPANY (WILLIAM B. ARNOLD).

On June 28, 1904, the United Company acquired all the business and assets of the Arnold Machine and Supply Company, Boston, a corporation engaged in manufacturing and putting out cementing machines used in the manufacture of boots and shoes, for $500 cash, and the royalties to be paid on each machine thereafter manufactured by the United Company during the life of the patents transferred. (Plff's Ex. 113, R. IV, 820.)

The United Company for the same consideration required and took from Arnold restrictive covenants similar to the others already noted providing that he would not engage in a like business within 15 years, and would convey to it any inventions relating to show machinery he might make. (Plff's Ex. 113, R. IV, 818.)

Howard testified that at the time of entering into the above agreement the United Company was engaging in putting out *cementing* machines, but he claimed that they were not adapted for work similar to that of the Arnold machine. (R. I, 64, l. 39 et seq.)

16. BOOTH BROTHERS.

On October 25, 1904, the United Company acquired from Booth Brothers, Rochester, N. Y., an assignment of their business in the United States and Canada relating to *perforating* machines, for $24,000 and a royalty of $15 to be paid for each machine thereafter sold by the United Company in the United States and $10 for each machine sold by it in Canada;

the said royalties to be continued until they should aggregate $7,600, whereupon all interest of said Booth Brothers in the said inventions should cease. (Plff's Ex. 114, R. IV, 823, par. 2.)

The United Company took covenants from the vendors that neither of them would engage in the manufacture or sale of any perforating machines, or become interested in any manner whatsoever in any such machines during the terms of the patents assigned to the United Company. (Plff's Ex. 114, R. IV, 825, par. 8.)

Howard testified that the United Company was engaged in putting out a *perforating* machine which could be used for the same operation as the Booth machines, although he claimed that it was not *intended* for the same operation. (R. I., 65, l. 28.)

On November 1, 1907, the United Company acquired for $71,284 the entire remaining business of Booth Brothers of manufacturing and putting out machinery, tools, mechanisms, devices, findings, materials, and supplies used in the manufacture of boots and shoes. (Plff's Exs. 121–124, R. IV, 856–871.) The United Company took from the vendors elaborate restrictive covenants, excluding the vendors from having any interest in any shoe machinery business or any business or patents relating to the manufacture of shoes for a term of 15 years. (Plff's Ex. 121, R. IV, 859.)

Howard testified that the United Company through the above agreement acquired from Booth Brothers a fudge edge-making machine, a *wheeling* machine,

a stitch burnishing machine, an upper-shaping machine and a *beating* machine. He further testified that the United Company at that time had a *wheeling* machine and an upper-*beating* machine. (R. I, 69, l. 9.)

Having acquired Booth Brothers' business, a corporation was formed under the laws of New York, with a capital of $25,000 all of which is issued and owned by the United Company. It operates a manufacturing plant at Rochester, N. Y. Winslow is president of the Company and is also a director, as well as defendants Hurd, Howe, and Coolidge. (Plff's Exs. 187, R. IV, 1232, 188, R. IV, 1240, 1246.)

17. FRED H. PERRY.

On January 1, 1904, Fred H. Perry entered into an agreement with the United Company wherein he agreed to convey to that company all inventions which he should make relating to shoe machinery for a period of five years from the termination of his employment by the United Company. (R. I, 61, l. 19, et seq.)

18. BOSTON SHOE TOOL COMPANY.

On August 16, 1899, the United Company acquired the business of Timothy A. Bresnahan, Boston, engaged in manufacturing and putting out machines, tools, and appliances used in the manufacture of shoes, together with the entire capital stock of the Boston Shoe Tool Company for approximately $72,000, paid in cash and preferred stock of the United Company. (R. I, 38, l. 33; Plff's Ex. 67, R. III, 563 et seq.; Dft's Ex. 231, R. V, 460.)

The business of the Boston Shoe Tool Company as a going concern was discontinued and the business transferred to the Beverly factory of the United Company. (Dft's Ex. 231, R. V, 460.)

Bresnahan agreed to enter the employ of the Boston Shoe Tool Company, as manager, for a period of two years. United Company took from him covenants that he would not *thereafter* engage in nor directly or indirectly aid, assist, or encourage any other person to engage in the manufacture of heel-trimming, edge-trimming, or edge-cutting machines and tools, cutters or irons for heel or edge trimming, for edge setting, or of any of the machines, tools, and products formerly made by the Boston Shoe Tool Company. (Plff's Ex. 67, R. III, 565.)

D. GLOBE SHOE TOOL COMPANY.

On October 24, 1899, the United Company, acquired the business of James H. Reed, and others, copartners, trading under the name of Globe Shoe Tool Company, Boston, engaged in manufacturing and putting out edge cutters and irons used in the manufacture of shoes. The purchase price was $30,000, which was paid part in cash and part in preferred stock of the United Company. (Plff's Ex. 71, R. III, 577.)

Loomer and Perkins, part owners of the Globe Shoe Tool Company, each agreed to enter the employ of the United Company at a compensation of $25 per week, for a period of one year, and furthermore agreed that they would not *thereafter* engage, either

directly or indirectly, or assist or encourage any other person so to do, in the manufacture of shoe machinery in competition with the United Company; and for the same consideration, each of them further agreed that they would convey to the United Company all improvements or inventions relating to shoe machinery, which they should *thereafter* make. (Plff's Ex. 72–73, R. III, 581, 582, 583, 584.)

The machines and business of the Globe Shoe Tool Company was along the *same* line as that of the Boston Shoe Tool Company *previously* acquired by the United Company. (R. I, 46, l. 1; Dfts. Ex. 231, V, 460.)

20. JOHN RITCHIE, AND JOHN RITCHIE COMPANY.

On November 18, 1899, the United Company acquired all the business of John Ritchie, and John Ritchie Company, a corporation, relating to the manufacture of standard screw machines, slugging machines, tacking machines, and machines, mechanisms, and appliances for manufacturing and inserting metallic fastenings, including standard screw wire, slugger wire, and tacker wire, used in the manufacture of boots and shoes. The purchase price was not to exceed $15,000 (R. I, 40, l. 11; Plff's Ex. 74, R. III, 585, 588.)

The vendors agreed that they would not *thereafter* manufacture, or sell, or become, directly or indirectly, interested in any wire-fastening shoe machinery like that which they had sold.

The purpose of defendants to force shoe manufacturers to deal exclusively with the United Company

is well illustrated in Dfts. Ex. 231, R. V, 444. It is there stated, with respect to the contract with John Ritchie, and the John Ritchie Company—"the reason for this contract and purchase was to prevent manufacturers who held metallic machinery under lease from the United Company (and who had agreed to purchase their metallic fastening material from the United Company) violating their leases and contracts by purchasing material from Ritchie." (R. I, 46, l. 31 et seq.)

21. STANLEY MANUFACTURING COMPANY.

On March 19, 1900, the United Company acquired the stock of machines, parts, and supplies, on hand at Frankfurt, Germany, of the Stanley Manufacturing Company, a Maine corporation, with its principal place of business at Lawrence, Mass., engaged in the manufacture of McKay sewing machines and other machines, paying therefor $86,500 in preferred stock of the United Company. (R. I, 40, l. 35; Plff's Ex. 78, R. III, 620.)

The United Company took from the Stanley Company a covenant that "the said Stanley Company will at once give up its branch office in Germany, so far as relates to the sale or disposal of shoe machinery or shoe manufacturers' supplies, and that the Stanley Company will not in the future establish an office, or maintain an agent or representative of any kind to solicit orders for the sale of such machinery and supplies, outside of the United States of America, and will not *export* or sell, or dispose of to others for export, any boot or shoe machinery or

supplies therefor, outside of the United States, except through the United Company." (Plff's Ex. 78, R. III, 621.)

A somewhat similar transaction in respect of a shoe machinery company engaged in foreign commerce is that with W. J. Young. (Plff's Ex. 99, R. IV, 713.)

22. BAY STATE INTERNATIONAL SHOE MACHINERY COMPANY.

On January 30, 1901, United Company, acquired for the United Shoe Machinery Company de France and for Deutsche Vereinigte Schuhmaschinen Gesellschaft G. m. b. H. the property and good will for the Continent of Europe of the Bay State International Shoe Machinery Company, Boston, Mass., paying therefor approximately $25,000 in preferred stock of the United Company. (Plff's Ex. 86, R. III, 655; Dfts. Ex. 231, R. V, 448.)

Howard said that the acquired company "had a welter and stitcher and I think *a rough rounder*" but that he did not know whether it "was shipping machinery from the United States to foreign countries. (R. I, 52, l. 20.) It was free to do so if it saw fit, and therefore it was a potential if not an actual competitor.

23. GEORGE W. EMERSON & COMPANY.

On December 18, 1902, the United Company acquired for $41,500 the business of George W. Emerson and William R. Sampson, copartners, trading under the name of George W. Emerson & Company, Lynn, Mass., engaged in manufacturing and putting out machinery, appliances, devices, and

supplies used in the manufacture of boots and shoes. (Plff's Ex. 101, R. IV, 725.)

The United Company, for the same consideration, took from the vendors covenants that they would not engage in competition with the United Company for a period of 15 years, and that all inventions which they should make relating to machinery for use in the manufacture of shoes at any time within said period should be forthwith disclosed to the United Company. (Plff's Ex. 101, R. IV, 729, 730, 731; pars. 5, 6, and 7.)

Howard testified that the Emerson Company at the time of its acquisition was engaged in manufacturing a power-spring heel scarfer, and a heel-burnishing machine, and that the United Company was at that time putting out a heel-burnishing machine but of a different type from that put out by the Emerson Company, and that the United Company was also putting out a spring heel-scarfing machine to be operated by hand. (R. I, 58, l. 21, 39; 59, l. 5.)

The business of the Emerson Company as a going concern was discontinued and its business transferred to the United Company. (R. I, 59, l. 11.)

Sampson has remained in the employ of the United Company. (R. I, 95, l. 12.)

34. JOSEPH W. LEARY.

On January 1, 1904, the United Company acquired, for $3,052, from Joseph W. Leary, Lynn, Mass., his business of manufacturing and dealing in shoe machinery. (Plff's Ex. 108, R. IV, 765.)

The vendor agreed to enter the employ of the United Company for a period of 5 years at a compensation of $40 per week, and for the same consideration, agreed to convey to the United Company all improvements which he should make within 10 years from the date of the termination of his employment with the United Company, and that within the same period he would not engage, directly or indirectly, in any business which *competed* or interfered with the United Company. (Plff's Ex. 108, R. IV, 767, par. 3.)

25. ZACHARY TAYLOR FRENCH.

On January 1, 1904, the United Company and United Shoe Machinery Company, of Maine, acquired the business of Zachary Taylor French, Boston, Mass., engaged in the development of machines designed and used in the manufacture of boots and shoes, agreeing to pay therefor $15,000 in annual installments of $1,500 each. (R. I, 63, l. 22; Plff's Ex. 111, R. IV, 803.)

The United Company took from the vendor, for the same consideration, covenants that he would assign all inventions which he should make or acquire within 10 years relating to machines useful in the manufacture of boots and shoes, and that he would not engage in competition with the United Company, for the same period, in the United States or in any foreign country. (Plff's Ex. 111, R. IV, 807, pars. 5 and 6.)

Howard testified that French had been in the employ of the United Company and previously in the

employ of the Goodyear Company, as an inventor, and was later superintendent of the Goodyear factory at Boston; that the above agreement was entered into as a settlement of the royalties that would become due under various existing contracts, as French desired to leave the employ of the United Company. (R. I, 63, l. 30.)

26. KIMBALL & HADLEY.

On June 11, 1904, the United Company acquired, for $4,750 cash, the business of Herbert L. Kimball and Irving A. Hadley, copartners, doing business under the firm name of Kimball & Hadley, Lynn, Mass., engaged in manufacturing and marketing *awls, needles,* drivers, supplies, etc., used in the manufacture of boots and shoes. (Plff's Ex. 112, R. IV, 814.)

The United Company, for the same consideration, took from the vendors *covenants* that neither of them would, within a period of 15 years, become interested in, developing, or carrying on any business which related to manufacturing or dealing in awls, needles, or drivers. (Plff's Ex. 112, R. IV, 815, par. 2.)

Howard testified that at the time of acquiring the business of Kimball & Hadley the United Company was engaged in manufacturing and putting out *awls, and needles,* except curved needles for the Goodyear sewing machine, and that the United Company was making awls for the use of its own machines; that the United Company purchased Goodyear needles from others, including Kimball & Hadley. (R. I, 64, l. 16.)

Howard's testimony that the United Company bought Goodyear needles from Kimball & Hadley is specifically denied by Hadley, who testified as follows:

> Q. Now, do you know whether the United Company, before it obtained your needles, manufactured any needles for its Goodyear machines?
>
> A. It did not, to my knowledge.
>
> Q. Did it buy Goodyear needles of you?
>
> A. Never.
>
> Q. Did you supply Goodyear needles for its machines?
>
> A. Not to the United Shoe Machinery Company. (R. I, 310, l. 20.)

The fact is that Kimball and Hadley were forced to sell out their business to the United Company by reason of the latter's leasing system, discussed *infra*, pp. 145–213. That company was buying its awls and needles from persons other than Kimball & Hadley and supplying them to its lessees, who were obliged by the terms of their leases to take the needles from the United Company. Consequently when Kimball & Hadley approached the lessees for the purpose of selling their needles, "They stated orally that the using of our needles and awls was in violation of the terms and conditions of the leases and if the manufacturer continued to use our awls and needles the United Company would take their machines out of the factories." (R. I, 308, l. 31.) Finding it difficult to place the output of their factory, Hadley had a conversation with Mr. Bailey, one of the managing

officers of the United Company, with respect to the sale of the Kimball & Hadley Company. They were not able to agree upon a price. He said to Mr. Bailey, "We can manufacture needles and sell them as cheap as the United Shoe Machinery Company," to which the latter replied, "Oh, no, you can't; we can give them away if necessary. You know Mr. Winslow is a man that once having made up his mind to get something, he will get it." (R. I, 309, l. 16 et seq.) Realizing the impossibility of competing with the United Company and impressed by the truth of what Mr. Bailey said with respect to Mr. Winslow's disposition, Kimball & Hadley sold out; but the sale was not voluntary; it was coerced.

Kimball & Hadley, several years after they had sold out their partnership business to the United Company again engaged in the awl and needle business and the United Company brought suit to enjoin them, upon the ground that they were violating their agreement of June 11, 1904. (R. I, 311, l. 15.)

27. LEOPOLD J. COURTEAU.

On October 1, 1904, the United Company acquired from Leopold J. Courteau, Brockton, an assignment of all his inventions and devices, including letters patent, relating to machines and mechanisms for holding the linings of shoes during the process of pasting the outer leather to the lining. (Plff's Ex. 115, R. IV, 826–831.)

The United Company, for the same consideration, took from Courteau covenants that he would convey

to it all inventions which he should at any time thereafter, within 15 years, own or possess or in which he should have any interest whatsoever, relating to mechanisms or devices for handling or holding linings. (Plff's Ex. 115, R. IV, 830, 1st par.)

28. BROCKTON SUPPLY COMPANY.

On November 1, 1905, United Shoe Machinery Company of New Jersey, acquired, for $21,724, the business of Oscar A. Campbell and Samuel H. Nichols, copartners, trading under the name of Brockton Supply Company, Brockton, Mass., engaged in manufacturing and putting out machines for pulling lasting tacks. (Plff's Ex. 116, R. IV, 831–834.)

Howard testified that at the time of acquiring the business of the Brockton Supply Company the United Company was engaged in developing a machine for pulling lasting tacks, but that none had been put out. (R. I, 66, l. 24.)

29. ZOTIQUE BEAUDRY.

On September 4, 1906, the United Xpedite Finishing Company, a corporation controlled by the United Company acquired for $12,500 cash, from Zotique Beaudry, Lynn, his inventions and improvements relating to machines, and parts thereof, for burnishing and finishing the heels of shoes. The United Xpedite Finishing Company for the same consideration took from vendor covenants that all inventions which he should thereafter make should be disclosed to the United Xpedite Finishing Company, and that the vendor would not within a period

of 15 years engage in making, developing, or exploiting any improvements in heel burnishing machinery or carrying on any business of manufacturing mechanisms for finishing or burnishing the heels of shoes without the consent in writing of said United Xpedite Finishing Company. (Plff's Ex. 120, R. IV, 850–855.)

Howard testified that at the time of entering into the agreement wiith Beaudry, the United Company *had* a heel burnishing machine. (R. I, 68, l. 9.)

30. RICHARDSON SHOE MACHINERY COMPANY.

On December 1, 1908, the United Shoe Machinery Company acquired, for $80,000, from William B. Rice and others, all the property and business of Richardson Shoe Machinery Company, Lynn, Mass., engaged in manufacturing and putting out *McKay* sewing machines and machines designed and used for cutting or dieing out leather and other materials used in the manufacture of boots and shoes, including machines known to the trade as "*clicking* machines." (Plff's Exs. 125–126, R. IV, 871–893.)

United Company took from the vendors, and each of them, covenants that they would not for a period of 10 years engage in the manufacture of any machinery which should compete with the business of said Richardson Company in such machinery. (Plff's Ex. 125, R. IV, 875, par. 6; also Plff's Ex. 126, R. IV, 889, par. 3.)

Howard testified that at the time of the acquisition of the Richardson Company, United Company

was also engaged in manufacturing and putting out *McKay* sewing machines. (R. I, 70, l. 10 et seq.)

31. HARRY L. RICE—FRED LA CHAPELLE.

On January 20, 1909, the United Company acquired for $11,500 cash from Harry L. Rice and Fred La Chapelle, of Lynn, their inventions and improvements relating to machinery for forming chain stitches and chain-stitch seams, and machines used for attaching the welts of boots and shoes. (Plff's Ex. 128, R. IV, 898–904.)

The vendors for the consideration aforesaid in effect agreed to sell to the United Company all inventions which they owned relating to methods for the formation of chain stitches adapted to use in attaching the welts to shoes, etc., and likewise to transfer to the United Company all inventions which either of them within 10 years thereafter might make or acquire relating to any shoe machinery intended for the purposes described in the agreement.

They further agreed that they would not, without the consent in writing of the United Company enter into or become interested financially or otherwise or assist any person in carrying on the manufacturing of or dealing in the machinery described in the agreement in any manner which would directly or indirectly *compete* with the business of the United Company therein. (Plff's Ex. 128, R. IV, 899, 901, pars. 1 & 4.)

Howard testified that the United Company acquired by this purchase a welting machine which was

equipped "to put an extra thread on to the single thread side of the chain stitch formed by the machine" and that the United Company was then engaged in manufacturing and putting out welting machines, minus the improvement on the Rice and La Chapelle machine. (R. I, 71, l. 32.)

Howard further testified that the United Company has not yet put out the machine acquired from Rice and La Chapelle, but "we are still experimenting with it." (R. I, 72, l. 1.)

32. THE WENTWORTH COMPANY.

On February 3, 1910, the United Company acquired for $60,000 cash all of the capital stock and business of the Wentworth Company of Cincinnati, a corporation engaged in manufacturing and putting out machines used in the manufacture of boots and shoes. (Plff's Ex. 130, R. IV, 913.)

The United Company took from each of the vendors (seven individuals) covenants which in effect provided that none of them would at any time within a period of 10 years without the consent in writing of the United Company engage in manufacturing, developing or dealing in certain shoe machinery described therein and would not compete or interfere with the business of the United Company in the aforementioned machinery. (Plff's Ex. 130, R. IV, 918, par. 5.)

Howard testified that through this acquisition they acquired a "machine for beating heel seats; * * * This operation was to prepare the heel end of the shoe for the sole." That they also acquired "a shank

sticking machine." He further testified that the United Company at that time was manufacturing a machine for beating heel seats, and that the United was experimenting with the shank sticking machine. (R. I, 73, ls. 6, 18, 29.)

Winslow testified that the Wentworth Company was acquired for the purpose of settling infringement litigation.

33. ADAM H. PRENZEL.

On November 22, 1910, the United Company acquired from Adam H. Prenzel, of Halifax, Pa., all his inventions and letters patent of the United States and of other countries, relating to certain machines used in the manufacture of turn shoes, for $8,000 cash and 25 per cent of all royalties on machines thereafter manufactured by the United Company under the letters patent acquired until they shall have aggregated $75,000. (Plff's Ex. 143, R. IV, 1046.)

The United Company for the same consideration took from the vendor covenants which in effect provided that he would convey to the United Company all inventions, etc., adapted for use in connection with footwear or for use in connection with machinery adapted for use in the manufacture of footwear which the vendor should make or acquire at any time prior to the expiration of certain letters patent. (Plff's Ex. 143, R. IV, 1048.)

This like other similar covenants, tends to show suppression of competition so far as it puts restrictions upon the use of any inventions which the

vendor might make respecting the art of shoe machinery.

M. V. BRESNAHAN & COMPANY.

On December 19, 1910, the United Company acquired for $25,000 cash the business of Maurice V. Bresnahan, William H. Bresnahan, and John J. Dolan, trading under the name of M. V. Bresnahan & Company, of Lynn, engaged in manufacturing and putting out machines used in the manufacture of boots and shoes. The vendors each agreed to enter the employ of the United Company. (Plff's Ex. 144, R. IV, 1054, 1057.)

The United Company took from the vendors covenants that neither of them should, directly or indirectly, within 10 years *after* the termination of their employment by the United Company engage in any business relating to manufacturing machinery adapted for use in the manufacture of boots and shoes, or in any business which would in any way compete with the business of said United Company; and each of them further agreed to convey to the United Company for the same consideration all inventions which they should make or acquire at any time within 10 years after the termination of said employment agreement relating to shoe machinery. (Plff's Ex. 144, R. IV, 1055, 1058, pars. 2 & 5.)

Howard testified that by this purchase they acquired an experimental *lasting* machine and a *heel burnishing* machine and that the United Company at that time was manufacturing and putting out *lasting* machines and *heel-burnishing* machines. (R. I, 77, l. 1, 18.)

"Schedule A" attached to Plaintiff's Exhibit 144 gives a list of many different machines together with supplies acquired from the Bresnahan Company.

33. CHARLES P. STANBON & COMPANY.

On April 2, 1911, the United Company acquired for approxiamtely $122,735 cash the business of Charles P. Stanbon, doing business under the name of Charles P. Stanbon & Company of Lynn, engaged in manufacturing and putting out machines, tools, mechanisms and devices used in the manufacture of shoes. The vendor agreed to enter the employ of the United Company. (Plff's Ex. 145, R. IV, 1064.)

Howard testified that the United Company acquired from the Stanbon Company a channel-cementing machine, a folding machine, perforating machine, and a channel-opening machine, and that the United Company at that time *was* putting out an inferior channel-cementing machine and a perforating machine. (R. I, 78, l. 15.)

The foregoing evidence shows a series of restrictive covenants imposed upon the vendors which greatly restrained trade. They were forbidden to engage in *competition* with the United Company for a stated period of years and were required during a like period, where they were inventors, and most of them were, to assign to the United Company all discoveries made by them. This had the effect of chilling the genius of invention and of removing all incentives to serious work in that field of discovery. Not

only that, but it withheld any inventions the vendor should make from the hands of men who might become competitors of the United Company.

The claim that any or all of these acquisitions were made for the purpose of avoiding litigation relative to patent infringements will not do, because the purpose real or fancied is immaterial when the natural and necessary effect, as here, is undue restraint of trade. (*Infra*, pp. 242–244, 280.) This end never justifies the means, defendants to the contrary notwithstanding.

Moreover, if the machines acquired were infringing any machines owned by the United Company, the parties owning them could have been prevented by injunction from manufacturing or operating them, but suits for infringement would not prevent the defendants therein from inventing or acquiring other constructions which would accomplish the same purpose and avoid infringement. Hence to bring about the desired result, namely, the destruction of competition, it became necessary not only to buy out the inventors but to tie them by covenants which would prevent future competition. Accordingly there are here constantly recurring stipulations binding competitors and inventors who might become competitors not to compete in the future. Whether such covenants isolately viewed are illegal need not be discussed. Such a series of such covenants is forbidden by the Anti-Trust Law. (*Infra*, p. 234.)

The fact that some of the machines obtained by the defendants in the foregoing acquisitions were not at the time actually competing with machines put

out by the United Company does not alter the illegal character of the transaction. It must always be remembered that these machines were taken over by a great corporation which had a monopoly of certain machines which no shoe manufacturer could be without (*supra*, p. 15), and therefore could compel every shoe manufacturer to come to it for those machines. Every acquisition which gave to the defendants control of a machine formerly freely obtainable in the open market increased the power of the defendants to exclude competition as to other machines by refusing to let shoe manufacturers have on acceptable terms machines of which defendants were the only source of supply unless such manufacturers took also from the defendants machines in which competition existed or threatened. How the defendants availed themselves of this power is shown. (*Infra*, pp. 145–213.)

B. THE PLANT ACQUISITION.

1. INTRODUCTORY.

During several years prior to September, 1910, Thomas G. Plant had, at great trouble and expense, developed a complete line of shoe machinery for manufacturing welt, turn, and McKay shoes. (R. I, 189, l. 19.) Plant also had contracts with factories where such machines could be made in large quantities, and had equipped and was successfully operating his machines in the factory of Thomas G. Plant Company, a corporation, engaged in the shoe manufacturing business at Boston, Mass. (daily capacity approxi-

mately 17,000 pairs). He had thus demonstrated his ability to become immediately an active and effective competitor of the United Company, when that company, after extended negotiations, purchased all his assets, including machines and patents relating to shoe machinery, together with a majority of the capital stock of the Thomas G. Plant Company. Clearness requires the statement that this latter company is a *shoe manufacturing* corporation of whose stock Plant owned 60 per cent. It must not be confounded with the *shoe machinery* interest of Thomas G. Plant of which he was the sole owner.

On September 23, 1910, at four o'clock in the morning, the purchase was consummated. (R. I, 590, l. 1.)

2. WHAT PLANT HAD.

The properties and contracts acquired from Plant were as follows:

(a) Two hundred and six United States patents.

(b) Twenty-eight applications for United States patents.

(c) Seventy-four British patents.

(d) Twenty-one applications for British patents.

(e) Seventy-three French patents.

(f) Fourteen applications for French patents.

(g) Forty-two German patents.

(h) Forty-seven applications for German patents.

(i) Twenty-six Austrian patents.

(j) Fifty-eight applications for Austrian patents.

(k) Thirty-three Australian and eleven New Zealand patents.

(l) Fifteen thousand shares of the preferred and seven thousand five hundred shares of the common stock of the Thomas G. Plant Company. This company, which was engaged in *shoe manufacturing* exclusively, had outstanding twenty-five thousand shares of preferred stock and twelve thousand five hundred shares of common stock. The par value of each share of preferred and common stock was $100.

(m) The contents of a machine shop located in the Pevear Building in Lynn, Mass., and two-thirds of the capital stock of the Bresnahan Shoe Machinery Company, which was manufacturing for Plant; also patterns, tools, jigs, etc., built for the purpose of manufacturing the "Wonder Worker" shoe machinery (Plant's machinery). These patterns, etc., were in use at the place of business of the Bresnahan Shoe Machinery Company, at the machine shop in the Pevear Building, at the place of business of C. P. Stanbon & Company, Lynn, Mass., Taft-Pierce Manufacturing Company, Woonsocket, Rhode Island; Stanley Manufacturing Company, Lawrence, Mass., National Machine & Tool Company, Boston. Certain machines and parts were also included. (R. I, 563, l. 9.)

(n) There were also assigned the following agreements:

i. Between Charles P. Stanbon & Company and the Manufacturers' Machine Company, which latter was controlled by Plant, under which the Stanbon Company gave to the Manufacturers' Company an option to purchase on or before November 1, 1906, the busi-

ness of the Stanbon Company. (Plff's Ex. 132, R. IV, 931.) By a separate contract the United Company assumed all obligations and liabilities of Plant under the Stanbon contract. (Plff's Ex. 138, R. IV, 1038.)

ii. Between the Keighley Company and Thomas G. Plant, dated January 26, 1910, whereby the Keighley Company agreed to furnish to Plant its rapid inseam trimming machines in such quantities, up to twenty-five per cent of its output, as Plant might desire, said machines to be subject to a lease of forty-nine years without the payment of royalty. Plant agreed that he would place said machines only in the factories of such shoe manufacturing concerns as equip their factories with his general line of machinery; that he would use his best efforts to induce the users of his machines to use the Keighley rapid inseam trimming machines; Plant further agreed that he would take thirty or more of said machines during the year 1910 and fifteen or more during each six months thereafter during the life of the agreement; and the Keighley Company agreed that it would not sell its business or patents to any one within one year in such manner or to such effect as would interfere with the performance of its contract with Plant. (Plff's Ex. 132, R. IV, 975.)

By separate contract, the United Company covenanted with Plant that it would indemnify and save him harmless from all actions, claims, and liabilities, which might at any time arise under the contract with the Keighley Company, and Plant agreed that he

would exercise the rights secured to him by said agreement *solely* as the United Company should direct. (Plff's Ex. 135, R. IV, 1023.)

iii. Between Plant and the Stanley Company, dated June 15, 1910, wherein Plant obtained the right to use certain machinery belonging to the Stanley Company. (Plff's Ex. 132, R. IV, 931.)

iv. Between Plant and the Stanley Company of the same date, which assigned to Plant the rights held by the Stanley Company under a contract it had made with the United Company on May 1, 1901. (Plff's Ex. 132, R. IV, 983.)

v. Between Plant and the Stanley Manufacturing Company whereby the latter leased to Plant certain real estate also a lot of machinery, by which Plant also agreed that on or before the termination of the lease, to wit, June 30, 1915, he would purchase the property described for $150,000 cash. (Plff's Ex. 132, R. IV, 988, 991.)

vi. Between Plant and the Stanley Manufacturing Company, whereby Plant agreed to manufacture for that Company so many of certain machines as the Stanley Company might thereafter need, and as Plant might find it convenient to make. (Plff's Ex. 132, R. IV, 1012.)

In connection with the several contracts above referred to, the United Company entered into special contracts to protect Plant against all liability that might arise therefrom. (Plff's Ex. 140, 142, R. IV, 1040–43.)

It was also agreed that claims against Plant to enforce certain leases for the use of United Company's machines, which were set forth in a bill of equity then pending in the Supreme Judicial Court of Massachusetts, and claims for infringement of letters patent by Plant would be abandoned.

We invite attention to the large number of important obligations assumed by the United Company for the purpose, defendants say, of procuring a few patents owned by Plant.

The United Company took from Plant covenants that he would assign to it all inventions, etc., which he might make or otherwise acquire within 15 years thereafter, relating to the manufacture of shoes or to machinery, devices, etc., used in such manufacture.

Thus the several contracts executed between Plant and the United Company show within themselves that Plant was the owner of numerous patents upon shoe machinery, that he had obtained the ownership or control of or was in contract relations with a number of factories for the manufacture of shoe machinery located in different parts of the country, and that he was fully equipped to enter upon active and extensive competition with the United Company.

3. THE PURCHASE BY THE DEFENDANTS.

In June, 1910, negotiations were entered upon between the United Company and Plant with a view to purchasing the Plant machinery interests just described. At first they were without success. They

were renewed from time to time until September 23rd when they were closed, according to Howe, after an all-night session, at 4.30 a. m. (R. I., 688, l. 21.) The money consideration was $6,000,000; according to the defendants' testimony, $500,000 had been paid the day before when not so much as a scrap of paper had been drafted or signed. (R. I., 487, ls. 28 to 44; 488, l. 1.)

This covered the Plant machinery, 60 per cent of the capital stock of the Plant shoe manufacturing company, and the other Plant interests described under the previous head. (R. I., 486, ls. 1 to 11.)

The story of the negotiations eventuating in the purchase is told by Winslow (R. I., 558, l. 6 *et seq.*); Endicott (R. I., 578, l. 10 *et seq.*); Howe (R. I., 668, l. 35 *et seq.*) and Herrick (R. I., 602, l. 6 *et seq.*). We do not think it necessary further to abstract it here.

4. PLANT WAS A SERIOUS COMPETITOR OF THE DEFENDANTS.

a. He Had Already Completely Equipped a Large Shoe Factory.

As stated, *supra*, Plant had equipped with his machines the shoe factory of The Thomas G. Plant Company, Boston, which had a daily capacity approximating 17,000 pairs. The Thomas G. Plant Company conducted its entire business for several years with this machinery. It continued to use it even after the purchase by the United Company. Substantially all the machines were continued in use until December, 1912 (McGaffee, R. I, 774, l. 36), and some of them were in operation at the time when the testimony was taken [Jan. 7, 1914] (McGaffee, R. I, 781, l. 42).

b. He Was Offering to Equip Other Manufacturers and Was Ready to Do So.

Plant also had contracts with factories where his machines could be made in large quantities. (*Supra*, pp. 99–101.) He had offered to install them in the factories of the Commonwealth Shoe and Leather Company, the W. H. McElwain Company, and Endicott-Johnson & Company. (Jones, R. I, 114, l. 31; also Endicott, R. I, 576, l. 27.) He had issued an elaborate catalog (Plff's Ex. 266) and was prepared to furnish his machines to shoe manufacturers generally if the opportunity was presented.

Representatives of large shoe factories located in the west had caused his machines to be inspected and as will appear came to Boston immediately prior to the sale to the United Company and made a further inspection with a view to purchasing an interest in the business. (*Infra*, pp. 99–111.)

c. His Machines Were Efficient Competitors of the United Machines in the Opinion of Experts.

Apart from actual success in the Plant shoe factory, there was the following direct testimony as to the capabilities of Plant's machines:

Warren F. McElroy, from 1890 to 1911, superintendent of the manufacturing department of the Hamilton-Brown Shoe Company, later president of the Non-Royalty Shoe Company, and still later in the employ of Burrow, Jones & Dyer Shoe Company, St. Louis, Mo., testified that he went through Plant's factory in May, 1910, at the request of Mr. Brown, president of the Hamilton-Brown Shoe Company.

The shoe manufacturers just mentioned as contemplating acquiring an interest in Plant's shoe machinery had also sent McElroy as an expert to examine the machines.

Mr. McElroy testified:

> The machines were doing women's McKay and welt work of good workmanship and high grade. I spent practically two days going over the machinery. I can not state the number of machines in operation, but it was a full line, consisting of lasting, welting, stitching and leveling machines. The essential bottoming room machinery was the machinery I examined. The work done was equally as good as that done by our United Company machines (the Hamilton-Brown Company, his employer, had the United Company's machines) and I felt they were doing about the same number of pairs. They were actually at work on women's shoes. I saw men's shoes there which were made upon them. (R. I, 189, l. 15, et seq.)

Milton S. Florsheim, president of the Florsheim Shoe Company, of Chicago, Illinois, testified that he went through Plant's factory in 1910, and found that Plant's machines were doing very satisfactory work, and that Plant had a line of machines which were making welt shoes and also McKay sewed shoes. (Florsheim, R. I, 160, l. 37 et seq.)

E. F. Selz, general manager of the manufacturing department of Selz, Schwab & Company, Chicago, Illinois, engaged in the manufacture of men's and

women's shoes, testified that he spent a half day examining Plant's machinery which was in operation in Plant's shoe factory and that the machines were making women's welts and McKay sewed shoes, and that Plant had a full line of machinery for making such shoes; that the machines were doing equally as good work, as far as he could observe, as the United Company's machines in his own factory, and with as much rapidity; that the machines were capable of being used in the manufacture of men's welt shoes. (R. I, 145, l. 40, 146, l. 1 et seq.)

Charles H. Jones, president of the Commonwealth Shoe and Leather Company, with factories at Whitman, Mass., and at Gardiner and Skowhegan, Maine, testified that he spent one entire day in June, 1910, examining Plant's machines; that his examining the machines was with a view to arranging for their use in his own factory; that Plant offered him the complete line of machinery which included every machine that was then in use in the Jones factories belonging to the United Shoe Machinery Company, offering in all, somewhere between 125 and 150 machines; that the price named by Plant was somewhere between $125,000 and $150,000 for the complete line; that the proposition was rejected principally on account of the tying clauses of the United Company's leases; (*infra*, pp. 145–213) that Plant's machines were adapted for the manufacture of men's shoes as well as women's although witness never saw the machines manufacturing men's shoes. (Jones, R. I. 114, l, 26 et seq., 124, l. 16, et seq., 125, l. 31.)

George E. Warren, an expert in the employ of the United Company, testified that, in conjunction with a Mr. Phillips, he had made an examination of the Plant factory in September, 1910, at the instance of the United Company. (R. I, 808, l. 29.) He said there were "sixty-nine machines in the Plant catalogue, and we saw them all, but not all in operation. It was a very large factory and had a capacity of ten thousand pairs a day or more, and was in full operation at that time." (R. I, 809, l. 6.) "I found a welter which was welting shoes and doing the work rapidly. They were running it at different speeds, some of them as fast as we run ours. The work on the shoe looked very well." (R. I, 809, l. 21.) "I regard the United Company welter as mechanically superior, and, taken as a whole, to some extent a superior machine to the Plant machine." (Ibid, l. 35.) "These Plant improvements on the welter were the things which especially impressed me." (R. I, 813, l. 5.)

This, we may add, is high praise from a representative of the United Company.

Elmer P. Howe, director and expert of the United Company, said that he had examined the Plant machines with Winslow prior to the purchase (R. I, 668, l. 35), and that in the main the machines "were improvements on old machines" upon which the patents had expired (R. I, 787, l. 6, 669, l. 16). With respect to the Plant *welting* machines, he said that Plant had added certain improvements which constituted a very valuable feature. (R. I, 669, l. 21–30.)

The defendants introduced considerable evidence with reference to this transaction, designed to show that Plant's machines as they were in September, 1910, were not yet fully satisfactory for shoe making processes; that the purchase was intended merely to acquire certain inventions which the United Company believed that *it*, but inferentially not Plant, could develop so as to be of great value, and to relieve the United Company of litigation.

It appears, however, that after the report of Mr. Warren and his associate experts was made to Winslow, there was no suggestion whatever upon Winslow's part that the particular inventions mentioned by them should be singled out and purchased, but during the entire negotiations nothing was talked of but the buying of Plant's *entire* line of machinery. (R. I, 559, l. 19 et seq.) This is important.

The machines were new, and to a certain extent experimental, and, as was to be expected, certain weaknesses and defects developed under the test of actual operation. Much is made of this circumstance by the defendants. There is, however, nothing in the record to indicate that the defects were of such character as not to be easily remedied by the alterations and adjustments common in the practical working out of a project like Plant's and the evidence does show conclusively that Plant and his assistants were possessed of a very high grade of inventive genius which already had been shown in the production of a number of inventions admitted by the defendants to be very valuable.

d. Shoe Manufacturers Believed the Plant Machines to be Efficient and Were Eager to Purchase an Interest in Them.

In September, 1910, a group of shoe manufacturers had been for some time in negotiations with Plant with a view to acquiring an interest in his shoe machinery business for the purpose of obtaining a source of supply of machinery other than the United Company and to secure relief from what they regarded as oppressive and arbitrary methods of the United Company. These manufacturers were Jackson Johnson, representing the Roberts Johnson & Rand Shoe Company, with a capacity of over 30,000 pairs of shoes daily, A. C. Brown, representing the Hamilton-Brown Company of St. Louis, with a capacity of 25,000 pairs of shoes daily, George Brown, representing the Brown Shoe Company of St. Louis, Henry W. Peters, representing the Peters Shoe Company of St. Louis, Milton S. Florsheim, representing the Florsheim Shoe Company of Chicago, with a capacity of 4,000 pairs of shoes daily, E. F. Selz, representing the Selz, Schwab Company of Chicago, with a capacity of over 15,000 pairs of shoes daily, and Charles H. Jones of the Commonwealth Shoe and Leather Company of Boston, with a capacity of 6,000 to 7,000 pairs of shoes daily. (Rand, R. I, 178, l. 24; Florsheim, R. I, 158, l. 13; Selz, R. I, 141, l. 16; Jones, R. I, 105, l. 20; Brown, R. I, 617, l. 10.)

A further idea of the importance of these manufacturers may be gathered from the fact that they paid to the United Company royalties ranging from

$79,000 (Jones, R. I, 117, l. 23) to $600,000 per annum (Rand, R. I, 186, l. 40).

These gentlemen met in Boston on September 22, 1910. Plant made them an offer to sell an undivided *one-half* of the *shoe machinery* business for $1,600,000. They asked for specifications as to what he owned. He was then unable to give them, but insisted that it was unnecessary as they had seen the machinery in operation, and he assured them that he had the facilities to manufacture the machines in large quantities. This was true. (*Supra*, pp. 99–101.) That was between eight and nine o'clock on the evening of September 22d. The purchase was not effected that night because they were unable to raise before Plant left them the very large sum required. The following morning, before they heard anything further from Plant, they succeeded in procuring subscriptions for $1,100,000, and Wade, treasurer of the North American Company of St. Louis, and Campbell, president of the Mercantile Trust Company of St. Louis, men abundantly able to supply the money, undertook to underwrite the purchase. That occurred about nine or ten o'clock in the morning of September 23d, but when the shoe manufacturers heard from Plant on that morning, they learned that about three or four o'clock on the previous night, after Plant had left them, he had gone to the office of counsel for the United Company and had sold all his interests to that company for $6,000,000. (Jones, R. I, 114, l. 39 *et seq.;* 115, l. 1 *et seq.;* Selz, R. I,

147, l. 7 *et seq.;* Florsheim, R. I, 160, l. 30 *et seq.;* 161, l. 1 *et seq.*)

The fact that the shoe manufacturers who had examined the machinery were willing to purchase a half interest in Plant's shoe machinery business, and pay therefor $1,600,000, is very persuasive that they regarded the machinery as capable of doing well the same work as that done by the United Company's product.

e. Winslow Knew of Their Desire.

Winslow states that on the evening of September 20th, the day *prior* to the meeting when Winslow practically agreed to buy the Plant property, Plant advised him that he was expecting the "western people," and that if he traded with Winslow, he would have to put up a proposition to the western people that they could not accept, or words to that effect. (R. I, 488, l. 18–23.) Mr. Endicott who became a director of the United Company "to carry through the deal for the Plant machinery" (R. I, 587, l. 33) also knew that the western shoe manufacturers were interested and were coming to examine Plant's machines (R. I, 589, l. 25). He knew this at least as far back as June, 1010. (R. I, 589, l. 27.)

He also testified that Plant had told him the day *before* the papers closing the purchase were signed that the western manufacturers *were in town and that he was going to take them out that day to show them his factory,* but that he, Endicott, didn't "think" that he knew of their presence in Boston until *then.* (R. I, 589, l. 30.)

Mr. Endicott, a leading figure in the defendants' negotiations, must have informed Mr. Winslow and Mr. Herrick of the presence of the western manufacturers in the town and the object of their mission. No other hypothesis is reasonable.

From this testimony it is fair to conclude that Winslow and his associates were well aware that negotiations were going on between Plant and the shoe manufacturers, and that unless the United people were prompt in closing the bargain the shoe manufacturers would obtain the Plant machines and establish a vigorous rival of the United Company. The result was the all-night session ending in closing the deal at 4.30 a. m. (R. I, 688, l. 9.)

f. Defendants Knew That Other Capitalists Contemplated the Purchase of the Plant Machines.

Herrick, attorney for the United Company who took an important part in the Plant negotiations (R. I, 602, l. 6 et seq.) stated that on September 1, 1910, while the Plant purchase was under consideration by the United people, he was called to New York by Wiggin, President of the Chase National Bank, who said to him that Evans of the North American Insurance Company desired to see him; that when he asked what Evans wanted to see him about, he was told by Wiggin to call upon Wallace, president of the Central Trust Company, New York; that he did so and Wallace, after talking for a while about other matters, said in effect that a large concern with international banking connections was considering buying into the Plant machinery, and

that he, Wallace, was planning to have an expert, together with a patent lawyer, go to Boston for the purpose of seeing what Plant had and that if this concern which he was speaking about took over the Plant machinery it would undoubtedly establish a strong and prosperous business; (R. I, 613, l. 28 et seq.) that he also saw Woodward of the Hanover National Bank, a director of the United Company, who told him that he had heard "Plant owed the City Bank (of New York) some money and that the City Bank and a hide man, whose name he would not tell me, had some plan for buying Plant's business" (R. I, 614, l. 14).

g. Winslow was Exceedingly Anxious to Get Plant's Machines.

The whole history of the transaction shows that the defendant's were keenly alive to the importance of removing from their path so dangerous a competitor and were exceedingly anxious to accomplish that end. The negotiations were continuous from their inception in June, 1910, until their consummation in September. When they were not proceeding between Plant and Winslow, through Endicott, they were going on between Herrick and Plant, at the instance of one Smith. Herrick was reporting to Winslow after every interview. (R. I, 602, l. 17; 604, l. 10; 605, l. 18; 608, l. 43; 609, l. 1 et seq., 610, l. 4, 20.)

One very significant circumstance shows this anxiety in sharp relief. When the negotiations had once reached the semblance of agreement although none of the intricate details had been worked out the

defendants hastened to give Mr. Plant a check for $500,000. (R. I, 488.) When this check was delivered not a document had been drawn.

Other facts indicate this imperative anxiety even more strongly.

1. Endicott's Strange Story.

Henry B. Endicott, of Endicott-Johnson Shoe Company, Endicott, New York (daily capacity about 40,000 pairs) testified that in 1909 Plant had told him that he would give to him $250,000 if he would complete or help to complete the sale of Plant's machinery to the United people; (R. I, 576, l. 40) and that thereupon Endicott arranged for a meeting between Winslow and Plant at his house; (R. I, 577, l. 1) that, after he had failed as the representative of Plant, he then sought Winslow, and made to him a remarkable proposition. Here is the way he tells it:

> "I am going to make a proposition to you, Mr. Winslow, and you may laugh at it, but you shall be the only man that will laugh at it, because you must promise me, if you don't accept it, never to reveal it," which of course he did promise. I said, "Hanan and Keith refuse to take the responsibility of this recommendation" (to examine the Plant machines and report on the advisability of the purchase.) "I have been thinking that if I had been director in your company I would have been wil'ing to take that responsibility; if you care to elect me as a director in your company, I will do my share toward taking that responsibility." Mr. Winslow said he would not laugh at that;

(of course not) that he liked the idea of it; and he asked me if I would go and see Mr. Howe, which we did—took a motor and went to Mr. Howe's residence, I think to Marblehead. (R. I, 578, l. 22.)

Asked why he thus pledged Mr. Winslow to secrecy, Mr. Endicott said, "I am not in the habit of offering myself as a director."

Q. Why did you offer yourself as a director in this case?

A. Because I wanted to make a success of what I had started in on.

Q. In other words, you wanted to be elected a director of the United Shoe Machinery Company to carry through this deal to acquire the plant machinery; is that right?

A. As far as I was concerned; yes, sir; and because I believed, of course, as I have stated here, that there was value there. (R. I, 587, l. 30.)

That night he informed Plant that he had changed his allegiance (R. I, 579, l. 4), went with Winslow to New York, where they met others of the directors, and was elected to the Board, although he did not own a dollar's worth of stock in the company (R. I, 587, l. 43). He then continued his efforts to forward the purchase. (R. I, 579, l. 11.) But, according to his story, he had, simply for the sake of accomplishing that end, exchanged a position where $250,000 was to reward his success for one where he could profit not a penny.

It will be remembered in this connection that this was not the first time Mr. Endicott was so used to serve the ends of the United Company. When Mr. Winslow desired to secure control of the Eppler Company, he did not go about it directly, but employed Mr. Endicott as the man to accomplish the result. (R. I, 530, l. 4.)

Here we find Mr. Endicott appearing as the most active agent in the purchase of a much more important competitor. He was made a director expressly to carry forward those negotiations. When it was decided that he assume that position he had not yet renounced his character as agent for Plant. As agent he had acquired information about the machinery. It had been examined by his experts. (R. I, 576, l. 12.) He knew of the desire of the western men to buy it. (*Supra*, p. 111.) When he became a director of the defendants he knew better than any other how likely Plant was to become a powerful competitor of the defendants.

Endicott's maneuvers are difficult to understand. His story excites curiosity and suspicion. We doubt that it has a parallel in the history of great business transactions. But, however that may be, it shows the deep anxiety of Mr. Winslow and his associates to acquire the Plant machinery and their willingness to adopt any means necessary to accomplish the result.

There was a cause for this anxiety. It rested in the fact that the Plant machinery was seriously competitive and that men capable of making that

machinery a vigorous antagonist of the United Company were on the spot or near at hand ready to purchase it.

ii. Suits by United Company to Compel Him to Sell.

On July 5, 1910 a committee appointed by Winslow to examine the Plant machinery made an adverse report. (R. I, 484, l. 16 et seq.) On that day the United Company commenced a suit against Plant and the Thomas G. Plant Company to enjoin the latter company from using the machines which had been supplied to it by Plant; to enjoin Plant from supplying to the Plant Company other machines in place of those leased by the United Company, and for other purposes. (Pff's. Ex. 162.) Soon thereafter a number of patent infringement suits were instituted against Plant and others made ready for filing. (R. I, 480, l. 19, 484 l. 38; Dft's Ex. 270, R. V, 723.) Defendants' witnesses talk of counter infringements by their machines. (R. I, 820, l. 17; Dft's Ex. 277.) *But no litigation was begun by Plant.* These suits, no doubt, were intended in part at least as spurs to induce Plant to sell and hence certainly tend to show that the United Company believed Plant to be a dangerous competitor.

5. DEFENDANTS' ALLEGED REASONS FOR MAKING THE PURCHASE ARE INSUFFICIENT TO CONCEAL THEIR FEAR OF PLANT AS A COMPETITOR.

Defendants say that the purchase was made to obtain Plant's improvements so that they might advance the art of shoe machinery for the benefit of shoe manufacturers.

This altruistic motive might have been satisfied without the expenditure of $6,000,000. All that was necessary was to permit the shoe manufacturers who were ready and anxious to purchase an interest in Plant's machinery to carry through their design. They were ready to interest themselves in the machinery to which the improvements had already been successfully applied.

And the facts demonstrate that the United Company which is directed by pretty efficient business minds hardly could have invested $6,000,000 for the purpose of getting control of a few improvements.

In the first place no effort was made to acquire the improvements or any of them or any right to use them without at the same time acquiring all of Plant's interests in shoe machinery. In the second place, the defendants' own witnesses show that however valuable the Plant improvements were to him as a present and prospective competitor of the defendants, they were of little use to the United Company. For the following testimony shows what, according to the defendants, the improvements were and what they did with them.

Warren, an expert of the United Company, said:

> These Plant improvements on the welter were the things which especially impressed me. (R. I, 813, l. 5.)

Howe said that Plant had added a certain improvement to his welting machine which constituted a valuable feature. (R. I, 669, l. 20 to 30.)

From Howard we learn that these improvements were an automatic stopping mechanism on an outsole stitcher and a welt measurer and cutter attached to the welting machine. (R. II, 2259–2263, *passim.*)

With respect to the stopping mechanism, Howard said:

> The Plant mechanism was far from satisfactory as it was not a good mechanical arrangement and occasioned much trouble from breakage. After the acquisition of the Plant patents by the United Company in September, 1910, *five* different inventors employed by the United Company were put to work upon the *problem* of providing a *commercially satisfactory stopping* mechanism. * * * The mechanism finally produced by the joint work of these five inventors was that which I have described and *was entirely different in structure and mode of operation from the Plant mechanism.* (R. II, 2297.)

Concerning the welt measurer and cutter, he said:

> Some four or *five* inventors were put to work by the United Company to adapt [it] to the United Company's Model G. welter. * * * The United Company's inventors made *important improvements* upon them so that, as finally incorporated in the Model G. machine embodying these improvements and others to which I shall refer, became known as Model K. machine, improvements were made which represent almost as *important advances* in the industry as did the Plant improvements. In

> operating the Plant welt holder and cutter, it was necessary for the operator to step on a treadle at the time when he desired to sever the welt. In the Model K. machine it is only necessary for the operator to move the shoe slightly to the left. (R. II, 2260–2261.)

It appears, then, that none of the improvements purchased from Plant at enormous cost were used without radical and far reaching change by the United Company.

Plant's machines were efficient and were of great value *to him as a competitor of the defendants.* But the United Company already had machines, of different design, which it believed efficient. All that it could get from Plant in the way of machinery of value to it was improvements which it could add to its own machines. The foregoing testimony shows that Plant's improvements could not be added to its machines without being so changed that they were *entirely different* in structure and mode of operation. New invention was required. What was of immediate value to the defendants in the Plant acquisition was the removal of Plant's competition. This is what they bought and it was for this that they paid their millions.

It is suggested by the defendants also that the purchase was inspired by a desire to avoid litigation. This would not be a defense for an otherwise illegal purchase. (*Infra*, p. 242.) But that the avoidance of litigation was in fact an actuating factor in the transaction does not appear. In no part of the negotia-

tions was it suggested that the defendants should buy out Plant in order to avoid litigation. And no litigation *against* the United Company had been bought or threatened.

It is true that a number of infringement suits had been instituted against Plant, as above noted. But it does not appear that if any or all of them had been sustained it would have been fatal to the line of machinery owned by him. His improvements, so far as his two principal machines were concerned were made upon machines previously put out by the United Company. (R. I, 787, l. 6.) The patents on these machines had expired, by limitation.

Nor will it do to say that Plant had developed his line of machines with the design to force the United Company to purchase them and that the purchase was made at his instance. He did not have to sell to the United Company. The western manufacturers and the people of whom Herrick was told in New York (*supra*, pp. 112, 113), were ready to go in with him. He had two courses open, one to sell to the United Company and restore the complete monopoly in his lines of machinery which existed before he came into the field, and the other to sell to the others and thus perpetuate the active competition in those lines. He chose the former and no doubt was moved thereto by the fact that the United Company was willing to buy out his entire interest in both his shoe machinery and his shoe manufacturing business and permit him to retire to enjoy his mountain in New

Hampshire. (R. I, 488, l. 24.) But whether the initiative came from the defendants or from Plant, the result was the same. A powerful existing and potential competitor was purchased. That is the significant fact.

The purchase of the shoe factory is in itself enlightening. The United Company had never been in the shoe manufacturing business and, so far as this record shows, had never intended to go into that business. (R. I, 580, l. 42.) Yet, in order to obtain Plant's machines, it took sixty per cent of the stock of the Thomas G. Plant Shoe Company, *whose factory was equipped with Plant's machines*, at a price which Winslow says was $3,500,000. (R. I, 499, l. 35.)

Furthermore Winslow says that this stock was not purchased because he wanted it. It was because Plant made it a condition of his proposition. (R. I, 562, l. 12.) It is inconceivable that such an expensive piece of property which was not desired and in which the United Company had never manifested any interest was purchased for no other reason than to obtain inventions which defendants say had to be entirely worked over before they could be adjusted to the United Company's machines, machines which defendants insist were already better machines than those made by Plant.

In addition, the magnitude of the consideration paid clearly shows that the value of the purchase did not consist alone in the machines and improvements obtained. In the original organization the stockholders of the Consolidated & McKay Lasting

Machine Company received $4,599,840 of stock, preferred and common, and $432,000 in cash, or a total of $5,031,840, or $968,160 less than was paid Plant. (R. I, 568, l. 21.) The Goodyear stockholders received $4,800,000 in stock, or $1,200,000 less than was paid Plant. (R. I, 569, l. 3.) The McKay Shoe Machinery Company stockholders received $5,500,000, or a half a million dollars less than was paid Plant. (R. I, 569, l. 8.) Furthermore, it is difficult to conceive how Winslow could value 60 per cent of the stock of T. G. Plant Company at $3,500,000. The total capitalization of that company was $3,750,000, of which $2,500,000 was preferred and $1,250,000 was common stock. Plant owned and the United Company received by this purchase only $1,500,000 preferred and $750,000 common, or a total of $2,250,000 (R. I, 486, l. 8 et seq.), and the statement furnished the company by Plant showed that the Plant Company had a net investment at that time of only $2,500,000 (Plffs. Ex. 132, IV, 1015), 60 per cent of which was $1,500,000. Moreover, the evidence does not show that the stock of the Plant Company was specially valuable.

Besides the amount paid Plant, the United Company also paid under the several contracts which Plant had, $122,000 to Stanbon (R. I, 558, l. 33 et seq.) $150,000 to the Stanley Company and also considerable sums to other concerns which were taken over; but Winslow says that these purchases were regarded as mere incidents.

4. RESULT OF THE ACQUISITION OF THE PLANT PROPERTIES.

a. The United Company Again Acquired Substantial Control of Welters and Stitchers.

In order to fully comprehend the effect of this purchase, the conditions then existing must be kept in mind. The only concern at that time engaged in putting out welters and stitchers to any material extent was the United Company. Winslow named the Haverhill Company, R. H. Long, and the Boylston and Duplessis Companies as being engaged in manufacturing welting machines but the evidence of representatives of each of those companies is in the record and shows that when the Plant purchase was made no one of them was manufacturing welting machines to any material extent. (R. I, Webster, I, 290, l. 26; 291, l. 42; 292, l. 8; Doidge, I, 344, l. 17 and 26; Maloy, I, 301, l. 26; Hamel, I, 326, l. 9, 36, 37.)

b. The United Company Secured Control of the McKay Sewing Machine.

The Richardson Shoe Machinery Company manufactured an improved McKay sewing machine, but its factory was obtained by the United Company through the purchase of all its assets in 1908. (R. I, 69, l. 20 et seq.)

Since that time the United Company had been putting out the McKay machine either by absolute sale or, more recently, by lease; but the Stanley Company was manufacturing the original McKay machine (R. I, 564, l. 22). Its properties were pro-

cured at a consideration of $150,000 in accordance with the terms of the Plant acquisition. This gave the United Company complete control of that machine.

Winslow testified that the machine could be obtained elsewhere, but he was wholly unable to name any other concerns which manufacture it in competition with the United Company. (R. I, 564, l. 25.) Possibly second-hand machines can be obtained from dealers, but when that supply is exhausted it will be necessary for every manufacturer to equip his factory with McKay machines held by the United Company. Not only that, but the McKay machines are all tied to the lasting machines of the United Company by its system of leasing. (*Infra*, pp. 145–213.) No one may use a United lasting machine upon any shoe which has been operated upon by a machine not procured from the United Company, therefore not upon a shoe operated on by a McKay machine procured outside of the United Company. The lasting machine is virtually, if not absolutely controlled by the United Company. (*Infra*, p. 164.) Practically, every shoe manufacturer in the United States must have it. Therefore, every such manufacturer must also procure his McKay machines from the United Company.

In consequence, the United Company by procuring control of the McKay sewing machine completed its monopoly of every important machine used in bottoming shoes.

c. It Removed the One Formidable Competitor of the Defendants.

Mr. Johnson of the International Shoe Company, one of the largest practical shoe manufacturers of the country, truly said of the Plant purchase that—

> it showed either that somebody was able to make a superior line of shoe machinery to what the United Company had, or else they wanted to retain an absolute monopoly of the shoe machinery business. (R. I, 161, l. 26.)

There is no pretense that any competitor of the defendants except Plant has ever undertaken to place upon the market anything approaching a complete and successful line of machinery for the manufacture of welt or McKay shoes. The fact is that the purchase removed the one really formidable competitor which had appeared since the organization of the United Company.

VI. THE POSITION OF THE UNITED COMPANY AT THE TIME WHEN THIS ACTION WAS BEGUN.

A. IT WAS OVERWHELMINGLY PREPONDERANT.

Facts already reviewed show that upon its formation the United Company acquired every company then actively putting out or planning to put out lasting, pegging, welt sewing, outsole stitching, heeling and metallic fastening machines. (*Supra*, p. 54.) In the twelve years before the bringing of this action no substantial change took place but rather the monopoly so acquired was in some respects extended and in many respects strengthened and intrenched. In 1911 the United Company was putting out a complete line of machinery in the field which it then

had entered. It was offering machines for every operation performed by machinery in the bottoming of shoes, clicking and eyeletting machines. (Dfts.' Ex. 232, R. V, 480.) As to many of these machines, it appears from exhibit 232 that the defendants admit that they have no competition. No company in this country except the United Company offers such a full line of machines. (Jones, R. I, 115, l. 31; Long, R. I, 231, l. 17; Dfts.' Ex. 232, R. V, 480.) The testimony of the many shoe manufacturers who appeared as witnesses either for the United States or for the defendants shows that substantially every machine used for these operations by shoe manufacturers in the United States is a machine put out by the defendants.

Charles H. Jones, president of the Commonwealth Shoe & Leather Company, of Boston, Mass.—capacity 6,000 to 7,000 pairs per day—testified that his company does not use any welting, outsole stitching, lasting, heeling, or metallic fastening machines other than those of the United Company. (R. I, 114, l. 22.)

E. F. Selz, of Selz, Schwab & Co., Chicago, Illinois—daily capacity about 15,000 pairs—testified that his company has obtained all its welting, stitching, lasting, heeling, and metallic fastening machines under lease from the United Company. (R. I, 144, l. 15.)

Milton S. Florsheim, president of the Florsheim Company, Chicago—daily capacity about 4,000 pairs—testified that his company leases all of its welting and stitching, lasting and heeling machines from the United Company, except a few machines which

had been obtained previous to the consolidation from companies which became a part thereof. All royalties are paid to the United Company, except royalties for the use of the Xpedite finishing machine, which is paid direct to the Xpedite Company, a subsidiary of the United. (R. I, 159, l. 44; 160, l. 1 et seq.)

Frank C. Rand, vice president of the International Shoe Company, of St. Louis, Mo.—daily capacity about 50,000 pairs—testified that his company leases all of its lasting, heeling, welting, stitching, and metallic fastening machines, etc., from the United Company. (R. I, 178, l. 37 et seq.)

George R. Harsh, president and general manager of Harsh-Edmands Shoe Company, Milwaukee, Wisconsin, testified that his company did not use in the bottoming department any machines other than those obtained from the United Company, except one stitching machine of the Union Lock Stitch Company for ornamental work. (R. I, 195, l. 14.)

Pearl E. Selby, of the Selby Shoe Company, Portsmouth, Ohio—daily capacity about 6,000 pairs—testified that his company uses the United Company's welters and stitchers exclusively for welt work, but for fair stitching, viz. inserting an ornamental stitch in, the McKay shoe they have used a Puritan machine for about fifteen years, and were trying out the Union lock-stitch machine (R. I, 210, l. 38; 213, l. 11 et seq.) and that the company uses exclusively lasting, heeling and metallic fastening machines of the United Company (R. I, 212, l. 33).

John E. Williams, with factories at Portsmouth and Ironton, Ohio, testified that he used exclusively the United's bottoming machines (R. I, 216, l. 37.)

William A. Hogan, treasurer of T. D. Barry Company, Brockton, Mass.—daily capacity from 3,000 to 3,500 pairs—testified his company uses exclusively the United Company's welters, stitchers, heeling, lasting, and metallic fastening machines. (R. I, 222, l. 10; 224, l. 14.)

Frank R. Hilliard, Haverhill, Mass., manufacturer of women's welt and turn shoes—daily capacity about 4,000 pairs, uses the United Company's machines exclusively. (R. I, 282, l. 42; 283, l. 4.)

Ernest Bottomley, Haverhill, Mass., manufacturer of McKay shoes—daily capacity about 700 pairs—testified that with the exception of two old McKay sewing machines he uses exclusively bottoming machines of the United Company. (R. I, 285, l. 2, 24; 287, l. 18.)

James H. Cunningham, general superintendent of the Stacy-Adams Company, Brockton, Mass.—daily capacity about 1,200 pairs of welt shoes—testified that his company uses exclusively the United Company's welting and outsole stitching, lasting, heeling, metallic fastening and eyeletting machines. (R. I, 288, l. 35; 289, l. 29.)

Ira J. Webster, Haverhill, Mass., shoe manufacturer, testified that he uses exclusively bottoming machinery of the United Company. (R. I, 362, l. 20.)

Thomas H. Shinn, superintendent for the Curtis & Jones Company, Reading, Pa.—daily capacity

about 10,000 pairs—testified that his company uses the United Company's bottoming machinery exclusively. (R. I, 366, l. 35, 37.)

Alanson C. Brown, president of Hamilton-Brown Shoe Company, St. Louis, Mo., manufacturers of welts, turns and McKays, with a daily capacity of about 25,000 pairs, testified that practically all of the machinery used in his factories was obtained from the United Company. (R. I, 617, l. 10 and 26.)

Robert P. Hazzard, of the R. P. Hazzard Company, Gardiner, Maine, manufacturers of men's welt shoes, with a daily capacity of about 5,000 pairs, testified that his company "got from the United Company all the machinery they could supply." (R. I, 651, l. 10, 26.)

Martin E. Welch of the Welch Shoe Company of Lynn, Mass., testified that every machine used by that company in the bottoming room with the exception of two or three machines are United machines. (R. I, 710, l. 25.)

Frederick Allen, of the Allen, Foster, Willett Company of Lynn, Mass., manufacturers of welts, turns, and McKays with a daily capacity of about 6,000 pairs testified that his concern uses the United Company's bottoming machines exclusively, with the exception of the Puritan fair stitching machines. They also used defendants' eyeletting and clicking machines. (R. I, 723, l. 37.)

Jonathan Brown, Jr., manufacturers of women's, misses', and children's McKay-sewed and standard screw shoes, with an output of about 7,500 pairs per

day testified that he uses practically all of the United's bottoming machines in his factory. (R. I, 730, l. 15, 31; Plff's Ex. 269, R. IV, 1441.)

James W. Hitchings, of Luther S. Johnson & Co., Lynn, Mass., manufacturers of slippers, testified that all of the bottoming machines used by his company belonged to the United Company. (R. I, 738, l. 6.)

Edward W. Burt, of E. W. Burt & Co., (Inc.) of Lynn, Mass., manufacturers of men's, women's, misses', boys' and children's welt shoes, with a daily capacity of about 500 pairs testified that he was using the United Company's machines. (R. I, 739, l. 4.)

Charles A. Eaton, of the Charles A. Eaton Company, Brockton, Mass., manufacturers of men's welt shoes, with a daily capacity of about 2,400 pairs, testified that he had not made any attempt to obtain bottoming machines from any other source than the United Company. (R. I, 751, l. 20, 27; 755, l. 25 et seq.)

C. Willis Bennett, Fitchburg, Mass., manufacturer of women's, misses', and children's McKay-sewed shoes, with a daily capacity of from 800 to 1,400 pairs, testified that, with the exception of machines for fair stitching, all of his sewing, heeling, lasting, and metallic fastening machines were obtained from the United Company. (R. I, 757, l. 42; 760. l. 1.)

Frederick J. Gross, of Field Bros. & Gross Company, Auburn, Maine, shoe manufacturers, with a capacity of 7,200 pairs per day, testified that at the time of his examination his company was using no bottoming

machines except those of the United Company. (R. I, 806, l. 21; 808, l. 1.)

Evidence of this kind might have been indefinitely multiplied but even the foregoing was hardly necessary in view of the defendants' admission that they are in business relations with 1,033 shoe manufacturers in the United States. (Donham, R. I, 26, l. 39.) When the testimony in this case was closed in 1914, there were, according to the census figures in all 1,090 such manufacturers. The census of 1910 showed that in 1909, there were in the neighborhood of 1,300 manufacturers.

B. EXISTING COMPETITION WAS NEGLIGIBLE IN EXTENT.

1. IN GENERAL.

The foregoing testimony in itself shows that the defendants had in the American market no competition worthy of the name as to any of the more important machines used for operations lying within the field to which the Government's charge of monopolization applies. In the course of the testimony of Mr. Winslow and of other officers of the United Company, various manufacturers are named as offering to the trade machines which competed with the United Company's machines of these departments, and a number of exhibits containing lists of such names were introduced. The claims of the defendants, however, were summed up in a final exhibit. (Dfts. Ex. 337, R. V, 906.) This was chronologically the last of the series of these exhibits to be produced and therefore may fairly be taken as stating

the defendants' case on this point in the way in which they desired to leave it and the heading of the exhibit itself indicates this. It is headed: "List of Machines Offered by Shoe Machinery Manufacturers and Dealers Other Than United Shoe Machinery Company for Preparing and Attaching the Bottoms to the Uppers of Shoes, Eyeleting Machines, Dieing-Out Machines and Clicking Machines. Named in Defendants' Exhibit 311 (Folio of Catalogs), Defendants' Exhibits 312, 313, 314, 315, 316, 317, 318, 319, and 320 (Catalogs), Defendants' Exhibit 321 (Letters, Advertisements and Catalogs)."

Analysis of this exhibit (Dfts. Ex. 337, R. V, 906) in the light of certain testimony in the record discloses the unsoundness of any claim that the defendants have any substantial competition in the field which they have undertaken to preempt.

The basis of the exhibit as is shown by its descriptive heading was a number of catalogs, letters and advertisements which defendants were permitted to introduce. The circumstances under which this material was received appear in the examination of the witness Sampson. (R. I, 836–837, 879–881.) He was permitted to put in, as Dfts. Ex. 311, what he described as

> catalogs of machines which I have not seen specifically advertised within a few years, but which were generally known to be those of manufacturers who have these machines for sale as a matter of general trade knowledge. (R. I, 836, l. 43; 837, l. 1–3.)

Other catalogs were gathered by solicitation. As to the actual putting out of machines by the concerns whose catalogs he had collected, the witness testified in substance that he had no way of knowing, and he explained:

> As to how I know that these various concerns that have catalogs are holding themselves out to the trade as furnishing these various machines, I know it from the advertisements and catalogs which they issue and from general trade knowledge. I have not undertaken to buy anything from them * * I do not know how many they are selling. (R. I, 880, l. 43; 881, l. 1–5.)

In view of the care and labor expended by the defendants in collecting these catalogs, in writing letters to the concerns, many of them mere machine shops (R. I, 837, l. 6 et seq.), asking them for quotations on machines which the concerns had described themselves as ready to furnish upon order, and in utilizing the "general trade knowledge" of the witness, it is very significant that neither he nor any witness called by the defendants informed the Court of any appreciable use of the machines furnished by this cloud of alleged competitors. Eighty-five representatives of a number of these manufacturers were, however, called by the Government (R. I, 882–960 and elsewhere) and testified as to the actual character and amount of the business of these companies.

2. THE FOREIGN COMPANIES.

Before reviewing that testimony, however, it is convenient to dispose of the eleven foreign companies which are mentioned by the defendants in connection with a large number of the machines enumerated in Defendants' Exhibit 337. A number of companies in France, England and Germany are named by the defendants as manufacturing one or more of the more important machines used for bottoming operations and it is contended by the defendants that these companies compete with them in this country. The defendants did not show the use of a single foreign machine in the United States, offered no evidence of any attempt to introduce such machines and contented themselves with producing catalogs bearing the names of the companies in question which they were allowed to introduce as evidence of something.

On the other hand, the United States produced witnesses Stone, McElroy and Cavanaugh who testified specifically on the matter and supplied the full story of foreign machines in this country. This evidence was in addition to the testimony of the shoe manufacturers as to their exclusive use of the defendants' machines which has been noted *supra*. The testimony shows that these foreign companies had not attempted marketing their machines in the United States in competition with the United Company.

Cavanaugh (R. I, 954, l. 31 et seq.; 955, l. 1 et seq.) testified that as a salesman of shoe machinery he had visited shoe factories all over this country. He was acquainted with nearly all the foreign companies mentioned, and testified that he knew of no business in shoe machinery having been done in the United States by any of the foreign companies mentioned.

McElroy was especially qualified to testify on this point because of his experience in attempting to fit up a factory to manufacture welt shoes without using any of the machinery supplied by the United Company. (R. I, 190, l. 1 et seq.) In his effort to do so, he "looked over all the available markets." (R. I, 190, l. 18.) He did obtain in England certain machines, to wit: sole molding, stitching, indenting, rough rounding, leveling and lasting machines "because we could only get them from the United Company in this country." (R. I, 190, l. 43.) These are the only foreign machines which the record shows ever to have been used in this country. To obtain these machines, he was compelled to make a journey to England (R. I, 190, l. 20, 45; 191, l. 1 et seq.) and then was unable to secure a machine without waiting for it to be constructed. It took him in all seven months to get together machinery (R. I, 922, l. 2) sufficient to equip *one* factory with a capacity of six hundred to one thousand pairs of shoes a day. (R. I, 194, l. 18.) On page 923, this witness reviewed the foreign concerns named in defendants' list. The only one which he knew of as having done any business in this country was the Standard Rotary Machine Com-

pany of England, and in connection with it he refers *only* to the machinery which he himself had obtained. He testified that it had no machinery in this country at the time when he resorted to it for his machinery. (R. I, 190, l. 35.)

Stone, who was called by the United States (R. I, 339, l. 41), testified to all that the record shows as to the making of any efforts by any foreign company to market machines in this country. Representing the Atlas Works of Leipsic, Germany, he spent six weeks in this country. In that time he succeeded in selling two machines for nailing wooden heels on turn shoes to two small manufacturers. (R. I, 341, l. 21.) He placed no important machines and did no business with any manufacturers of any considerable size.

Why he was unable to do any more business is graphically illustrated by the reception he got from Mr. Jackson Johnson, of the Roberts, Johnson & Rand Company of St. Louis. Mr. Johnson said:

> My boy, I know all about it, about the machines you are producing in Germany, and what kind of machines can be made in Germany or in Europe; but, as it is, you know, if you bring over a machine which is constructed in such a way that we drive a cow into it, and on one side ready made shoes come out and on the other side ready made sausages and you want to sell it to us for ten cents, then we are not allowed to install it or make use of it.

and added (R. I, 340; l. 13) that this situation arose from the leases of the United Shoe Machinery

Company which are discussed *infra*. Other large manufacturers gave him the same reason. (R. I, 340, l. 29; 341, ls. 12, 16.)

This witness who was the only person ever connected with any foreign company who testified, was asked as to the capacity of the Atlas Works. He answered that his proposition to the American shoe manufacturers was that if they would put at his company's disposal the capital that they would pay in one year in royalties they "might be able *to enlarge* their plant and furnish them machinery but as it was *they were equipped only for European business.*" (R. I, 344, l. 4.) He stated that he had given up his employment "automatically" being unable to do anything for his employers. (R. I, 343, l. 28.) It will be noticed that he was not even permitted to show his wares. In fact he had no wares in the shape of actual machines to show.

Nothing on the record goes further than to show that these foreign companies are doing business in the countries in which they are respectively situated, and issue catalogs of which the United Company had been able to procure copies.

With respect to the Plant transaction, the United Company contended that Mr. Plant was not in competition with them, although he had issued an elaborate catalog, and announced that he stood ready to supply shoe manufacturers with all of the machinery therein named. The Government, however, supported its contention as to Mr. Plant with the concrete evidence of ability to supply

machines which has heretofore been reviewed. The United Company made no such effort as to the foreign or indeed as to most of the domestic concerns whose catalogs were introduced and referred to in Defendants' Exhibit 337.

It is submitted, therefore, that the alleged foreign competition may be dismissed without further notice.

3. AMERICAN COMPANIES.

It has just been noted that Warren F. McElroy testified that in the year 1911 he attempted to equip, as a demonstration, a factory to manufacture welt shoes having a capacity of from 600 to 1,000 pairs a day from sources independent of the United Company. (*Supra*, p. 136.) He searched all over the United States, picking up machines here and there. But he could not get in this country, and was compelled to go to England to obtain many essential machines which he desired. (*Supra*, p. 136.) Certain machines such as heeling machines he found he could obtain in this country with the exercise of sufficient patience "but it took two months to get the first one." (R. I, 191, l. 6.) He could not get a full line of welt machines in this country (R. I, 190, l. 45; 191, l. 1–2), although he did get two welt machines for trial from *two* American manufacturers. After his return from England he found that the Krentler Company of Detroit had a crude lasting machine which they were ready to instal on trial. That machine was not a commercial proposition at the time. (R. I, 190, l. 22.) The record shows that

Krentler's entire output was two machines, both of which were installed in this demonstration factory. (R. I, 190, l. 29.) Winslow testified that the Krentler property had been offered to the United Company. It had not been accepted at the time the suit was brought. (R. I, 570, l. 25.) Under the rule of the Court limiting the introduction of evidence, the subsequent history of this company could not, of course, appear in the record.

McElroy also spoke of the circumstance that from the organization of the United Company he observed the discontinuance of calls from agents for different shoe machines which had been customary before. (R. I, 188, l. 35, 189, l. 2.)

Winslow also testified that while other machines for dieing out heavy stock were offered, he knew "of no clicking machine that is being used in this country in the manufacture of light grades of shoes except ours." (R. I, 592, l. 38.)

The foregoing testimony in itself tends to show the situation with respect to the dominance of the United Company, already disclosed by the evidence of the shoe manufacturers and otherwise. (*Supra*, pp. 126–132.) It did appear that certain companies were preparing to enter the field, provided a reasonable opportunity of successful competition presented itself. Representatives of practically every one of these factories testified with reference to the machines which they had put out, the supply of machinery which they had on hand and the capacity and re-

sources of their factories. It is to be presumed that they made the best possible showing for their respective companies. Their evidence showed that these companies are at present wholly inadequate to supply any appreciable part of the American demand. (Merrick, R. I, 199, l. 8; Long, R. I, 232, l. 4, and 233, l. 11; Malloy, R. I, 301, l. 23, 302, l. 2; Webster, R. I, 298, l. 1; Doidge, R. I, 344, l. 14.)

Charles H. Jones of the Commonwealth Shoe Manufacturing Company testified that from his knowledge of the shoe machinery business no one outside of the United Company could, on December 12, 1911, furnish machines for the purpose of fitting out a factory for the manufacture of welt and turn shoes. (R. I, 115, l. 31.)

Long testified to the same effect. (R. I, 231, l. 17.).

Appendix B, parts 1 and 2, attached hereto is a condensed statement drawn from the uncontradicted evidence of the eighty-four witnesses referred to with respect to the catalogues, etc., and from other undisputed sources indicated therein showing in part 1, the number of principal bottoming machines together with eyeletting and clicking machines which the United Company had out March 1, 1911, and the number which all other concerns had out at that time. The appendix, part 1, does not give the number of pulling over, standard screw, or pegging machines in use at that time, but they are found in Defendants' Exhibit 228. A summariza-

tion of the appendix aided by Defendants' Exhibit 228, as just indicated, is as follows:

Machines.	By defendants.	By all others.
Clicking machine	3,655	None.
Eyeletting machine	4,472	150
Pulling-over machine	1,632	None.
Lasting machine	7,496	7
Standard screw machine	409	None.
Pegging machine	146	None.
Tacking machine	3,488	6
McKay sewing machine	898	8
Welt sewing machine	2,527	142
Outsole stitching machine	2,676	758
Loose-nailing machine	1,835	24
Heeling machine	2,019	17
Slugging machine	1,876	23

According to this summary, the United Company controls all the clicking, all the pulling over, all the pegging and all the standard screw machines, and about 96 per cent of the total number of bottoming machines in use (clicking and eyeletting machines are not bottoming machines).

It should also be noted that welt sewing and outsole stitching machines are used in repair work and many of the independent machines of these classes are used for that work and not for making new shoes. Doidge, general manager of the R. H. Long Machinery Company said:

> We have sold 285 outsole stitching machines of which 3 went to shoe manufacturers and the others to cobblers. (R. I, 344, l. 25).

Remarkable as this showing is, it finds ample support in the testimony of Mr. Winslow. He said "that a large proportion, to wit, more than

90 per cent of all the welt and turn shoes made in this country are sewed upon such machines" (meaning the machines of the United) (R. I, 597, l. 10) also, "I know of no clicking machine that is being used in this country in the manufacture of light grades of shoes except ours" (R. I, 592, l. 38).

The evidence therefore demonstrates conclusively that there is now no substantial competition with the defendants in the field which they have preempted by combination and acquisition.

To this the defendants made no answer other than to introduce the catalogs, letters, and advertisements already referred to and discussed unless certain testimony of Mr. Winslow based upon lists made up for him (R. I, 575 l, 4. *et seq.*), can be said to supplement them. The defendants did not call any *independent* maker of machinery *or any shoe manufacturer* to testify *to the use* of such *independent* machinery. In view of the evidence offered by the Government the reason for their so doing is obvious.

Two other claims of the defendants with respect to the question of their monopoly may be here noted. The defendants suggest that they are not to be charged with monopolizing because a number of ideas and inventions had been offered to the company which it had not bought. And because a number of concerns manufacturing or dealing in certain kinds of shoe machinery had been offered to the United Company but rejected. But Mr. Winslow was asked to name a single one of the rejected ideas or inventions which had developed into a machine of

any value. His reply was that he should "hope [he] could not mention a single one," but [he had] not looked through the list to see." (R. I, 574, l. 25.) He was asked whether any one of the concerns which had been offered to the United Company and rejected by it was in existence on December 12, 1911, and was doing a substantial business in competition with the United Company. His answer (R. I, 575, l. 14) was that he should have to study the list before he could state.

A further example of the value of Mr. Winslow's elaborate testimony as to the existence of competition, testimony based on lists which were worked up laboriously by clerks who were not called, (R. 575, l. 4 et seq.) appears in what he says regarding the acquisition of the Stanley Company, the last independent manufacturer of the McKay sewing machine. He referred to a list previously filed which shows Walter Pearson, A. Johnson & Sons, the American Worsted Machine Company and the Nolle Works as manufacturers of or dealers in the McKay machine. But he was unable to state who Walter Pearson was, or anything about A. Johnson & Sons, except that they were probably somewhere in France. He did not know what the American Worsted Machine Company was putting out. He did know that the Nolle Works were in Germany. (R. I, 565, l. 29.)

It is respectfully submitted that Mr. Winslow would not need to make any particular research to remember the names of substantial competitors. The fact is that the United Company is now the only company

in this country making and putting out the McKay sewing machine. That circumstance is unaffected by the fact that second-hand machines may be had, if one wants second-hand machinery, or that the old types of McKay machines are unaffected by patent control, and therefore *could* be manufactured by others than the United Company.

A final reason why no one else *will* manufacture such machines will appear when the leases of the United Company are considered.

Winslow also filed a list showing the increase in welt machines, lasting machines, and certain other shoe machines from 1900 to 1911. He admits, however, that the entire increase in welt machines and in lasting machines was in machines put out by his company.

The evidence is wholly convincing and indeed substantially uncontradicted that the United Company which had a complete monopoly of the field which it entered at its organization in 1899 retained that monopoly down to the institution of this suit, and that in 1911 it had no substantial competition.

VII. CLAUSES IN DEFENDANTS' LEASES UNDULY INTERFERE WITH INTERSTATE COMMERCE.

A. IN GENERAL.

Irrespective of whether the original formation of the United Company or the subsequent acquisitions by that company were legal or illegal the defendants have adopted and are enforcing a system of leasing which is unlawful in that it directly and inevitably interferes with the free flow of trade in the channels of interstate commerce.

The United States raises no objection to the fact that the United Company leases but refuses to sell its more important machines. The illegality to which it directs the attention of the Court lies in the insertion in the defendants' leases of certain specific clauses "framed to accomplish exactly what they seemed to be intended to accomplish" (Choate, R. I, 113, l. 31) whose necessary effect is the restraint described.

These leases themselves are in every respect carefully and skillfully drawn and contain every ordinary provision to protect the interests of a lessor. Among these is a clause which appears in every lease requiring the payment of a fixed minimum royalty. In many leases there is a clause authorizing the lessor to take back all machines not needed for the business requirements of the lessee. The lessee is bound at his own expense to keep the machinery in good and efficient working order; to procure from the lessor exclusively the parts which he may need to replace defective ones and to pay therefor "the regular prices from time to time *established by*

the lessor." The machine is held at the sole risk of the lessee, who is bound to pay all taxes and assessments upon it, and when the term of the lease has expired he must return the machine to Beverly, Mass., and pay the freight on it. If the machinery be destroyed by fire, he must pay for it a sum fixed in the lease; and whether the machine is put out on a rental or a royalty basis he is obligated to guarantee a minimum monthly return. Plaintiff's Exhibit 21 (R. III, 182) is in these and other respects a fair sample of the defendants' leases.

But in addition to these provisions there are clauses in general use in defendants' system of leases which are sometimes called "tying clauses." These restrict the freedom of choice of the lessee between the defendants' machines and those of their competitors not merely as to the particular need for machinery whose satisfaction was the occasion for the making of the particular lease but also as to his future desires both for machinery of the kind leased and for shoe machines of different but important and necessary kinds. Correlatively they limit and prevent the possibility of access to the shoe manufacturers—the only market possible to defendants and their competitors—of all competitors of the defendants not only as to the immediate transaction closed by the particular lease but as to all future transactions, including the replacement of existing equipment with superior or cheaper machinery.

The objectionable clauses are inter-related and operate together with cumulative effect. They are unlawful both as integral and effective parts of an unlawful whole, and, for the most part, in and of

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themselves. It is, however, in their combined effect as a system of leasing used and insisted upon by a powerful corporation that the full extent of their illegality is to be perceived.

B. THE LEASE FORMS.

Plaintiff's Exhibits 14 to 49, inclusive (R. III, 121–435), 149, 168 to 174, 176 (R. IV, 1082, 1144–1197, 1212) are leases made by the United Company or controlled companies subsequent to the organization of the United Company. Defendants' Exhibits 278 to 308 are riders attached by the defendants at different times to their leases. The testimony as to the circumstances and frequency of their use is in the record (832 to 835). The exhibits first referred to cover samples of all the United Company leases of lasting machines (Exhibits 14 to 22, R. III, 121–203), welt sewing and outsole stitching machines (Exhibits 23 to 26, R. III, 204–254), heeling machines (Exhibits 27, 28, R. III, 254–272), metallic machines, including slugging, nailing, standard screw, and all the remaining machines classified by the defendants as metallic machines (Exhibits 29 to 35, R. III, pp. 272–331), pulling over machines and auxiliaries (Exhibits 36, 39, R. III, 331–373), general department machines (Exhibits 40, 41, R. III, 373–387), eyeletting machines (Exhibits 42, 43, R. III, 387–401), clicking machines (Exhibit 44, R. III, 402), and pegging machines (Exhibits 45, 46, R. III, 413–430). Order forms used by the United Company are Exhibits 47 to 49 (R. III, 430–435). Leases used by companies

controlled by the United Company are Exhibits 50 to 59 (R. III, 436–514).

The foregoing leases are forms of all the leases used by the United Company. (Donham, I, 5–17, *passim*.) The riders referred to are all the riders ever used by the defendants, (Donham, I. 822, l. 12) and together the exhibits cover the entire body of leases in force and exemplify both what the defendants call their restricted system and their "independent" system.

C. THE "TYING" CLAUSES.

The leases are characterized by the inclusion in them of the tying clauses to which reference has been made. They are called "tying" clauses because they tie the use of the machine leased to the use of machines not covered by the particular lease. Their result is to make it in effect a condition of the lease that the lessee shall not use the machines of competitors either to supply a need for additional machines of the kind leased or for machines of other important though wholly different types. For example, a welting machine may not be used upon any shoe operated upon by a sole stitching machine procured from another than the lessor. This necessitates taking the sole stitching machine from the United Company, and thus the use of the welter and the sole stitcher are *tied* together. (Plff's Ex. 21, par. 9, R. III, 182.) As it is in the case of the welting machine, so it is with respect to the other machines used in the bottoming of shoes.

In addition to these clauses there are certain other clauses which make the tying clauses more effective

and give to them their maximum effect as destroyers of the possibility of competition with the defendants.

Examples of the various tying clauses and other clauses which together give the defendants' leasing system its illegal character are set out below. The names given to them are adopted purely for convenience.

1. THE SEVENTEEN YEAR TERM.

All leases made by the defendants are made for a uniform term of seventeen years. The result is of course that during that long period no replacement of a machine so leased and no avoidance of any of the requirements of the lease is open to the lessee except with the defendants' consent and upon their terms. The particular application of this provision in the general situation is noticed later (p. 162).

2. THE "ADDITIONAL MACHINES CLAUSE."

This clause appears in many leases. It is said by the defendants (R. I, 444, l. 17) to have been abandoned in 1907, but the defendants have called in no leases containing this clause, (Donham, R. I, 981, l. 2, 16 et seq.) and therefore have now in full force many leases in which it appears. A typical form is that of Plaintiff's Exhibit 30, Lease for Metallic Department machines (R. III, 281, par. 3)—covering in one lease twenty-six machines. The clause reads:

> In case the lessee has more work of the kind which can be performed by any of the machines belonging to the Metallic Department of the lessor than the capacity of the Metallic machinery which he has under lease from the lessor will permit, then the lessee *shall either take from the lessor*, under a like lease and

agreement sufficient *additional machinery* to perform the work, *or* in case the lessee does not thus lease additional Metallic machinery from the lessor, then *the lessor may*, if it so elects, *cancel* forthwith this lease *and any other* lease of Metallic machinery then in force between the lessor and the lessee. [Italics ours.]

The extent of the use of this clause and any material modifications which have been made in its phraseology are noted in Appendices C & D. This is true of all the clauses here set out.

3. THE EXCLUSIVE USE CLAUSE.

This clause as it appears in Plaintiff's Exhibit 21 (R. III, 187, par. 8) lease of No. 5 lasting machine, reads as follows:

> If at any time the lessee shall fail or *cease to use exclusively* lasting machinery held by him under lease from the lessor for lasting all boots, shoes, and other footwear made by or for him, which are lasted by the aid of machinery, or shall fail or cease to use *exclusively* tacking mechanisms and appliances held by him under lease from the lessor, for doing all work in the manufacture of all boots, shoes, and other footwear made by or for him which is done by the aid of tacking mechanisms and appliances, *the lessor*, although it may have waived or ignored prior instances of such failure or cessation, *may* at its option *terminate forthwith* by notice in writing *any or all leases* or licenses of lasting machines, lasting machinery, lasting mechanisms, or lasting devices, then existing between the lessor and the lessee, whether as the result

of assignment to the lessor or otherwise; and the possession of and full right to and control of all lasting machines, lasting machinery, lasting mechisms, and lasting devices, the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever.

4. THE PROHIBITIVE CLAUSE.

This clause as it appears in the lease last referred to, Exhibit 21 (R. III, 185, par. 5), is as follows:

> The leased machinery *shall not* nor shall any part thereof *be used in the manufacture* or preparation *of any* welted boots, shoes, or other footwear or portions thereof *which* have been or *shall be welted in whole or in part*, or the soles in whole or in part stitched by the aid of any welt-sewing or sole-stitching machinery not held by the lessee under lease from the lessor, or in the manufacture or preparation of any turned boots, shoes, or other footwear or portions thereof, the soles of which have been or shall be in whole or in part attached to their uppers by the aid of any turn-sewing machinery not held by the lessee under lease from the lessor, *or in the manufacture of any boots, shoes, or other footwear which have been or shall be in whole or in part pulled over, slugged, heel seat nailed, or otherwise partly made by the aid of any pulling-over or "metallic" machinery not held by the lessee under lease from the lessor.* [Italics ours.]

5. THE "RIGHT TO TERMINATE ALL LEASE" CLAUSE.

This clause as it also appears in Plaintiff's Exhibit 21 (R. III, 188, par. 9) is as follows:

> But if any breach or default shall be made in the observance of *any one or more* of the conditions in *this* agreement contained or contained *in any other* lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, *the lessor shall have the right* by notice in writing to the lessee *to terminate* forthwith *any or all leases* of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. * * * Upon the expiration or termination of this agreement or any extension thereof, or of the lease and license herein contained by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise, in any manner whatsoever, the *lessee shall forthwith deliver* the leased machinery to the lessor at *Beverly, Massachusetts, complete* and *in good order*, reasonable wear and tear alone excepted. [Italics ours.]

6. THE "FULL CAPACITY" CLAUSE.

This clause as it appears in Plaintiff's Exhibit 21 (R. III, 185, par. 5) reads as follows:

> The lessee shall use the leased machinery to its full capacity upon all boots, shoes, or other footwear or portions thereof made by or for the lessee in the manufacture or preparation of which such machinery is capable of being used.

7. THE RETURN CHARGE.

Where machines are installed by the defendants under certain of their restricted leases no charge is made at the time of installation. Many of these leases, however, provide for what is called a "return charge." The provision for the charge as it appears in Plaintiff's Exhibit 21 (R. III, 189, par. 9), previously referred to, reads as follows:

> Upon the expiration or termination of this agreement or any extension thereof or of the lease and license herein contained by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise, in any manner whatsoever, the *lessee shall forthwith deliver* the leased machinery to the lessor *at Beverly*, Massachusetts, complete and *in good order*, reasonable wear and tear alone excepted; *and shall thereupon pay* to the lessor without prejudice to any other rights or remedies of the lessor the sum of *One Hundred and Fifty Dollars* ($150) in respect to each lasting machine hereby leased as partial reimbursement to the lessor

> for deterioration of the leased machinery, expenses in connection with the installation thereof and instruction of operators.

The figure above set out is significant upon the question of the value of the machine when considered in connection with the fire insurance demanded of $225.00.

8. "ROYALTY" CHARGES ON WORK NOT DONE ON DEFENDANTS' MACHINES.

A clause which is not strictly a "tying" clause in the sense in which that phrase is ordinarily used, but which operates to support and extend the monopoly of the defendants, appears in several leases and especially in leases of welt machinery which the defendants contend are "unrestricted" and classify as such in tabulations introduced as exhibits. Plaintiff's Exhibit 24 (R. III, 214) is an example of such a lease. In addition, to the exclusive use, full capacity, and right to terminate all leases clauses it provides (par. 6, p. 218) that

> The lessee shall pay to the lessor throughout the full term of this agreement the respective amounts set forth in the following schedule in respect to each pair of welted boots, shoes, or other footwear, or portions thereof, manufactured or prepared by or for the lessee, which shall have been welted in whole or in part or the soles of which shall have been in whole *or in part* attached to welts by the use of *any welting* or stitching or sewing *machinery*, and in respect to each pair of "turned" boots, shoes, or other footwear, or portions

> thereof, manufactured or prepared by or for the lessee, the soles of which shall have been sewed or attached to their uppers in whole or in part by the use of *any* sewing or stitching machinery, viz: * * * [Here follows a schedule of prices.]

It will be noted that if a shoe manufacturer made 1,000 pairs of shoes of which 500 were sewed on defendants' machines *used to their full capacity* and 500 on a machine of a competitor he would nevertheless have to pay to defendants royalties both on the 500 pairs made on their machines *and on the 500 pairs made on the competing machine.* In addition, he would, of course, have to pay for the competing machine. The likelihood of a shoe manufacturer's taking a welt machine of a competitor of defendants under such circumstances need not be enlarged upon.

The lease proceeds (p. 219):

> All payments and the guarantee in this agreement provided for are independent of and in addition to all payments and guarantees provided for in any other leases or licenses or agreements between the lessor and the lessee, provided, however, that (excepting in so far as is required by the guarantees herein contained or contained in other lease and license agreements between the lessor and the lessee) in case under any other "Goodyear Department" lease and license agreement between the lessor and the lessee and covering one or more Goodyear Welt and Turn Shoe Machines, Goodyear Universal Inseam Sewing Machines or Goodyear Outsole Rapid Lockstitch Machines,

> the lessee shall have paid to the lessor the amount set forth in the Schedule of Payments in such lease and license agreement contained in respect to any pair of boots, shoes, or other footwear, then the lessee shall be relieved from said payment hereunder in respect to that pair of boots, shoes, or other footwear.

This means that the United Company charges in the first instance for *each* machine what it deems an adequate compensation for *all* the machines of the group described. When, therefore, the lessee pays for one, he has paid for all, and is relieved by the provision quoted from further payment for the use of any of the others. That is to say, he is obliged to pay as much *for one machine* as *for all* in the group. The evident purpose and result of this provision is to prevent a manufacturer who leases one of the machines, without which he can not get along, e. g. under the prohibitive clauses in his leases of lasting and other machines, from taking an independent machine. For if he did he would have to pay not only for it, but also royalties to the defendant in the same amount as though the work were done on their machines. It is a cunning and effective provision.

9. DISCRIMINATORY ROYALTY CHARGES WHERE COMPETITORS' MACHINES ARE USED BY THE LESSEE.

Apart from the "initial premiums" which characterize the so-called "independent" leases, which are discussed *infra*, the defendants in many cases make higher demands for compensation where the lessee uses machines of defendant's competitors than where he refrains from such use. These demands are made

although the use of competitors' machines be for purposes for which the machine covered by the particular lease is not designed.

An example of such a clause is the following, taken from Plaintiff's Exhibit 44 (R. III, 405, par. 6), lease of a clicking machine, a machine used for cutting out the parts of uppers, whose importance is indicated *supra*, p. 16:

> The lessee shall pay to the lessor on the last day of each calendar month the amount or amounts set forth in the following schedule of payments in respect to each pair of footwear of a kind or kinds therein specified cut during the preceding calendar month in whole or in part by the aid of any clicking machine or machines held by the lessee under lease from the lessor or by the aid of any Clicking Machine dies of the lessor:
>
> *Schedule of Payments.*
>
> | | Per pair. |
> |---|---|
> | For all footwear which is lasted by machinery *not* held by the lessee under lease *from* the *lessor* | 1 cent |
> | For all welted footwear which is welted or stitched by machinery *not* held by the lessee under lease *from* the *lessor* | 6 cents. |
> | For all turned footwear the soles of which are sewed to their uppers by machinery *not* held by the lessee under lease *from* the *lessor* | 1¾ cents. |
>
> (Italics ours.)
>
> (NOTE.—The lease provides for a discount of fifty per cent for prompt payment.)

It will be noted that the royalties above stated are cumulative.

The same principle in another form appears in a lease for metallic machines. As to these machines, comprising a large and important group, it appears

that the defendants' compensation is derived from payments for material used in the machines, the lease requiring all such material to be bought of the lessor.

Exhibit 31 is a lease for metallic machines. It may cover a number of machines or only one, e. g. a standard screw machine. (R. I, 11, l. 20.) It contains the full capacity clause, additional machines clause, applying not only to machines of the kind leased but to *all* metallic machines, and the right to to terminate all leases clause. It provides for the return to the lessor of any machines which the *lessor* thinks the lessee does not need for the requirements of his business and for the payment on such return of such sums as may be necessary to put the machine into condition to be leased to another lessee. It provides for the purchase of a minimum amount of material. It does not contain the prohibitive clause and therefore apparently permits the use of the machines leased upon shoes operated upon by machines, other than metallic machines, supplied by competitors of the defendants. In return for this apparent grant of freedom, wholly illusory as will be shown (*infra*, p. 175), the lease contains this clause:

> The lessee, as rent and royalty for the leased machinery shall purchase exclusively of the lessor all the fastening material used by him in or in connection with the leased machinery, and shall pay the lessor in cash on delivery the regular and uniform prices therefor as established *from time to time by the lessor*, which shall not be more than *ten* per cent *in excess*

of the prices to be established from time to time by the lessor for like fastening material to be used in its metallic department machinery by lessees who shall *agree not* to use the metallic department machinery leased to them in the manufacture of boots or shoes which are lasted on machines *other* than those leased from the lessor, or of welted boots or shoes which are *not* welted and stitched on welt-sewing and sole-stitching machines leased from the lessor, or of turned shoes the soles of which are *not* attached by turn sewing machines leased from the lessor. (Plff's Ex. 31, R. III, 290 par. 4.)

D. THE USE OF THE RESTRICTIVE CLAUSES IN LEASES OF DEFENDANTS' MACHINES.

All of defendants' leases as we have seen provide for a seventeen years' term. All contain the "right to terminate all leases" clause. The varying use of the other clauses noted above appears from the summaries which are to be found in appendices C and D. These appendices contain all the forms of lease used by the defendants for the machines mentioned, whether such leases are in the "noninitial payment" form or in the "initial payment" form in which in some cases though not in all the prohibitive clause is replaced by the demand for an installation charge. Appendix C is a brief statement of the clauses contained in each lease of the defendants. Appendix D shows as to each of the various clauses set out, the leases in which it is to be found.

E. THE EFFECT OF THE RESTRICTIVE CLAUSES.

Certain of the foregoing clauses clearly restrain the freedom of trade of buyers and sellers of shoe machinery even when considered separately and not as parts of a greater whole. The exclusive use clause, for example, obviously limits the freedom of choice of every lessee as to all his future needs for machines of the kind leased and clearly prevents access to him, as a possible customer for any such machines, of all who seek to compete with defendants as to those machines.

Some other clauses considered separately and without regard to the circumstance that in practice they are combined with the other clauses as units in an interrelated system used by a dominant monopoly might be argued to be unexceptionable. Such an argument, for example, has been made regarding the full capacity clause taken by itself. Similarly the seventeen-year term alone might be said to be no more restrictive than an outright sale. But even these clauses can not be considered separately and it is a grave misconception of the situation to endeavor to so dispose of them. Were all the clauses, considered separately, legal enough, which we deny, their combined and cumulative effect constitutes a clearly illegal restraint of trade.

For example, if it be assumed that the full capacity clause standing alone is a reasonable and not unduly restrictive condition where machinery is leased, here it is not alone. A manufacturer is not only forbidden by it even to try out a competing machine by doing

upon it work which could be done on the leased machine, but he is bound for seventeen years. During all that long period he is legally unable to replace that machine with that of a competitor. Should he take the one method open to him of obtaining freedom, that of violating his lease and permitting the defendants to exercise the right of cancellation, he finds—under a lease like Exhibit 24, paragraphs 9 and 10 (R. III, 222–3) for example—that he must pay not only the cost of putting the machine into condition to be leased to another, but in addition a return charge amounting practically to the value of the machine. Nor is this heavy payment all. He also, under the right to cancel all leases clause, subjects himself to the penalty of cancellation of *all* his leases and the loss of *all* his leased machinery. And this though he may conceivably have made heavy payments for "initial premiums" in order to obtain machines under the so-called "independent" leases. The result, then, of an attempt to replace a machine of sufficient capacity to do his work may be not only to cost him a prohibitive sum of money but also to take away from him machines necessary to his business which he can not obtain elsewhere, e. g. lasting machines. (*Infra*, p. 164.) The practical operation, then, of this clause which to outward seeming is perhaps the most reasonable of all the restrictive clauses is to prevent the displacement by competitors of any of the defendants' machines. Without looking beyond it and those which have just been mentioned as giving it its peculiar effect

the United Company is, indeed, as Brown, J., says in a phrase not marked by exaggeration, "a very formidable competitor." Without going further, it is apparent that no field of competition is left open except the equipment of entirely new manufacturers and the satisfaction of new or additional requirements of old manufacturers.

This latter field however is closed by the exclusive use clause. *Every lease* has that clause or an equivalent. No new demand by an existing lessee of the United Company can be satisfied by a competitor of the defendants without a violation of this clause. The consequences of such a violation need not be repeated. They are the same as those which follow the violation of the full capacity clause. It is enough to say that "as a practical question" no manufacturer can afford to incur them.

Nor is this enough for the defendants. Even the opportunity to do business with new manufacturers is closed by the all-embracing system of defendants' leases. Here the "prohibitive clause" is peculiarly effective. It is the "tying clause" *par excellence*. The defendants term leases which do not contain it "independent" leases. How complete a misnomer the term "independent" is as applied to these leases and how fictitious the pretended choice offered to the shoe manufacturer really is will appear when those leases are examined, as shortly they will be. (*Infra*, p. 175.)

What is important here is the fact that a shoe manufacturer about to enter the field who finds,

as he will find, himself compelled by business necessity to take one important machine from the defendants under a lease which contains a "prohibitive clause" is thereby removed as a possible customer for competitors of the defendant not only as to machines of the particular type leased but also as to machines of all other important types used in the bottoming of shoes. This can, perhaps, best be made clear by stating a specific case, based on the facts as they were at the filing of the petition.

One of the necessary machines for bottoming shoes is the lasting machine (*supra*, pp. 11, 15). A manufacturer in need of lasting machines finds in the first place that except the United Company which has out 7,496 such machines, only one American company is professing to put them out (Appendix B.) That company, the R. H. Long Machinery Company, has out in all only four and it does not appear that it is able to supply any lasting machines for standard screw shoes, loose nailed shoes, McKay sewed shoes, or turn shoes. (Dfts. Ex. 235, V, 531.) It has no machine for lasting the sides of welt shoes (Dfts. Ex. 235, V, 531), no pulling over or assembling machines, and no lasting machine auxiliaries (Dfts. Ex. 235, V, 531). These circumstances, in themselves compelling of resort to the defendants for lasting machines, are reinforced by the further circumstances that if he should do any of his lasting on machines supplied by any concern other than the United Company, his payments for pulling over machines as to which the United Com-

pany has no American competition (Dfts. Ex. 235, V, 531) would be nearly tripled (Pffs. Ex. 38 III, 350, par. 6, appendix C *infra*), and his payments for clicking machines as to which also the United Company has no American competition (Winslow, R. I, 592, l. 38) would be increased by a penalty royalty of from one to three cents a pair (*supra*, p. 158).

Obviously such a manufacturer must go to the defendants for the kinds of lasting machines which no other American manufacturer even professes to be able to supply. Practically, he must go to them for all, for the defendants offer no form of lease for lasting machines which does not contain an "exclusive use clause" under which he can use in his factory only lasting machines and devices supplied by the defendants. The manufacturer is thus committed to the defendants for all of his present and future demands for any kind of lasting machine or device. He is presented with the form of lease for lasting machines which the defendants assure him (Winslow, R. 594, l. 6) is most favorable to him. It contains the "prohibitive clause." He may learn of another form without this clause. But he will also learn of certain conditions attached thereto which make the choice of the alleged alternative commercially impossible. These will be discussed. (*Infra*, p. 175.) Accordingly he accepts the lease containing the prohibitive clause.

At once the possibilities of competition with the defendants in respect of future needs of that manu-

ufacturer, already closed as to lasting machines, are closed as to welting, sole stitching, turn sewing, pulling over, slugging, nailing, and all "metallic" machines. For under the prohibitive clause, he can not use any machine of any competitor of the defendants for any of those operations upon any shoe lasted in any part on the defendants' lasting machine. And for the reasons already given he can have in his factory no lasting machine not the defendants'.

A chart illustrative of the practical effect of the tying clauses in these restrictive leases is submitted herewith as Appendix A. This chart has been criticised by the defendants, but all the criticisms are trivial and none of them is based upon fact. It will be observed that this chart relates to provisions in "restrictive" leases and not to leases generally, and it will be found that every statement made in it is supported by the provisions of the leases to which reference is made therein.

It follows, therefore, that by the cumulative and interrelated operation of the various parts of the defendants' leasing system coupled with the circumstance that, as to certain machines necessary in the bottoming of shoes the defendants admit a virtual monopoly (Dfts. Ex. 235, R. V, 531) the defendants have brought about a situation in which competition with them either as to the existing or the future needs for machinery of existing or future shoe manufacturers has become entirely impossible. The United Company is not merely "a formidable com-

petitor." It is absolute monarch of the industry. No competitor can exist unless for its own pleasure or policy it withholds its destroying hand.

It remains only to notice certain special features in regard to the leases of certain machines.

1. GOODYEAR MACHINES.

Much is made by the defendants of the circumstance that the leases of their principal welt method machines while tying them to each other do not forbid the use of competitors' machines other than welt method machines on shoes on which defendants' welt method machines are used. This might be important were it not that the prohibitive clauses in leases of the other indispensable machines as above indicated make the use of such competing machines impossible.

The defendants also call attention to the circumstance that they permit the use of their principal welt method machines with auxiliary machines supplied by other manufacturers. This would be more important were there such machines to be had. But Winslow testified that a great many of these machines were manufactured only by the defendants. (R. I, 545, l. 31 et seq.; 546, l. 3; and Dfts. Ex. 235, R. V, 531.)

(For the definition of "principal" and "auxiliary" in this connection, see *supra*, p. 13.)

A much more important circumstance is the fact that the defendants do *not* permit their "auxiliary" machines to be used with principal welt method machines supplied by other manufacturers. (R. I,

544, l. 8.) The operations performed by these auxiliary machines are necessary to the making of welt shoes. The effect of the defendants' refusal to permit the auxiliary machines of which they have an admitted monopoly to be used with principal welt method machines supplied by their competitors upon the possibility of competition is too obvious to require elaboration. Winslow was questioned regarding this practice of the defendants. Attention is invited to the evasive character of his answers. (R. I, 867, l. 17.) The upshot of his testimony is that the defendants have not departed from the practice just noted because no competitor has yet produced welt method machines which, in their opinion, are the equal of their own machines. But he suggests that when the happy day arrives on which a competing welt method machine is produced which the defendants recognize as equal to their own, then the company will establish prices for its auxiliary machines. The prospect which this position holds out to competitors of the defendants is also too obvious to warrant elaboration.

It may be said, however, that if no welter or stitcher made by any competitor of the defendants is in fact equal to those of the defendants, the defendants who offer increased economy and efficiency of manufacturing as the justification of their combination need fear no competition even if they made it possible by relaxing the rigors of their practices as regards these auxiliary machines. Nor can the practice in any way redound to their advantage except by

extending their monopoly of principal welt method machines and intrenching it by keeping out competitors.

It is apparent that these machines are tied together and are tied to the principal welt method machines of the defendants in order to hold for the United Company the monopoly in such machines which it acquired at its organization.

2. HEELING MACHINES.

It will be observed (Appendix C.) that from 1900 to 1904 the only form of lease for heeling machines which had been adopted by the United Company was Exhibit 27. In 1904, Exhibit 28 was adopted. This superseding lease contained in addition to the "right to terminate all leases" clause which had appeared in Exhibit 27, the full capacity, exclusive use, and prohibitive clauses.

Winslow testified that the prohibitive clause was inserted in the lease of Exhibit 28 because it had been decided to get out a lease for welt method machines without requiring an initial payment and it was decided "to have the manufacturer use our heeling machines or [to be] entitled to limit it to use with the welter or stitcher." (R. I, 546, l. 29.) He said that compensation for ceasing to charge the initial premium was not to be obtained by requiring manufacturers to put in more heeling machines but by getting a greater volume of business in a given factory. (R. I, 546, l. 34.) Pressed for further explanation, he said, that since the productive capacity

of a series of machines depends on regularity of operation, the breaking down of a heeling machine obtained from a competitor might stop defendants' machines (R. I, 547, l. 1), and added that "What we wanted to bring about was the productivity of the machines that were in use." (R. I, 547, l. 25.)

The machines whose breakdowns are in Mr. Winslow's apprehension to stop the flow of work are machines of competitors of the defendants. Productivity was to be increased by replacing them with defendant's machines. In other words, the defendants proposed to increase productivity by so designing their system of leasing as to produce monopoly. The probabilities as to increase of productivity depend upon whether the Court is willing to believe that no other manufacturer could produce a machine as effective as that of the defendants. But there was nothing problematical about the effect of the defendants' efforts in respect of their monopoly. The tie created between the welt method and the heeling departments rendered doubly secure the monopoly already enjoyed as to each.

3. METALLIC FASTENING MACHINES.

The prohibitive clause was applied to metallic machines upon the adoption of Exhibit 30 in June, 1900. The defendants attempt to justify it as an offset to the rising cost of copper. They say that instead of increasing the price of the material sold by them (Winslow, R. I, 548, l. 5) they adopted the

policy of limiting the use of these metallic machines to work that had been done on machines of other departments (*ibid*). But while it was practical and desirable in the opinion of the defendants to tie the metallic machines to the other machines when the price of copper rose it was "not a practical proposition" to untie them when it fell. (Winslow, R. I, 548, l. 29.)

The obvious effect of the tying was to protect the defendants' control of machines. That this was the object is consistent with their having found it impracticable to give up the tie when the conditions which they say justified it disappeared. That such was the purpose is substantially admitted. Mr. Winslow testified that at the time this lease was adopted the United Company "was about the only one that had any metallic machines or any welting or stitching machines in the factories in this country." (R. I, 550, l. 20.) In other words, it had a monopoly. The purpose of the tying as expressed by Mr. Winslow was to lessen the cost of service by placing two sets of defendants' machinery in a given factory where without the tying there might be only one. (R. I, 549, l. 29.) But when asked how in view of the circumstance that his company had at the time a virtual monopoly of the business that result could follow, his only answer was "The best way I can answer is to ask why didn't we raise the price." (R. I, 550, l. 25.) Mr. Winslow was a resourceful witness, and such an answer is extremely suggestive. The real reason is indicated by Mr. Winslow's testi-

mony, as far as it can be understood, at the bottom of page 549. The increased revenue was to be obtained by "treating the metallic machines in the broad sense like auxiliary machines." How the defendants treat auxiliary machines has just been shown. The change of the form of lease could not change the location of a single machine or add a penny to any royalty. But it could and did operate to prevent future competition with the defendants in the machines to which the metallic machines were tied. And it could have been intended for no other purpose.

F. OTHER OPPRESSIVE PROVISIONS OF DEFENDANTS' LEASES

In addition to the tying and rebate clauses there are other clauses which are extremely burdensome. Brief reference has been made to these, *supra*, but a more extended statement is warranted at this point.

Take for example the provisions of Exhibit 21. (R. III, 182, par. 1.)

The lessee can not without permission from the lessor remove a machine from one of his factories to another.

The lessor "and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use." The representatives of the United Company may enter the factory of the lessee at any time they please, and put themselves in a position to learn

any manufacturing secret the lessee may have. They have the power to determine when repairs are needed and the extent thereof. (Par. 11.) If a lessee should refuse he violates his lease and the lessor acquires the right to cancel every lease on machines in his factory. (Par. 8.)

Further, he is required "at his own expense" to keep the machinery "in good and efficient working order," although the machinery belongs to the lessor and the lessee is bound to pay for its use. He is also required to obtain from the "lessor exclusively" the parts needed for repairs and to pay therefor the prices "from time to time established by the lessor;" no matter how unreasonable. (Plffs. Ex. 21, par. 2.)

The machinery must be held by the lessee at his risk and in case of its destruction by fire he is required to pay a stated sum (where it is a lasting machine, $225), and must return whatever remains of it to the defendants. (Plffs. Ex. 21, par. 3.)

Where the machine has not been lost, he must return it at the end of the term for which it has been leased, to Beverly, Mass., and pay a return charge of $150, in the case of a laster "as partial reimbursement to the lessor for deterioration," etc.

If the value of the machine is $225 as we may infer from the amount which the lessee is required to pay in case of destruction, payment of this return charge is exorbitant. In other words, after paying for the use of the machine for 17 years, paying for all repairs necessary and all taxes and assessments upon

it during that period and the freight from Beverly to the lessee's factory, and the freight from the latter place to Beverly at the end of the term (par. 9), he is compelled to pay the lessor almost the value of the machine while the lessor takes the machine. Could there be anything more extortionate?

He must also pay a *minimum* charge of ten dollars a month for seventeen years, or $2040 for the use of a machine, valued as we have just said, at $225. (Par. 6.)

He is obligated to keep accurate accounts showing the number of boots and shoes or other footwear operated upon, to submit these accounts to the defendants or their representatives, and to "furnish any further information which may be called for in relation to the leased machinery or the use thereof." (Par. 7.)

He gives to the lessor the full right, power, and authority to enter upon his premises and take possession of the machine and remove it in case of "any default on the part of the lessee as to the terms of this agreement or of any other lease," and he agrees that he will not have any claim for the repayment of any sum which shall have been paid upon the machine. (Par. 9.)

For the use of machinery under these conditions he pays an extraordinary price. Assuming a small factory with a daily production of 350 pairs, making all the deductions for which defendants contend (R. I, 444, ls. 41–43) its actual annual production will be over 41,000 pairs. At 6 cents per pair the royalty

fixed for machines making welt shoes (I, 503, l. 32) the defendants would receive annual royalties of $2,460. For this they lease nine principal machines. Assuming their value to average $225, the defendants have here an investment of $2,025. They receive *annually* a return of over 120 per cent on this investment. This calculation omits both the auxiliary machines, whose value ranges from a small figure to a large one, and the rentals paid by the manufacturers for them.

No self-respecting business man would enter into stipulations so offensive and destructive of his liberty unless he was coerced by the circumstances surrounding him. This is additional evidence that all competition in bottoming shoe machinery is substantially dead, and that by reason of the tying clauses the defendants hold all shoe manufacturers in a steel-like grip from which escape is impossible save through a decree of this court.

G. THE SO-CALLED "INDEPENDENT" LEASES.

The defendants also offer what they call "independent" leases. The difference between them and the "restricted" leases lies in the fact that they do not contain the "prohibitive" clause. But these leases do contain the exclusive use, full capacity, and right to terminate all leases, clauses, and other burdensome and restrictive provisions. The defendants grant these leases only upon terms which, as a practical matter prohibit their acceptance and coerce the manufacturer into taking the restricted form.

In the first place they are granted only on the payment of heavy initial premiums.

In the second place, a manufacturer must take the independent lease as to every class of machines, in order to be relieved from the restrictions. For illustration, suppose one entering upon the manufacture of welt shoes should take restricted leases for lasting and metallic fastening machines, but an independent lease for heeling machines. His independent heeling machine lease would avail him nothing, because his lasting machine and metallic fastening machine leases would prohibit the use of such machines in connection with a heeling machine not owned by the United Company. So, if he were to take independent leases for all machines other than lasting machines, *that one lease* would prohibit the use of the lasting machines in connection with either of the *other classes* of machinery. Hence, the manufacturer must take the *entire* independent system to obtain any freedom whatever.

Mr. Winslow makes this very clear. He testified:

> For example, if a manufacturer wished to use Pettingill heelers, which are not built by our company, in the place of our heeling machine, we asked him to respect his leases up to the time when he made that decision. Then he could return our heeling machines, place his machines in the other departments upon the independent forms of leases, and continue to use the heeling machines of others. (R. I, 443, l. 2.)

This means that the shoe manufacturer would have first to find Pettingill heelers enough to satisfy his wants for heelers, and having done this he would then have to place *all his machines* "in the other departments upon the independent forms of leases." In other words, to enjoy the privilege of using an "independent" set of heelers, he would have to take over other classes of machines upon so-called "independent" leases and pay initial premiums for all of them. He could not be half slave and half free.

Now let us see what it would cost him in "initial premiums" to get the Pettingill heeler under these circumstances. Winslow says that in 1899 when his company was operating under the so-called independent form of lease it cost $11,350 to equip a factory with sufficient machinery to manufacture a thousand pairs of welts per day, while in 1911, under the restricted form of lease, it would cost only $2,467.50 to equip the same kind of a factory, a difference of $8,833.00. In other words, the owner of such a factory would have to pay at the time Mr. Winslow testified about $8,833.00 for the privilege of using a Pettingill heeler.

Williams, a shoe manufacturer of Portsmouth, Ohio, testified that the United people proposed to charge him $3,675.00 for equipping his factory, having a capacity of less than 600 pairs per day, with machines under the "independent" leases. (R. I, 217, l. 28, also 218, l. 20.)

George A. Learned was told by Matthew Gray, a representative of the United Company, that it would

cost him $3,000 to secure the machines which he desired from the United Company under the "independent" leases. (R. I, 313, l. 35.)

Rand of the International Shoe Company obtained from Winslow a careful estimate of what it would cost his company to change from the restricted to the "independent" leases, and it amounted to about $250,000. (R. I. 180, l. 42.)

Winslow made a proposition to F. E. Leavitt to install certain machines under "independent" leases (Dfts. Ex. 334, R. V, 848; R. I, 873, l. 22 et seq.) Leavitt's factory was a small one, as there was but one McKay and one lasting machine included in the list. However, the total charge for the privilege of installing one "independent" machine would be $1,800.

In this regard, it must not be forgotten that after the shoe manufacturer had paid for the privilege of using an independent machine he was required to pay to the United Company the same royalty, for that machine as if he had taken it upon a "restricted" lease. And in addition he must pay increased royalties upon certain other United machines—clicking, lasting, and metallic fastening machines, *supra*, pp. 159, 165. Of course, no shoe manufacturer could afford the luxury of an independent lease under such circumstances. He could not compete with the shoe manufacturer who took his machines under the restricted system. Consequently the privilege of taking the so-called independent leases may not be used by shoe manufacturers, and they are as

a result compelled to take their machines under the restricted leases or not at all. But as we have heretofore shown, even after the shoe manufacturer has obtained the independent lease he has gained but little freedom, because every such lease contains the "exclusive use" clause as well as the "right to terminate all leases" clause. (Appendix D, p. 351.)

In fact, it is not claimed by the defendants that the shoe manufacturers can obtain any benefits by taking the independent leases. Touching this question, Winslow says: "I believe a manufacturer is better off if he uses all our machines in series." (R. I, 550, l. 39.) Again: "I do not think it is any advantage for a manufacturer to take metallic machines on the independent lease; I never have thought so." (R. I, 551, l. 26.)

Therefore, Winslow has deliberately formulated two classes of leases, and has so framed the so-called "independent" class that in his judgment it is more beneficial to the lessee to adopt the other class, which ties him hand and foot to the United Company.

No shoe manufacturer testified that under the present conditions there are any advantages in operating under the United's so-called "independent" leases. Many of the large manufacturers who are the most strongly opposed to the present system equip their factories under the restricted leases.

The competitive disadvantage which they otherwise would suffer is a sufficient explanation. This disadvantage results not only from the heavy initial premiums which have been noticed but from other con-

ditions of the defendants' system. It should not be forgotten that this is an industry where pennies in machinery charges may make the difference between success and bankruptcy. One cent a pair sounds trifling. But one cent a pair means many dollars to a manufacturer making thousands of pairs a day. Florsheim came to Boston to beg for Eppler machines which cost 3 c. a pair instead of the four cents charged for Goodyear machines. (*Supra*, p. 46.) Herrick did not dare to keep a Haverhill machine because under his leases with defendants it meant an increase of royalties of 1½ cents a pair. (R. I, 293, l. 2 et seq.; 318, l. 6.)

Apart from losing the rebates and bonuses given by the defendants to obedient manufacturers (*infra*, p. 185), a lessee using machines of competitors under the "independent lease" would not only have to pay the initial premiums but his premiums for pulling over machines would be nearly tripled and his clicking machines would cost him an additional and discriminatory royalty of from one to three cents a pair. (*Supra*, p. 165.) On top of all this, he would have to pay ten per cent extra for any of the defendants' metallic machines which he might have to use. (*Supra*, p. 159.)

Assuming for convenience that these cumulative disadvantages to the manufacturer who tried the "independent" lease amounted only to four cents a pair it would mean to a manufacturer like Selby, a small manufacturer as compared with many mentioned in the record (R. I, 210–214), $72,000 in a

working year of 306 days. It is no wonder that Selby gave up an attempt to use independent machines upon welt shoes but acquired an interest in the Boylston Manufacturing Company "to get independence" (I. 212, l. 44). It would cost the International Shoe Company (R. I, 170) $600,000 a year. The difference in the clicking machine royalties (*supra*, p. 158) is alone sufficient "as a matter of dollars and cents" to compel the choice of the restricted leases.

The natural result of the system appears in the relative number of manufacturers who held restricted and those who held unrestricted leases in the years 1905 and 1911. (Winslow, R. I, 448, l. 42 et seq.)

In 1905 the United Company had under lease 8,129 metallic machines of which 603, or 7.4 per cent, were under independent leases.

In 1911, it had out 7,587 metallic machines, of which 225, or 3 per cent, were under independent leases. (R. I, 449, l. 17.)

In 1905 it had out 1,652 heeling machines, of which 1,500, or 90.8 per cent, were under independent leases. (R. I, 448, l. 44.)

In 1911 it had out 2,019 heeling machines, of which 415, or 20.5 per cent, were under independent leases.

In 1905 it had out 5,289 lasting machines, of which 1,956, or 37 per cent, were under the independent leases (R. I, 449, l. 3, 23) while in 1911 it had out 7,819, of which 1,506, or 19.3 per cent, were under independent leases.

That is, from 1905 to 1911 there had been a decrease in the number of machines held under inde-

pendent leases, of metallic machines, 3.4 per cent; heeling machines, 70.3 per cent; and lasting machines, 18.7 per cent. These figures not only show that a very large proportion of the principal machines are now held under the restricted forms of leases, but that there is an increasing tendency among shoe manufacturers to take the restricted form in preference to the so-called "independent" leases; and that the result of the system in actual operation is to destroy such independence upon the part of the shoe manufacturers as heretofore existed, to tie them more strongly to the United Company, and thus to prevent the development of any competition with the defendants. Nothing could demonstrate more clearly the actual workings of the system than these figures presented by Winslow.

The defendants attempt to offset these figures by presenting Exhibit 225 (R. I, 450), which purports to show that of 90,296 machines out on lease (Pffs. Ex. 163, R. IV, 1125) 23,403 are on independent leases. But of these 23,403, 5,203 are Goodyear principal machines and 16,054 are auxiliary machines of various kinds. How far these are "independent" is noted *supra*. It follows, then, that on defendants' own figures only 2,146 machines, or 2.3 per cent of their leased machines, are out on the leases pretended to be independent. In view of the conditions attending these leases, there is no cause for wonder.

H. ALLEGED MODIFICATIONS OF THE RESTRICTIVE LEASES.

The defendants insist that the leases do not represent the policy of the company because of certain "riders" by which their leases are modified upon occasion. (Winslow, R. I, 546, l. 16 et seq.) Donham, however, produced (R. I, 822, l. 12 et seq.) all riders of which he had any knowledge. They are Exhibits 278 to 310. (R. V, 777–809.) Winslow produced no others.

On account of the large number of these exhibits, no special analysis will here be attempted, but a glance at them will show that the modifications were either an elimination of the "prohibitive" clause, merely changing a restricted lease to one of the so-called "independent" form which has just been discussed, or the giving of permission to a lessee to use some particular machine upon a certain kind of work, as, for instance, an outsole stitcher upon shoes welted by hand, or upon McKay shoes, for fair-stitching. In no instance does any modification indicate the least deviation from the general policy or effect of the lease system.

There is certainly no material proof otherwise than from the officers of the company that any liberality of spirit along this line was shown.

The legality of the lease system must be determined independent of occasional concessions to particular individuals for the special use of a machine. There is certainly nothing in any lease which obligates the company to make such concessions.

If they are made it is by favor of the company and not as a matter of right to the lessees.

I. EFFECT OF THE LEASING SYSTEM UPON COMPETITION WHICH WOULD OTHERWISE EXIST BETWEEN SHOE MANUFACTURERS.

Mr. Winslow testified upon this point:

> We have never granted concessions of any sort. * * * Our royalties have been the same to all, whether they used a thousand machines or one; they are charged by the pair and the service is exactly the same. (R. I, 439, l. 43; 440, l. 2 et seq.)

This testimony is not quite correct, for the record shows that the United Company granted rebates in the form of stock donations. (R. I, 351, l. 43.) But it is generally true and characteristic of the United Company's system.

The general effect of it is to place shoe manufacturers upon a common plane—to which we do not object (*infra*, p. 258)—and to eliminate all opportunity of competition as to a very important element embraced in the manufacture of footwear, namely, machinery.

Manufacturers may compete in the purchase of hides and other material for the manufacture of shoes, in the location of their factories with regard to shipping and manufacturing convenience, in the construction and arrangement of the factory and in marketing the finished product. But the skillful manufacturer is denied the privilege of exercising a choice as to machines or to exercise his judgment as to the terms on which he will take them or the manner of keeping them in proper efficiency. Un-

doubtedly the cost of a shoe must depend to a very material extent upon the kind and cost of the machinery used in its manufacture. But from the time the shoe is presented to the pulling-over machine until it emerges from the final bottoming machine, the possibility of competition in this respect to any material extent is entirely cut off; and the cost of preparing and attaching the sole of every shoe of a given kind must be exactly the same to every lessee of the United Shoe Machinery Company, which comprises substantially all the shoe manufacturers of the United States.

Any scheme which is enforced by contracts, and which has the effect of making absolutely uniform one element of cost of practically all the shoes which enter into interstate commerce, must be violative of the Sherman Act.

J. ENFORCEMENT BY THE UNITED COMPANY OF THE RESTRICTIVE PROVISIONS OF ITS LEASES.

The United Company in administering its leasing system and its consequent control of the shoe manufacturing industry has adopted a system of rewards for those who assist its program of monopoly and of punishment for those who do not comply with its requirements.

1. REBATES GRANTED TO OBEDIENT LESSEES.

As a part of its plan for monopolizing the shoe machinery business, the United Company has granted rebates and special inducements to its lessees upon

condition that they should use its machines exclusively and faithfully observe the covenants of the leases.

On June 10, 1910, the United Shoe Machinery Company of New Jersey by its president, Sidney W. Winslow, addressed a circular letter "To the Lessees of the United Shoe Machinery Company" in which it was provided that beginning with January 1, 1910, the company would create a fund by investing in the common stock of the United Shoe Machinery Company and would add to it from time to time; that at the end of three years it would distribute the stock among the lessees of "the Goodyear welting, Goodyear stitching, and Goodyear turn sewing machines in the United States," who had "faithfully observed the covenants of their leases," and that in this fund not less than fifteen per cent of the amount received from the use of the Goodyear welters and stitchers in the United States would be invested and of the amount received from Goodyear turn machines not less than ten per cent would be invested. (Plff's Ex. 146, R. V, 1067, last four paragraphs.) The covenants referred to embrace the tying clauses which in effect obligated the lessees, as we have said, not to use machinery procured from competitors of the United Company.

This proposition of the United Company is of special significance, in view of the fact that the offer was made at a time when serious competition threatened the United Company. It was in May, 1910, that Plant discontinued the use of the United Company's

machines in the factory of the Thomas G. Plant Company and installed in their place the Plant machines. It was about that time that Endicott invited Winslow to meet Plant at Endicott's house at Dedham, Mass., for a conference with respect to the Plant machines, and it was in June, 1910, that the meeting was held. (R. I, 558, l. 6.) Furthermore, while this notification to the lessees of the United Company of the plan for rebating was not made until June 10, 1910, the plan, by the terms of the notification, became operative on January 1, 1910, antedating the notification by a period of more than five months.

The testimony of defendants' witnesses is to the effect that the principal improvements obtained by the United Company through the Plant purchase, were embodied in the welters and stitchers. (R. I, 785, l. 44; 787, l. 34 et seq.) The conclusion is irresistible that the defendants realized that Plant's welters and stitchers would appeal to the shoe manufacturers, and that it was for the purpose of holding the shoe manufacturers in line and inducing them to continue the exclusive use of the United Company's machines that the proposition of June 10, 1910, was made by that company. The United Company was organized in February, 1899, and a period of more than ten years had elapsed before there was any expression of an intention to grant a rebate. It is noteworthy that the plan did not present itself to the minds of the representatives of the United Company prior to the time when serious competition was threatened. Furthermore, it will be

observed that only those lessees "*who shall faithfully observe the covenants of their leases*"—the tying clauses—were entitled to the benefits of the plan.

2. PUNITIVE ACTION AGAINST DISOBEDIENT LESSEES.

The defendants contend that they have used their great power mildly and that their policy is much more liberal than the leases indicate. This forbearance if genuine can not be of any legal consequence. But it does not appear that the defendants have refrained from enforcing their rights in any appreciable number of cases of violation of the leases. That there should be few instances of violation is not remarkable when one considers the possible consequences to a recalcitrant manufacturer of such violation. The manufacturers could obtain no machines elsewhere, and hence they dare not violate the leases. But when the evidence is taken as a whole, there can be no doubt that the provisions of the leases which are especially obnoxious have been strictly enforced.

The efforts made by the United Company to enforce the restrictive provisions and their effect upon the business of competitors, are indicated by the following evidence, which is practically uncontradicted.

Frank R. Hilliard is a shoe manufacturer. His company attempted to install a turn sewing machine, made by the Haverhill Shoe Machinery Company, at a time when they had machines of the United Company doing the same work. They talked with Winslow, who stated that they were using that machine contrary to their lease, and would either have to change the lease or stop using the machine. They

had the Haverhill machine on trial, and returned it, on account of the objection of the United Company based on the provisions of the lease. (Hilliard, R. I, 282–4.)

The Haverhill Shoe Machinery Company installed with Herrick, of Lynn, a channeling machine, a turn sewer, a heeling machine, and a heel-breasting machine. There was a clause in Herrick's clicking machine lease, from the United Company, prohibiting the use of these machines. Under the terms of that lease he had to pay the United Company royalty *on work done on the Haverhill machines* of one and one-half cents per pair, with a fifty per cent discount for prompt payment, so Herrick did not dare keep the machine, and took it out. He kept the nailing machine for some time, but found that if he kept it, he would lose his rebate on his Gem insoles, and also the fifteen per cent rebate that the United was giving for not violating the leases. Consequently Herrick gave up the Haverhill machine. (Webster, R. I, 293, l. 2 et seq.; also Harriman, R. I, 318, l. 6.)

Fred W. Herrick testified as to one of these machines, that on negotiating for a return of a United machine, it was said by the United people that the Herrick Company would have to pay them royalty on the same shoes on which they had already paid for the use of the Haverhill machine, consequently the Haverhill machine was taken out. (Herrick, R. I, 357, l. 2 et seq.)

Louis H. Harriman, treasurer of the Haverhill Shoe Machinery Company, details the following instances

in which that company had trouble in installing machines, in addition to those detailed by the witnesses Webster and Hilliard:

Lynch & Sherman had a turn sewing machine which was installed in their factory and operated for a short time. They caused the Haverhill Company to take it out, because the agents of the United Company had told them that they were violating their lease (R. I, 318, l. 26).

W. S. Chase & Company had installed two channeling machines, a turn sewing machine, and a heeling machine, which were operated very satisfactorily, but a year before the witness testified the Haverhill Company was told to remove all their machines. One reason given by Chase & Company was that they had been sued for infringement by the Xpedite Company, and that one of the terms of the settlement of the suit without charging damages was that they should remove the Haverhill machines; and another reason assigned was that the United Company said they were violating the conditions of their leases. (R. I, 319, l. 35 et seq.)

Carleton & Hunt installed a channeling machine in 1908, and about two years later a turn sewing machine, which were operated until early in 1912. The machines were taken out because otherwise the manufacturers could not get from the United Company a line of machinery for making welt shoes. (R. I, 320, l. 1 et seq.)

The Haverhill Company installed two turn sewers and two channelers in N. D. Dodge & Son's factory.

Their use was discontinued because the Haverhill Company *could not furnish a line of welt machinery, and they could not get such line from the United Company while they used the Haverhill machines.* (R. I, 320, l. 9.)

Ned Pike was employed to install machinery by the Haverhill Company and while so employed he traveled in eight States, and he details certain difficulties which he encountered (R. I, 329–331) as follows:

He attempted to install a machine in the factory of Ashe, Noyes & Small, Auburn, Maine, but they said that under their existing leases with the United Company it would be impossible to take the machinery, without laying themselves open to a great deal of trouble with that company.

Dunn & McCarthy of Auburn, New York, stated "they would like to consider the proposition of putting in my machine, particularly the turn sewer, but under the United Company's leases, their toe-laster and heel-seat machines would cost them more than any saving they could make on our machines."

Krippendorf & Dittman, of Cincinnati, ordered some machines from another solicitor for the Haverhill Company, and when witness saw them afterwards, they said they did not dare put in the machines at that time, on account of the character of the leases of the United Company they were operating under.

The Syracuse Shoe Company, in New York, said it meant altogether too much to them to install a

competing machine, as it would make lots of trouble for them with the United Company.

The Irving Drew Shoe Company of Portsmouth, Ohio, said in substance that they were owned, body and soul, by the United Company, so far as shoe machinery was concerned.

George A. Learned, a shoe manufacturer at Newburyport, Mass., had been using United Company machines and some machines belonging to the Haverhill Shoe Machinery Company. He was told by one Gray, representing the United people, that if he wanted to use other machines in conjunction with the Haverhill machines he would have to pay $3,000 in addition to the sum that would be required from him if he discontinued the use of the Haverhill machines. Later he was told by Winslow that unless he did comply with the terms of his leases, that is, those which in effect prohibited him from using independent machinery, the United Company would withdraw all their machines from his factory and drive him out of business. (R. I, 313, l. 27 to 314, l. 16.)

Prior to December 12, 1911, the Union Lockstitch Company had difficulty in installing its curved needle machine, which had the same function as the United Company's outsole stitcher. In fact, the Lock Stitch Company had succeeded in installing but one and that was with a small manufacturer. The company had tried to sell to Roberts, Johnson & Rand, Harsh & Edmands, Commonwealth Shoe & Leather Company, and the Peters Shoe Company. Jones, of

the Commonwealth Company, said he could not afford to touch the Union Lockstitch Machine because his lease forbade it. (R. I, 203, l. 5.)

Merrick, of the Lockstitch Company, when subsequently recalled filed as Plff's Exs. 177, 178, and 179 letters showing that these parties would not take machines from his company on account of the United Company's leases. (R. I, 207, l. 36.)

John E. Williams, of the Portsmouth Shoe Co., has four factories at Portsmouth and Ironton, Ohio, manufacturing men's and boys' welts and mock welts. They had installed a Union lock-stitch machine, and talked with Colonel King, of Boston, representative of the United Company. After three days' talk, Colonel King said: "Mr. Williams, under the leases we feel that you have broken your obligation, and would ask you to discontinue it."

King, through Ross, the local representative of the United Company, submitted a plan whereby they could use the Union machine, but the initial charges would have been $3,675, and there would have been an additional royalty of one and one-eighth cents per pair. They thereupon sent the machine back, and took no more. The proposition was made with reference to the installation of a new factory, with much auxiliary machinery left out, the shoe to be a simple one. (R. I, 217, l. 14; 218, l. 27.)

E. P. Reed was using a turn sewing machine of the Standard Shoe Machinery Company, which was manufactured by the Bay State Shoe Machinery Company, and the Standard Company wanted him to introduce

more of its machine, but he said he was afraid—that the United Company was such a gigantic corporation that no shoe manufacturer could afford to be a martyr. (Darrah, R. I, 334, l. 35.)

The Standard Company had a Woodward machine with Mark J. Worthley, of Lynn, Mass., who reported that he was afraid he would have to return it; that the United Company's agents were after him all the time and were making threats. (Darrah, R. I, 335, l. 1.)

Thomas G. Plant who was using the Standard's Woodward machines told the witness Darrah that the United Company's agents had been after him so often and so persistently that he was afraid he would have to surrender the Woodward machines and install the McKay machines of the United Company. (Darrah, R. I, 335, l. 8.)

The T. D. Barry Company had obtained some machines from the Standard Shoe Machinery Company. The United Company's machines were also in use in that factory. Barry was in Europe, and the United Company had had a replevin warrant issued and started to take the United machines out, when William A. Hogan, treasurer of the Barry Company, threatened to shoot the officer. Hogan then obtained a writ of injunction, which was subsequently dissolved, and he then agreed with Storrow, counsel for the United Company, to stop the Standard machines until Barry should return. After his return the Standard machines were taken out. (Hogan, R. I, 222, l. 11–38.)

The Standard Shoe Machinery Company was incorporated in 1899 and went into the hands of a receiver in 1901. (R. I, 335, l. 30.)

Prior to 1912, Curtis & Jones had one shoe factory at Reading, Pennsylvania, and another at Hamburg, 16 miles from Reading. In the Hamburg factory they used a miscellaneous lot of machinery and the Lincoln machine made by the Campbell Sewing Machine Company, but used the United Company's sewing machines altogether in the Reading plant. They combined the two factories, moving the Hamburg plant to Reading, in July, 1902. (R. I, 363, l. 36, 364.) About the time of the consolidation they bought three Duplessis turn sewing machines, and they already had five Lincoln machines. Mr. Clark, the local representative of the United Company, told them that the operation of the Duplessis machines in the same factory with a Goodyear machine was prohibited by the United Company's leases, and that since the factories had been consolidated the rule applied. He said they would remove all their leased machines, unless they discontinued the use of the independent machines. (R. I, 365, l. 41.) Colonel King a manager of the United Company then came, and they agreed to turn over the independent machines at cost price, and replace them with Goodyear machines. (Shinn, R. 366, l. 3; Curtis, 377, l. 29 et seq.)

Curtis, of the same firm, testified that they changed to United Company's machines to avoid a fight with the United Company; that company told them that

they could not, under their leases, use any independent machinery in the same building, and that the United would take its machinery away if they kept on operating the independent machinery. If the witness's company had thrown the United machines out, he said they *could not have obtained substitutes, as he knew of no other concern from which he could obtain them.* (R. I, 380, l. 21 et seq.) The use of the United machines increased the cost one-half cent per pair. The independent machines were doing satisfactory work and they wanted to keep them. (R. I, 381, l. 8.)

In 1904, Peter Tessier, of Peter Tessier & Company, Haverhill, Mass., was manufacturing shoes. He had two channelers, a slugging machine, a molder, and a Goodyear stitcher, which he had obtained from the United Company. He installed a Duplessis sewing machine, and the United Company thereupon took all its machines out of his factory. (R. I, 281, 2.)

Ernest Bottomley, of Haverhill, Mass., testified that about 1903 he was engaged in making turn shoes, and had nailing and stitching machines made by the Duplessis Company. Prior to that time he had a Goodyear stitcher, which he quit using when he took the Duplessis. He had a sole rounder, and several other United machines. He had a talk with Colonel King of the United Company, in which King said, in effect, that witness would have to use one or the other line of machines. Witness chose the Duplessis, and the United Company took its machines out. Subsequently witness's factory was

changed from making turn shoes to McKays, and therefore had to change its machines. Witness went to the United Company, and they required him to pay royalty on the shoes *made on the Duplessis machinery*, after the machinery of the United Company had been taken out. He now uses United machinery exclusively, except a buffer or rounder, which he bought from others. (R. I, 284, l. 26.)

George R. Harsh, of Harsh-Edmands Shoe Company, Milwaukee, Wisconsin, had procured a clicking machine from the Richardson Shoe Machinery Company, of Lynn, and was trying to procure other clicking machines. Wilson a representative of the United Company told Harsh that it would be better for him if he ceased his activities against the United Company, and would take things as they were, and showed him that in a lease for a metallic fastening machine he was already bound by a provision similar to the one he was complaining about in the clicking machine lease. As a result the witness made no further efforts to obtain such machines elsewhere, but took them from the United Company. (R. I, 196, l. 5.)

George H. Clark had invented a method of molding shoes, and had also invented an attachment for a stitcher which enabled him to stitch the shoe and trim it at the same time. He had one of the machines in Richardson's factory at Lynn. The United Company refused to place any of their machines in that factory, saying, through its manager, Hurd,

"We have to put the knife and protect our interests." (R. I, 307, l. 12.)

Kimball & Hadley, of Lynn, Mass., were making needles and awls. Beginning about January, 1904, they found that they could not sell Universal Slugging Machine awls. Five firms told Hadley personally that the reason they would not purchase was that the use of their needles and awls was in violation of the lease of the United Company; and if they continued to use their needles and awls, the United Company would take its machines away from them. (Hadley, R. I, 308, l. 11.)

In truth, Mr. Choate, one of counsel for the defendants, concedes that they enforce the tying clauses, for he said in answer to a question by the presiding judge: "I do admit that they carry out the terms of the leases." (R. I, 281, l. 30.)

K. UNSUCCESSFUL EFFORTS OF SHOE MANUFACTURERS TO OBTAIN MODIFICATIONS OF THE RESTRICTIVE CLAUSES.

From the very beginning of the United Company's existence shoe manufacturers have attempted unsuccessfully to secure modifications of the restrictive clauses. These efforts have been uniformly unsuccessful. And the circumstances, taken together with Mr. Winslow's declarations show that the object sought by the defendants in devising and insisting upon the clauses was the exclusion of competitors.

We have already referred to the first of these efforts. It was made by the National Boot & Shoe Manufacturers' Association, of which Charles H. Krippendorf was a director. He testified that on November 8,

1900, members of the association had a conference with Winslow for the purpose of asking him to eliminate the restrictive clauses from the new leases for the metallic machines. They had a stenographer present, who reported the proceedings. The witness produced the report. In the course of Winslow's remarks refusing to modify the tying clauses, he said that if the tying clauses were eliminated his company would be compelled to buy out every new machine that might be manufactured, and when asked why he would have to do this, stated:

> Why? Well, let me ask you if we haven't got either to purchase that machine *or compete* with the man who is simply doing that to force us to buy. (Krippendorf, R. I, 216, l. 6.)

In January or February, 1907, Winslow sent for Charles H. Jones, president of the Commonwealth Shoe & Leather Company who went to his office with McElwain, another manufacturer, now deceased. During the meeting they urged Winslow to abandon the tying clauses. Winslow replied in substance that he could not consider doing so; that those clauses gave him complete control; that without that complete control other machines would creep in; that if the clauses were eliminated "the *intense competition* which existed before would return."

Florsheim testified that while in Boston in September, 1910, in connection with the Plant purchase (*supra*, p. 109), and a few days after the United Company had acquired that business, he and Jackson Johnson told Winslow that the manufacturers were

dissatisfied with the tying clauses of the leases, and after considerable talk Winslow proposed to let the matter rest for the present. (R. I, 161, l. 23.)

Winslow went to St. Louis in the following February, and Johnson, who presided at the meeting called to hear him, submitted to him a proposition looking towards the elimination of the clauses. No definite action was taken, but Winslow proposed another meeting in Boston. (Florsheim, R. I, 161, l. 38; 162, l. 15; Selz, R. I, 145, l. 5.)

The next meeting between them was in Boston, in May, 1911; and Winslow then said that he had given the matter a good deal of consideration, but he didn't see how he could make any changes in the leases, and that any such change as they suggested in the leases would ruin the system, and could not be made. (Selz, R. I, 147, l. 22–32.)

L. OTHER EFFORTS OF SHOE MANUFACTURERS TO ESCAPE THE TYING CLAUSES.

For the purpose of protecting themselves against the oppressive practices of the United Company a number of the shoe manufacturers invested in the Boylston Manufacturing Company.

Johnson, of the International Company, said:

> Our company has an interest in the Boylston Manufacturing Company. It amounts to about $80,000. We went into it to protect our business by insuring the permanency of the supply of shoe machinery. (R. I, 171, l. 19.)

Rand of the same Company says that they invested in the Boylston Company" to safe guard our shoe

business by developing another source of supply in shoe machinery, and competition in that commodity." (R. I, 182, l. 41.)

Harsh, of the Harsh-Edmonds Shoe Company, Milwaukee, speaking of his investment in the Bolston Company, said:

> My sole and only reason for taking that interest was to supply my business with shoe machinery. (R. I, 196, l. 33.)

Selz, of Selz, Schwab & Company, Chicago, said that he had invested between $25,000 and $30,000 in the Boylston Company, and when asked the object of that organization, said:

> If these leases are declared invalid, we want to have a competitive shoe machinery in the market. (R. I, 157, l. 31, 33.)

Sleby, of Drew, Selby & Company, testified:

> I have an interest in the Boylston Manufacturing Company which I acquired in January or February of this year to protect the business of the Selby Shoe Company, to get independence. (R. I, 212, l. 42.)

Jones, of the Commonwealth Company, says he invested $20,000 to $25,000 in the Boylston Company, "Because we could see no other way in which to establish competition in shoe machinery." (R. I, 135, l. 28.)

It does not appear that the Boylston Company has put out bottoming machinery to the trade. (R. I, 301, l. 29.) It stands ready to enter active competition "if the leases are declared invalid."

Even Mr. Choate, counsel for defendants, admits that producers of independent shoe machinery are doomed to destruction if the tying clauses are not struck down. This undoubtedly is the purport of the following colloquy between him and Mr. Selz, while cross-examining the latter. After Selz had stated that he had an investment of between $25,000 and $30,000 in that company, this took place:

> So you have that amount at stake upon these machinery leases being declared invalid?
>
> A. If you choose to look at it that way.
>
> Q. If they are not, you stand to lose that money?
>
> A. Yes, sir.
>
> Q. If they are, you stand to make it?
>
> A. Yes. (R. I, 158, l. 1.)

This is undoubtedly true, and Mr. Choate has made a valuable contribution to the Government's contention by his implied admission. The sustaining of the leases would destroy not only the Boylston Company, but every company that dared to compete with the United Company.

M. CERTAIN ALLEGED DEFENSES.

1. THAT THE "RIGHT TO CANCEL ALL LEASES" CLAUSE IS A NECESSARY PROTECTION AGAINST DISHONEST LESSEES.

This clause as has been shown makes every tying clause in *any* lease signed by a shoe manufacturer a condition of *every* lease signed by that manufacturer. The defendants contend that this is necessary to protect them against dishonesty on the part of lessees. (Winslow, R. I, 447, l. 22, et seq.) It can **not** be so easily disposed of.

All lessees are not dishonest. But this clause is contained in every lease put out by the company and the power created thereby remains whether it is exercised or not. It is a threat to honest manufacturers as well as to those described by Mr. Winslow in explaining the purpose of the clause. Its existence is sufficient to coerce them into strict obedience to the terms of their leases. It is not matter of wonder in view of this clause that defendants rarely need to take steps to enforce their leases.

But even if every lessee was dishonest, that remarkable circumstance would not justify the existence of this clause. It is a violation of the law. The defendants must find some legal method of protecting themselves in their just rights. There are many such.

2. THAT IT IS NECESSARY TO EFFICIENT WORK THAT MACHINES BE LEASED AND OPERATED IN "TEAMS."

Emphasis is laid by the defendants upon the circumstance that in practical shoe manufacturing, the product is routed so as to advance progressively along the line of machines. It is said that for maximum production and economy it is necessary that the flow of work should be continuous. And that in a factory so organized the breaking down of a single machine may throw the entire organization out of gear and the inferiority of a single machine may result in a deleterious effect upon the output of the line. (Winslow, R. I, 866, l. 33 et seq., 867.)

There is nothing peculiar to the shoe manufacturing industry in this. Such organization is a com-

monplace of modern manufacturing. The special application sought by the defendants is in their contention that in this industry it is peculiarly necessary that all of the machines comprising a given line be specially designed to work with each other, and that that circumstance and the further necessity of protecting the reputation of their machines by preventing the introduction into the line of an inferior machine of one of their competitors are a justification of their leasing system. (Winslow, R. I, 866, 867.)

Certain facts regarding this contention should be noticed. It is obvious that a machine must be properly designed to perform the function for which it is used. It does not follow that no machine not designed by the defendants can perform a given function. Unless there is some direct physical connection between the operation of two machines there can be no practical difficulty in their proper performance of successive related functions if each is in fact properly designed for its own work. It has already been pointed out that the defendants concede that even the machines which they term "auxiliary" to other machines perform entirely independent operations. "The operations are as separate and distinct as the lasting operation and the welting operation only they are not so far removed from each other." (Winslow, R. I, 537, l. 9.) This is borne out by the testimony of McElroy and Selby. McElroy, who equipped the Non-Royalty factory, a man of very wide experience, testified:

"I do not think it necessary for a factory to have all its machines from one manufacturer in order to get efficient service." (R. I, 921, l. 1.)

Selby, a shoe manufacturer of large experience in the use of shoe machinery, said:

> The operation of the lasting machine has nothing to do with the operation of the welt sewing machine. The operation of the welt sewing machine has nothing to do with the operation of the outsole stitching machine. The operations are performed by separate operators on different machines. The same is true of heeling machines. (R. I, 924, l. 21.)

Therefore, no machine is necessary to the operation of any other, and this is one of the grounds upon which the case is distinguishable from *Henry* v. *Dick* (*infra*, p. 274).

A further and even more convincing circumstance, however, is to be found in certain facts upon which the defendants rely to support certain other arguments which they make. The method of making shoes by the welt process is that which the defendants say they have peculiarly fostered and promoted. It is upon shoes of this type that defendants earn their largest royalties. Welt shoes made in that particular manner which distinguishes the operation of the defendants' machines have been given by the defendant a trade mark. (R. I, 22, l. 3.) They are claimed to be the best type of shoes. (R. I, 441, l. 38.) In their manufacture more different types of machines are used than in the making of shoes by

any other method. (Dfts. Ex. 235, R. V, 631.) Especially are more "auxiliary" machines used. (*Ibid.*) In no branch of shoe making can the "continuity of operation" of which defendants talk have greater significance. The operations of no machines are more closely related than those of the welt method principal and auxiliary machines. Yet in this all important division of their business it is not only admitted by the defendants but is asserted by them that "Auxiliary machines doing any of the operations that are performed by any of our auxiliary machines may be obtained from any one and used in connection with (our) welter and stitcher." (Winslow, R. I, 544, l. 12.)

Another thing that should be remembered in this connection is the fact that defendants boast their readiness for a consideration to admit independent machines into their line of machinery under the so-called independent leases. An independent machine thus admitted would be as likely to break down and disturb the continuity of operation as if admitted in any other way, but still defendants are willing to let it enter. Does this not expose the hollowness of their continuity argument?

3. THAT DEFENDANTS HAVE MADE IMPROVEMENTS IN MACHINERY AND METHODS.

The United Company further insists that it has greatly improved the different kinds of machinery; that it gives excellent service to the manufacturers; that its leasing system is satisfactory to some of the manufacturers and is a benefit to the public gener-

ally. From these things they seek to argue that the tying clauses are lawful. But even were they true, which we deny, they furnish no justification for violating the anti-trust act. Some such palliation is offered for every monopolistic endeavor. The question here is not whether some beneficial results have followed in the train of the defendants' acts. It is whether those acts were acts in restraint of trade—whether competition or monopoly shall be the law of this industry. Upon what is relevant to that inquiry this Court has long since passed.

In this connection it is proper to observe that shoe manufacturers may well prefer a leasing system to a system under which they could obtain machines only by purchase with a necessary investment of large amounts of fixed capital. That, however, shows no approval of the tying clauses. Those clauses are neither essential nor proper accompaniments to a satisfactory leasing system.

4. THAT ITS SUCCESS IS DUE WHOLLY TO THE EFFICIENCY OF ITS MACHINES.

It is also claimed by the defendants that their preponderant position in the shoe machinery business is due to the efficiency of their machines and not to the tying clauses. Assuming the claim of superiority for their machines to be well founded it is not clear how the defendants expect the Court to differentiate between the contribution to their control made by that circumstance and the contribution made by the fact that the United Company began with an admitted monopoly and has sup-

ported and extended it in the way herein indicated. Nor do the defendants indicate the answer to another obvious question. The superiority of their machines, if any, has been gained in a field in which the efforts and the possibilities of competitors of the defendants have been limited and circumscribed by the conditions which the defendants have been able to impose upon the industry. They have won in a race in which they have themselves allotted the handicaps. Who shall say what would have been the merits of competing machines developed by competitors to whom a fair and equal opportunity was open? Who can predict as to the future of such a field?

In fact it is here that the argument of the defendants destroys itself. If it be true that the superiority of their machines is in itself a sufficient explanation of their success, then it certainly is true that now that such superiority has been established it is unnecessary for them to hedge about the shoe manufacturers of the country with the restrictions and penalties of the tying and cognate clauses of the leases. Or is it the contention of the defendants that the shoe manufacturers do not understand their own best interests and therefore need the restraints imposed upon them,—that the defendants must be permitted to be the benevolent despots of the shoe machinery world? Unless this be their position, they should allow shoe manufacturers to exercise freely their own judgment as to what machines are best suitable for their purposes. For the tying clauses are utterly opposed to that freedom of trade which

it is the purpose of the Sherman Act to foster and are antagonistic to the genius of American institutions.

5. THAT THE UNITED COMPANY GIVES GOOD SERVICE.

Defendants make much of their alleged free service. They talk of service stations, of a force of six or eight thousand men maintained for the purpose of keeping leased machines in repair without charge, *except for parts*, to the lessee. But the machines are the defendants machines and they produce revenue only when in good condition. Keeping the machines in repair is in every respect a good business proposition for the defendants. It affords no basis for claims of altruism.

And it is very doubtful whether anything is given without compensation. The lessees are bound by the leases to permit defendants' men to enter their factories at any time, to determine whether repairs or repair parts are needed without the concurrence of the lessee. The lessee is obligated to purchase repair parts exclusively from the defendants at the prices which defendants fix. (Plff's Ex. 30, par. 2, 3, R. III, 278.) Given the power to determine when repair parts shall be bought and the price that shall be paid it is a pretty safe inference that the defendants do not lose money on this vaunted service system.

The weakness of the argument, however, is the failure to indicate any connection whatever between this service and the tying clauses. As a matter of fact, the defendants are by no means the only

corporation which gives service. The Singer Manufacturing Company for example does so. (R. I, 734, l. 44.) But it does not find it necessary to bind and gag its customers in order to do so.

It may however be repeated that the question here is whether the defendants have done acts which restrain trade in violation of the Sherman Law. It is no answer to such a charge to say that certain other acts of the defendants are not blameworthy.

6. THAT IT IS AS LIBERAL AS ITS CONSTITUENT COMPANIES WERE.

The defendants contend that they have not restrained trade because they continue to offer machines on substantially the same terms as they were offered before the consolidation. If this were true, it would be irrelevant. For the defendants have adopted also the restrictive system of leases and have so devised it as to compel its acceptance by shoe manufacturers. The contention, however, has no basis in fact. The leases under which machines were put out by the constituent companies are all set out in the record. (Plff's Exs. 3–17, R. III, 3–153; see also Donham, R. I, 2–6.)

Inspection of the leases shows that the McKay Shoe Machinery Company, at the time of the consolidation, was putting out its machines (comprising the numerous and important group of metallic and heeling machines) *without initial payment* and *without exclusive use or other tying clauses.* Its previous initial payment lease had no such clauses. (Plff's Exs. 11, 12, R. III, l. 90, 103.) The defendants offer no such

lease. The Goodyear Company was offering lasting machines upon leases (Plff's Ex. 5, III, 37) which forbade the use of the machine with welt method machines supplied by competitors of the Goodyear Company, *but had no other tie* to any other kind of bottoming machinery. It had no exclusive use clause and therefore permitted the lessee to have in his factory an independent lasting machine to use with independent welt method machines. The United Company offers no such lease. The Consolidated Company, Mr. Winslow's original company, had an initial payment for the hand-method machine. (Plff's Ex. 8, R. I, III, 6, 9, par. 1.) It contains none of the tying clauses. The United Company offers no such lease. The Goodyear Company's "full set" lease for welt method machines (Plff's Ex. 4, R. III, 29) contained no exclusive use clause. No such lease is now offered by the United Company.

It has already been pointed out that no lease of a constituent company could contain a prohibitive clause of the kind and effect of those which characterize the "restricted" system devised by the United Company. A prohibitive clause in the McKay Shoe Machinery Company leases could not have affected competition in lasting machines. It made no such machines. The effect of such a clause could have been produced only by an agreement that each company would refuse to put out their machines to shoe manufacturers who would not undertake to deal with the other companies exclusively as to the machines dealt in by them. The illegality of such a

boycott need no longer be argued to this Court. Yet what the defendants actually did, by progressive steps and what they must have intended since it resulted inevitably from what they did was to give such an illegal agreement the form of corporate organization. In so far as the defendants follow the leasing system of the constituent companies, they apply it under wholly different conditions to wholly different circumstances, with very different practical and legal effect.

7. THAT THE RESTRICTIVE LEASES SIMPLY MAKE A WHOLESALE PRICE

The defendants contend that their restrictive leases simply are the making of a wholesale price. But they regard it as a virtue that they charge a manufacturer who uses a dozen lasting machines no less per machine than a manufacturer who uses only one such machine. (*Supra*, p. 184.)

In no sense do they make any quantity discount. The discount—and it is a heavy one—is for monopoly and for monopoly alone. Where the ordinary purchaser who buys at wholesale is free to make his next purchase where he will, he who deals with the defendants surrenders his liberty of choice for seventeen years, at least—possibly for his business life.

8. THAT COMPETITORS HAVE NO RIGHT TO EXIST.

The defendants contend in effect that they can not be charged with violation of law in excluding competitors because competitors have no right to exist. They urge this especially in respect to welt machinery, a field which they say would not exist had they not

discovered and developed it. In so far as this contention is based on patent rights, it is discussed *infra* pp. 263–280. But a competitor who produces a non-infringing welt method machine has the same right to equal opportunity and users of such machines have the same right to a free choice as to welt method machines as in any other division of industry. No rights of preemption or prescription of a whole field of modern industry are recognized by the Sherman Law.

THE LAW OF THE CASE.

I.

THE UNITED COMPANY IS A COMBINATION IN VIOLATION OF THE FEDERAL ANTI-TRUST LAW.

A. RESTRAINT OF TRADE BY A COMBINATION OF PREVIOUSLY COMPETITIVE UNITS IS ILLEGAL NO MATTER WHAT FORM IT ASSUMES.

In view of the thoroughness with which the Federal Anti-Trust Act has been discussed recently in the Harvester and Steel cases, those features of the act which do not relate to facts peculiar to the instant case require only a very brief consideration.

In the foregoing pages it has been shown that the Goodyear Company, the Consolidated & McKay Company, McKay Shoe Machinery Company, and Eppler Company were "able competitors" (*International Harvester Company* v. *Missouri*, 234 U. S. 199) at the time the United Company was incorporated (*supra*, pp. 17–49), and that the purchase of those companies by the latter destroyed the existing and potential competition between them.

At one time it was apparently believed by some that the Federal Anti-Trust Law permitted the *purchase* of competitors, and Howe seemed to have thought so at the time this combination was formed, for he tells us that he feared a trade agreement between the companies would be illegal on the ground that it would restrain trade, and therefore he advised the formation of a corporation. In other

words he was conscious that the effect of what he and his associates were about to do would be the restraint of trade, but he thought he could escape the consequences of the act by forming a corporation. In this purpose Winslow, who says that he agreed with Howe in all matters of policy, concurred. (*Supra*, p. 52.) Both, however, were mistaken. The law can not be defeated by any "disguise or subterfuge of form." (*Tobacco Case*, 221 U. S. 106, 181.)

The prohibitions of the Federal Anti-Trust Law apply no less to combinations formed by a purchase of property by a corporation than to combinations formed by simple agreements. In the *Tobacco Case*, 221 U. S. 106, it was held that each of six New Jersey corporations was an unlawful combination. The Chief Justice, speaking for the court, observed (184):

> The assailed combination in all its aspects—that is to say, whether it be looked at from the point of view of stock ownership or from the standpoint of the principal corporation and the accessory or subsidiary corporations viewed independently, including the foreign corporations in so far as by the contracts made by them they become cooperators in the combination—comes within the prohibitions of the first and second sections of the Anti-Trust Act.

And it was decreed (187):

> That the combination in and of itself, as well as each and all of the elements composing it, whether corporate or individual, whether considered collectively or separately, be de-

> creed to be in restraint of trade and an attempt to monopolize and a monopolization within the first and second sections of the Anti-Trust Act.

In *Harriman* v. *Northern Securities Co.*, 197 U. S. 244, 291, it was said:

> Some of our number thought that as the Securities Company *owned* the stock the relief sought could not be granted, but the conclusion was that the possession of the power which, if exercised, would prevent competition, brought the case within the statute no matter what the tenure of title was. (Italics ours.)

In the *Union Pacific Case*, 226 U. S. 61, 97, it was held that the—

> acquisition [by the Union Pacific Company of a controlling stock interest in the Southern Pacific, a competing line,] constituted an unlawful combination in violation of the Anti-Trust Act.

Justice Brewer in his concurring opinion in the *Northern Securities Case*, 193 U. S. 197, said (362):

> There was a combination by several individuals separately owning stock in two competing railroad companies to place the control of both in a single corporation.

Continuing, he observed that a corporation—

> is an artificial person created and existing for the convenient transaction of business. In this case it was a mere instrumentality by which separate railroad properties were com-

> bined under one control. That combination is as direct a restraint of trade by destroying competition as the appointment of a committee to regulate rates. The prohibition of such a combination is not at all inconsistent with the right of an individual to purchase stock. The transfer of stock to the securities company was a mere incident, the manner in which the combination to destroy competition and thus unlawfully restrain trade was carried out.

In the *Standard Oil Case*, 221 U. S. 1, 59, the Chief Justice said:

> In view of the many new forms of contracts and combinations which were being evolved from existing economic conditions, it was deemed essential by an all-embracing enumeration to make sure that no form of contract or combination by which an undue restraint of interstate or foreign commerce was brought about could save such restraint from condemnation.

In *United States* v. *Great Lakes Towing Company*, 208 Fed. 733, it was proved that the Great Lakes Company was formed in 1899 and *acquired* the properties of various tug owners and operators, and subsequently secured by purchase the properties of other tug owners and operators, with the result that it then owned all the prominent towing companies at 14 important lake ports. The Government alleged that the Towing Company was a combination in restraint of trade and a monopoly.

The district court, three judges sitting, held that the Towing Company and the corporations controlled by it constituted a combination in violation of the Sherman Act. The court said (741):

> a combination which places the direct instrumentalities of interstate commerce in such a relation as to create a single dominating control in one corporation, whereby natural and existing competition in interstate commerce is unduly restricted or suppressed, is within the condemnation of the act (*Standard Oil Co. case, supra; American Tobacco Co. case, supra*).
>
> * * * * *
>
> (744) Has the Towing Company acquired this domination of the towing and wrecking service by normal methods alone; or, as otherwise stated, has it unduly restrained or suppressed competition? We think it clear that the Towing Company's domination does not result from normal methods alone. Whatever may be the views of individual economists, under the Federal statutory policy normal and healthy competition is the law of trade; and such evils as may result from such competition must be considered less than those liable to follow a complete unification of interests and the power such unification gives. The evil of unification lies in the temptation to higher rates and lessened regard for the public interests; and the tendency to this evil result must be recognized, even though not in a given case yet realized in actual experience. *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61; *Joint Traffic Association Case*, 171 U. S.

> 505, 576; *Standard Sanitary Mfg. Co.* v. *United States, supra.* Even competitive practices, of a nature which as between business rivals standing practically on equal terms may be normal and lawful, yet when employed by a powerful monopolistic combination with the ability to crush, and for the purpose of crushing, a weak rival, may become abnormal and unlawful.

Although the constituent elements of an illegal combination or monopoly considered separately may be unobjectionable, if they are bound together as a part of a plan to restrain trade, they are unlawful. Mr. Justice Holmes, who delivered the opinion of the court in *Swift & Company* v. *United States,* 196 U. S. 375, 396, said:

> Moreover, whatever we may think of them separately when we take them up as distinct charges, they are alleged sufficiently as elements of the scheme. It is suggested that the several acts charged are lawful and that intent can make no difference. But they are bound together as the parts of a single plan. The plan may make the parts unlawful.

In the *Reading Co. case,* 226 U. S. 324, Mr. Justice Lurton said (357):

> It is not essential that these contracts considered singly be unlawful as in restraint of trade. So considered, they may be wholly innocent. Even acts absolutely lawful may be steps in a criminal plot, *Aikens* v. *Wisconsin,* 195 U. S. 194, 206. But a series of such contracts, if the result of a concerted

> plan or plot between the defendants to thereby secure control of the sale of the independent coal in the markets of other States, and thereby suppress competition in prices between their own output and that of the independent operators, would come plainly within the terms of the statute, and as parts of the scheme or plot would be unlawful.

The application of these principles of law to the facts of this case is clearly suggested by the Supreme Judicial Court of Massachusetts (*United Shoe Machinery Co.* v. *La Chapelle*, 212 Mass. 467) which, in a carefully written opinion by Chief Justice Rugg reviewing all the decisions of this court up to the time at which he was speaking (1912) found that the plaintiff in that case, the principal defendant herein, was a combination in violation of the Federal Anti-Trust Act.

United States v. *Winslow*, 227 U. S. 202, is in nowise inconsistent with our argument on this or on any other point in the case. There the decision was on a demurrer to an indictment against Winslow, Hurd and Brown alleging a violation of the Sherman Act by combining three companies which became a part of the United Company, and by the adoption of the restrictive leasing system. The court below found that the facts stated in the indictment were insufficient to show competition at the time of the consolidation and this court held that it had "no jurisdiction to review" that interpretation of the indictment and also that "the validity of the leases or

of a combination contemplating them can not be passed upon in this case."

B. NO SPECIFIC INTENT IS REQUIRED WHERE THE NECESSARY RESULT IS MATERIALLY TO RESTRAIN TRADE.

The defendants deny any intent to restrain or monopolize trade and commerce, and strenuously urge that benefits to the shoe manufacturers and to the public have resulted from the organization of the United Shoe Machinery Company and its subsequent acquisitions.

It is well settled that the lawfulness or unlawfulness of a combination which restrains trade does not depend upon the primary intent or motive of the parties forming it. Otherwise the actual destruction of competition would become immaterial. Necessary consequences are presumed to have been intended, and the lawfulness of defendants' acts must be determined by the direct results.

Mr. Justice Peckham, in the *Trans-Missouri Freight Case*, 166 U. S. 290, said (341):

> If the intent alleged in the bill were a necessary fact to be proved in order to maintain the suit, the bill would have to be dismissed. In the view we have taken of the question, the intent alleged by the Government is not necessary to be proved. The question is one of law in regard to the meaning and effect of the agreement itself, namely: Does the agreement restrain trade or commerce in any way so as to be a violation of the act? We have no doubt that it does.

(342) The necessary effect of the agreement is to restrain trade or commerce, no matter what the intent was on the part of those who signed it.

In the *Addyston Pipe Case*, 175 U. S. 211, 234, it was held:

> If the necessary, direct, and immediate effect of the contract be to violate an act of Congress and also to restrain and regulate interstate commerce, it is manifestly immaterial whether the design to so regulate was or was not in existence when the contract was entered into. In such case the design does not constitute the material thing. The fact of a direct and substantial regulation is the important part of the contract, and that regulation existing, it is unimportant that it was not designed.

In the *Standard Sanitary Case*, 226 U. S. 20, 49, this Court went so far as to accept as true, for the purposes of argument, the alleged intent of the defendants to improve the quality of the ware and thereby benefit the public by forming the combination. Mr. Justice McKenna, speaking for the court, stated, however, that the prohibitions of the statute can not be evaded by good motives, and said (49):

> The law is its own measure of right and wrong, of what it permits, or forbids and the judgment of the courts cannot be set up against it in a supposed accommodation of its policy with the good intention of parties, and it may be of some good results. (*United*

> *States* v. *Trans-Missouri Freight Assn.*, 166 U. S. 290; *Armour Packing Co.* v. *United States*, 209 U. S. 56, 62.)

Also in *United States* v. *Patten*, 226 U. S. 525, 543, where, after holding that the conspiracy burdened commerce and inflicted upon the public the injuries which the Sherman Act is designed to prevent, Mr. Justice Van Devanter said:

> And that there is no allegation of a specific intent to restrain such trade or commerce does not make against this conclusion, for, as is shown by prior decisions of this Court, the conspirators must be held to have intended the necessary and direct consequences of their acts and can not be heard to say the contrary. In other words, by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are, in legal contemplation, chargeable with intending that result (*Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 243; *United States* v. *Reading Co.*, 226 U. S. 324, 370).

To the same effect is the opinion of Mr. Justice Lurton in the *Reading Case*, 226 U. S. 324, 370, where he observed:

> Of course, if the necessary result is materially to restrain trade between the States, the intent with which the thing is done is of no consequence. * * * (*U. S.* v. *St. Louis Term. Assoc.*, 224 U. S. 383, 394; *Swift & Co.* v. *U. S.*, 196 U. S. 375.)

The record in the case at bar discloses beyond any doubt a direct, material, and undue restraint of trade. We submit that all of the evidence introduced by the defendants tending to show good motives and the absence of intent to restrain trade is wholly immaterial.

C. EVEN IF IT WERE NECESSARY TO PROVE INTENT, THE COMPREHENSIVENESS OF THE COMBINATION WOULD DO IT.

Where a combination takes in so large a proportion of the units in any branch of trade that those outside can not hope effectively to compete with it except by sufferance, it is a legitimate inference that one of the purposes of the combination was to prevent effective competition by those outside. This is clear from the *Standard Oil Case*, 221 U. S. 1, 75, where it was held that—

> the unification of power and control over petroleum and its products which was the inevitable result of the combining in the New Jersey corporation by the increase of its stock and the transfer to it of the stocks of so many other corporations, aggregating so vast a capital, gives rise, *in and of itself*, in the absence of countervailing circumstances, *to say the least*, to a *prima facie* presumption of intent and purpose to maintain the dominancy over the oil industry, not as a result of normal methods of industrial development, but by new means of combination which were resorted to in order that greater power might be added than would otherwise have arisen had normal methods been followed, the whole with the

> purpose of excluding others from the trade and thus centralizing in the combination a perpetual control of the movements of petroleum and its products in the channels of interstate commerce. [Italics ours.]

Again, in *United States* v. *St. Louis Terminal Railroad Ass'n*, 224 U. S. 383, 394–395, and in *United States* v. *Reading Co.*, 226 U. S. 324, 370, it was recognized that an intent to exclude others might be inferred from the "extent of the control" acquired by the combination, the court saying in the latter case:

> In the instant case the *extent of the control* over the limited supply of anthracite coal by means of the great proportion theretofore owned or controlled by the defendant companies, and the *extent of the control* acquired over the independent output which constituted the only competing supply, affords evidence of an intent to suppress that competition and of a purpose to unduly restrain the freedom of production, transportation and sale of the article at tide-water markets. [Italics ours.]

There was a similar ruling in *Shawnee Compress Co.* v. *Anderson*, 209 U. S. 423, 433, 434, where it was said:

> To what object was the assembling in one ownership or management so many compresses, and keeping the means and declaring the purpose of acquiring more? The answer would seem to be obvious. The first effect would necessarily be the cessation of competition. If there was left a possibility of other compresses being constructed, it was

> made less by the power that could be opposed to them * * *. This case presents something more than the lease of property by the Shawnee Company, induced or made necessary by financial embarrassment. It presents something more than the acquisition by the Gulf Company of another compress—of a mere addition to its business. It presents acts in aid of a scheme of monopoly.

The bearing upon its purpose of a combination's conduct toward its competitors of course requires no elucidation. In the case at bar the combination has acquired and now controls 89 per cent of the shoe eyelet production, over 96 per cent of the eyeletting machines, all the clicking machines, pegging machines and pulling-over machines, and over 96 per cent of the remainder of the machinery used in the United States in attaching the bottoms of shoes to the uppers. (Appendix B, part 1, *infra*.)

This is not denied. Even Mr. Winslow admits that more than 90 per cent of all the welt and turn shoes made in the United States are sewed upon machines put out by his company. (R. I, 597, l. 11.)

This is the necessary and direct result of the combination and therefore must have been intended by those who formed it. In the face of these circumstances, the literal denials by Winslow and Howe that they had in mind restraining trade are of no possible consequence.

D. THE COMBINATION, BEING A UNION OF ABLE COMPETITORS TOGETHER OCCUPYING A PREPONDERATING POSITION, VIOLATES THE LAW.

The testimony to which we have just re-called attention under the preceding head demonstrates that the defendants have acquired a preponderating position in the shoe machinery trade with respect at least to many essential machines—machines without which the trade of shoemaking can not be carried on profitably. Not only this, but they occupy such a position that every shoe manufacturer of consequence in the United States must deal with them. Out of 1,090, big and little, they do business with more than 1,033 (*supra*, p. 132) and have out 90,000 leases. (R. I, 37, l. 5.) Those with whom they do not have business relations must be insignificant. Donham, secretary of the United Company, could mention only two in the United States who do not receive their bottoming machinery from the United Company. (R. I, 30, l. 31.)

None of the manufacturers with whom the United Company does business can use machines for bottoming shoes obtained outside of the United Company, except upon conditions that are prohibitive. (*Supra*, p. 175.) It is impossible to procure a full line of shoe machinery anywhere except from the defendants, and as we have seen, they will not put out any of that machinery except upon conditions which in effect prohibit shoe manufacturers from dealing with the producers of independent machinery. Although the United Company does not embrace all

competitors in the manufacture of bottoming machinery, it does so virtually. But it is not necessary that it should control all in order that it may be guilty of monopolization. This court has said in the *Knight Case*, 156 U. S. 1, 16, that "all the authorities agree that in order to vitiate a contract or combination it is not essential that its result should be a complete monopoly. It is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition."

Circuit Judge Day, now Mr. Justice Day, said in the *Chesapeake & Ohio Case*, 115 Fed. 610, 623:

> It is not required in order to violate this statute that a monopoly be created. It is sufficient if that be the necessary tendency of the agreement.

A price-fixing combination which included a preponderant portion of the existing competitors would clearly violate the law. *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211; *Swift & Co.* v. *United States*, 196 U. S. 375.

In the last named case "a dominant proportion" was held to be a combination in restraint of trade.

E. THE FACT, IF IT BE A FACT, THAT PRICES WERE NOT RAISED OR THAT SERVICE AND MACHINES HAVE BEEN MADE MORE EFFICIENT, IS NO JUSTIFICATION FOR THE COMBINATION.

A combination may temporarily or perhaps even permanently reduce the price of the article traded in or manufactured. But that is no defense. Thus in the *Trans-Missouri Freight Association Case*, 166 U. S. 290, 323, the court said:

> In business or trading combinations they may even temporarily, or perhaps permanently, reduce the price of the article traded in or manufactured, by reducing the expense inseparable from the running of many different companies for the same purpose. Trade or commerce under those circumstances may nevertheless be badly and unfortunately restrained by driving out of business the small dealers and worthy men whose lives have been spent therein, and who might be unable to readjust themselves to their altered surroundings. Mere reduction in the price of the commodity dealt in might be dearly paid for by the ruin of such a class, and the absorption of control over one commodity by an all-powerful combination of capital.

Mr. Justice Day, in the *Union Pacific Case*, 226 U. S. 61, said (88):

> Nor does it make any difference that rates for the time being may not be raised and much money be spent in improvements after the combination is effected. It is the scope of such combinations and their power to suppress or stifle competition or create monopoly which determines the applicability of the act.

In *United States* v. *Addyston Pipe & Steel Company*, 85 Fed. 271, Mr. Taft, then circuit judge, had the following to say with respect to the question of the reasonableness of the prices claimed to have been charged by the combination (293):

> It has been earnestly pressed upon us that the prices at which the cast-iron pipe was sold

> in pay territory were reasonable. A great many affidavits of purchasers of pipe in pay territory, all drawn by the same hand or from the same model, are produced, in which the affiants say that, in their opinion, the prices at which pipe has been sold by defendants have been reasonable. We do not think the issue an important one, because, as already stated, we do not think that at common law there is any question of reasonableness open to the courts with reference to such a contract. Its tendency was certainly to give defendants the power to charge unreasonable prices, had they chosen to do so.

In *United States* v. *Great Lakes Towing Company*, 208 Fed. 733, 743, 744, *supra*, it was contended by the defendants that in 1899, when the Towing Company was formed, the tug service, both towing and wrecking, at certain of the lake ports was unsatisfactory. With respect to that contention, the court assumed that under the Towing Company's administration, the service had been improved, but held that improvement of service was no justification for the combination. The court said (743, 744):

> The question is whether the unsatisfactory towing facilities, including their practical operation, justified the making of this combination. * * *
>
> The fact that the towing and wrecking service has been improved under the Towing Company's administration can not legalize the combination if otherwise unlawful.

Much has been said by the defendants to the effect that their system of doing business results in greater efficiency and that it is in harmony with the best canons of modern commercial life. We deny both propositions, but even if they were true, it would make no difference. This court, replying to a like contention, said in the *Eastern States Lumber Case*, 234 U. S. 600, 613:

> The argument that the course pursued is necessary to the protection of the retail trade and promotive of the public welfare in providing retail facilities is answered by the fact that Congress, with the right to control the field of interstate commerce, has so legislated as to prevent resort to practices which unduly restrain competition or unduly obstruct the free flow of such commerce, and private choice of means must yield to the national authority thus exerted. *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 241–242.

II.

THE PLANT PURCHASE WAS ILLEGAL EVEN THOUGH PLANT HAD NOT INSTALLED HIS MACHINES IN ANY FACTORY OTHER THAN THAT OF THE PLANT COMPANY.

The Plant purchase resulted in the elimination of an able, existing and growing competitor. (*Supra*, p. 124.) Like the original combination, this purchase was a violation of the Anti-Trust Laws, as we have just disclosed.

If, however, it should be urged that Plant was not engaged in actual competition with the United Company because his machines were not in use in

any shoe factory except that of Thomas G. Plant Company (R. I, 778, l. 13), although they were in use in that company's factory at the time of the acquisition of the Plant property by the United Company and, indeed, until long afterward (*supra*, p. 103), it is none the less true that he had also offered, as we have seen, to install his machines in a number of large factories (R. I, 575, l. 36), and that representatives of other large factories were trying to make some arrangement whereby they might acquire an interest in Plant's machinery for the purpose of installing his machines (*supra*, p. 109). In other words, the record clearly shows that the Plant machines were right at the threshold of extended competition with the United Company's machines.

But conceding, *arguendo*, that Plant had invented and manufactured but had not yet installed his machines in any shoe factory, the purchase, nevertheless, would have been contrary to the provisions of the Sherman Act.

As was said by Circuit Judge Putnam in the *Patterson Case*, 59 Fed. 280, 283 (Mass.):

> neither the letter of the statute [the Sherman Act] nor its purpose distinguishes between strangling of commerce which has been born and preventing the birth of a commerce which does not exist.

And the language of this court in the *Reading Case*, 226 U. S. 324, *supra*, with respect to preventing competition from coming into existence is peculiarly applicable here. There the situation

was dominated by a number of carriers. It was desired to introduce competition and an independent railroad was projected for the purpose of providing it. The prevention of its construction was brought about by a combination through the defendants and the Temple Iron Company. Speaking of this Mr. Justice Lurton said (351):

> The New York, Wyoming & Western Railroad Company was successfully *strangled*, and the monopoly of transportation collectively held by the six defendant carrier companies was maintained.
>
> The *projected* competing railroad was undoubtedly a good faith proposition and held out *promise* to independent coal operators not only of the prospect of competition in transportation from the mines to tidewater, but the possibility of selling their coal either to the controlled coal companies defendant at better prices or to the consuming public at tidewater in competition with that of the controlled coal companies. *But if we assume that its construction was doubtful, the result must be the same* as characterizing the purpose and design of the concerted action of the defendants. They were so far convinced of the *threatening* character of the enterprise that they were moved at great cost *to thwart it and at the same time remove the temptation* for a like competition by securing to themselves forever the product of the collieries named. [Italics ours.]

That was precisely the situation in the Plant case, with respect to the threatening character of the Plant enterprise. Certain shoe manufacturers had been endeavoring for years to have the United Company modify its leases so that they might be enabled to place in their factories competing machinery. (*Supra*, p. 198.) The defendants feared the competition that the Plant machines were about to create, and they were willing, in the language of Mr. Justice Lurton, at a cost of $6,000,000 to "thwart it and at the same time remove the temptation for a like competition" by securing to themselves the product of Plant's genius and labor, and that of his large force of inventors, in perfecting a complete line of competitive machines, which made secure the monopoly that defendants already possessed of the shoe machinery industry. It was the first time in its history that the United Company was threatened with competition in the United States by a single concern in position to furnish to shoe manufacturers a complete line of shoe machinery.

III.

THE RESTRAINING AGREEMENTS MADE WITH VENDORS AT THE TIME THEIR PROPERTIES WERE ACQUIRED ARE ILLEGAL.

With respect to the various acquisitions of competitors, and others, we shall not discuss at length the question as to whether the covenants entered into with the vendors at the time their respective businesses were acquired are in each instance in

restraint of trade. All of the covenants restraining the vendors from again engaging in business, etc., are a part of the general plan of defendants to monopolize the bottoming shoe machinery business, and it is immaterial whether the contracts considered singly are void.

However, the majority of them, when considered separately, are clearly illegal, as they go far beyond what was necessary to afford fair protection to the legitimate interests of the purchaser, and all such agreements when entered into as part of a plan for monopolizing trade and commerce, are illegal.

In *United Shoe Machinery Co.* v. *La Chapelle* (*supra*, p. 220) the Supreme Judicial Court of Massachusetts applied the law to the facts of the case at bar. That was an action, it will be remembered, in which the United Shoe Machinery Company, one of the defendants herein, began a suit in equity against La Chapelle, to compel the specific performance of a contract between him and it. The contract provided among other things that La Chapelle, who was an inventor, should assign to the plaintiff all inventions he should make during the continuance of the contract and for ten years thereafter, and that for a like period he should not engage in any similar business. Speaking of the question as to whether or not the plaintiff was an unlawful combination within the meaning of the Federal Anti-Trust Act, Chief Justice Rugg said (479):

> It is to be observed that the averment of the answer is positive and direct that the plaintiff

> has acquired and maintained a monopoly of interstate trade in shoe machinery, *and the offer of proof in this regard was co-extensive with the averment.* This brings the case within the words of Section 2 of the Anti-Trust Act.

Continuing, the court, speaking of the contract in suit, observed (485):

> It was made by one who had a monopoly of one branch of trade; it was one of many similar contracts with individuals enough to constitute a practical monopoly of skill in that department; it was a necessary link in a chain of contracts essential to the maintenance and preservation of monopoly in interstate trade which had been established by the plaintiff.

In *Shawnee Compress Company* v. *Anderson*, 209 U. S. 423, *supra*, it appeared that the company had leased its property and business relating to the compressing of cotton to the Gulf Company.

The lease conveyed all of the property of the Shawnee Company to the Gulf Company and the former covenanted that it would not "directly or indirectly engage in the compressing of cotton within 50 miles of any plant operated by the Gulf Company," and further agreed to give to the latter "its good will, moral and legal support, and that it" would "render the Gulf Company every assistance in discouraging unreasonable and unnecessary competition." (430, 431.)

This court held that the lease was in restraint of trade and in furtherance of a scheme to monopolize. Mr. Justice McKenna, in delivering the unanimous opinion, said (433):

> It may be conceded that the evidence shows that the Shawnee Company was financially embarrassed, and its condition might have justified a lease of its property if that had been all it did. It however, covenanted for its assistance in discouraging competition against its tenant, and bound itself not to "directly or indirectly engage in the compressing of cotton within fifty miles of any plant operated by the tenant." So far it covenanted to aid in the restraint of trade. It went out of the field of competition; it covenanted not to enter into that field again, and it pledged itself to render every assistance to prevent others from entering it. And it could not misunderstand the purpose for which its lease was solicited.

Continuing, the court observed (434):

> This case presents something more than the lease of property by the Shawnee Company, induced or made necessary by financial embarrassment. It presents something more than the acquisition by the Gulf Company of another compress—of a mere addition to its business. It presents acts in aid of a scheme of monopoly. *Swift Co.* v. *United States*, 196 U. S. 375.
>
> But it is contended that it was held * * * that the sale of the good will of the business with an accompanying agreement not to engage in a similar business was not a restraint of trade within the meaning of the Sherman Act. Counsel has discussed with an affluent citation of cases the principle which regulates such contracts, and insists that the lease by the

> Shawnee Company conforms to such principle. The principle is well understood. The restraint upon one of the parties must not be greater than protection to the other party requires, and it needs no further explanation than is given in *Gibbs* v. *Baltimore Gas Company*, 130 U. S. 396.

In the *Gibbs* case it was held relative to restraints of trade, first, that (408)—

> In the instance of business of such character that it presumably can not be restrained to any extent whatever without prejudice to the public interest, courts decline to enforce or sustain contracts imposing such restraint, however partial, because in contravention of public policy.

And, secondly, that (409)—

> Even at common law such contracts were void when they are general, not to pursue one's trade at all, or not to pursue it in the entire realm or country. The country suffers the loss in both cases; and the party is deprived of his occupation, or is obliged to expatriate himself in order to follow it. A contract that is open to such grave objection is clearly against public policy.

The principle is also well stated in *United States* v. *Great Lakes Towing Company*, 208 Feb. 733, *supra*. There the Towing Company exacted from those whose properties it had acquired covenants whereby the vendors agreed that during the period of five years they would not engage in or be interested, directly or indirectly, in the business of towing and

wrecking or in any branch thereof, upon the Great Lakes (except Lake Ontario and its harbors and the waters east thereof), excepting only and so far as they, or either of them, shall be interested in or with the party of the second part, as shareholder or employee."

The court (three judges sitting) had the following to say with respect to those covenants (742):

> While the sale of a business and the surrender of the good will pertaining thereto, and an agreement thereunder, within reasonable limitations as to time and territory, not to enter into competition with the purchaser, when made as part of the sale of a business, and not as a device to control commerce, is not within the federal Anti-Trust Law (see authorities cited in *Darius Cole Transp. Co.* v. *White Star Line* (C. C. A. 6) 186 Fed. 63, 65, 108 C. C. A. 165), the imposition of a restraint greater than necessary to afford fair protection to the legitimate interests of the purchaser, or contractor, constitutes an unreasonable restraint under the Sherman act. *Shawnee Compress Co.* v. *Anderson*, 209 U. S. 423.

In *Darius Cole Transportation Co.* v. *White Star Line*, 186 Fed. 63, the lessor agreed "to surrender to the party of the second part all of the good will of the river business, so called, that may be controlled by it, and to that end agrees not to enter into competition with the party of the second part upon the routes herein named, and not to operate any of its vessels, or any vessel whatsoever, on the said routes, between

Detroit and Port Huron or between Detroit and Toledo during the period of the said three years."

Circuit Judge Knappen, who delivered the opinion of the Court of Appeals, had the following to say with respect to the agreement (68):

> On the other hand, if the restraint imposed is greater than necessary to afford a fair protection to the legitimate interests of a vendee or lessee, the contract is rendered void. *Shawnee Compress Co.* v. *Anderson*, 209 U. S. 423, 425, 28 Supt. Ct. 572, 52 L. ed. 865. The same test has been recognized by this court in several cases under the common law, including *Hitchcok* v. *Anthony*, 83 Fed. 779, 28 C. C. A. 80; *American Strawboard Co.* v. *Haldeman Paper Co.*, 83 Fed. 619, 27 C. C. A. 634; *Knapp* v. *S. Jarvis Adams Co.*, 135 Fed. 1008, 70 C. C. A. 536; *Prame* v. *Ferrell*, 166 Fed. 702, 92 C. C. A. 374.

It will be observed that in the *Darius Cole* case, *supra*, the court had before it but a single contract or lease, and it was held that the restrictive provisions against competition were illegal, as in restraint of trade, for the reason that the "restraint imposed" was "greater than necessary to afford a fair protection to the legitimate interests of the vendee or lessee."

Practically all of the agreements against competition in the case at bar are unlimited as to territory, and some of them as to time. A large number, in instances where only a single machine or a few machines were acquired, prohibit the vendors from en-

gaging in the shoe-machinery business in any way whatsoever, regardless of the properties conveyed. Many of them, in addition to the restraints against competition, provide that if the vendor shall invent or shall acquire any interest under any invention relating to shoe machinery, all such inventions shall be assigned to the United Company without additional compensation therefor. Such agreements not only restrict competition, but also tend to discourage the invention and improvement of shoe machinery.

These agreements, considered in their entirety, present "something more than the acquisition" by defendants of the business of others—"of a mere addition to" their "business." They present "acts in aid of a scheme of monopoly." (*Shawnee Compress Company* v. *Anderson*, 209 U. S. 423, *supra*.)

Thus in the *American Tobacco Case*, 221 U. S. 106, this court held that the wrongful purpose and illegal combination was overwhelmingly established by various considerations, and among others (183)—

> By the constantly recurring stipulations, whose legality, isolatedly viewed, we are not considering, by which numbers of persons, whether manufacturers, stockholders, or employees, were required to bind themselves, generally for long periods, not to compete in the future.

IV.

THE CLAIM THAT THE PLANT AND OTHER PURCHASES WERE MADE TO SETTLE LITIGATION IS IMMATERIAL.

Under a previous caption we saw that if the necessary and direct effect of what defendants did was illegal, they could not justify themselves by showing that they had a legitimate motive. (*Supra*, p. 221.) So here, they may not defend on the ground that their purpose in making the acquisitions complained of was the settlement of litigation and not the suppression of competition.

In *United States* v. *Patten*, supra (226 U. S. 525), Mr. Justice Van Devanter said (543):

> Conspirators must be held to have intended the necessary and direct consequences of their acts and can not be heard to say the contrary.

In the *Addystone Pipe Case* (175 U. S. 211) Mr. Justice Peckham observed (234):

> If the necessary, direct and immediate effect of the contract be to violate an act of Congress and also to restrain and regulate interstate commerce, it is manifestly *immaterial* whether the design to so regulate was or was not in existence when the contract was entered into. In such case the design does not constitute the material thing. The fact of a direct and substantial regulation is the important part of the contract, and that regulation existing, it is unimportant that it was not designed. (Italics ours.)

Neither will the defendants here be heard to say that they "did not intend the necessary and direct

consequences of their acts" but were moved by a lawful purpose only, to wit, the settlement of litigation.

The *Standard Sanitary Case* (226 U. S. 20, 49) is to the same effect. It says:

> The law is its own measure of right and wrong, of what it permits, or forbids, and the judgment of the courts can not be set up against it in a supposed accommodation of its policy with the *good intention* of parties, and it may be, of some good results. (Italics ours.)

And directly on the specific point is this language from the Circuit Court of Appeals, 3d Circuit (*National Harrow Co.* v. *Hench*, 83 Fed. 36, 38):

> The suggestion that the contract is justified by the situation of the parties—their exposure to litigation—is entitled to no greater weight. *Patentees* may compose their differences, *as the owners of other property may*, but they can not make the occasion an excuse or cloak for the *creation* of *monopolies* to the public disadvantage. (Italics ours.)

Between saying that the defendants did not intend to unlawfully restrain trade, although they did it, and protesting that their purpose was legitimate, though resulting in an illegal restraint of trade, there is no difference. The law rejects both defenses.

As was observed by this Court in the *International Harvester Case* (234 U. S. 199, 209):

> It is too late in the day to assert against statutes which forbid combinations of competing companies that a particular combination was induced by good intentions and has had some good effect.

V.

THE OBNOXIOUS CLAUSES OF THE LEASES ILLEGALLY RESTRAIN TRADE.

A. THEY SUPPRESS COMPETITION AND MAINTAIN A MONOPOLY.

We repeat that we do not complain of the circumstance that the United Company leases rather than sells its important machinery. (*Supra*, p. 146.) Eliminate the objectionable clauses from those leases and the Government will find no fault with them, but the tying clauses, we insist, are illegal whether put out by a lawfully organized corporation or by one which is a combination in restraint of trade.

In our discussion of the facts (*supra*, pp. 145–213) we showed that the dominant purpose and necessary effect of those clauses were to suppress competition. It is not necessary to repeat here the argument made there.

The House Judiciary Committee, when it was considering the Clayton Bill (38 Stat. 730) conducted extensive hearings relative to these leases. In its report to the House the Committee said:

> Where the concern making these contracts is already great and powerful, such as the *United Shoe Machinery Company*, * * * the exclusive or "tying" contract made with local dealers becomes one of the *greatest agencies and instrumentalities of monopoly ever devised by the brain of man.* It completely shuts out competitors not only from trade in which they are already engaged but from the opportunities to build up trade in any com-

> munity where these great and powerful conditions are appearing under this system and practice. By this method and practice the *Shoe Machinery Company* has built up a monopoly that owns and controls the entire machinery now being used by all great manufacturing houses of the United States. No independent manufacturer of shoe machines has the *slightest opportunity* to build up any considerable trade in this country while this condition obtains. If the manufacturer who is using machines of the *Shoe Machinery Company* were to purchase and place a machine manufactured by an independent company in his establishment, the *Shoe Machinery Company could*, under its contracts, withdraw all their machinery from the establishment and *thereby wreck* the business of the manufacturer. (Report of Committee, p. 13.) [Italics ours.]

This view of the clauses here in question is sustained by judicial decision. Judge Dyer of the Eastern District of Missouri, in *United States* v. *United Shoe Machinery Company*, 227 Fed. 507, said of them (509):

> Are the clauses inserted in and forming parts of the contracts between the defendants and their lessees prohibited by the act of Congress heretofore referred to. Reading this act of Congress and the clauses complained of together, there can be but one conclusion, and that is that all of the clauses (with the possible exception of No. 2) complained of in the bill are clearly violative of the plain words of the statute.

Continuing, the court observed with respect to the same clauses (511):

> It is hard to see how the ingenuity of man could have devised a scheme that would more effectually create a monopoly than the scheme set forth in the bill in this case.

Afterwards, in the same case upon a motion to dismiss (234 Fed. 127), Judge Trieber, of the Eastern District of Arkansas, was called upon to consider the same question. He called the tying clauses conditions and, speaking of them, said (148):

> What is the natural, direct, and necessary effect of these conditions? There can be but one answer to this: To compel the lessees to use defendants' machinery and material, regardless of whether the terms granted by the defendants are as favorable as can be obtained from other manufacturers of some of the machines or dealers in some of the materials.
>
> In addition, it is charged that by reason of these leases there is no market for any one inclined to manufacture these or some of these machines, and therefore all are deterred from engaging in their manufacture, as, there being no market for them, financial failure is bound to result from the attempt. Such a condition of affairs clearly tends to substantially lessen competition, and create, *in favor of the defendants, a monopoly in that line of commerce.* [Italics ours.]

True, both of these decisions were rendered under Section 3 of the Clayton Act (38 Stat. 731), which was

passed after this action was submitted to the court below and which declares:

> That it shall be unlawful for any person engaged in commerce * * * to lease machinery * * * on the condition, agreement or understanding that the lessee * * * shall not use or deal in * * * machinery * * * of a competitor * * * of the lessor or seller, where the effect of such lease, * * * agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

This section, as we view it, presents a different measure of duty from that embodied in the Sherman Act, but, nevertheless, the clauses which were considered by the Judges were the very clauses here in question and the judicial pronouncements to which we have just referred clearly show that their necessary effect and tendency are to restrain trade and create a monopoly.

We cannot conceive how any other conclusion could be reached, when their language is given that meaning which, according to Mr. Justice Holmes in the *Swift Case*, 196 U. S. 395, "it fairly conveys to a dispassionate reader."

B. THEY UNLAWFULLY COERCE SHOE MANUFACTURERS AND FORCE A BOYCOTT OF DEFENDANTS' COMPETITORS.

All leases made by the United Company run for a period of 17 years. New leases are made from time to time by every shoe manufacturer who deals with the United Company. Each lease is tied to all the earlier

leases. It would be hard to imagine a time when a lessee would be free from all such leases in the ordinary course of business. Therefore there is no time when he is at liberty to procure his bottoming, clicking, or eyeletting machinery where he wills. He is coerced by virtue of the tying clauses into dealing with the United Company whether he desires to do so or not. It may well be said of that system that he who enters it "leaves all hope behind."

A system of leases or contracts producing such a situation must be illegal.

If the combined companies in the case at bar had entered into a trade agreement instead of a corporate combination, thereby securing control of more than 96 per cent of a certain line of machinery, and an absolute monopoly of other lines, and had agreed that no one company would trade with any shoe manufacturer unless he purchased all his machinery from the members of the combination, clearly we would have that "potency in numbers" spoken of in the *Loewe Case*, 187 Fed. 522, which amounts to coercion and creates a boycott. As was further said in that case (524):

> If it be shown that individuals have combined in order to induce a manufacturer engaged in interstate commerce to conduct his business as they wish, and upon his refusal, retaliatory steps are taken * * * such combination of individuals must be held to have essentially obstructed the free flow of com-

> merce between the States, a combination to effect such an obstruction is in violation of the Anti-Trust Law.

If the Danbury Hatters were guilty of boycotting by combining for the purpose of preventing dealers in hats from trading with Loewe, why are not the defendants equally guilty by combining with the shoe manufacturers through the tying clauses, to prevent the latter from dealing with independent shoe machinery manufacturers. True, the shoe manufacturers are unwilling members of the combination, but nevertheless they are members for the purpose of the combination—the destruction of trade with independent shoe machinery manufacturers.

The mere fact that the combined companies have united by a corporate combination instead of a loose combination, is wholly immaterial. They can not do by the one what they could not do by the other. Their conduct in either case would be in substance a boycott.

The power which the tying clauses gives to the defendants over the shoe manufacturers is analogous to that possessed by the combination in the *Eastern States Retail Lumber Case*, 234 U. S. 600; or in *Montague* v. *Lowry*, 193 U. S. 38; or in *Jayne* v. *Loder*, 149 Fed. 21.

In the former case the court said (614):

> When the retailer goes beyond his personal right, and conspiring and combining with others of like purpose, seeks to obstruct the free course of interstate trade and commerce

> * * * by placing obnoxious wholesale dealers under the coercive influence of a condemnatory report * * * he exceeds his lawful rights, and such action brings him and those acting with him within the condemnation of the act of Congress.

Every shoe manufacturer who deals with the appellees is by the coercive influence of the leases prohibited from trading with competitors of the defendants.

In *Continental Wall Paper Company* v. *Voight & Sons*, 212 U. S. 227, manufacturers of wall paper, controlling 97 per cent of interstate commerce therein, organized a corporation to act as their common selling agent, which corporation made separate contracts with wholesalers and jobbers in the several States by which such wholesalers and jobbers agreed to buy only of such corporation.

This court, speaking through Mr. Justice Harlan, quotes with approval the following language of Judge Lurton in the court below (256):

> The jobbers and wholesalers, who were to be *coerced* into contracts to buy their entire demands from the Continental Wall Paper Company or be driven out of business, were in every State. Before the combination each of the combining companies was engaged in both State and interstate commerce. The freedom of each, with respect to prices and terms, was restrained by the agreement and interstate commerce directly affected thereby, as well as by the enhancement of prices which resulted. *A more complete monopoly in an article of uni-*

> *versal use has probably never been brought about. It may be that the wit of man may yet devise a more complete scheme to accomplish the stifling of competition.* But none of the shifts resorted to for suppressing freedom of commerce and securing undue prices, shown by the reported cases, is half so complete in its details. None of the schemes with which this may be compared is more certain in results, more widespread in its operation, and more evil in its purposes. It must fall within the definition of a "restraint of trade," whether we confine ourselves to the common-law interpretation of that term or apply that given to the term as used in the Federal act. [Italics ours.]

In the *Reading Company Case*, 226 U. S. 324 *supra*, the defendant carriers controlled about seventy-five per cent, and the independent operators about twenty per cent, of the annual supply of anthracite coal. Contracts were entered into whereby the independent operators severally agreed to deliver their entire output to the defendants and in consideration therefor they were to receive sixty-five per cent of the general average price prevailing at tidewater points. The purpose of the contracts was to prevent the output of the independent mines being sold in competition with the output of the mines belonging to the defendants.

Speaking of these contracts the court said (357):

> It is not essential that these contracts, considered *singly*, be unlawful as in restraint of trade. So considered, they may be wholly innocent. Even acts absolutely lawful may be

> steps in a criminal plot. (*Aikens* v. *Wisconsin*, 195 U. S. 194, 206.) But a *series* of such contracts, if the result of a concerted plan or plot between the defendants to thereby secure control of the sale of the independent coal in the markets of other States, and thereby suppress competition in prices between their own output and that of the independent operators, would come plainly within the terms of the statute, and as parts of the scheme or plot would be unlawful. [Italics ours.]

The opinion proceeds (358):

> That the plan was calculated to accomplish the design averred, in the present case, seems plain enough. The anthracite field was very limited. The means for transportation from the mines to seaboard shipping points were in the hands of the defendant carriers. They, together with their subsidiary companies, controlled about ninety per cent of the coal deposit and about seventy-five per cent of the annual output. If the remaining output, that of the independent operators along their several lines, could be controlled as to production and sale at tidewater points, there would inevitably result such a dominating control of a necessity of life as to bring the scheme or combination within the condemnation of the statute.

We submit that the contracts in the *Continental Wall Paper case*, *supra*, and the 65 per cent contracts in the *Reading case*, *supra*, were not as far-reaching in their evil results as the system of leasing used by defendants.

C. THE TYING CLAUSES ARE CONDEMNED BY THE LAW IRRESPECTIVE OF WHETHER THE UNITED COMPANY IS A LAWFUL OR UNLAWFUL COMBINATION.

Assuming without conceding, that the United Company in absorbing the four companies at the time of its organization and in its subsequent acquisitions of concerns engaged in the shoe machinery business, did nothing illegal, still the tying clauses would be unlawful since their motive and necessary effect is the restraint and monoplization of trade. Especially is this true when it is considered that they are enforced by a single corporation (for the various corporate defendants must be treated as one) having such a preponderant position in the trade as that indicated by this record. (*Supra*, pp. 126–145.) What might be entirely harmless by an unimportant trade unit, is extremely vicious when practiced by an aggregation as powerful financially and industrially as the United Company.

Systems of exclusive contracts have been condemned in several cases under the Sherman Act. In *United States* v. *Keystone Watch Case Co.*, 218 Fed. 502, it is said (510):

> As power increases, the temptation to abuse it is likely also to increase, so that the acts of an influential factor in a particular trade may well be scrutinized with more suspicion than the acts of a *weak and inconspicuous* contributor. * * * Beginning in 1904, or thereabouts, it made several attempts—perhaps not very numerous, but numerous enough—that showed a definite purpose to

> restrain trade by attempting to fix and maintain prices, and *by using a species of boycott or blacklisting in order to lessen the trade of its rivals.* [Italics ours.]

Every lease in the case at bar containing a tying clause is not only an attempt to restrain trade, but an actual restraint thereof, especially when it is considered that more than 1033 of the 1090 shoe manufacturers in the country are compelled to accept such leases for all the bottoming, clicking, and eyeletting machinery used by them.

Continuing, the same court said, in speaking of a circular letter informing jobbers that the Keystone Watch Case Company would refuse to deal with those who handled *independent* goods (512):

> We regard it not as a request, but as a threat; and *not as an empty threat, but as a real menace from a strong manufacturer* * * * Now what the defendant company did was either to close these already existing and already utilized outlets, or to narrow them materially so far as the cases of its competitors were concerned; and we think the proposition need not be discussed that this was *pro tanto* a direct and unlawful restraint of trade. [Italics ours.]

The United Company is a "strong manufacturer"—a giant. It refuses to deal with shoe manufacturers who use independent machines.

The Court in the *Great Lakes Towing Case* (208 Fed. 733 *supra*) says emphatically (745):

> *No more effective obstacle to successful competition could well be devised than is found in this exclusive contract system.* It is manifest that no competitor doing business at less than all 14 of the ports could compete with the Towing Company on anything like equal terms. With the field already occupied by a strong combination, with a large patronage fixedly secured through stockholding interests, the formation of another company equipped to do business at all 14 ports would seem a commercial and financial impossibility. [Italics ours.]
>
> * * * * *
>
> Even competitive practices, of a nature which as between business rivals standing practically on equal terms may be normal and lawful, yet when employed by a powerful monopolistic combination with the ability to crush, and for the purpose of crushing, a weak rival, may become abnormal and unlawful. (744.)

It is equally manifest here that no competitor having less than a complete line of bottoming machinery could compete with the United Company on any terms.

In the *Window Glass Jobbers Association Case*, 152 Fed. 864, we read (870–871):

> *It is argued with much force and ingenuity* by the defendant in error that the combination set out in the declaration was only an agreement by which a certain number of wholesalers were to trade exclusively with a certain manufacturer, with the reciprocal understand-

> ing that the manufacturer was to sell to no one else, except at a price higher than that paid by the parties to the contract; *that this was, in effect, nothing more than an agreement to sell to one person or to several at a price advantageously lower than the general price, on condition that such person or persons would buy exclusively from the manufacturer so agreeing.* In other words the American Window Glass Co. had the right to select its customers and charge one price to one and another price to another. It had the right to offer certain inducements to certain customers in exchange for their exclusive trade. And it had the right to do all or any of these things. But it is always to be borne in mind, in considering arguments of this kind, that the act of Congress has made, and was intended to make, illegal many sorts of contracts and agreements that prior thereto were not only legal, but were regarded as meritorious and beneficial, and has materially restricted the area within which freedom of contract may be exercised. (Italics ours.)

If a contract to sell to one person "at a price advantageously lower than the general price on condition that such person or persons would buy exclusively from the manufacturer so agreeing," is invalid, then a contract leasing to one person, who must agree to any terms fixed by the lessor, on condition that he will lease "exclusively" from the lessor, must be void.

In *Nash* v. *United States*, 229 U. S. 373, 375, one of the means of monopolization named was,

> coercing factors and brokers into contracts with the defendants for the storage and pur-

chase of their receipts and refusing to purchase from such factors and brokers unless such contracts were entered into.

The illegality of such systems even at common law is indicated by Stimson, Popular Law Making, as follows (p. 175):

> We have legislated * * * against what we have termed "*unfair competition,*" that being generally defined to be the making of an artificially low price in a certain locality for the purpose of destroying a competitor, or the making of *exclusive contracts; that is to say, refusing to deal with a person unless he binds himself not to deal with anybody else. This last thing can hardly, however, be said to add to common law principles.* [Italics ours.]

That is precisely what we have here and it is unlawful according to the foregoing authorities.

D. EVEN IF ALL THE SHOE MANUFACTURERS WERE SATISFIED WITH THE CLAUSES COMPLAINED OF THEY WOULD STILL BE ILLEGAL.

Defendants urge that a large number of shoe manufacturers are satisfied with the tying clause system. This can make no difference from a legal standpoint. No man nor body of men can enter into contracts that violate the law of the land merely because such contracts may be to his or their advantage. It is very doubtful, however, whether this contention of the defendants finds any support in the evidence. That a small number of shoe manufacturers prefer the leasing system to one which would require them to purchase their machines out-

right because, as they seem to think, it saves the investment of a large amount of capital in machinery, may be conceded. That it does in fact save the investment of much capital is far from clear, when we consider the great amount of royalties which manufacturers have to pay. (*Supra*, p. 175.) Be that as it may, the Government, as we have heretofore observed, does not find fault with the leasing system as such. That system can continue with all its actual or imaginary benefits to shoe manufacturers after the obnoxious clauses have been eliminated. Those clauses are burdens on, not benefits to, the shoe manufacturers of the country.

The following language from the opinion of this court in the *Reading Case*, 226 U. S. 324, *supra* is applicable here (359):

> That the conditions were not accepted by the independent producers as satisfactory, is evident. The majority at all times stood out, and those making such agreements as well as those refusing to do so, maintained an agitation for better freight rates and better prices for those who preferred to sell at their breakers. For many years before this proceeding they maintained an organization called "the Anthracite Coal Operators' Association," and through that body endeavored to improve their situation.

And so it is here. The so-called "Shoe Manufacturers' Alliance," composed of both large and small shoe manufacturers in the West and in the East, has been endeavoring for several years past through

their organization to devise some plan whereby they might be relieved from the domination of defendants. Practically their last effort was to obtain an interest in the inventions and machines of Thomas G. Plant, but even in that attempt they were thwarted, by the defendants going in during the late hours of the night and acquiring control of all of Plant's inventions, patents, and machinery.

We submit that with respect to the tying clause system employed by defendants the mind of man has about reached the zenith of perfection in devising a scheme to accomplish the stifling of competition and to monopolize trade and commerce. It is illegal and should be condemned.

VI.

THE LESSEES ARE NOT NECESSARY PARTIES TO THIS LITIGATION.

It was intimated in the trial court that the leases could not be condemned unless the lessees were parties to the action. As we have said before, the Government does not attack the leases, but only certain clauses of them. These clauses are, we say, illegal. They impose obligations upon the lessees and are made for the sole benefit of the defendants. The relief sought is a prohibition against the defendants enforcing them. We do not seek in any wise to control the action of the lessees. What we ask would not in the least impinge their rights. Neither would it impose any obligation upon them. On the contrary, it is designed to relieve them from an oppressive and wholly illegal burden.

There is nothing in *Minnesota* v. *Northern Securities Co.* (184 U. S. 199) which militates against our position. In that case, the Court said (245) that the controversy was between—

> the State of Minnesota, the Great Northern Railway Company, the Northern Pacific Railway Company * * * and the Northern Securities Company * * *, the stockholders and bondholders of those corporations, and of the numerous railway companies whose lines are alleged to be owned, managed, or controlled by the Great Northern and Northern Pacific Railway Companies

and that—

> the rights of the minority stockholders of the two railroad companies are not represented * * * ; they have a right to be represented * * * and their rights ought not to be affected without a hearing.

In the words "their rights ought not to be affected without a hearing" lies the gist of that case. But if their rights were not involved, it would follow that they were not necessary parties. As we have just observed, the rights of the lessees are not touched in this case, except to preserve them. Hence, it was not necessary to bring the lessees before the court.

Moreover, this action is not like a private one involving only private rights. It is an action in which the Government charges the defendants with violation of law, and asks for a judgment restraining them from continuing their illegal practices. They can not object to the suit proceeding because parties whom

they claim are interested in their unlawful conduct are not before the Court. No one has the right to say that the unlawful conduct of another shall be permitted to continue because he has an interest in it. The acts complained of are illegal, and the Government has an indubitable right to have defendants restrained from their continuance. This was all brought out very clearly by Judge Lanning in the case of *U. S.* v. *Du Pont de Nemours* (188 Fed. 127).

Speaking for the Circuit Court of Appeals, he said (153):

> We do not propose by our decree to deal with titles to property. Our power is defined in the fourth section of the Anti-Trust Act. That section invests us "with jurisdiction to prevent and restrain violations" of the Act. The same section provides that the petition may contain a prayer that the violation of law, therein alleged, "shall be enjoined or otherwise prohibited." It is our purpose, as it is our duty, to exert the power thus conferred on us to the extent necessary to "prevent and restrain" further violations of the act. In other words, *the relief we can give in this proceeding is preventive and injunctive only.* If our decree, limited to that purpose, shall *necessitate* a *discontinuance* of *present business methods,* it is *only because those methods are illegal.*

Again (155):

> We have not overlooked the motion of the defendants to dismiss the petition for *want* of *necessary* parties. It appears that certain of the defendant corporations have outstanding

> bonds secured by mortgages or trust deeds, held by trust companies, who are not defendants. As already stated, *this suit* is not designed, primarily, to deal with or dispose of *property* rights. We see no reason for bringing in mortgage or other creditors. [Italics ours.]

If "mortgage or other creditors" were not necessary parties in that case, neither are the lessees here. This suit is not designed to deal with any questions that may arise between the defendants and their lessees concerning the leases. It has to do alone with the enforcement of a public statute which defendants have violated.

VII.

STATEMENTS BY SHOE MANUFACTURERS OF THE REASONS WHY THEY DID NOT BUY INDEPENDENT MACHINES WERE ADMISSIBLE.

There is considerable evidence in the record consisting of statements made by shoe manufacturers to the representatives of independent shoe machinery dealers to the effect that they would like to trade with such dealers but could not do so because of the tying clauses in the United Company's leases to which they were parties. These statements were objected to on the ground that they were hearsay, but the objections were overruled and the testimony admitted. This was correct. (*Lawlor* v. *Loewe*, 235 U. S. 522; *Wigmore on Evidence*, Sec. 1729; *Casey* v. *Cincinnati Typographical Union*, 45 Fed. 135, 146, 147; *Elmer* v. *Fessenden*, 151 Mass., 359, 361.)

VIII.

LETTERS PATENT DO NOT JUSTIFY ACTS OTHERWISE ILLEGAL UNDER THE SHERMAN ACT.

A. CERTAIN RIGHTS NOT CONFERRED BY THE PATENT LAW.

The answer of defendant, the United Shoe Machinery Company of New Jersey, the principal operating company, with respect to its alleged rights under letters patent, says:

> If this defendant is engaged in interstate trade and commerce, which it denies, and has any monopoly of such trade or commerce, which it denies, *then this defendant says any such monopoly is a valid and legal monopoly of such trade or commerce derived under and pursuant to and coextensive with letters patent of the United States or of foreign countries, owned by it.* [Italics ours.] (R. I, 1045.)

It seems to be upon this defense that defendants chiefly rely. But we submit that there is no authority under the patent laws or in the decisions of the courts which sustains their contention.

> The right to make, use, and sell an invented article is not derived from the patent law. This right existed before and without the passage of the law, and was always the right of an inventor. The act secured to the inventor the exclusive right to make, use, and vend the thing patented, and consequently to prevent others from exercising like privileges without the consent of the patentee. *Bauer* v. *O'Donnell*, 229 U. S. 1. (See also *Bloomer* v. *McQuewan*, 14 How. 539, 549; *Continental Paper Bag Co.* v. *Eastern Paper Bag Co.*, 210

U. S. 405, 425; *Blount* v. *Yale & Towne Mfg. Co.*, 166 Fed. 555.)

The right to contract concerning the patent is not derived from the patent itself, but from the general law, and is governed by that law. *Pope Manufacturing Co.* v. *Gormully*, 144 U. S. 224; *State* v. *Bell Telephone Co.*, 23 Fed. 539; *State* v. *Delaware etc. Tel. Co.*, 47 Fed. 633; *Delaware, etc., Tel. Co.* v. *Postal Telegraph Co.*, 50 Fed. 677 (affirming 47 Fed. 633); *Heaton Peninsular Button-Fastener Co.* v. *Eureka Specialty Co.*, 77 Fed. 288; *Strait* v. *National Harrow Co.*, 18 N. Y. Supp. 224. *Opinion of the Justices*, 193 Mass. 605.

Thus, in *Pope* v. *Gormully, supra*, it was held that an agreement not to contest the validity of certain patents of the licensor, in consideration of a license to use certain other patents, is unenforceable.

Again, it was held in the three telephone cases, *supra*, that the holder of telephone patents could not lawfully impose in its licenses to subsidiary companies a condition that telephone service should not be furnished to any telegraph company except the Western Union Company, because such a condition violated the common-law duty of the licensee to serve all alike. The principle is thus stated by Wales, J., in *State* v. *Delaware, etc.*, 47 Fed. 633, 636:

> The conclusion drawn from an examination of these cases is that the patent laws give to the patentee a monopoly in his invention, and afford him protection in its proper and legitimate employment; but that they do not authorize him to employ it for a purpose or

in a manner that may be *forbidden to all other persons in the use of their unpatented property or discoveries.* [Italics ours.]

In the *State of Missouri, etc.*, v. *Bell Telephone Company*, 23 Fed., 539, Brewer, J., said (540):

> I believe fully in the sacredness of property; but I think all property stands upon an equal basis, whether that property consists of gold dollars in your pocket, real estate, or the ownership of a patent. There is no peculiar sanctity hovering over or attaching to the ownership of a patent. It is simply a property right, to be protected as such. Starting from that as a basis, while every property owner may determine for himself to what he will devote his property, yet the moment he puts that property into what I perhaps may, for lack of a better expression, define as the channels of commerce, that moment he subjects that property to the laws which control commercial transactions.

Similarly, in *Heaton-Peninsular Button-Fastener Co.* v. *Eureka Specialty Co.*, 77 Fed. 288, *supra*, Lurton, J., said (292–293):

> We are not at all prepared to say that there are no limitations upon a patentee's power of contract with reference to the use of his invention by others. *The property right of a patentee is, after all, but a property right, and subject, as is all other property, to the general law of the land.* We may also concede that contracts respecting the use of inventions and discoveries are, like all other contracts, sub-

> ject to the limitations imposed by definite principles of public policy. [Italics ours.]

In the same case the court continued thus (293):

> The patentees were under no obligation to license the use of their inventions by any public telephone company. Having done so, however, they were not at liberty to place restraints upon such a public corporation which would disable it from the discharge of all the duties imposed upon companies engaged in the discharge of duties subject to regulation by law. * * * Neither the patentee, nor the machine involving his invention, nor a license for use, can be exempted from the liabilities and regulations which, in the public interest, attach to all persons and property under the general law of the land.

Again, it was held in *Strait* v. *National Harrow Co.*, *supra*, that restrictive agreements extending 50 years beyond the life of the patent are invalid, though entered into in consideration of a license to use the patented invention.

In the same way, in the *Opinion of the Justices*, 193 Mass. 605, it was held that the State had the power to pass a statute prohibiting the owner of patented machinery to embody in leases thereof a condition that the lessee should procure other machinery from the lessor. That opinion was given by the Supreme Judicial Court of Massachusetts to the State Senate upon the question of the constitutionality of a proposed act "To regulate the lease and sale of ma-

chinery, tools, implements, and appliances" (St. 1907, c. 469,—Mass.).

The justices after quoting from the decision of Mr. Justice Harlan in *Patterson* v. *Kentucky*, 97 U. S. 501, with respect to property rights of patentees or assignees, went on to say (p. 610):

> We think also that it is manifest that not every right which in the absence of legislative prohibition can be by contract annexed to the assignment of a patent right, or to a license given thereunder, or to the sale or lease of a patented machine, is therefore to be said to be necessarily incident to the full exercise of the right secured by the patent.

The distinction between the right to exclude others from making, using, or selling the invention and the right to contract with respect to the invention is clear. The right to exclude is derived from the patent. That is the only right which the patent confers. The right to contract is derived from the general law. The patentee had it before he took out the patent. (*Brown* v. *Shannon*, 20 How. 55; *Hartell* v. *Tighlman*, 95 U. S. 547; *Wilson* v. *Sandford*, 10 How. 99; *Albright* v. *Teas*, 106 U. S. 613; *Dale Tile Mfg. Co.* v. *Hyatt*, 125 U. S. 46.) He would still have it if he had never obtained the patent. Clearly, therefore, it is not derived from or dependent upon the patent. Therefore since the right to contract is derived from the general law, the validity of the contracts so made must depend upon that law. But, *if the validity of such contracts is*

determined by the general law, they must be subject to the Sherman Act, which is a part of that law.

B. PATENTS CONFER NO RIGHT ON PATENTEES OR ASSIGNEES ENGAGED IN INTERSTATE TRADE AND COMMERCE TO COMBINE TO RESTRAIN OR MONOPOLIZE SUCH TRADE AND COMMERCE.

The cases on this point are not numerous and we shall refer briefly to each.

In *National Harrow Co.* v. *Hench et al.*, 76 Fed., 667, Circuit Judge Acheson, holding the Harrow Co. to be an illegal combination, said (p. 669):

> It is true that a patentee has the exclusive control of his invention during the life of the patent. He may practice the invention or not, as he sees fit, and he may grant to others licenses upon his own terms. But where, as was the case here, a large number of independent manufacturing concerns are engaged in making and selling, under different patents and in various forms, an extensively used article, competition between them is the natural and inevitable result, and thereby the public interest is promoted. Therefore, a combination between such manufacturers, which imposes a widespread restraint upon the trade, and destroys competition, is as injurious to the community, and as obnoxious to sound public policy, as if the confederates were dealing in unpatented articles. * * * To sanction such a result, because accomplished by a combination of patentees would be, I think, to pervert the patent laws. * * * I am constrained to regard the license contracts sued on as part of an illegal combination and in unwarrantable restraint of trade.

Plaintiff appealed to the Circuit Court of Appeals for the Third Circuit, 83 Fed. 36, where the judgment below was affirmed. On the question of illegal combination the appellate court said (p. 38):

> The fact that the property involved is covered by letters patent is urged as a justification; but we do not see how any importance can be attributed to this fact. Patents confer a monopoly as respects the property covered by them, but they confer no right upon the owners of several distinct patents to combine for the purpose of restraining competition and trade. Patented property does not differ in this respect from any other. The fact that one patentee may possess himself of several patents, and thus increase his monopoly, affords no support for an argument in favor of a combination by several distinct owners of such property to restrain manufacture, control sales, and enhance prices. Such combinations are conspiracies against the public interests and abuses of patent privileges. The object of these privileges is to promote the public benefit, as well as to reward inventors. The suggestion that the contract is justified by the situation of the parties—their *exposure to litigation*—is entitled to *no* greater weight. Patentees may compose their differences, *as* the owners of *other* property may, but they can *not* make the occasion an excuse, or cloak for the creation of monopolies to the public disadvantage. We do not see anything to distinguish this case, in principle, from *Nester* v. *Brewing Co.*, 161 Pa. St. 473; 29 Atl. 102; *Carbon Co.*

> v. *McMillin*, 119 N. Y. 46; 23 N. E. 530; *Morris Run Coal Co.* v. *Barclay Coal Co.*, 68 Pa. St. 173; *Distilling & Cattle Feeding Co.* v. *People* (Ill. Sup.). 41 N. E. 188; *Strait* v. *Harrow Co.* (Sup.), 18 N. Y. Supp. 233. [Italics ours.]

The italicized part is especially pertinent in view of the contention of the defendants that many of their illegal acquisitions were justified by the fact, as claimed by them, that they were made to avoid litigation (*supra*, pp. 43, 63, 120).

There is nothing in *Bement* v. *National Harrow Co.*, 186 U. S. 70, that is opposed to our position. In that case there was no proof that the contract involved was a contract and combination in violation of the Anti-Trust Law, and because of this the court refused to say that it was illegal. This was very clearly pointed out in the *Standard Sanitary Case*, 226 U. S. 20, where the court said (48):

> There was a contention in that case [Bement case] that the contract of the National Harrow Company with Bement & Sons was part of a contract and combination with many other companies and constituted a violation of the Sherman law, *but the fact was not established and the case was treated as one between the particular parties, the one granting and other receiving a right to use a patented article with conditions suitable to protect such use and secure its benefits.* [Italics ours.]

In Blount Manufacturing Company v. *Yale & Towne Manufacturing Company*, 166 Fed. 555, the Court said (557):

> The monopoly granted by letters patent is of a particular invention. Devices thus protected by patents are as a matter of fact in commercial competition with both patented and unpatented devices. A contract whereby the manufacturers of two independent patented inventions agree not to compete in the same commercial field deprives the public of the benefits of competition, and creates a restraint of trade which results, not from the granting of letters patent, but from agreement. While the monopoly of the patented articles is not increased, the monopoly of the commercial field is increased by the "unified tactics" as to prices.
>
> (562) Combinations between owners of *independent patents*, whereby, as a part of a plan to monopolize the commercial field, competition is eliminated, *are* within the Sherman Act, for the reason that the restraint of trade or monopoly arises from *combination*, and *not* from the exercise of rights granted by letters patent. As by the terms of the contracts under consideration the owners of *distinct patents* each agreed to restrain its own interstate trade, I am of the opinion that the contracts are in these particulars obnoxious to the Sherman Anti-trust Act. [Italics ours.]

That case is supported and supplemented by *United States* v. *Standard Sanitary Mfg. Co.*, 191 Fed. 172. The Court (three Judges sitting) said, through Rose, J. (190):

> A patentee is as much subject to the laws of the land as is any other man * * *. It [a

> patent] does not give a right to sell indulgences to violate the law of the land, be it the Sherman Law or another.

Continuing, the Court observed:

> A patentee who monopolizes his invention breaks no law. He who uses his property right to exclude others from the making, selling, or using his invention for the purpose and with the effect of making a combination to restrain trade in something from which his patent gives him no right to exclude others, does break the law. He breaks it precisely as the individual defendants in the Standard Oil and American Tobacco Companies broke it. They had the same right to use their brains, their capital, and their credit as they thought best, as he had to use his right to exclude all others from making, using, or selling automatic dredgers. He was subject to the same limitations as they were. They could not lawfully use their brains, their money, and their credit to restrain trade in petroleum and tobacco. He can not use his patent rights to restrain trade in unpatented bathtubs.

The judgment of the Circuit Court in that case was affirmed by this Court (226 U. S. 20, *supra*) in an opinion by Mr. Justice McKenna. After pointing out the distinction between that case and the *Bement* case as above noticed, he said:

> The agreements in the case at bar combined the manufacturers and jobbers of enameled ware very much to the same purpose and results as the association of manufacturers and dealers

> in tiles combined them in *Montague & Co.* v. *Lowry*, 193 U. S. 38, which combination was condemned by this court as offending the Sherman law. The added element of the patent in the case at bar can not confer immunity from a like condemnation for the reasons we have stated. * * * *Rights conferred by patents are indeed very definite and extensive, but they do not give any more than other rights an universal license against positive prohibitions. The Sherman law is a limitation of rights, rights which may be pushed to evil consequences and therefore restrained.* [Italics ours.]

The case of *Straus et al.* v. *American Publishers' Association et al.*, 231 U. S. 222, involved the question as to whether or not the copyright laws protected an agreement made by the defendants restricting the sale, price, etc., of copyrighted books, in violation of the Sherman Act. In it the foregoing language of Mr. Justice McKenna was quoted with approval, and then the Court observed:

> So, in the present case, it can not be successfully contended that the monopoly of a copyright is in this respect any more extensive than that secured under the patent law. No more than the patent statute was the copyright act intended to authorize agreements in unlawful restraint of trade and tending to monopoly, in violation of the specific terms of the Sherman law, which is broadly designed to reach all combinations in unlawful restraint of trade and tending because of the agree-

> ments or combinations entered into, to build up and perpetuate monopolies. * * *

To the same effect are *Virtue* v. *Creamery Package Co.*, 227 U. S. 8; *International Harvester Co.* v. *Missouri*, 234 U. S. 199, 209; and *U. S.* v. *Pacific and Arctic Co.*, 228 U. S. 87, 104.

United States v. *Winslow*, 227 U. S. 202, *supra*, contains no statement that owners of competing patents have a right to combine and no expression of any opinion upon a state of facts like those here in evidence.

Nor is *Henry et al.* v. *Dick*, 224 U. S. 1, applicable to the case at bar. A careful examination of that decision will show that it rests on ground fundamentally distinct from it.

The only restriction placed upon the purchaser of the mimeograph machine in that case was thus expressed (p. 11):

> This machine is sold by the A. B. Dick Co., with the license restriction that it may be used only with the stencil paper, ink, and other supplies made by A. B. Dick Company, Chicago, U. S. A.

As construed by this Court, the restriction is limited to "supplies necessary for" the operation of the machine. We quote from the opinion (34):

> For the purpose of testing the consequence of a ruling which will support the lawfulness of a sale of a patented machine for use only in connection with supplies *necessary for its operation* bought from the patentee, many fanciful suggestions of conditions which might

> be imposed by a patentee have been pressed upon us. [Italics ours.]

In the present case, the restrictions which the defendants impose go far beyond the use of its machines "only in connection with supplies necessary for (their) operation." They apply to the use of entirely different and independent machines which have no mechanical or other necessary connection with the machine as to which the alleged limitation of use is insisted upon by the defendants. (*Supra*, p. 14, 204–205.)

There are other differences, equally fundamental, between the *Dick* case and that now before the Court. In the *Dick* case, there was but one contract involved, a contract between the patentee and Miss Skou. In this case we have a vast number of contracts with a great number of people embodying a comprehensive system of restrictions. It might well be said that one contract such as existed in the *Dick* case would not be a violation of the Sherman Act, while a large number of like contracts with many persons as in the instant case, would be.

As the Court said in the *La Chapelle* case (212 Mass. 467, *supra*, at p. 485):

> A single contract for the employment in labor of one person is far away from interstate commerce. * * * As a single incident it may be harmless. As an integral part of an unlawful scheme for monopolizing commerce between the States which can not be perpetu-

> ated successfully without contracts of like tenor with all practicing a similar craft, it partakes of the illegality of the scheme.

This distinction was recognized and enforced in the *Bement* case, 186 U. S. 75, upon which the Court seemed to greatly rely in the *Dick* case. In the former there were but two contracts. Speaking of them, Mr. Justice Peckham observed (87):

> There is no finding by the referee that this agreement was ever signed by anyone other than the parties to this action or that any other person received the licenses from and made contracts with the plaintiffs similar to the ones entered into between these parties. * * * In the absence of any finding as to the escrow agreement having been signed by others, it must be regarded as unimportant, and we are brought back to the question whether these contracts or licenses, A and B, irrespective of any contracts not found by the referee as in any way connected with or forming a part thereof, are void as a violation of the Act of Congress (Anti-Trust Act).

He reached the conclusion they were not, but for the obvious reason that within themselves they were not sufficient to constitute an unreasonable restraint of trade.

This Court pointed out and emphasized the same distinction in the *Standard Sanitary Case*, 226 U. S. 20, where it said (48):

> There was a contention in that case that the contract of the National Harrow Company with Bement & Sons was part of a contract and

> combination with many other companies and constituted a violation of the Sherman law, *but the fact was not established, and the case was treated as one between the particular parties, the one granting and the other receiving a right to use a patented article with conditions suitable to protect such use and secure its benefits,* * * * and there is nothing in *Henry* v. *A. B. Dick Co.*, 224 U. S. 1, which contravenes the views herein expressed. [Italics ours.]

Even the *Dick* case recognizes that in certain circumstances the State and Nation may impose restrictions upon the rights of a patentee. It says (29):

> That there are limitations upon the right of vending and using a patented machine may be conceded. Thus, if the thing patented belong to a class of things which on account of their inherent danger to the public safety or health, can not be sold or used because prohibited by an exertion of the police power of a state, they will not be immune to such a law because patented.

If the state may impose restrictions for the reasons indicated *a fortiori* so also may the Nation where the public good demands it.

In *Bauer & Cie* v. *O'Donnell*, 229 U. S. 1, the right of a patentee to limit the price at which the vendee might dispose of a patented article is denied and attention is called to the narrowness of the facts in the *Dick* case and its scope is limited to them (pp. 14–16).

The precise question which we have here was before the Supreme Judicial Court of Massachusetts in the

La Chapelle case *supra*, p. 220. There the Court observed:

> Therefore, the further question arises whether a combination among several patentees of competing devices is within the inhibition of the statute.

Answering this, after referring to all the decisions of this Court upon the subject, including the *Dick* case, it was said (482–3):

> No word or phrase in the Sherman Anti-Trust Act reveals an intent to exempt the owners of patents from its sweeping provisions against monopolistic combination. We are unable to perceive any underlying reason for supposing that by implication growing out of economic or business conditions such an exemption was intended. There appears to be no inherent natural distinction between owners of patents and owners of oil which would justify the application of the statute to one and not to the other. The conclusion seems to follow that the comprehensive condemnation of the act against every person who monopolizes interstate commerce by combination with others includes holders of patents as well as others.

In *United States* v. *Motion Picture Patents Company*, 225 Fed. 800, a very recent decision, the court discusses at great length the question as to whether or not owners of patents may combine and thereby restrain and monopolize trade without violating the Anti-Trust Law, and he reaches the conclusion, after careful examination of all the decisions of this court

upon the question, that they may not. In that connection the Court says:

> The distinction sought to be pointed out is that while the owner of a patent on a plow covering the handles or beam might acquire or join with the owners of patents covering the moldboard or share or other parts of the plow for the protection of the patented rights of all and thereby incidentally secure an enlarged part of the trade in plows, the judgment would refuse to sanction a combination between the owners of patented plows, patented harrows, patented reapers and binders * * * for the purpose of monopolizing the whole trade in the products of agriculture if the direct end first proposed was to unduly and unreasonably restrain trade as a means to the final purpose of monopolizing. The ownership of the patents in such a case surely could not be accepted as a defense to the charge of unlawful combination. (810)

We can not end our discussion of this point better than by repeating the language of Mr. Justice McKenna in the *Standard Sanitary* case, *supra* (458):

> Rights conferred by patents are indeed very definite and extensive, but they do not give any more than other rights an universal license against positive prohibitions. The Sherman Act is a limitation of rights, rights which may be pushed to evil consequences and therefore restrained.

IX.

THE ALLEGED PATENT INFRINGEMENTS DO NOT REMOVE THE ILLEGALITY OF THE DEFENDANTS' ACQUISITIONS.

A. THE CHALLENGED PATENTS WERE PRESUMPTIVELY VALID.

The purchase of the Eppler Company, the Plant interests, and other acquisitions is sought to be justified by the defendants upon the ground that patented machines owned by them infringed machines belonging to the United Company. The defendants have attempted to prove such infringements. We deny that this may be done in an action under the Anti-Trust Act, because it would constitute a collateral attack upon the novelty and utility of the patent. Every patent issued is *prima facie* valid. It represents the judgment of the patent officials in a matter concerning which Congress has conferred upon them the exclusive right to decide in the first instance, and this judgment can not be reviewed or set aside except in the manner provided by statute.

In *Smelting Co.* v. *Kemp*, 104 U. S. 636, speaking of the issuance of a patent by the officers of the Land Department, the court said (640–641):

> In that respect they exercise a judicial function and, therefore, it has been held in various instances by this court that their judgment as to matters of fact properly determinable by them is conclusive when brought to notice in a collateral proceeding.

In *Boyd* v. *Jaynesville Hay Tool Co.*, 158 U. S. 260, the following language from Mr. Justice Strong in a former case was approved (261):

> The grant of the letters patent was virtually a decision of the patent office that there is a substantial difference between the inventions. It raises the *presumption* that, according to the claims of the later patentees, this invention is not an infringement of the earlier patent. [Italics ours.]

In *Lehnbeuter* v. *Holthaus*, 105 U. S. 94, 96, it was said:

> The patent is *prima facie* evidence of both novelty and utility.

See also *Barden* v. *Northern Pacific R. R. Co.*, 154 U. S. 288, 327; *U. S.* v. *Motion Pictures Patents Co.*, 225 Fed. 800, 804; *Marsh* v. *Nichols, etc., Co.*, 128 U. S. 605, 610.

B. THEIR VALIDITY MAY BE CHALLENGED ONLY IN AN APPEAL OR AN ACTION FOR INFRINGEMENT.

Congress has provided for appeals in certain cases from the decisions of the patent officials to the Supreme Court of the District of Columbia. (R. S. Sec. 4911–4914.) It has also provided that the validity of a patent may be attacked for certain reasons in a collateral proceeding. (R. S. Sec. 4920.) But this attack may be made only "*in an action for infringement*" and in accordance with the provisions of that Act.

Rubber Co. v. *Goodyear*, 9 Wall. 788, was an action for infringement. The court was asked to go behind the decision of the Commissioner of Patents and inquire into the frauds by which it was alleged that

a patent extension was procured (796). It refused to do so on the ground that this defense was not included amongst those that might be presented under the act of 1836, which was the statute then in force with respect to the grounds upon which a patent could be collaterally attacked. After stating that no defense could be entertained in a collateral proceeding *except that provided for in the statute*, the court said, quoting from Chancellor Kent (797):

> Unless letters patent are absolutely void on the face of them, or the issuing of them was without authority or was prohibited by statute, they can only be avoided in a regular course of pleading in which the fraud, irregularity or mistake is *regularly* put in issue. [Italics ours.]

In *Mahn* v. *Harwood*, 112 U. S. 354, 358, we read:

> It was not intended then, and is not now, to question the conclusiveness, in suits for infringements of patents, of the decisions of the Commissioner on questions of fact necessary to be decided before issuing such patents, except as the *statute* gives *specific* defenses in that regard. [Italics ours.]

In *Marsh* v. *Nichols, Shepard & Co.*, 128 U. S. 605, Mr. Justice Field, speaking for this court said (610):

> It is undoubtedly true, as a general rule, that a patent of the United States, whether for land or for an invention, can be attacked for defects, not apparent on its face, only by *regular* proceedings instituted for *that purpose*, and is not open to collateral attack except

> where *specially* provided by statute. [Italics ours.]

Continuing, he observed:

> In such cases the impeachment must be by pleadings setting up the *specific* acts, which it is alleged, vitiate and defeat the instrument. [Italics ours.]

We have no such pleading in this case.

Besides, Section 4920 R. S. requires the party who desires to avail himself in a collateral proceeding of the defenses enumerated therein, to give notice in writing thirty days before the trial of the defenses relied upon. That was not done in the case at bar and this alone would, under the authority of *Eureka Co.* v. *Bailey Company*, 11 Wall. 488, 492, prevent the defendants from availing themselves of the defenses.

This court has said in *United States* v. *Bell Telephone Co.*, 167 U. S. 224, at page 269, that courts of the United States sitting as courts of equity could not—

> entertain jurisdiction of a suit by the United States to set aside a patent for an invention on the mere ground of error of judgment on the part of the patent officials. That would be an attempt on the part of the courts in collateral attack to exercise an appellate jurisdiction over the decisions of the patent office although no appellate jurisdiction has been by the statutes conferred.

Why? Manifestly because suit by the United States would not be "an action for infringement."

If it was, the judgment of the patent officials in the respect mentioned could be attacked collaterally under Section 4920 of the Revised Statutes, *supra*.

Congress has, according to this court in that case, given to the patent office "exclusive jurisdiction in the first instance" over all questions of "novelty and utility" and "has specifically provided under what circumstances its decisions may be reviewed either *collaterally* or by appeal." (267) [Italics ours.]

In that case one of the contentions of the Government was that a prior patent covered the same invention covered by the subsequent one and therefore that the latter was invalid. The court held that the Government could not present such a question in the case then before the court because that question had been determined by the patent office (264), and that if presented at all it must be done in a suit brought by an *individual* for infringement under Section 4920, R. S. *supra*.

The meaning of this decision, as we read it, is that the contention of the Government being in the nature of a collateral attack upon the validity of the patent, the point could be presented *only* "in an action for infringement." The action at bar not being one for infringement, the validity of the patents can not be drawn in question—all must be treated as valid.

If the law were otherwise it would be very unfortunate, because it would greatly burden the administration of the Anti-Trust statute. In this case it would be necessary for the court to decide many hun-

dred patent claims before it could determine whether or not the Sherman Act had been violated. The patent expert, Howard, says that with respect to the Plant purchase alone, the number of patents would be 132 and the number of claims would be 708. (R. I, 800, l. 5.) The total number involved in all the acquisitions would be, of course, much greater.

C. WHETHER THE PATENTED MACHINES WHICH WERE ACQUIRED INFRINGED PATENTED MACHINES OWNED BY THE UNITED COMPANY IS IMMATERIAL FOR ANOTHER REASON.

There was actual and vigorous competition between the companies owning the machines which the United Company claims infringed machines belonging to it. That competition was suppressed by the acquisition. The Anti-Trust statute, it appears, makes no distinction between rightful or wrongful interstate trade. It was so held by the decision of the Circuit Court of Appeals for the 6th Circuit in *Patterson* v. *United States*, 222 Fed. 599, in which Mr. Justice Day concurred.

The lower Court had rejected certain evidence offered to prove that the purchasing corporation owned unexpired patents covering the machines made by 16 competitors whom it bought out. This evidence was offered for the purpose, as here, of showing that in acquiring the competitors the corporation did not violate the Anti-Trust Act. The court of appeals in sustaining the action of the lower court said of the Sherman Act (646):

> It includes every conspiracy in restraint of interstate trade or commerce. It is not a

question whether it is *rightful or wrongful interstate* trade or commerce that is covered by the conspiracy. It is *sufficient* that it is interstate trade or commerce. If two or more persons in no way interested in a patent were to conspire in restraint of interstate trade or commerce of an infringer, no one would contend that the conspiracy was not covered by the statute. *No more* is it open to contend that a *conspiracy* by a *patentee* and *another*, or by the officers and agents of a patentee in his interest, to restrain the interstate trade and commerce of an infringer is not within the statute. *The intent of the statute was to sweep away all conspiracies in restraint of such trade or commerce whatever their character may be. The statute respects the monopoly of the patentee.* It to no extent invades the rights conferred upon him. (Citing authorities.) But the right to conspire with another or others in his interest in restraint of the interstate trade or commerce covered by his patent *is not* one of the rights conferred thereby and such a conspiracy is within the statute. [Italics ours.]

CONCLUSION.

The Government has established then, that there existed vigorous competition between three of the Companies merged in the organization of the United Company, and that the fourth Company, which at any moment might have become a competitor, was taken in for the purpose and with the effect of furthering the unlawful scheme of the combination thus brought into being; that there was like competition

between the United Company and many of its subsequent acquisitions, and that such competition was especially vigorous and threatening with the Plant interests; that these acquisitions not only destroyed prevailing but also strangled potential competition both by combination and through the operation of restrictive contracts exacted from the vendors; and further that the defendants have adopted and are enforcing certain oppressive tying clauses in their leases which coerce the shoe manufacturers of the country into dealing with them on their own terms and force them to boycott independent shoe machinery manufacturers—clauses which have practically destroyed all competition in bottoming, eyeletting, and clicking machinery, and have eliminated every inducement to the birth of new competition. In the language of the House Judiciary Committee, those clauses form "one of the greatest instrumentalities of monopoly devised by the brain of man." Considering the entire record, the Government urges that the prayer of its petition in all respects should be granted.

Respectfully submitted.

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APPENDICES.

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APPENDIX "B."

ANALYSIS

OF

DEFENDANTS' EXHIBIT 337.

"LIST OF MACHINES

OFFERED BY

SHOE MACHINERY MANUFACTURERS AND DEALERS

OTHER THAN

UNITED SHOE MACHINERY COMPANY,

FOR PREPARING AND ATTACHING THE BOTTOMS TO THE UPPERS OF SHOES, EYELETTING MACHINES, DIEING-OUT MACHINES, AND CLICKING MACHINES,

NAMED IN

DEFENDANTS' EXHIBITS 311 TO 321, INCLUSIVE—CATALOGS, LETTERS, ADVERTISEMENTS, ETC."

APPENDIX B.

PART I.

PRINCIPAL MACHINES,

TOGETHER WITH

McKAY SEWING, CLICKING, AND EYELETTING MACHINES,

AND

PERCENTAGE OF EYELET OUTPUT CONTROL OF U. S. M. CO.

GOODYEAR DEPARTMENT.

WELT AND TURN SEWING MACHINE.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Under lease by U. S. M. Co., on Mar. 1, 1911.	2,527	.....	Pltffs. Ex. 163, IV, 1125.....	

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Hamel Shoe Mchy. Co... Lynn & Haverhill, Mass.	86	Hamel (R. I, 326, l. 37).	Pltffs. Ex. 159, IV, 1113.... Defts. Ex. 321, p. 178C.	Total—all turn stitchers—marketed by Duplessis Shoe Mchy. Co.—a defunct concern and its successors, C. A. Hamel and Hamel Shoe Mchy. Co., of which 71 were sold by Duplessis Company, 6 by C. A. Hamel, and 9 by Hamel Shoe Mchy. Co. Of the 71 sold by the Duplessis Company 40 went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines. Defts. Ex. 321, reference.—Note by U. S. M. Co. representative that he has seen a "Duplessis Welt Sewing Machine" in operation in a factory.
Haverhill Shoe Mchy. Co Haverhill, Mass.	56	Webster (R. I, 292, l. 8).	Pltffs. Ex. 161, IV, 1118..... Dfts. Ex. 321, pp. 7C, 5A, 95C.	In use—June, 1913—by shoe manufacturers. Marketed since 1910. Defts. Ex. 321, reference.—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, and notation in sale list of its machines—June, 1913. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912. Also note by Haverhill Company to U. S. M. Co. that it can furnish this machine.
R. H. Long Mchy. Co.... So. Framingham, Mass.	0	Doidge (R. I, 344, l. 17; 345, l. 15; 346, l. 614).	..... Defts. Ex. 321, p. 56B.	Three Duplessis machines bought and resold—two to shoe manufacturers and one to repair man. None manufactured by company prior to June, 1913. Although listed in catalog, witness Doidge explained that not all so listed were manufactured, but that it was the intention to do so. Defts. Ex. 321, reference—Catalog of Long Company.
Boylston Mfg. Co..... Boston, Mass.	0	Maloy (R. I, 301, l. 23; 302, l. 16, 36).	..... Defts. Ex. 321, p. 192E.	Not included among machines specified by witness Maloy, nor in catalog of company. Defts. Ex. 321, reference.—Note by U. S. M. Co. representative that he has reason to believe this company manufactures this machine.

WELT OUTSOLE STITCHER.

Under lease by U. S. M. Co., on Mar. 1, 1911.	2,676	.....	Pltffs. Ex. 163, IV, 1125.....	
Boylston Mfg. Co..... Boston, Mass.	0	Maloy (R. I, 301, l. 23; 302, l. 16, 36.)	..... Defts. Ex. 321, p. 192B.....	Not included among machines specified by witness Maloy, nor in catalog of company. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has reason to believe this company manufactures this machine.

GOODYEAR DEPARTMENT—Continued.

WELT OUTSOLE STITCHER—Continued.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Landis Machine Co. St. Louis, Mo.		McElroy (R. I, 923, l. 5)		No representative of company called.
			Defts. Ex. 321, p. 170	Witness McElroy, of St. Louis, Mo., knew this company to be engaged in manufacturing harness machinery, but never knew it to manufacture shoe machinery. Defts. Ex. 321, reference—Catalog entitled "Landis Shoe Repair Machinery." Same reference used under "Fairstitching Machine" classification.
Larsen Mchy. Co. Brooklyn, N. Y.		Wirths (R. I, 928, l. 6)		None marketed among shoe manufacturers.
			Defts. Ex. 316, p. 159	Defts. Ex. 316, reference—Catalog of C. V. Engstrom Company containing reference to this machine. Same reference used under "Fairstitching machine" classification.
C. V. Engstrom Co Peoria, Ill.				No representative of company called.
			Defts. Ex. 316, p. 161A	Defts. Ex. 316, reference—Catalog of company containing reference to an "Automatic Stitcher." Same reference used under "Fairstitching Machine" classification.
Jas. Clark Leather Co. St. Louis, Mo.		McElroy (R. I, 921, l. 29).		No representative of company called.
			Defts. Ex. 321, p. 161, (Cat. pp. 68-71).	Witness McElroy, of St. Louis, Mo., knew this company to be engaged in the shoe findings business and that it manufactured no shoe machinery. Defts. Ex. 321, reference—Announcement of Simplex Manufacturing Company in catalog of Clark Company, which shows that machine had not been marketed prior to issuance of same. Simplex Company not referred to elsewhere in record.
Union Lock Stitch Co. E. Boston, Mass.	400	Merrick (R. I, 199, l. 33, 37; 200, l. 18.		Approximate sales—4 curved needle and 350 to 400 straight-needle machines. Of latter type about 75 have been sold to shoe manufac-
			Defts. Ex. 321, pp. 44B, 5J.	

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				turers. Curved-needle machines marketed since May, 1910; straight-needle machines since 1906. Defts. Ex. 321, reference—Quotations to U. S. M. Co. Same reference used under "Fairstitching machine" classification.
Universal Shoe Mchy. Co. St. Louis, Mo.	.....	Johnson (R. I, 893, l. 38; 895, l. 10).	..... Defts. Ex. 321, pp. 7L, 95L	No representative of company called. Johnson, of Victor Shoe Mchy. Co. handled machinery for this company but never placed any. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, and notation in sale list of its machines—June, 1913. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912.
Victor Shoe Mchy. Co. Boston, Mass.	**32**	Johnson (R. I, 893, l. 23; 894, l. 6).	..... Defts. Ex. 321, p. 174D.	Machine marketed only since September, 1913, and none among lessees of U. S. M. Co. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has seen machine of this company in demonstration at its factory
R. H. Long Mchy. Co. So. Framingham, Mass.	**285**	Doidge (R. I, 344, l. 26)	..... Defts. Ex. 321, pp. 5I, 56A.	Of this total only three have been sold to shoe manufacturers. Defts. Ex. 321, reference—Note by Haverhill Shoe Mchy. Co. to U. S. M. Co., that it can furnish Long machines; also catalog of Long Company.
Hamel Shoe Mchy. Co. Lynn & Haverhill, Mass.	**41**	Hamel (R. I, 326, l. 36).	Pltffs. Ex. 159, IV, 1113..... Defts. Ex. 321, p. 193C.	Total marketed by Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co., of which 39 were sold by Duplessis Company. These went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines. No machine included as marketed by Hamel Shoe Mchy. Co. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has seen a Duplessis machine in operation in shoe factory.

METALLIC DEPARTMENT.

STANDARD SCREW MACHINE.

Under lease by U. S. M. Co., on Mar. 1, 1911.	**409**	.....	Defts. Ex. 228, V, 430	
Hamel Shoe Mchy. Co.	**1**	Hamel (R. I, 326, l. 50.)	.....	No reference under this classification in Defts. Ex. 337 to this testimony of Hamel.

METALLIC DEPARTMENT—Continued.

HEEL SLUGGING MACHINE.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Under lease by U. S. M. Co., on Mar. 1, 1911.	**1,878**	.....	Pltffs. Ex. 163, IV, 1125..... Defts. Ex. 228, V, 430.....	
Boylston Mfg. Co..... Boston, Mass.	**1**	Maloy (R. I, 301, l. 23; 302, l. 16.) Cavannaugh (R. I, 956, l. 19).	..... Defts. Ex. 321, p. 192C.....	Not included among machines specified by witness Maloy, nor in catalog of company. Machine noted was installed on trial in January, 1914. (Subsequent to death of Maloy.) Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has reason to believe this company manufactures this machine.
Hamel Shoe Mchy. Co... Lynn & Haverhill, Mass.	**22**	Hamel (R. I, 326, l. 31).	Pltffs. Ex. 159, IV, 1113.... Defts. Ex. 321, pp. 8Q, 95 N 2.	Total marketed by Duplessis Shoe Mchy. Co.—a defunct concern and its successors, C. A. Hamel and Hamel Shoe Mchy. Co., of which 17 were sold by Duplessis Company, 3 by C. A. Hamel, and 2 by Hamel Shoe Mchy. Co. Of the 17 sold by the Duplessis Company, 7 went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. Machines. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, and notation in sale list of its machines—June, 1913. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912.
R. H. Long Mchy. Co... So. Framingham, Mass.	**0**	Long (R. I, 232, l. 4 et seq., 272, l. 16). Doidge (R. I, 346, l. 5)	..... Defts. Ex. 321, p. 56K.	Not included among machines specified by witnesses Long and Doidge as previously manufactured, or on hand. Statement by Long shows none manufactured at date of June, 1913. Although listed in catalog, Doidge explained that not all machines so listed were manufactured, but that it was intention to do so. Defts. Ex. 321, reference—Catalog of Long Company.

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Under lease by U. S. M. Co., on Mar. 1, 1911.	**1,835**	.....	Pltffs. Ex. 163, IV, 1125..... Dfts. Ex. 228, V, 430.....	
Hamel Shoe Mchy. Co... Lynn & Haverhill, Mass.	**24**	Hamel (R. I, 326, l. 30).	Pltffs. Ex. 159, IV, 1113, 1114. Defts. Ex. 321, p. 172A.	Total marketed by Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co., of which 20 were sold by the Duplessis Company. Of these 15 went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co machines. Only 4 of the total have been sold by the Hamel Shoe Mchy. Co. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has seen a "Duplessis Loose Nailer" in operation in a shoe factory.
R. H. Long Mchy. Co... So. Framingham, Mass.	**0**	Long (R. I, 232, l. 4 et seq; 272, l. 16. Doidge (R. I, 346).	..... Defts. Ex. 321, p. 56J.	Not included among machines specified by witnesses Long and Doidge as previously manufactured or on hand. Statement by Long shows none manufactured at date of June, 1913. Although listed in catalog, Doidge explained that not all machines so listed were manufactured, but that it was intention to do so. Defts. Ex. 321, reference—Catalog of Long Company.
Universal Shoe Mchy. Co. St. Louis, Mo.	.....	Johnson (R. I, 893, l. 38).	..... Defts. Ex. 321, pp. 7H, 95P.	No representative of company called. Johnson, of Victor Shoe Mchy. Co., handled machinery for this company, but never placed any Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company and notation in sale list of its machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months, about 1912.
Victor Shoe Mchy. Co... Boston, Mass.	.....	Johnson (R. I, 894, l. 5, 27).	..... Defts. Ex. 321, p. 174A.	Adapted for repair trade only. Company started operations about January, 1911. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he had seen a "Tacking Machine" of this company in demonstration at its factory. Same reference used under "Tacking Machine" classification.

METALLIC DEPARTMENT—Continued.

TACKING MACHINE.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Under lease by U. S. M. Co., on Mar. 1, 1911.	3,488	.....	Pltffs. Ex. 163, IV, 1125, 1126.	Total represents: Metallic department 3065, lasting department 423.
Universal Shoe Mchy. Co. St. Louis, Mo.	.....	Johnson (R., I. 893, l. 38).	..... Defts. Ex. 321, pp. 88, 95I.	No representative of company called. Johnson, of Victor Shoe Mchy. Co. handled machinery for this company, but never placed any. Defts. Ex. 321, reference—Advertisement of "Clinching Machine" and same reference used under latter classification. Also notation for Universal "String Nailer" in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912.
Hamel Shoe Mchy. Co... Lynn & Haverhill, Mass.	6	Hamel (R., I, 326, l. 32).	Pltffs. Ex. 159, IV, 1113, 1114. Defts. Ex. 321, p. 193B.	All marketed by the Duplessis Shoe Mchy. Co.—a defunct concern—which preceded the Hamel Shoe Mchy. Co. by some years. These machines went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he had seen a "Duplessis Tacking Machine" in operation in a shoe factory.
Louis G. Freeman Co... Cincinnati, O.	.....	.....	..... Defts. Ex. 321, pp. 7A, 95A.	No representative of company called. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, and notation in sale list of its machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

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Victor Shoe Machy. Co. Boston, Mass.	.....	Johnson (R., I, 894, ls. 5, 27).	..... Defts. Ex. 321, p. 174A.	Adapted for repair trade only and known as a "Loose Nailing Machine." Company started operations about January, 1911. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he had seen a "Loose Nailing Machine" of this company in demonstration at its factory. Same reference used under "Loose Nailing Machine" classification.

HEELING DEPARTMENT.

HEELING MACHINE.

(ATTACHING HEELS.)

Under lease by U. S. M. Co., on Mar. 1, 1911.	**2,019**	.....	Pltffs. Ex. 163, IV, 1125..... Defts. Ex. 228, V, 430.....	Total represents: Bigelow 14, Wood Heel 9, National 10, American Lightning Nailing 978, McKay Automatic Heel Loading & Attaching 948, Rapid Nailing & Automatic (#1 & #2) 60.
R. H. Long Mchy. Co.... So. Framingham, Mass.	**6**	Doidge (R. I, 345, l. 42)	Defts. Ex. 321, p. 56Q.....	National heelers. All installed in Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines. Defts. Ex. 321, reference—Catalog of Long Company.
Haverhill Shoe Mchy. Co. Haverhill, Mass.	**12**	.....	Pltffs. Ex. 161, IV, 1118, 1120-1125. Defts. Ex. 321, pp. 8P, 5N...	In use—June, 1913—by shoe manufacturers. Marketed since about 1910. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912. Also note by Haverhill Company to U. S. M. Co. that it can supply this machine.

LASTING DEPARTMENT.

LASTING MACHINE.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Under lease by U. S. M. Co., on Mar. 1, 1911.	**7,496**	.....	Pltffs. Ex. 163, IV, 1125, 1126. Defts. Ex. 228, V, 430, 432.	Total represents: Hand method (four divisions), 3,854; Chase, 780; McKay & Copeland, 300; Ideal & Copeland (five divisions), 482; No. 5, 2,080.
R. H. Long Mchy. Co... So. Framingham, Mass.	**4**	Doidge (R. I, 344, l. 34).	Defts. Ex. 321, p. 5E.....	Three to Buffalo Shoe Company, not a lessee of U. S. M. Co.; one to Zion Coop. Merc. Ass'n, a hand-process concern mostly. Defts. Ex. 321, reference—Note by Haverhill Shoe Mchy. Co. to U. S. M. Co. that it can supply Long machine.
Boylston Mfg. Co..... Boston, Mass.	**1**	Maloy (R. I., 301, l. 23; 302, l. 16). Cavanaugh (R. I, 956, l. 8).	Defts. Ex. 321, p. 192A.....	Not included among machines specified by witness Maloy, nor in catalog of company. Machine noted was installed on trial in January, 1914 (subsequent to death of Maloy). Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has reason to believe this company manufactures this machine.
Louis G. Freeman Co.... Cincinnati, O.	**2**	McElroy (R. I, 190, l. 20).	Defts. Ex. 321, p. 7, A1, A2..	No representative of company called. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912. Witness McElroy stated that the only lasting machine used in the Non-Royalty Shoe Company which was procured in the United States was a trial machine of the Krentler Company—last manufacturers—Detroit, Mich. This had not been perfected and was not a commercial proposition. The Krentler Company—prior to 1913—had produced only two of these machines. Both of these were installed in the Non-Royalty Shoe Company, but only one was operated. The Louis G. Freeman Co. was the representative for the Krentler Company.

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PULLING OVER DEPARTMENT.

PULLING OVER MACHINE.

No competition in United States.

PEGGING DEPARTMENT.

PEGGING MACHINE.

No competition in United States.

MISCELLANEOUS.

McKAY SEWING MACHINE.

Under lease by U. S. M. Co., on Mar. 1, 1911.	898	.....	Pltffs. Ex. 163, IV, 1126..... Defts. Ex. 228, V, 430, 437.	
Shawmut Macby. Co.... Boston, Mass.	8	Emerson (R. I, 910, l. 23).	.....	Marketed, on trial, only since June, 1913. No reference to Defts. Ex. 321 shown in Defts. Ex. 337, V, 906. Not mentioned in list of company's machines shown in Defts. Ex. 336, V, 849.
Haverhill Supply Co.... Haverhill, Mass.	.....	.....	.....	No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in Defts. Ex. 336 nor elsewhere in record.
Louis G. Freeman Co.... Cincinnati, O.	.....	.....	.....	No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in list of company's machines shown in Defts. Ex. 336.
Edward E. Spencer & Co. New York, N. Y.	.....	Spencer (R. I, 884, l. 40; 885, l. 1).	.....	Not included among machines specified by witness Spencer as manufactured by company. Company in bankruptcy in 1912. Principal business had been in supplies rather than shoe machinery. Defts. Ex. 312—Catalog of company, printed in 1897.

MISCELLANEOUS—Continued.

McKAY SEWING MACHINE—Continued.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Manufacturers Supply Co. St. Louis, Mo.				No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in Defts. Ex. 336 nor elsewhere in record.
J. W. White & Co. Haverhill, Mass.				No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in Defts. Ex. 336 nor elsewhere in record.
Lynn Supply Co. Lynn, Mass.				No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in Defts. Ex. 336 nor elsewhere in record.
American Worsted Mchy. Co. Abington, Mass.		Hall (R. I, 953, l. 5, 20).	Defts. Ex. 321, p. 1K.	None manufactured from 1907 to 1914. Parts only handled. Defts. Ex. 321, reference—Quotation to U. S. M. Co.
Walter Pearson. Whitman, Mass.			Defts. Ex. 321, p. 23A.	No representative of company called. Defts. Ex. 321, reference—Quotation to U. S. M. Co., together with catalog of McKay machines, printed in 1896.

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CLICKING MACHINE.

Under lease by U. S. M. Co., on Mar. 1, 1911.	3,655	.....	Pltffs. Ex. 163, IV, 1126..... Defts. Ex. 228, V, 430, 435.	
Seelye Mfg. Co..... Boston, Mass.	.....	Seelye (R. I, 327, l. 28).	.....	Not referred to in testimony of witness Seelye.
			Defts. Ex. 321, p. 182.	Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has seen machine in operation in a shoe factory.
Parsons Mchy. Co..... Marlboro, Mass.	.....	.....	.....	No representative of company called.
			Defts. Ex. 321, p. 12B.	Defts. Ex. 321, reference—Quotation to U. S. M. Co. for "Upper Leather Cutter."

EYELETTING MACHINE.

Under lease by U. S. M. Co., on Mar. 1, 1911.	4,472	.....	Pltffs. Ex. 163, IV, 1126..... Defts. Ex. 228, V, 430, 433.	
American Worsted Mchy. Co. Abington, Mass.	150	Hall (R., I, 953, l. 11)..	.....	Approximate sales from 1907 to 1914 to shoe manufacturers and others.
			Defts. Ex. 321, p. 2 K, B, C, D.	Defts. Ex. 321, reference—Quotations to U. S. M. Co.
Geo. Knight & Co..... Brockton, Mass.	0	Knight (R., I, 902, l. 40).	.....	None manufactured since 1906.
			Defts. Ex. 321, p. 9 G.	Now manufactured by Peerless Mfg. Company. U. S. M. Co. never manufactured machines of "Gang" type. Defts. Ex. 321, reference—Quotation to U. S. M. Co., on "Power" and "Gang" machines. (See Peerless Mfg. Co.)
Peerless Mfg. Co..... Boston, Mass.	.....	Muther (R., I, 303, l. 3 et seq).	.....	Output not stated, but we may assume that if it was large enough to be significant it would have been stated by the defendants.
			Defts. Ex. 321, p. 67 A, F.	Loaned to eyelet customers. Defts. Ex. 321, reference—Advertisement of "Rapid" and "Gang" eyeletting machines. U. S. M. Co. never manufactured machines of "Gang" type. (See Geo. Knight & Co.)

MISCELLANEOUS—Continued.

EYELET MANUFACTURERS IN 1913.

(See Defts. Ex. 234, V, 530.)

Shoe Eyelet Production.	Millions per month.
Hughes Eyelet Company, Taunton, Mass	20
Scoville Manufacturing Company, Taunton, Mass	2
Atlas Tack Company, Fairhaven, Mass	200
Waterbury Brass Company, Waterbury, Conn	5
S. O. & C. Company, Ansonia, Conn	200
J. C. Rhodes Company, New Bedford, Mass	200
Rimmon Eyelet Company, Seymour, Conn	5
United Fast Color Eyelet Company	30
Total	662

Controlled by U. S. M. Co. (and allied interests).	
Hughes Eyelet Company (by Winslow personally)	20
S. O. & C. Company, Ansonia, Conn	200
J. C. Rhodes Company, New Bedford, Mass	200
Rimmon Eyelet Company, Seymour, Conn	5
United Fast Color Eyelet Company	30
Total	455
Output of Atlas Tack Company (corrected) (Donovan I, 959, l. 7)	50
Output of Scoville Mfg. Company	2
Output of Waterbury Brass Company	5
Total	57
Corrected total	512
Percentage controlled by United Shoe Machinery Company and allied interests per cent	89

NOTE.—Output of Atlas Tack Company and percentage controlled by U. S. M. Co. are approximate figures.

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APPENDIX "B."

PART II.

OTHER MACHINES.

WELT BEATING MACHINE.

BOYLSTON MFG. CO., Boston, Mass.

Not included in list specified by witness Maloy on pages 301 and 302, nor in catalog of company—page 302.

(Maloy, I, 301, l. 23; 302, l. 16.)

Defts.' Ex. 321. Reference: page 192, item D. Note by U. S. M. Co. representative that he has reason to believe the Boylston Co. manufactures this machine.

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.

Twenty-five machines manufactured and marketed in United States by Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co.

No division of sales shown in Pltff's Ex. 159, customers of Duplessis Co. and successors.

(Hamel, I, 326, l. 44.)

Defts.' Ex. 321. Reference: page 95, item G. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

HAVERHILL SHOE MCHY. CO., Haverhill, Mass.

None marketed since date of manufacture—May, 1913.

(Webster, I, 292, l. 30.)

Defts.' Ex. 321. Reference: page 5, item T. Haverhill Co. statement to U. S. M. Co. that it can furnish this machine.

R. H. LONG MCHY. CO., South Framingham, Mass.

None marketed prior to June, 1913.

Doidge explained that not all machines listed in catalog were manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, l. 16.)

Defts.' Ex. 321. Reference: page 56, item E. Notation for this machine in catalog of company.

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OUTSOLE BLOCKING MACHINE (cutting outsoles).

QUARMBY & HILLIKER, Lynn, Mass.

Twelve machines manufactured and marketed among shoe manufacturers—sometimes referred to as "sole cutters."

The manufacture of these machines has been discontinued.

(Hilliker, I, 929, l. 5.)

Defts.' Ex. 321. Reference: page 11, items A and B. Quotation to U. S. M. Co.

HEEL BUILDING MACHINE.

W. T. BOSWORTH, Brockton, Mass.

Machine manufactured by the Brockton Heel Co., which Bosworth represents.

This is sold or leased to shoe and heel manufacturers and is a measuring machine or device, rather than a heel building machine.

Manufacture of this machine commenced about January, 1914.

To Bosworth's knowledge the U. S. M. Co. builds no machine for performing a similar operation.

(Bosworth, I, 911, l. 22 et seq.)

Defts.' Ex. 321. Reference: page 43, item A. Quotation to U. S. M. Co. on "Log Building and Log Slicing Machines."

JAMES BOSTOCK & SONS, Brockton, Mass.

Approximately 100 machines per year have been sold during past 17 years to shoe and heel manufacturers. A fair proportion of these have been sold to the U. S. M. Co., which also manufactures a heel building machine, although not essentially the same as the Bostock machine.

(Bostock, I, 904, l. 24 et seq.)

Defts.' Ex. 321. Reference: page 21, item F. Quotation to U. S. M. Co.

FORTUNA MACHINE CO., New York, N. Y.

None manufactured since organization of this company in 1903.

This company intended to manufacture and market a heel-building machine invention of one Geiger. It did not prove commercially successful, however, and nothing further was done by the Fortuna Company.

(Diehl, I, 911, l. 1.)

Defts.' Ex. 321. Reference: page 79. Announcement by the company that a heel building machine will be exhibited at a shoe and leather fair.

W. J. Young Mchy. Co., Lynn, Mass.

Approximately 2,500 machines have been manufactured since about 1906, practically all of which were marketed in the United States. The majority of these machines were sold to shoe manufacturers, although this was not true during the earlier years of the sale of these machines.

(Young, I, 942, l. 27.)

Defts.' Ex. 321. Reference: page 62, item F. Advertisement of machine.

Geo. Knight & Co., Brockton, Mass.

None manufactured during the past 15 years.

(Knight, I, 902, l. 32.)

Defts.' Ex. 321. Reference: page 9, item H. Quotation to U. S. M. Co.

Parsons Mchy. Co., Marlboro, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 12, item C. Quotation to U. S. M. Co. on a "Pieced Heel Machine."

F. H. White & Co., So. Easton, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 46, item A. Quotation to U. S. M. Co. and catalog of the concern.

CEMENTING MACHINES (cementing taps for soles).

Universal Supply Co., Haverhill, Mass.

No representative of company called as a witness.

Witness Donnelly, who has been engaged in the shoe machinery business for the past 14 years, stated that he has never heard of this company.

(Donnelly, I, 943, l. 38; 944, l. 31.)

Defts.' Ex. 321. Reference: page 160. Letter offering machine for sale.

Hazen-Brown Co., Brockton, Mass.

None manufactured by this company itself, although these machines are manufactured for it. These are sold to the Cochituate Oilproof Company, which loans them free to

shoe manufacturers in connection with sale of a special cement known as "gumbo tap sticker."

(Hazen, I, 906, l. 14.)

Defts.' Ex. 321. Reference: page 158. Letter to the U. S. M. Co. explaining that these machines are loaned to shoe manufacturers buying "gumbo cement" and using nothing else in these machines.

BOSTON MACHINE WORKS, Lynn, Mass.

Approximately 700 to 800 Julian cementing machines for cementing soles of shoes marketed among shoe manufacturers during past 10 years, 90% of which have been sold in the United States.

This company manufactures a fold-cementing machine which can not properly be included under this classification.

(Illingworth, I, 926, l. 43, et seq.)

Defts.' Exhibit 321. Reference: page 95, item X. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

Another reference is to page 49 (Cat. p. 34). Notation for this machine in catalog of company.

CHANNELING MACHINES (insoles and outsoles).

R. H. LONG MCHY. CO., So. Framingham, Mass.

No information obtained as to the output of Arnold channeling machine referred to in testimony of witness Doidge—page 1698—as one of the machines manufactured by the company.

In explanation of catalog Doidge stated that not all machines listed therein were manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, l. 5–16.)

Defts.' Ex. 321. Reference: page 56. Notations for "Arnold Channeler" and "Insole Channeler" in catalog of company.

HAVERHILL SHOE MCHY. CO., Haverhill, Mass.

Fifty-nine machines at present used by customers of company—Pltff.'s Ex. 161, IV, 1118.

The manufacture of this machine—a turn sole channeler—was commenced in 1908.

(Webster, I, 291, l. 35.)

Defts.' Ex. 321. Reference: page 95, item A. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

Another reference is to page 5, item B. Note by Haverhill Co. to U. S. M. Co. that it can furnish this machine.

HAMEL SHOE MCHY. CO., Lynn & Haverhill, Mass.

Four machines manufactured and marketed in United States by the Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co.

No division of sales shown in Pltff.'s Ex. 159—customers of Duplessis Co. and successors.

(Hamel, I, 326, l. 52.)

WALTER PEARSON, Whitman, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 23, item B. Quotation to U. S. M. Co.

AMERICAN WORSTED MCHY. CO., Abington, Mass.

Approximately 25 to 30 McKay channeling machines marketed among shoe manufacturers from 1907 to 1914.

(Hall, I, 953, l. 5.)

Defts.' Ex. 321. Reference: page 2, item A. Quotation to U. S. M. Co.

GEORGE KNIGHT & Co., Brockton, Mass.

No McKay channeling machines manufactured or marketed during past 15 years.

(Knight, I, 902, l. 38.)

Defts.' Ex. 321. Reference: page 9, item I. Quotation to U. S. M. Co.

CLICKING MACHINE.

SEELYE MFG. CO., Boston, Mass.

PARSONS MCHY. CO., Marlboro, Mass.

Reference to the above in Appendix "B"—Part I.

CLINCHING MACHINE.

UNIVERSAL SHOE MCHY. CO., St. Louis, Mo.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 88. Advertisement of machine.

HEEL COMPRESSING MACHINE.

QUARMBY & HILLIKER, Lynn, Mass.

Manufacture of this machine discontinued about 1907.

(Hilliker, I, 929, l. 8.)

Defts.' Ex. 321. Reference: page 109. Quotation to U. S. M. Co.

W. J. YOUNG MCHY. CO., Lynn, Mass.

Approximately 300 machines manufactured and marketed—almost exclusively among heel manufacturers.

(Young, I, 942, l. 38; 943, l. 18.)

Defts.' Ex. 321. Reference: page 62, item G. Advertisement of machine.

LEATHER CUTTING MACHINES (including dieing-out machines).

THOMAS BOSTOCK & SONS, Brockton, Mass.

Rand cutting and tap cutting machines—properly included under this classification—manufactured by this concern.

Extent of output not stated.

This concern conducts a general machine shop business in which 15 men are employed.

(Bostock, I, 904–905.)

Defts.' Ex. 321. Reference: page 21, items C and H. Quotations to U. S. M. Co.

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, item H. Quotation to U. S. M. Co. on "Rand Cutter."

PARSONS MCHY. CO., Marlboro, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 12, item H. Quotation to U. S. M. Co.

BOSTON MACHINE WORKS CO., Lynn, Mass.

Approximately 50 flap-slashing machines—properly included under this classification—manufactured and marketed principally in the United States.

(Illingworth, I, 927, l. 15.)

Defts.' Ex. 321. Reference: page 49 (Cat. p. 32). Advertisement of machine.

QUARMBY & HILLIKER, Lynn, Mass.

Approximately 150 to 200 dinking machines—properly included under this classification—manufactured and marketed since 1904, one-third of these among shoe manufacturers.

(Hilliker, I, 929, l. 39.)

Defts.' Ex. 321. Reference: page 10, item B. Quotation to U. S. M. Co. on "Beam Dinker."

SEELYE MFG. CO., Boston, Mass.

Approximately 50 to 100 beam-die pressers or dinking machines—properly included under this classification—manufactured and marketed yearly prior to formation of U. S. M. Co. Subsequent to 1899 not more than 25 per cent of this output marketed yearly.

(Seelye, I, 327, l. 37; 328, l. 11.)

Defts.' Ex. 321. Reference: pages 92, 93, 94. Advertisement of machine.

Another reference is to page 95, item N. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

TOWER BROS., Hudson, Mass.

Approximately 10 to 12 sole cutting machines manufactured and marketed yearly.

(Tower, I, 907, l. 35.)

Defts.' Ex. 321. Reference: page 3, item F. Quotation to U. S. M. Co. on "Beam Sole Cutter."

W. J. YOUNG MCHY. CO., Lynn, Mass.

A wedge lift dinker or cutter—properly included under this classification—is manufactured by this concern and marketed both to shoe and heel manufacturers.

Extent of output not stated.

(Young, I, 942, l. 39.)

Defts.' Ex. 321. Reference: page 62, item J. Advertisement of machine.

HEEL LIFT EVENING MACHINE.

QUARMBY & HILLIKER, Lynn, Mass.

Not referred to in testimony of witness Hilliker.

(Hilliker, I, 928–929.)

Defts.' Ex. 321. Reference: page 10, item F. Quotation to U. S. M. Co. on "Knox 30-inch Splitter."

This same reference is also used under the classification for "Splitting Machine."

SEELYE MFG. CO., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327–328.)

Defts.' Ex. 321. Reference: page 91, item C. Quotation (unsigned) purporting to have been received by U. S. M. Co from Seelye—on "Splitting Machine."

This same reference is also used under the classification for "Splitting Machine."

J. S. WHEELER & Co., Boston, Mass.

Not referred to in testimony of witness Wheeler.

On page 4555 Counsel Choate, for the U. S. M. Co., stated "I want to call attention to the fact that all we offered was that this man put out a splitting machine and an insole flexing machine."

(Wheeler, I, 889, l. 43; 890, l. 27.)

Defts.' Ex. 321. Reference: page 41, item A. Quotation on "Baby Splitters" (upper leather and sole evener).

This same reference is also used under the classification for "Splitting Machine."

EYELETTING MACHINE.

AMERICAN WORSTED MCHY. CO., Abington, Mass.

GEO. KNIGHT & Co., Brockton, Mass.

PEERLESS MFG. CO., Boston, Mass.

Reference to the above in Appendix "B"—Part I.

FAIRSTITCHING MACHINE.

LANDIS MACHINE CO., St. Louis, Mo.

No representative of company called as a witness.

Witness McElroy, of St. Louis, Mo., stated that he knew this company to be engaged in the manufacture of harness machinery but had no knowledge that it manufactured shoe machinery.

(McElroy, I, 923, l. 4.)

Defts.' Ex. 316. Reference: page 161. Catalog of C. V. Engstrom Co., Peoria, Ill., containing a reference to this machine.

This same reference is also used under the classification for "Welt Outsole Stitcher."

LARSEN MCHY. CO., Brooklyn, N. Y.

No specific reference is made in the testimony of witness Wirths to a "Fairstitching Machine."

On page 4746 Wirths stated that this company manufactures a "Welt Outsole Lockstitch Machine," but that none have been marketed among shoe manufacturers.

(Wirths, I, 928, l. 4–6.)

Defts.' Ex. 316. Reference: page 161, item A. Catalog of C. V. Engstrom Co., Peoria, Ill., containing reference to an "Automatic Stitcher."

This same reference is also used under the classification for "Welt Outsole Stitcher."

C. V. ENGSTROM CO., Peoria, Ill.

No representative of company called as a witness.

Defts.' Ex. 316. Reference: page 161, item A. Notation for "Automatic Stitcher" in catalog of company.

THE JOHN O'FLAHERTY CO., Rouses Point, N. Y.

No representative of company called as a witness.

Witness Spencer stated that he had handled machines for the O'Flaherty Company and that its lockstitch machine was adapted for harness work principally and could not be used in shoe bottoming operations.

(Spencer, I, 885, l. 13.)

Defts.' Ex. 321. (NOTE.—This Exhibit is one of many "physical" exhibits. It has not been printed, but is a part of the record. It is often referred to herein.) Reference: page 58. Advertisement of "Harness Sewing Machine."

It is to be noted that this machine is advertised for harness work, and that the advertisement appeared in the publication "Harness World."

PURITAN MFG. CO., Boston, Mass.

Approximately 1,000 machines manufactured and marketed since 1892, practically all among shoe manufacturers. A number of these have also been sold to the U. S. M. Co.

(Lingley, I, 891, l. 19 et seq.)

Defts.' Ex. 321. Reference: page 73, item E. Advertisement of "Flax or Dry Thread Machine."

J. D. Randall Co., Cincinnati, O.

No representative of company called as a witness.

Witness McElroy stated that the J. D. Randall Company was not known to him in the shoe machinery field.

(McElroy, I, 922, l. 42.)

Witness Spencer stated that the J. D. Randall Company particularized on machines for the harness trade and that, to his knowledge, it handles no machines for use in shoe manufacture other than strip cutters.

(Spencer, I, 885, l. 17.)

Defts.' Ex. 321. Reference: page 57. Advertisement in "Harness World."

Another reference is to Defts.' Ex. 313. Catalog of the company.

From both references it appears that no claim is made that this machine can be or is ordinarily used in shoe factories but rather for harness and horse collar work. In the catalog particularly this company sets itself forth as manufacturing only this type of machinery.

James Clark Leather Co., St. Louis, Mo.

No representative of company called as a witness.

Witness McElroy, of St. Louis, Mo., stated that this company is engaged in the shoe findings business and that it manufactures no shoe machinery.

(McElroy, I, 921, l. 29.)

Defts.' Ex. 321. Reference: page 161 (Cat. pp. 68, 69, 70). Catalog of the company.

On page 71 of this catalog it appears that this machine had not been placed upon the market prior to date of issuance, and there is no evidence that any of these machines have ever been marketed. Furthermore, although this announcement appears in the catalog of the Clark Company, it is signed by the Simplex Mfg. Co. of St. Louis, Mo., a company which has not been referred to elsewhere in the record as ever having been engaged in the shoe machinery business.

Union Lockstitch Co., E. Boston, Mass.

Four curved-needle stitching machines manufactured and marketed since May, 1910, and 350 to 400 straight-needle machines since 1906.

The curved-needle machines have been sold to shoe manufacturers. Of the straight-needle machines 75 only have been installed in shoe factories and the balance among harness and saddlery manufacturers.

From the testimony of witness Merrick it appears that both the curved-needle machine and the straight-needle machine may be used for fairstitching—an ornamental operation. The curved-needle machine, however, is capable of stitching around the shank, a very necessary operation, inasmuch as it attaches the outsole to the inner sole, and hence is essentially a bottoming operation.

(Merrick, I, 199, l. 27; 200, l. 18.)

Defts.' Ex. 321. Reference: page 44, item B; page 5, item J. Quotations to U. S. M. Co. on "curved-needle machines."

BOTTOM FILLING MACHINE.

No. American Chemical Co., Boston, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 147. Note by U. S. M. Co. representative that one of these machines had been seen in operation in a shoe factory.

McKAY NSOLE FLEXING MACHINE.

Edward E. Spencer, jr., New York, N. Y.

In connection with the concern of Edw. E. Spencer & Co., witness Spencer stated that this concern went into bankruptcy in August, 1912.

During the period from 1906 to 1911, Edw. E. Spencer & Co. averaged a yearly business of between $25,000 and $30,000 in shoe machinery and accessories, the larger proportion being in the shoe manufacturers' supply business, such as nails, tacks, wax, etc.

A strip cutter manufactured by Edw. E. Spencer & Co. has been referred to in Defts.' Ex. 321 as an insole flexing machine. Witness Spencer admitted that this machine, although not particularly adapted for this work, can be changed for this purpose by an adjustment of the knives.

(Spencer, I, 884, l. 40; 885, l. 5, 40.)

Defts.' Ex. 321. Reference: page 26. Quotation to U. S. M. Co. stating "We build a special machine for this

purpose—machine fitted up for McKay flexible-insole work on principle of our strip-cutting machine."

Another reference is to Defts.' Ex. 312. Catalog of Edward E. Spencer & Co.—issued in 1897. Few of these had been distributed among shoe manufacturers, but mostly outside of this field.

EDWIN B. STIMPSON & Co., New York, N. Y.

Witness Stimpson stated that this company manufactures a strip cutter—which has been used as a reference under this classification.

Stimpson further stated that the letter used as a reference was signed by him at the insistence of Nichols of the U. S. M. Co. that a strip cutter was the same as an insole flexing machine. Stimpson maintained, however, that this machine had been manufactured for stripping leather for belts and for cutting welts, and had been sold at all times for these purposes only.

Referring to the catalog of this company, Stimpson stated that it had been printed in 1890 and could not be considered applicable to present conditions.

(Stimpson, I, 882, l. 20.)

Defts.' Ex. 321. Reference: page 26. Letter to the U. S. M. Co. stating "In addition to illustrations in catalogue we build an insole flexing machine." (See above explanation.)

Another reference is to Defts.' Ex. 312. Catalogue of the company.

J. S. WHEELER & Co., Boston, Mass.

No insole flexing machines manufactured or marketed.

Witness Wheeler insisted that a welt cutting machine could not be used as a flexing machine—by an adjustment of the knives—as then it would be changed into an entirely different machine.

(Wheeler, I, 890, l .21.)

Defts.' Ex. 321. Reference: page 65, item X. Advertisement of "Welt Cutter."

HEEL LIFT GOUGING MACHINES.

THOMAS BOSTOCK & SONS, Brockton, Mass.

This machine is manufactured by this concern.

Extent of output not stated.

This concern conducts a general machine shop business in which 15 men are employed.

(Bostock, I, 904–905.)

Defts.' Ex. 321. Reference: page 21, item B. Quotation to U. S. M. Co.

W. J. Young Mchy. Co., Lynn, Mass.

Approximately 150 to 200 machines have been manufactured and marketed—evenly divided between shoe and heel manufacturers.

(Young, I, 942, l. 43; 943, l. 18.)

Defts.' Ex. 321. Reference: page 62, item K. Advertisement of machine.

GRADING MACHINE (gauging thickness of soles).

Lacene Mfg. Co., Manchester, N. H.

No representative of company called as a witness.

Witness Winslow stated that there is no other machine upon the market doing the work of this machine, and that the U. S. M. Co. has never put out a similar one.

(Winslow, I, 600, l. 9.)

Defts.' Ex. 321. Reference: page 77. Advertisement of machine.

This same reference is also used under the classification for "Splitting Machine."

WELT GROOVING AND BEVELING MACHINE.

Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.

Twenty-five of these machines have been manufactured and marketed in the United States by the Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and the Hamel Shoe Mchy. Co.

No division of sales shown in Pltff's Ex. 159, IV, 1113, customers of Duplessis Co. and successors.

(Hamel, I, 326, l. 45.)

Defts.' Ex. 321. Reference: page 178, item B. Note by U. S. M. Co. representative that a "Duplessis Welt Groover and Beveler" had been seen in operation in a shoe factory.

Haverhill Shoe Mchy. Co., Haverhill, Mass.

Not included in the list of machines at present used by customers of this company—Pltff.'s Ex. 161, IV, 1118.

Witness Webster included this machine as one manufactured at date of June, 1913, but no information was obtained as to the extent of output.

(Webster, I, 291, l. 2.)

Defts.' Ex. 321. Reference: page 5, item U. Note by Haverhill Co. to U. S. M. Co. that it can furnish this machine.

R. H. Long Mchy. Co., So. Framingham, Mass.

Extent of output not stated.

Doidge explained that not all machines listed in catalog were manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, l. 16.)

Defts.' Ex. 321. Reference: page 56, item M. Notation for this machine in catalog of company.

HARDENING SHOULDER MACHINE (for Gem insoles).

Plymouth Rubber Co., Canton, Mass.

No representative of company called as a witness.

Witness Donnelly stated that this machine has been manufactured by him for this company, but no further information was obtained.

(Donnelly, I, 944, l. 25.)

Defts.' Ex. 321. Reference: page 81. Advertisement of machine.

Walpole Shoe Supply Co., Boston, Mass.

Approximately 50 machines manufactured and marketed among shoe manufacturers from 1912 to 1914.

(Chamberlin, I, 889, l. 28.)

Defts.' Ex. 321. Reference: p. 80. Advertisement of machine.

HEELING MACHINE (attaching heels).

R. H. Long Mchy. Co., South Framingham, Mass.
Haverhill Shoe Mchy. Co., Haverhill, Mass.
References to the above in Appendix "B"—Part I.

LASTING MACHINE.

R. H. Long Mchy. Co., South Framingham, Mass.
Boylston Mfg. Co., Boston, Mass.
Louis G. Freeman Co., Cincinnati, O.
References to the above in Appendix "B"—Part I.

CHANNEL LAYING MACHINE.

AMERICAN WORSTED MCHY. CO., Abington, Mass.

None manufactured, marketed, or handled from 1907 to 1914.

(Hall, I, 953, l. 14.)

Defts.' Ex. 321. Reference: page 1, item D. Quotation to U. S. M. Co.

GEORGE KNIGHT & CO., Brockton, Mass.

None manufactured or marketed during past 15 years.

(Knight, I, 902, l. 38.)

Defts.' Ex. 321. Reference: page 9, item J. Quotation to U. S. M. Co.

McKAY WELT LAYING MACHINE.

KIMBALL BROS. & SPRAGUE, Brockton, Mass.

Approximately 25 to 30 machines, adapted only for laying the Arnold flex welt, manufactured and marketed from 1909 to 1914.

(Sprague, I, 904, l. 5.)

Defts.' Ex. 321. Reference: page 36. Quotation to U. S. M. Co.

SOLE LAYING MACHINE.

R. H. LONG MCHY. CO., South Framingham, Mass.

Included—as turn sole layer—among machines specified by witness Doidge as manufactured by this company.

Extent of output not stated.

In explanation of catalog, Doidge stated that not all machines listed therein had been manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, l. 11, 15.)

Defts.' Ex. 321. Reference: page 5, item H. Note by Haverhill Co. to U. S. M. Co. that it can furnish sole laying machine of the Long Company.

Another reference is to page 56, item F. Catalog of Long Company, including notation for "Twin Sole Layer."

LEVELING MACHINE.

BOYLSTON MFG. CO., Boston, Mass.

Not included in list of machines specified by witness Maloy on pages 1457 and 1460, nor in catalog of company—page 1463.

Cavanaugh explained that when the company absorbed the Giant Leveler Company in 1904—referred to in testimony of C. S. Johnson—some machines on hand were disposed of. Occasionally the company had rebuilt machines of this type for manufacturers, but had never manufactured any.

(Maloy, I, 301, l. 23: 302, l. 16, 36.)
(Cavanaugh, I, 955, l. 44.)

Defts.' Ex. 321. Reference: pages 108, 109, 179. Statements by U. S. M. Co. representatives that Giant leveling machines had been seen in operation in shoe factories.

A catalog of the Boylston Co. showing an advertisement for C. & J. leveling machines is also included.

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.

Five machines manufactured and marketed in the United States by the Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and the Hamel Shoe Mchy. Co.

Pltff.'s Ex. 159, IV, 1113—customers of Duplessis Co. and successors—shows that all of these machines had been marketed by the Duplessis Co. Four of these were installed in the Framingham Shoe Co.—controlled by Richard H. Long—which uses no U. S. M. Co. machines.

(Hamel, I, 326, l. 33.)

R. H. LONG MCHY. CO., South Framingham, Mass.

Not included among machines specified by witness Doidge as manufactured by the company.

In explanation of catalog, Doidge stated that not all machines listed therein had been manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, ls. 5, 16.)

Defts.' Ex. 321. Reference: page 56, item I. Notation for "Eclipse Leveler" in catalog of company.

HAVERHILL SHOE MCHY. CO., Haverhill, Mass.

Not included in the list of machines at present used by customers of company—Pltff.'s Ex. 161, IV, 1118.

Not included among machines enumerated by witness Webster as manufactured by company at date of testimony, June, 1913.

This company handles a Webster leveler, however.

(Webster, I, 291, l. 1.)

Defts.' Ex. 321. Reference: page 5, item M. Note by Haverhill Co. to U. S. M. Co. that it can furnish a "Turn Leveler" manufactured by the Webster Machine Co.

WELT OUTSOLE STITCHER.

BOYLSTON MFG. CO., Boston, Mass.

LANDIS MACHINE CO., St. Louis, Mo.

LARSEN MFG. CO., Brooklyn, N. Y.

C. V. ENGSTROM CO., Peoria, Ill.

JAMES CLARK LEATHER CO., St. Louis, Mo.

UNION LOCKSTITCH CO., East Boston, Mass.

UNIVERSAL SHOE MCHY. CO., St. Louis, Mo.

VICTOR SHOE MCHY. CO., Boston, Mass.

R. H. LONG MCHY. CO., South Framingham, Mass.

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.

References to the above in Appendix "B"—Part I.

MOULDING MACHINE (for outsoles and turn soles).

BOYLSTON MFG. CO., Boston, Mass.

Not included in list of machines specified by witness Maloy on pages 1457 and 1460, nor in catalog of company—page 1463.

(Maloy, I, 301, l. 23; 302, ls. 16, 36.)

Defts.' Ex. 321. Reference: page 110. Note by U. S. M. Co. representative that he had seen a moulding machine in a shoe factory which he claimed was manufactured by the Boylston Company.

SEELYE MFG. CO., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327–328.)

Defts.' Ex. 321. Reference: page 91, item F. Quotations (unsigned) purporting to have been received by the U. S. M. Co. from Seelye—on "Moulders."

QUARMBY & HILLIKER, Lynn, Mass.

None manufactured since 1907.

(Hilliker, I, 929, l. 14.)

Defts.' Ex. 321. Reference: page 10, item D. Quotation to U. S. M. Company.

HAVERHILL SHOE MCHY. CO., Haverhill, Mass.

Not included in list of machines at present used by customers of company—Pltff.'s Ex. 161, IV, 1118.

Witness Webster stated that the company manufactured a sole moulder for turn soles, and that 40 to 50 of these have been sold from 1910 to 1913—one with each Haverhill Co. stitcher marketed.

(Webster, I, 292, l. 18.)

Defts.' Ex. 321. Reference: page 5, item D. Note by Haverhill Co. to U. S. M. Co. that it can furnish a "Turn Moulder."

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.

Thirty-five machines manufactured and marketed in the United States by Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co.

No division of sales shown in Pltff.'s Ex. 159, IV, 1113—customers of Duplessis Co. and successors.

(Hamel, I, 326, l. 40.)

Defts.' Ex. 321. Reference: page 159. Note by U. S. M. Co. representative that he had seen two "Duplessis Turn Moulding machines" in operation in a shoe factory.

LOOSE NAILING MACHINE.

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.
R. H. LONG MCHY. CO., South Framingham, Mass.
UNIVERSAL SHOE MCHY. CO., St. Louis, Mo
VICTOR SHOE MCHY. CO., Boston, Mass.

References to the above in Appendix "B"—Part I.

CHANNEL OPENING MACHINE.

AMERICAN WORSTED MCHY. CO., Abington, Mass.
None manufactured or marketed from 1907 to 1914.
(Hall, I, 953, l. 19.)
Defts.' Ex. 321. Reference: page 1, item J. Quotation to U. S. M. Co.

GEORGE KNIGHT & CO., Brockton, Mass.
None manufactured during past 8 or 10 years.
(Knight, I, 902, l. 43.)
Defts.' Ex. 321. Reference: page 9, item K. Quotation to U. S. M. Co.

VENEER PRESS (for pressing cemented soles and taps).

JAMES BUSFIELD, Haverhill, Mass.
No representative of concern called as a witness.
Defts.' Ex. 321. Reference: page 6, item E. Quotation on "Veneer Sole Press."

HEEL PRESSING MACHINE.

SEELYE MFG. CO., Boston, Mass.
Not referred to in testimony of witness Seelye.
(Seelye, I, 327–328.)
Defts.' Ex. 321. Reference: page 91, item B. Quotation (unsigned) purporting to have been received by the U. S. M. Co. from Seelye—on "Presses."

TACK PULLING MACHINE.

LOUIS G. FREEMAN CO., Cincinnati, Ohio.
No representative of company called as a witness.
Defts.' Ex. 321. Reference: page 78, items A and F. Announcement that company will exhibit tack pulling machines.

PULLING OVER MACHINE.

Reference to the above in Appendix "B"—Part I.

TACK PULLING AND RESETTING MACHINE.

LOUIS G. FREEMAN CO., Cincinnati, Ohio.
No representative of company called as a witness.
Defts.' Ex. 321. Reference: page 7, item B. Note by U. S. M. Co. representative as to operation of machine in

Non-Royalty Shoe Co., St. Louis, Mo. This concern used no U. S. M. Co. machines and was in existence but a few months—about 1912.

REDUCING MACHINE.

American Worsted Mchy. Co., Abington, Mass.

No feather-edge or shank reducing machines—properly included under this classification—manufactured or marketed from 1907 to 1914.

(Hall, I. 953, l. 19.)

Defts.' Ex. 321. Reference: page 1, item F. Quotation to U. S. M. Co. on "Feather Reducer."

George Knight & Co., Brockton, Mass.

Feather-edge and shank reducing machines—properly included under this classification—manufactured and marketed by this company, mostly to shoe manufacturers.

Some of these are sold to and through the U. S. M. Co.

Extent of output not stated.

(Knight, I. 903, l. 6, 15.)

Defts.' Ex. 321. Reference: page 9, item D. Quotation to U. S. M. Co.

Theodore Ringenbach, Cincinnati, Ohio.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 126. Advertisement of "Rapid Shoe Feathering Machine."

This same reference is also used under the classification for "Thin Edge Machine."

ROLLING MACHINE.

James Busfield, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, item D. Quotation to U. S. M. Co. on "Rolling Mills."

Quarmby & Hilliker, Lynn, Mass.

Approximately 50 machines manufactured and marketed since 1904, one-half of these among shoe manufacturers.

(Hilliker, I. 929, l. 15.)

Defts.' Ex. 321. Reference: page 10, item E. Quotation to U. S. M. Co. on "Light Roller."

SEELYE MFG. CO., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, IV, I, 327–328.)

Defts.' Ex. 321. Reference: page 91, item D. Quotation (unsigned) purporting to have been received by U. S. M. Co. from Seelye on "Rollers."

TAP ROUGHING MACHINE.

PEERLESS MCHY. CO., Boston, Mass.

The machine referred to is undoubtedly the sanding machine manufactured by this company, which merely "finishes or roughs the sole before it is put on the shoe."

Extent of output not stated.

(Muther, I, 303, l. 24.)

Defts.' Ex. 321. Reference: page 67, item J. Advertisement for "Auto-Scourer."

ROUGH ROUNDING AND CHANNELING MACHINE.

R. H. LONG MCHY. CO., South Framingham, Mass.

Not included as a single machine in list of machines specified by witness Doidge—page 1698—manufactured by the company.

Doidge stated that the company was "Getting ready to build" a rough rounder. From this it appears that none of these machines had been manufactured or marketed at date of June, 1913.

In explanation of catalog, Doidge stated that not all machines listed therein had been manufactured at date of June, 1913, but that it was the intention of the company to do so.

A channeling machine manufactured by this company is also included under the "Channeling Machine" classification.

(Doidge, I, 346, l. 9, 15–16.)

Defts.' Ex. 321. Reference: page 56, item G. Notation for "Rough Rounder" in catalog of company.

VICTOR SHOE MCHY. CO., Boston, Mass.

Three machines manufactured and marketed since 1911.

None were sold to shoe manufacturers, but to repair men only.

(Johnson, I, 893, l. 29; 894, l. 5, 9.)

Defts.' Ex. 321. Reference: page 74, item B. Note by U. S. M. Co. representative that this machine was seen by him in demonstration at the Victor Co. factory.

HAVERHILL SHOE MCHY. CO., Haverhill, Mass.

Not included in list of machines used at date of June, 1913, by customers of company—Pltff's Ex. 161, IV, 1118.

Not included—as a single machine—in list of machines specified by witness Webster (R. I., 291) as manufactured by the company.

This company has manufactured and marketed a turn channeling machine, included under the "Channeling Machine" classification.

(Webster, I, 291, l. 1.)

Defts.' Ex. 321. Reference: page 5, item B. Note by Haverhill Co. to U. S. M. Co. that it can furnish a "Rough Rounding and Channeling Machine."

ROUNDING MACHINE (rounding heels, heel seats, and taps).

LOUIS G. FREEMAN CO., Cincinnati, Ohio.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 8, item T. Note by U. S. M. Co. representative as to operation of "Heel Seat Rounding Machine" in Non-Royalty Shoe Company, St. Louis, Mo. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912.

CONSOLIDATED ROTARY ROUNDER CO., Cincinnati, Ohio.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 128, item A. Telegram from W. F. Harmon to S. G. Ross naming certain shoe factories using Ross rounders; also catalog of company.

The catalog of this company was issued in 1897, evidently by the Ross-Moyer Mfg. Co. of Cincinnati, Ohio, now a subsidiary company of the U. S. M. Co.—its first page being headed "Ross-Moyer Mfg. Co., Distributing Agents." It is further to be noted that both Harmon and Ross were formerly connected with the Ross-Moyer Mfg. Co.—prior to its absorption.

Witness Selz, of Selz, Schwab & Co., Chicago, Ill.—one of the shoe factories named in the Ross telegram as using Ross

rounders—stated that these machines had been, and are now, marketed by the Ross-Moyer Mfg. Co.

(Selz, I, 144, l. 21; 154, l. 13.)

Boylston Mfg. Co., Boston, Mass.

A "Julian rounder" is included in the list of machines manufactured by this company specified by witness Maloy on page 302, and in catalog.

Extent of output not stated.

(Maloy, I, 302, l. 17.)

Defts.' Ex. 321. Reference: page 8, item K. Note by U. S. M. Co. representative as to operation of "Julian" machine in Non-Royalty Shoe Company, St. Louis, Mo. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

A further reference is to page 95, item B_2. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913.

Another reference is to page 5, item A. Note by Haverhill Company to U. S. M. Co., that it can furnish a Boylston Co. "Sole Rounder."

American Worsted Mchy. Co., Abington, Mass.

None manufactured by this company from 1907 to 1914.

(Hall, I, 953, l. 19.)

Defts.' Ex. 321. Reference: page 1, item A. Quotation to U. S. M. Co. on "Severance Tap Rounder."

SPRING HEEL SCARFING MACHINE.

James Bostock & Sons, Brockton, Mass.

None manufactured.

Second-hand machines have from time to time in the past been purchased and resold.

Extent of sales not stated.

(Bostock, I, 904, l. 37.)

Defts.' Ex. 321. Reference: page 21, item D. Quotation to U. S. M. Co.

Thomas J. Bowden & Son, Marblehead, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 28. Quotation to U. S. M. Co.

W. J. Young Mchy. Co., Lynn, Mass.

A spring heel scarfing machine manufactured and marketed by this company.

Extent of output not stated.

(Young, I, 943, l. 2.)

Defts.' Ex. 321. Reference: page 152, item K. Advertisement of machine.

LITTLE McKAY TURN SEWING MACHINE.

George Hobbs, Boston, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 177. Note by U. S. M. Co. representing that Hobbs machines have been seen in operation in a shoe factory. Also a catalog of parts for McKay turn sewing machine and channeler, issued in 1902.

McKAY SEWING MACHINE.

Shawmut Mchy. Co., Boston, Mass.
Haverhill Supply Co., Haverhill, Mass.
Louis G. Freeman, Cincinnati, O.
E. E. Spencer & Co., New York, N. Y.
Manufacturers' Supply Co., St. Louis, Mo.
J. W. White & Co., Haverhill, Mass.
Lynn Supply Co., Lynn, Mass.
American Worsted Mchy. Co., Abington, Mass.
Walter Pearson, Whitman, Mass.

References to the above in Appendix "B"—Part I.

WELT AND TURN SEWING MACHINE.

Hamel Shoe Mchy. Co., Lynn and Haverhill, Mass.
Haverhill Shoe Mchy. Co., Haverhill, Mass.
R. H. Long Mchy. Co., So. Framingham, Mass.
Universal Shoe Mchy. Co., St. Louis, Mo.
Boylston Mfg. Co., Boston, Mass.

References to the above in Appendix "B"—Part I.

SKIVING MACHINE (tap skiving, welt and rand splitting).

Victor Shoe Mchy. Co., Boston, Mass.

Witness Johnson indirectly admitted that this company manufactures a skiving machine.

Extent of output not stated.

(Johnson, I, 894, l. 21.)

Defts.' Ex. 321. Reference: page 174, item C. Note by U. S. M. Co. representative that Victor "Tap Skiving Machine" was seen in demonstration at Victor Co. factory.

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, item F. Quotation to U. S. M. Co. for "Welt Splitting Machine." This same reference has also been used under the classification for "Splitting Machine."

AMERICAN WORSTED MCHY. CO., Abington, Mass.

Output of machines not stated in testimony of witness Hall.

(Hall, I, 954, l. 8.)

Defts.' Ex. 321. Reference: page 2, items G and J. Quotations to U. S. M. Co. on Tripp "Improved" and "New Old-Style" skivers.

This same reference for "Tripp Improved Skiver" has also been used under the classification for "Splitting Machine."

McKAY WELT SLASHING MACHINE.

THOMAS BOSTOCK & SONS, Brockton, Mass.

This machine is the same as the "Heel Lift Gouging Machine" included under the latter classification—for which the same reference has been used.

(Bostock, I, 904, l. 35.)

Defts.' Ex. 321. Reference: page 21, item G. Quotation to U. S. M. Co. on "Rand Chopping and Welt Slashing Machine."

A. G. BREWER, Natick, Mass.

Approximately ten machines manufactured and marketed, the last one about 1912.

(Brewer, I, 907, l. 15.)

Defts.' Ex. 321. Reference: page 105. Quotation to U. S. M. Co., and advertisement of "Double Rapid Welt Splitter."

WILLIAM KNIPE, Ward Hill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 167. Note by U. S. M. Co. representative that he had seen at Knipe Bros. shoe factory a "Knipe Welt Slasher."

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, item G. Quotation to U. S. M. Co. on "Combination Welt Splitter and Slasher."

SLUGGING MACHINE.

BOYLSTON MFG. CO., Boston, Mass.

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.

R. H. LONG MCHY. CO., South Framingham, Mass.

References to the above in Appendix "B"—Part I.

SPLITTING MACHINE.

AMERICAN TOOL & MACHINE CO., Boston, Mass.

The machine referred to by witness Eichler—included under this classification as manufactured by this company—is a belt knife splitting machine.

Eichler stated that this company manufactures no bottoming machines, or eyeletting or clicking machines.

(Eichler, I, 886, l. 43; 887, l. 1.)

Defts.' Ex. 321. Reference: page 51. Advertisement of "Belt Knife Leather Splitting Machine."

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, items A and F. Quotations to U. S. M. Co.

The latter reference (6 F) is also used under the classification for "Skiving Machine."

J. S. WHEELER & CO., Boston, Mass.

None manufactured by this company.

Some have been rebuilt from time to time.

This concern does a small jobbing business and employs from two to six men only.

(Wheeler, I, 890, l. 3.)

Defts.' Ex. 321. Reference: page 41, item A. Quotation to U. S. M. Co. on "Baby splitters" (upper leather and sole evener).

This same reference has also been used under the classification for "Evening Machine."

SEELYE MFG. CO., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327–328.)

Defts.' Ex. 321. Reference: page 91, item C. Quotation (unsigned)—purporting to have been received by the U. S. M. Co. from Seelye—on "Splitters."

Another reference is to page 95, item V. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

These same references are also used under the classification for "Evening Machine."

QUARMBY & HILLIKER, Lynn, Mass.

None manufactured.

From time to time some have been purchased second-hand and resold.

Extent of sales not stated.

(Hilliker, I, 929, l. 23.)

Defts.' Ex. 321. Reference: page 10, item F. Quotation to U. S. M. Co. on "Splitter."

This same reference has also been used under the classification for "Evening Machine."

AMERICAN WORSTED MCHY. CO., Abington, Mass.

Not referred to in testimony of witness Hall.

(Hall, I, 954, l. 8.)

Defts.' Ex. 321. Reference: page 2, item G. Quotation on "Tripp Improved Skiver."

This same reference has also been used under the classification for "Skiving Machine."

LACENE MFG. CO., Manchester, New Hampshire.

No representative of company called as a witness.

Witness Winslow stated that there is no other machine upon the market for doing the work of this machine and that the U. S. M. Co. has never put out a similar one.

(Winslow, I, 600, l. 9.)

Defts.' Ex. 321. Reference: page 77. Advertisement of machine.

This same reference is also used under the classification for "Grading Machine."

TURNER TANNING MCHY. CO., Peabody, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 119. Quotation to U. S. M. Co. on "Belt Knife Splitting Machine."

In this connection reference is made to the testimony of witness Eichler, for the American Tool & Machine Co., to the effect that this is not properly included as a bottoming machine.

(Eichler, I, 886, l. 43–887, l. 4.)

W. J. YOUNG MCHY. CO., Lynn, Mass.

None manufactured by this company.

At close of cross-examination, Counsel Choate for the U. S. M. Co. requested permission to correct this reference from "Rand Splitting Machine" to "Rand Trimming Machine."

(Young, I, 943, l. 2, 32.)

Defts.' Ex. 321. Reference: page 185. Advertisement of "New Rand Trimmer."

STRIPPING MACHINES (cutting leather or leatherboard into strips).

QUARMBY & HILLIKER, Lynn, Mass.

Approximately 75 machines manufactured and marketed since 1904, one-third of these to shoe manufacturers.

(Hilliker, I, 929, l. 20.)

Defts.' Ex. 321. Reference: page 10, item C. Quotation to U. S. M. Co. on "Knox Old-Style Geared Stripper."

PARSONS MCHY. CO., Marlboro, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 13. Quotation to U. S. M. Co. on "Old-Style Stripper."

SEELYE MFG. CO., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327–328.)

Defts.' Ex. 321. Reference: page 91, item E. Quotation (unsigned)—purporting to have been received by U. S. M. Co. from Seelye—on "Strippers."

TOWER BROS., Hudson, Mass.

On page 4622 witness Tower stated—in answer to the question whether this concern manufactures this machine—

"We make stripping machines for anybody who wants them, but they have gone out of fashion." This indicates that this machine is not one regularly manufactured and marketed by this company.

(Tower, I, 907, l. 42.)

Defts.' Ex. 321. Reference: page 3, item E. Quotation to U. S. M. Co.

W. J. Young Mchy. Co., Lynn, Mass.

A wedge stripping machine—properly included under this classification—is manufactured by this company.

The majority of these are sold to heel manufacturers rather than to shoe manufacturers.

Extent of output not stated.

(Young, I, 942, l. 35.)

Defts.' Ex. 321. Reference: page 62, item I. Advertisement of "Wedge Stripper."

TACKING MACHINES (tacking soles and heel rands).

Universal Shoe Mchy. Co., St. Louis, Mo.
Hamel Shoe Mchy. Co., Lynn and Haverhill, Mass.
Louis G. Freeman Co., Cincinnati, Ohio.
Victor Shoe Mchy. Co., Boston, Mass.

References to the above in Appendix "B"—Part I.

THIN EDGE MACHINE.

Theodore Ringenbach, Cincinnati, Ohio.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 126. Advertisement of "Rapid Shoe Feathering Machine."

This same reference is also used under the classification for "Reducing Machine."

INSEAM TRIMMING MACHINE.

The Keighley Co., Vineland, N. J.

Witness Tappey stated that, during 1911, about 20 inseam trimming machines had been placed among shoe manufacturers on trial in New England.

(Tappey, I, 913, l. 4.)

In this connection it is to be noted that an agreement was entered into on September 21, 1912, between the U. S. M. Co.

and the Keighley Co., whereby the U. S. M. Co. obtained control of the inseam trimming machine business of the Keighley Co. in the United States.

The agreement provided in part that neither company, during the period of the agreement, would enter into, engage in, or financially or otherwise encourage or assist any other person, firm, or corporation from entering into or developing any business in inseam trimming machines.

It further provided that the Keighley Co. should not thereafter sell any inseam trimming machine of the type covered by the agreement for a price less than $650, and also that the U. S. M. Co. should not be required to pay more than $250 for a single inseam trimming machine of the same type.

Pltff.'s Ex. 275, IV, 1529 (U. S. M. Co.-Keighley Co. agreement).

Defts.' Ex. 321. Reference: page 7, item F. Note by U. S. M. Co. as to operation of machine in Non-Royalty Shoe Company, St. Louis, Mo.

Another reference is to page 95, item F. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

HEEL RAND TURNING MACHINE.

James Bostock & Sons, Brockton, Mass.

A rand turning machine is manufactured by this concern. Extent of output not stated.

(Bostock, I, 904, l. 36.)

Defts.' Ex. 321. Reference: page 21, item E. Quotation to U. S. M. Co.

American Worsted Mchy. Co., Abington, Mass.

No rand turning machines manufactured or marketed from 1907 to 1914.

(Hall, I, 953, l. 22.)

Defts.' Ex. 321. Reference: page 6, item B. Quotation to U. S. M. Co. on "Rand Crimping Machine."

LIP OF INSOLE TURNING MACHINE.

American Worsted Mchy. Co., Abington, Mass.

None manufactured or marketed from 1907 to 1914.

(Hall, I, 953, l. 22.)

Defts.' Ex. 321. Reference: page 1, item I. Quotation to U. S. M. Co. on "Lip Turner."

HAMEL SHOE MCHY. Co., Lynn and Haverhill, Mass.

Twelve lip turning machines manufactured and marketed in the United States by the Duplessis Shoe Machy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co.

No division of sales shown in Pltff.'s Ex. 159, IV, 1113—customers of Duplessis Co. and its successors.

(Hamel, I, 326, l. 41.)

Defts.' Ex. 321. Reference: page 178, item A. Note by U. S. M. Co. representative that he had seen a "Duplessis Channeling and Turning machine (hand power)" in operation in a factory.

HAVERHILL SHOE MCHY. Co., Haverhill, Mass.

Four lip turning machines manufactured and marketed from June, 1913, to June, 1914.

(Webster, I, 292, l. 24.)

Defts.' Ex. 321. Reference: page 5, item C. Note by Haverhill Co. to U. S. M. Co. that it can furnish an "Innersole Lip Turner."

Another reference is to page 8, item Z. Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, St. Louis, Mo.

A further reference is to page 95, item Z. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

GEORGE KNIGHT & Co., Brockton, Mass.

A lip turning machine is manufactured by this company. Extent of output not stated.

Some of the machines manufactured by this company are sold to and through the U. S. M. Co. Witness Knight did not specify whether a lip turning machine was so included, however.

(Knight, I, 903, l. 8, 15.)

Defts.' Ex. 321. Reference: page 9, item F. Quotation on "Lip Turner."

R. H. LONG MCHY. Co., South Framingham, Mass.

Number placed not stated.

In explanation of catalog, Doidge stated that not all machines listed therein had been manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, l. 7, 16.)

Defts.' Ex. 321. Reference: page 56, item L. Notation for machine in catalog of company.

LIP GEM INSOLE TURNING MACHINE.

Inasmuch as the same companies and the same references thereto in Defts.' Ex. 321 have been used under this classification as under "Lip of Insole Turning Machine," no further reference thereto is considered necessary herein.

INSOLE REINFORCING MACHINE.

No competition in the United States.

TACKING MACHINE.

References to the above in Appendix "B"—Part I.

POUNDING AND TRIMMING MACHINE.

No competition in the United States.

STANDARD SCREW MACHINE.

Reference to the above in Appendix "B"—Part I.

* * * * *

FOREIGN COMPANIES.

That the Foreign Companies Referred to in the Catalogs Letters, Advertisements, &c., have not been Engaged in Marketing Shoe Machinery in the United States is Evidenced by the Testimony of witnesses Stone, McElroy, and Cavanaugh. (I, 339–344; 954–957; 190–193; 923.)

APPENDIX C.

SYNOPSIS OF LEASE FORMS SHOWING TYING CLAUSES CONTAINED IN EACH.

1. Lasting Machines.

(Exhibits 14–22)

(a) Consolidated Hand Method Machine.

i. Non Initial Payment.

Exhibit 16 (adopted September, 1900) contains

Prohibitive clause, applying to welting, stitching, turn sewing and metallic fastening machines.

Exclusive Use clause.

Full Capacity clause.

Return charge of $150.00.

Minimum royalty of $15 per month with deduction for months in which factory is wholly idle.

Right to terminate all leases clause.

Exhibit 15 (adopted December, 1900) contains

Same provisions in particulars here material as Exhibit 16, except that prohibitive clause does not extend to metallic fastening machines.

(Note this form of lease is used for the hand-method type of machine when adapted to lasting welt shoes.)

ii. Initial Payment.

Exhibit 14 (adopted December, 1900) contains

Full Capacity clause.

Exclusive Use clause, applying to all lasting machines and devices.

Initial payment of $300.

Minimum royalty $75 per annum.

1. Lasting Machines—Continued.
   (a) Consolidated Hand Method Machine—Continued.
      ii. Initial Payment—Continued.
         Exhibit 17 (adopted ———).
            Same provisions in particulars here material as Exhibit 14, except that exclusive use clause is extended to include all *tacking* devices as well as lasting machines and devices. There is also a difference in the royalty which is fixed at one cent per pair straight in Exhibit 14 and at one cent per pair for misses' and children's shoes and one and one-fourth cents for all other kinds in Exhibit 17. The latter figure is also that of Exhibits 15 and 16. In each case there is a 50% discount for prompt payment.
   (b) Chase Lasting Machine.
      Exhibit 19 (adopted June, 1901) contains
      Non Initial payment.
         Exclusive Use clause, applying both to lasting machines and tacking devices.
         Prohibitive clause, applying to welting, stitching, turn sewing and metallic machines.
         Full capacity clause.
         Right to terminate all leases clause.
         Minimum royalty $10.00 a month.
         Abated royalty ¾c for long legged boots, ½c for all others.
      No other form of lease was adopted by the defendants for this machine, but it is claimed by Mr. Winslow that a manufacturer might still have had the lease formerly offered by the Consolidated & McKay Company. (R. 543.) No evidence of any actual lease or offer to lease in that form subsequent to the adoption of Exhibit 19 appears. The royalties under the old lease (Exhibit 7) "were very much in excess of what they were under the United lease." (Winslow, R. 543.)

1. Lasting Machines—Continued.

(c) McKay & Copeland Machine.

Initial payment.

Exhibit 20 (adopted August, 1903) contains

Exclusive Use clause applying to tacking appliances as well as lasting machines.

Prohibitive Clause applying to welting, stitching, sewing, pegging, metallic fastening and heeling machines.

Full Capacity Clause.

Right to Terminate All Leases clause.

Minimum royalty of $125.00 per annum.

No other lease for this machine was adopted by the United Company. (Winslow R. 542.) It is worth noting in connection with the defendants' claim that the fields of the various lasting machines were so distinct as to exclude the idea of competition that the prohibitive clause of this lease indicates that in the opinion of the defendants it could be used in a serious attempt to last welt shoes—a circumstance which they are now inclined to deny. The lease used previously by the Consolidated & McKay Company indicates a similar opinion.

(d) Ideal Lasting Machine.

Initial Payment.

Exhibit 18 (adopted August, 1901) contains

Exclusive Use clause applying to tacking devices as well as lasting machines.

Prohibitive Clause applying to welting, sole stitching, and turn sewing machines.

Full Capacity clause.

Initial Payment of $300.

Minimum Royalty of $75 per annum.

Right to Terminate All Leases clause.

NOTE.—Mr. Winslow testified in response to the question whether there had ever been any "unrestricted" form of the leases for the Ideal machine that he did not "recall any different lease ever used by the United Company for the Ideal machine from that of Plaintiff's Exhibit 18. (R. 543.)

1. Lasting Machines—Continued.
   (e) Number Five Lasting Machine.
      i. Non Initial Payment.
         Exhibit 21 (adopted ——, 1906).
            Exclusive Use clause.
            Prohibitive Clause, applying to welt sewing, sole stitching, turn sewing, pulling over and metallic machines.
            Full Capacity Clause.
            Return charge of $150.
            Right to Terminate All Leases Clause.
            Minimum Royalty of $10 a month.
      ii. Initial Payment.
         Exhibit 22.
            Exclusive Use Clause.
            Full Capacity Clause.
            Right to Terminate All Leases clause.
            Initial Payment of $300.
            Minimum Royalty $75 per annum.
               NOTE.—The Royalties are the same in both forms of lease. The minimum royalty provision of the initial payment lease, Exhibit 22, provides for the return of the machine at the option of the lessor in case the royalty in any succeeding 12 months does not amount to $75. In case of such return, one-third of the initial payment is returned.
2. Welt and Turn Sewing and Outsole Stitching Machines and Auxiliaries.
   i. Non Initial Payment.
      Exhibit 24 (adopted January, 1905) contains
         Exclusive Use clause, applying to welt stitching and turn sewing machines.
         Prohibitive Clause, applying to the same machines.
         Full Capacity Clause.
         Return Charge of $150.
         Right to Terminate All Leases clause.
         Minimum Royalty, $15 a month for each machine.

2. Welt and Turn Sewing and Outsole Stitching Machines and Auxiliaries—Continued.

i. Non Initial Payment—Continued.

Exhibit 24—Continued.

NOTE.—This lease provides for "royalties" to the defendants upon shoes made upon machines supplied by competitors of the defendants.

Exhibit 25 (adopted January, 1905) lease for Auxiliary Machines only, contains

Exclusive Use clause applying to welting, turn sewing, inseaming and outsole stitching machines.

Prohibitive Clause applying to same machines.

Right to Terminate All Leases clause.

Annual Rental, amounting to about $184 per annum.

Return Charges as scheduled.

NOTE.—This lease embraces twenty-four different kinds of machines. There is no lease under which these auxiliary machines can be obtained without the prohibitive clause restricting their use to use on shoes upon which the defendants' principal welt method machines are used. That is to say, the United Company does not permit on any terms the use of its auxiliary machines with principal machines supplied by some other manufacturer.

ii. Initial Payment.

Exhibit 23 (adopted December, 1906) contains

Exclusive Use Clause as to welting and outsole stitching machines.

Prohibitive Clause applying to same machines.

Right to Terminate All Leases clause.

Initial Payment provided for in the written application for the lease. (Donham, R. I, 9.)

Exhibit 26 (adopted 1905).

This lease was intended as a substitute for Exhibit 23. To the provisions of that lease are added the full capacity clause applying

2. Welt and Turn Sewing and Outsole Stitching Machines and Auxiliaries—Continued.
   ii. Initial Payment—Continued.
      Exhibit 26—Continued.
         to all welting, turn sewing, inseam sewing and outsole stitching machines held under that *and all other leases;* the exclusive use clause was extended to turn sewing machines.
            NOTE.—There is no lease under which the defendants will put out a welt sewing machine for welt work without a limitation to work that is to be stitched on the outsole stitcher or under which it will put out the stitching machine for use upon work that has not been welted on the welt sewing machine. (Winslow, R. I, 544.) In order to obtain either the welt sewing or the stitching or any of the auxiliary machines, the lessee must agree that he will not use at any time in his factory any welt sewing or outsole stitching machines made by any competitor of the defendants.
3. Heeling Machines.
   i. Non Initial Payment.
      Exhibit 27 (adopted 1900) contains
         Right to Terminate All Leases clause.
         Minimum Royalty $230 per annum.
      Exhibit 28 (adopted 1904) contains
         Exclusive Use clause.
         Prohibitive Clause applying to welt sewing, sole stitching, turn sewing, lasting, pegging and metallic machinery.
         Full Capacity Clause.
         Right to Terminate All Leases Clause.
            NOTE.—It is not unusual for the defendants to contend that they did not withdraw previous forms of leases upon the formulation of the new. Such a claim has already been introduced, *supra*. There can hardly be any question, however, in the light of Mr. Wins-

3. Heeling Machines—Continued.
   i. Non Initial Payment—Continued.
      Exhibit 28—Continued.
         Right to Terminate All Leases Clause—Contd.
         low's testimony that upon the adoption of Exhibit 28, the more favorable terms of Exhibit 27 were withdrawn, for, according to Mr. Winslow, the reason for the formulation of Exhibit 28, the insertion of the prohibitive clause which had not appeared in Exhibit 27, was the fact that the United Company at the time was bringing out its leases of welt method machines without initial payment. (R. I, 546.) His attempt to explain that the compensating advantage which he expected to obtain by way of off-set to giving up requirements of the initial payment on the welt method machines was not the exclusion of competition in heeling machines will be noticed later.

         There was no form of lease of heeling machines without the prohibitive clause at the time of filing the petition, but there is testimony as to a rider which eliminated the prohibitive clause and substituted an initial payment.

4. Metallic Fastening Machines.
   i. Non Initial Payment.
      Exhibit 29 (adopted March, 1900).
         Additional Machinery clause.
         Full Capacity clause.
         Right to Terminate All Leases clause.
      Exhibit 30 (adopted June, 1900).
         Superseding Exhibit 29 which was then discontinued contains
            Additional machines clause, providing for the cancellation of all leases for metallic machinery if the lessee fails to take from the lessor any additional metallic fastening machines which he may need.

4. Metallic Fastening Machines—Continued.
   i. Non Initial Payment—Continued.
      Exhibit 30—Continued.
         Superseding Exhibit 29, etc.—Continued.
            Prohibitive clause, applying to lasting, welting, outsole stitching, and turn sewing machines.
            Full Capacity clause.
            Royalty in this lease is to be paid by the purchase of material of which not less than 400 pounds per annum is to be taken.
      Exhibit 31 (adopted March, 1901) contains
         Additional machines clause.
         Full Capacity Clause.
         Clause permitting removal of machines deemed by the lessor unnecessary for the lessee's business.
         Right to Terminate All Leases clause.
         Provision for payment for material at prices "which shall not be more than ten per cent in excess of prices to be required from time to time by the lessor for like fastening material to be used in its metallic department machinery by lessees who shall agree not to use the metallic department machinery leased to them in the manufacture of boots and shoes which are lasted on machines other than those leased from the lessor, or of welted boots and shoes which are not welted and stitched on welt sewing and sole stitching machines leased from the lessor, or of turned shoes, the soles of which are not attached by turn sewing machines leased from the lessor."
         Provision for minimum use of 400 pounds of material per annum.
      Exhibit 32.
         This is a lease like Exhibit 30 with a rider attached eliminating the prohibitive clause.

4. Metallic Fastening Machines—Continued.
   i. Non Initial Payment—Continued.
      Exhibit 33 (printed July, 1911).
         This is a form which takes the place of Exhibit 32.
      Exhibit 34 (adopted 1911).
         This is described by the witness Donham (R. I, 11) as the current form of lease for metallic machines "when taken without the initial payment and without the provision for ten per cent excess in royalty charge." These provisions present no substantial change from the form of Exhibit 30.
      Exhibit 35.
         This is a form of lease for a single machine, the standard screw machine, belonging to the metallic department. Its provisions are the same as those of Exhibit 34.
5. Pegging Machines.
   i. Non Initial Payment.
      Exhibit 45, (adopted June, 1901) contains
         Prohibitive Clause applicable to lasting and metallic machines.
         Exclusive Use clause.
         Right to Terminate All Leases clause.
         Full capacity clause.
         Minimum royalty $10 a month.
   ii. Initial Payment.
      Exhibit 46 (adopted 1905 or 1906) contains
         Exclusive Use clause.
         Right to Terminate All Leases clause.
         Full Capacity clause.
         Initial Payments.
6. Pulling Over machines.
   i. Non Initial Payment.
      Exhibit 36 (adopted March, 1902) contains
         Prohibitive clause applying to heeling, welting, stitching, lasting, pegging, and metallic fastening machines.
         Additional machines clause.

6. Pulling Over Machines—Continued.
   i. Non Initial Payment—Continued.
      Exhibit 36—Continued.
         Right to Terminate All Leases clause.
         Full Capacity clause.
         Return charge of $200.
         Minimum royalty of $15 a month.
      Exhibit 37 (adopted January, 1905) contains
         Exclusive Use clause providing for optional forfeiture of all leases existing between the lessor and lessee in case of its violation.
         Prohibitive Clause applying to welting, stitching, turn sewing, hand-method lasting machines, pegging, metallic fastening and heeling machines.
         Additional Machines clause requiring auxiliary machines to be used exclusively with lessors' pulling over machine.
         Right to terminate all leases clause applying to "stipulation" and "provisions" as well as to "conditions."
         Full capacity clause.
         Return charge of $200.
         Minimum royalty of $20 a month.
      Defendants' Exhibit 345, (adopted 1907).
         This form is the same as Exhibit 37 except that the additional machine clause is omitted, and the exclusive use clause, while retained, gives the lessor the right only to forfeit all leases for pulling over machines.
      Exhibit 38 (Adopted 1909).
         Covering auxiliaries to pulling over machines contains
            Prohibitive clause, including the machinery of the pulling over system held under that *and all other* leases, and prohibiting their use with independent welting, stitching, turn sewing, lasting, pegging, heeling and metallic fastening machines.
            Exclusive use clause.

6. Pulling Over Machines—Continued.
   i. Non Initial Payment—Continued.
      Exhibit 38—Continued.
         Covering auxiliaries to pulling over machines contains—Continued.
            Right to terminate all leases clause.
            Full capacity clause, extending also to all pulling over machines held under these or other leases from the lessor.
            The royalty provisions are noticed just below.
   ii. Initial Payment.
      Exhibit 39 (Printed August, 1911) contains
         Full Capacity clause.
         Prohibitive Clause extending only to the use of the auxiliary machines with the principal machines.
         Exclusive use clause.
         Right to terminate all leases clause.
         Minimum royalty $20 a month.
         Initial payment.

NOTE.—The royalty provisions of Exhibit 38 require the payment of ½ c. for each pair of shoes pulled over in whole or in part by machinery, plus a further payment of ¼ c. for the use of each of 6 of the 8 auxiliary machines named in the schedule, making a total payment if all the machines are used of 2 c., with the proviso, however, that if the lessee shall use no lasting machines or devices except those, of the defendants, the royalty shall not be more than ¾ c. on each pair. This royalty is in addition to all other royalties except royalty paid under other leases for pulling over machines. A minimum royalty is also required.

This lease furnishes an example of the interrelation and cumulative effect of the various parts of the defendants' leasing system. The defendants are here leasing a patented *pulling over* machine. Their price

6. Pulling Over Machines—Continued.
   ii. Initial Payments—Continued.
      Exhibit 39—Continued.
         Initial payment—Continued.

for it is ¾ c. a pair to those who aid them to obtain a monopoly in *lasting* machines, and 2 c. a pair to those who do not.

It may be noticed, also, that under the exclusive use clause, they could not have in their factory a competing pulling over machine if they could find one and the possession of this pulling over machine is conditioned upon its not being used upon any shoes which are operated upon by any welting, stitching, turn sewing, lasting pegging, heeling, or metallic fastening machine made by any competitor of the defendants.

Exhibit 39 as is noted omits the prohibitive clause. To obtain it, however, the lessee must pay an initial payment amounting to about the value of the machine, and the royalty is 1c. a pair straight, with no deduction for royalties paid on the lasting machine. The royalty charges are stated as to both Exhibits 38 and 39 without the 50% discount for prompt payment. The net result is for lasting and pulling over under Exhibit 39, the so called independent lease, the lessee has to pay 1c. a pair while under Exhibit 38, he pays only 3/8c. a pair.

7. General Department Machines.

Exhibits 40 and 41 cover these machines. It is said that they were discontinued after the filing of the Government's petition, and that the company now does not lease these general department machines, but sells them exclusively. Before the filing of the petition, manufacturers who did not use United Company machines exclusively could obtain the machines by outright purchase, but not by lease. Lessees of the United Company could obtain them upon lease.

7. General Department Machines—Continued.

Many of these leases are still in force. Their terms are as follows:

Exhibit 40 (adopted about 1902) contains

Prohibitive clause, applying to stitching, turn sewing, lasting, pegging, and metallic machinery.

Right to Terminate All Leases clause.

The only charge made is payment of the lease premium except that the lessee was bound to purchase repair parts from the lessor. Donham testified that the lease premium *was substantially less* than the price at which the machine was sold, but it will be observed that this lease was used as an inducement to manufacturers to take other machines.

Exhibit 41 (adopted about 1908).

Like Exhibit 40. This lease could be obtained only by users of other machines of the United Company. It is different from Exhibit 40 in that it required an annual rental instead of a lump sum payable at the beginning.

8. Eyeletting machines.

i. Non Initial Payment.

Exhibit 43 (adopted about 1902).

Prohibitive clause, applying to welting, stitching, turn sewing, lasting, pegging, metallic fastening and heeling machines.

Right to Terminate All Leases clause.

ii. Initial Payment.

Exhibit 42 (adopted 1902).

Initial Payment $100.

Right to Terminate All Leases clause.

NOTE.—In both leases, the lessor's further compensation is derived from the requirement that the lessee purchase only from the lessor the eyelets used in the machines.

9. Clicking Machines.

Exhibit 44 (adopted about 1907) contains

Prohibitive clause, prohibiting the use of the lessor's dies with clicking machines other than those furnished by the lessor.

9. Clicking Machines—Continued.
Exhibit 44—Continued.
Exclusive Use clause.
Full Capacity Clause.
Right to Terminate All Leases clause.

NOTE.—The compensation for the use of the machine in case it is used only on shoes lasted and welted or stitched on the lessor's machines is derived from the sale by the defendants of dies at a fixed price. The lease requires the lessee to pay the United Company 5 c. for each inch of cutting edge of any dies which the lessee purchases from manufacturers other than the defendants. It also provides that *1 c.* per pair is to be paid for footwear lasted on lessor's machines, and *6 c.* per pair for footwear welted, or stitched otherwise than by lessor's machines. These royalties are cumulative, but are subject to 50 per cent discount.

This is a further example of the interlocking and cumulative effect of the defendants leases. The compensation for the use of this machine in itself is definitely fixed, and makes the profits upon the sale of dies at established prices, but the lessor who uses a lasting machine or a welting and stitching machine supplied by competitors of the lessor is penalized an amount ranging from ½ c. to 3½ c. a pair, net. While this penalty is stated as a charge for the use of this machine its true purpose and effect as a destroyer of competition in other types of machines is apparent.

APPENDIX D.

RÉSUMÉ OF LEASES IN WHICH THE VARIOUS OBJECTIONABLE CLAUSES APPEAR.

That the effect of these clauses as used in the United Company's entire system of leases may the more readily appear, the leases containing each one of them will be separately designated. In doing so, neither the leases executed by the constituent companies, nor those executed by the subsidiary companies of the United Company will be considered.

First. All the leases contain the seventeen year term.

Second. All the leases contain the "right to terminate all leases" clause.

Third. The following leases contain the "full capacity" clause:

(1) Exhibit 16, adopted September, 1900, a noninitial payment lease for the Consolidated hand-method lasting machine. (Sec. 4, R. III, 139.)

(2) Exhibit 15, adopted December, 1900, a noninitial payment lease for the Consolidated hand-method lasting machine. (Sec. 4, R. III, 131.)

(3) Exhibit 14, adopted December, 1900, an initial payment lease for the Consolidated hand-method lasting machine. (Sec. 4, R. III, 123.)

(4) Exhibit 17, adopted December, 1906, an initial payment lease for the Consolidated hand-method lasting machine. (Sec. 4, R. III, 147.)

(5) Exhibit 19, adopted June, 1901, a non-initial payment lease for the Chase lasting machine. (Sec. 4, R. III, 165.)

(6) Exhibit 20, adopted August, 1903, an initial payment lease for the McKay & Copeland lasting machine. (Sec. 4, R. III, 174.)

(7) Exhibit 18, adopted August, 1901, an initial payment lease for Ideal lasting machine. (Sec. 4, R. III, 156.)

(8) Exhibit 21, adopted in 1906 or 1907, a non-initial payment lease for No. 5 lasting machine. (Sec. 5, R. III, 184.)

(9) Exhibit 22, adopted in 1906 or 1907, an initial payment lease for No. 5 lasting machine. (Sec. 4, R. III, 196.)

(10) Exhibit 24, adopted January, 1905, a non-initial payment lease for Goodyear machines. (Sec. 5, R. III, 217.)

(11) Exhibit 26, adopted in 1905, an initial payment lease for a full set of Goodyear machines. (Sec. 4, R. III, 245.)

(12) Exhibit 27, adopted in 1900, a non-initial payment lease for a heeling machine. (Sec. 3, R. III, 256.)

(13) Exhibit 28, adopted in 1904, a non-initial payment lease for heeling machine. (Sec. 5, R. III, 264.)

(14) Exhibit 29, adopted March, 1900, a non-initial payment lease for metallic machines. (Sec. 3, R. III, 274.)

(15) Exhibit 30, adopted in June, 1900, succeeding Exhibit No. 29, a non-initial payment lease for metallic machines. (Sec. 3, R. III, 280.)

(16) Exhibit 31, adopted March, 1901, equivalent to an initial-payment lease for metallic machines. (Sec. 6, R. III, 290.)

(17) Exhibits 32 and 33. No. 32 is Exhibit 30 with a rider, eliminating the "prohibitive" clause, adopted June, 1900; and Exhibit 33 is a reprint of July, 1911, with the provisions of the rider incorporated in the face of the lease, which is an initial payment lease for metallic machines. (Sec. 3, R. III, 300, 308.)

(18) Exhibit 34, adopted May, 1911, a non-initial payment lease for metallic machines. (Sec. 3, R. III, 316.)

(19) Exhibit 35, adopted May, 1911, a non-initial payment lease for Standard screw machine of metallic department. Sec. 3, R. III, 325.)

(20) Exhibit 45, adopted June, 1901, a non-initial payment lease for Davey pegging machine. (Sec. 5, R. III, 416.)

(21) Exhibit 46, adopted in 1905 or 1906, an initial payment lease for Davey Pegging machine, an alternative form for Exhibit 45. (Sec. 5, R. III, 425.)

(22) Exhibit 36, adopted March, 1902, a non-initial payment lease for pulling over machine. (Sec. 4, R. III, 334.)

(23) Exhibit 37, adopted January, 1905, a non-initial payment lease for pulling over set. (Sec. 5, R. III, 342.)

(24) Defendants' Exhibit 345, adopted as early as 1907, a non-initial payment lease for pulling-over machines. (Sec. 5, R. V, 962.)

(25) Exhibit 38, adopted February, 1909, a noninitial payment lease for pulling-over machine. Clause extends to entire system. (Sec. 5, R. III, p. 354.)

(26) Exhibit 39, adopted August, 1911, an initial payment lease for pulling-over machine. (Sec. 4, R. III, 366.)

(27) Exhibit 42, adopted about 1902, an initial payment lease for eyeletting machine. (Sec. 4, R. III, 390.)

(28) Exhibit 43, adopted about 1902, a noninitial payment lease for eyeletting machine. (Sec. 5, R. III, 397.)

(29) Exhibit 44, adopted 1907, 1908, or 1909, a noninitial payment lease for clicking machine. (Sec. 5, R. III, 405.)

(30) Exhibit 52, adopted December, 1907, a noninitial payment lease for Economy insole reenforcing set. Clause applies only to principal machines. (Sec. 5, R. III, 453.)

This clause, therefore, appears in each of the nine leases for lasting machines, two of the four leases for Goodyear machines, both heeling-machine leases, all six of the leases for metallic machines, both of the leases for pegging machines, all five of the leases for pulling-over machines, both leases for eyeletting machines, and the one lease for clicking machines.

Fourth. The following leases contain the "additional machines" clause:

(1) Exhibit 27, adopted in 1900, a non-initial payment lease for a heeling machine. (Clause 3, R. III, 256.)

(2) Exhibit 29, adopted March, 1900, a non-initial payment lease for metallic machines. (Sec. 3, R. III, 274.)

(3) Exhibit 30, adopted June, 1900, succeeding Exhibit 29, a non-initial payment lease for metallic machines. (Sec. 3, R. III, 280.)

(4) Exhibit 31, adopted March, 1901, equivalent to an initial payment lease, for metallic machines. (Sec. 6, R. III, 290.)

(5) Exhibit 32 and 33: Exhibit 32 is the same as Exhibit 30, with rider eliminating prohibitive clause, adopted June, 1900, and Exhibit 33 is a reprint of same in July, 1900. An initial payment lease for metallic machines. (Sec. 3, R. III, 300, 308.)

(6) Exhibit 34, adopted May 11, 1911, a non-initial payment lease for metallic machines. (Sec. 3, R. III, 316.)

(7) Exhibit 35, adopted May, 1911, a non-initial payment lease for Standard screw machine of metallic department. (Sec. 3, R. III, 325.)

(8) Exhibit 36, adopted March, 1902, a non-initial payment lease for pulling-over machine. (Sec. 4, R. III, 334.)

(9) Exhibit 39, adopted January, 1905, a non-initial payment lease for pulling-over set. (Sec. 5, R. III, 367.)

This clause therefore appears in the first of the two leases for heeling machines, all six leases for metallic machines, and in two of the four leases for pulling-over machines.

Fifth. The following leases contain the "exclusive use" clause:

(1) Exhibit 16, adopted September, 1900, a non-initial payment lease for the Consolidated hand-method lasting machine. (Sec. 7, R. III, 141.)

(2) Exhibit 15, adopted December, 1900, a non-initial payment lease for Consolidated hand-method lasting machine (Sec. 7, R. III, 133.)

(3) Exhibit 14, adopted December, 1900, an initial payment lease for the Consolidated hand-method lasting machine. (Sec. 7, R. III, 125.)

(4) Exhibit 17, adopted December, 1906, an initial payment lease for Consolidated hand-method lasting machine. (Sec. 7, R. III, 150.)

(5) Exhibit 19, adopted June, 1901, a non-initial payment lease for the Chase lasting machine. (Sec. 7. R. III, 168.)

(6) Exhibit 20, adopted August, 1903, an initial payment lease for the McKay & Copeland machine. (Sec. 7, R. III, 177.)

(7) Exhibit 18, adopted August, 1901, an initial payment lease for the Ideal lasting machine. (Sec. 7, R. III, 158.)

(8) Exhibit 21, adopted in 1906 or 1907, a non-initial payment lease for No. 5 lasting machine. (Sec. 8, R. III, 187.)

(9) Exhibit 22, adopted in 1906 or 1907, an intial payment lease for No. 5 lasting machine. (Sec. 7, R. III, 198.)

(10) Exhibit 23, adopted December, 1900, in initial payment lease for Goodyear set. Clause requires exclusive use of only welting, sewing, and outsole stitching machines, but a violation authorizes the forfeiture of all machines men-

tioned in schedule of machines held by lessee from lessor. (Sec. 7, R. III, 209.)

(11) Exhibit 24, adopted January, 1905, a noninitial payment lease for Goodyear machines. Clause requires exclusive use of welting, sewing, and outsole stitching machinery, and turn sewing machinery belonging to lessor, and its violation authorizes forfeiture of all Goodyear machinery. (Sec. 8, R. III, 221.)

(12) Exhibit 26, adopted in 1905, an initial payment lease for full Goodyear set. Clause excludes use of all but lessor's welting and turn sewing machines, but if violated authorizes forfeiture of all Goodyear department machines. (Sec. 7, R. III, 247.)

(13) Exhibit 25, adopted about January, 1905, a noninitial payment lease for the auxiliary machines of the Goodyear department. Clause excludes use of all but lessor's welting and turn sewing machines, but its violation authorizes forfeiture of all machines of Goodyear department. (Sec. 9, R. III, 234.)

(14) Exhibit 28, adopted in 1904, a noninitial payment lease for heeling machine. (Sec. 10, R. III, 267.)

(15) Exhibit 45, adopted June, 1901, a noninitial payment lease for Davey pegging machine. (Sec. 8, R. III, 418.)

(16) Exhibit 46, adopted in 1905 or 1906, an initial payment lease for Davey pegging machine, alternative form for Exhibit 45. (Sec. 8, R. III, 427.)

(17) Exhibit 37, adopted January, 1905, a noninitial payment lease for pulling-over set. For violation of clause the lessor is authorized to terminate "any or all leases or licenses of machinery then existing between the lessor and the lessee." (Sec. 9, R. III, 345.)

(18) Defendants' Exhibit 345, adopted as early as 1907. A noninitial payment lease for pulling-over machine. (Sec. 9, R. V, 965.)

(19) Exhibit 38, adopted in February, 1909, a noninitial payment lease for pulling-over machine. (Sec. 8, R. III, 358.)

(20) Exhibit 39, adopted August, 1911, an initial payment lease for pulling-over machine. (Sec. 8, R. III, 369.)

(21) Exhibit 44, adopted 1907, 1908, or 1909, a noninitial payment lease for clicking machine. (Sec. 9, R. III, 408.)

(22) Exhibit 52, adopted in December, 1907, a noninitial payment lease for Economy insole reinforcing set. (Sec. 9, R. III, 456.)

This clause, therefore, appears in each of the nine leases for lasting machines, the four leases for Goodyear machines, one of the two leases for heeling machines, which has been in use since 1904, both leases for pegging machines, four of the five leases for pulling-over machines, one of the leases for clicking machines, and the one lease for Economy insole machines.

Sixth. The following leases contain the "prohibitive" clause:

(1) Exhibit 16, adopted December, 1900, a non-initial payment lease for the Consolidated hand-method lasting machine. This clause applies to welting, sole stitching, turn sewing, and metallic fastening machines. (Sec. 4, R. III, 139.)

(2) Exhibit 15, adopted December, 1900, a non-initial payment lease for the Consolidated hand-method lasting machine. Clause applies to welting, sole stitching and turn sewing machines. (Sec. 4, R. III, 131.)

(3) Exhibit 19, adopted June, 1901, a non-initial payment lease for the Chase lasting machine. Clause applies to welting, sole stitching, turn sewing, and metallic machines. (Sec. 4, R. III, 165.)

(4) Exhibit 20, adopted August, 1903, an initial payment lease for the McKay-Copeland lasting machine. Clause applies to welting, sole stitching, and sewing, pegging, metallic, and heeling machines. (Sec. 4, R. III, 174.)

(5) Exhibit 18, adopted August, 1901, an initial payment lease for the Ideal lasting machine. Clause applies to welting, sole stitching, and turn sewing machines. (Sec. 4, R. III, 156.)

(6) Exhibit 21, adopted in 1906 or 1907, a non-initial payment lease for No. 5 lasting machine. Clause applies to welting, sole stitching, turn sewing, pulling over and metallic machines. (Sec. 5, R. III, 185.)

(7) Exhibit 23, adopted December, 1900, an initial payment lease for the Goodyear set. Clause prohibits the use of the machine on welt shoes not welted and sole stitched, and turn shoes, the bottoms of which are not attached by

the lessor's machinery. This lease does not tie the leased machines to other than Goodyear machines. (Sec. 4, R. III, 207.)

(8) Exhibit 24, adopted in January, 1905, a non-initial payment lease for Goodyear machines. Clause prohibits the use of machines except on "Goodyear welts" and "Goodyear turns," which have been welted or soles attached by certain specified machines belonging to the lessor. (Sec. 4 R. III, 217.)

(9) Exhibit 26, adopted in 1905, an initial payment lease for full set of Goodyear machines. Clause prohibits use of machines upon other than "Goodyear welts" and "Goodyear turns," welted or soles attached by lessor's machines. (Sec. 4, R. III, 245.)

(10) Exhibit 25, adopted January, 1905, a non-initial payment lease for the auxiliary machines of the Goodyear department. Clause prohibits the use of machines in connection with other than designated welting, sole stitching and turn sewing machines belonging to the lessor. (Sec. 5, R. III, 230.)

(11) Exhibit 28, adopted in 1904, a non-initial payment lease for heeling machines. Clause prohibits use with other than lessor's welting, sole stitching, turn sewing, lasting, pegging, and metallic machines. (Sec. 5, R. III, 264.)

(12) Exhibit 30, adopted June, 1900, succeeding Exhibit 29, which did not contain this clause. The clause applies to lasting, welting, sole stitching and turn sewing machines. (Sec. 3, R. III, 280.)

(13) Exhibit 34, adopted May, 1911, a non-initial payment lease for metallic machines. Clause applies to lasting, welting, sole stitching and turn sewing machines. (Sec. 3, R. III, 316.)

(14) Exhibit 35, adopted May, 1911, a non-initial payment lease for Standard screw machine, of metallic department. Clause applies to lasting, welting, sole stitching, and turn sewing machines. (Sec. 3, R. III, 325.)

(15) Exhibit 45, adopted June, 1901, a non-initial payment lease for Davey pegging machine. Clause applies to lasting and metallic machines. (Sec. 5, R. III, 416.)

(16) Exhibit 36, adopted March, 1902, a non-initial payment lease for pulling-over machine. Clause applies to welt-

ing, sewing and stitching, and pegging and metallic machines. (Sec. 4, R. III, 334.)

(17) Exhibit 37, adopted January, 1905, a noninitial payment lease for pulling-over set. Clause extends to welting, stitching, turn sewing, lasting, pegging, metallic, and heeling machines. (Sec. 6, R. III, 343.)

(18) Defendants' Exhibit 345, adopted as early as 1907, a noninitial payment lease for pulling-over machines. (Sec. 5, R. V, 962.)

(19) Exhibit 38, adopted February, 1909, a noninitial payment lease for pulling-over machines. Clause extends to welting, stitching, turn sewing, lasting, pegging, metallic, and heeling machines, and is made to apply to pulling-over machines held by or for the lessee under that or any "other lease or license agreements from the lessor." (Sec. 5, R. III, 354.)

(20) Exhibit 39, adopted August, 1911, an initial payment lease for pulling-over machines. Clause extends only to use of auxiliary with principal machines. (Sec. 5, R. III, 367.)

(21) Exhibit 40, adopted about 1902. An initial payment lease for general department machines. Clause applies to welting, sole stitching, turn sewing, lasting, pegging, and metallic machines. (Sec. 4, R. III, 376.)

(22) Exhibit 41, adopted about 1908. Noninitial payment lease for general department machines. Clause extends to welting, sole stitching, turn sewing, lasting, pegging, and metallic machines. (Sec. 5, R. III, 382.)

(23) Exhibit 43, adopted about 1902, a noninitial payment lease for eyeletting machines. Clause extends to welting, sole stitching, turn sewing, lasting, pegging, metallic and heeling machines. (Sec. 5, R. III, 397.)

(24) Exhibit 51, adopted December, 1900, a noninitial payment lease for Gem insole machinery. Clause applies only to welting, sewing, and stitching machines. (Sec. 4, R. III, 445.)

(25) Exhibit 52, adopted December, 1907, a noninitial payment lease for Economy insole reinforcing set. Clause applies as to principal machines to welt and turn sewing machines, and as to auxiliary machines, to use with Economy insole reinforcing machine. (Sec. 5, R. III, 453.)

(26) Exhibit 56, adopted about 1910 or 1911, an initial payment lease for repairing machine, used to repair patent leather injured in the manufacture of the shoe. Clause applies to welting, sole stitching, turn sewing, and lasting machines. (Sec. 5, R. III, 487.)

(27) Exhibit 57, an initial payment lease for Miller treeing machines. Clause applies to welting, sole stitching, turn sewing, lasting, pegging and metallic machines. (Sec. 4, R. III, 494.)

The clause, therefore, appears in six of the nine leases for lasting machines, all four of the leases for Goodyear machines, the one of the two leases for heeling machines which has been in use ever since 1904, three of the six leases for metallic machines, all five of the leases for pulling-over machines, the two leases for general department machines, one of the two leases for Gem insole machines, the one lease for Economy insole machines, and the one lease for the Miller treeing machine.

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Supreme Court of the United States

OCTOBER TERM, 1916

No. 207

THE UNITED STATES,
Appellant,

v.

UNITED SHOE MACHINERY COMPANY,
OF NEW JERSEY, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

BRIEF FOR UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL., APPELLEES

FREDERICK P. FISH
CHARLES F. CHOATE, Jr.
MALCOLM DONALD
Counsel for Appellees.

BOSTON
Press of Geo. H. Ellis Co.
1917

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In the Supreme Court of the United States.

OCTOBER TERM, 1916.

No. 545.

THE UNITED STATES, *Appellant*,

v.

UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL., *Appellees*.

Appeal from the District Court of the United States for the District of Massachusetts.

BRIEF FOR THE UNITED SHOE MACHINERY COMPANY, ET AL.

PART ONE.

INTRODUCTORY AND GENERAL MATTERS.

I. INTRODUCTORY STATEMENT.

This is a direct appeal by the United States under the Expediting Act (32 Stat. 823, c. 544; 36 Stat. 854, c. 428) from a decree dismissing its petition by the District Court for the District of Massachusetts.

The petition was filed December 12, 1911. It charged a plan or scheme to monopolize shoe machinery, and a monopoly obtained in pursuance thereof in violation of the Sherman Anti-Trust Act (26 Stat. 209, c. 647). It prayed for the dissolution of

the defendants, United Shoe Machinery Company and United Shoe Machinery Corporation, and for other relief.

The Attorney-General filed a certificate under the Expediting Act, and the court which tried the case was composed of three judges of the first circuit—Judge Putnam, Judge Dodge, and Judge Brown (R. Vol. 1, pp. 1064, 1070).

All the evidence and the witnesses were heard by the judges in open court with the exception of certain evidence relating to patents which was heard before a special examiner (R. Vol. 2). The evidence taken in open court occupied about eleven weeks.

All three judges rendered opinions agreeing that the case was without merit and that the petition should be dismissed. Judge Putnam's opinion contained a general survey of the case (R. Vol. 1, p. 1110). Judge Dodge analyzed in detail the various transactions treated in the evidence and concurred in the opinion of Judge Brown as to the validity of the defendants' leases (R. Vol. 1, p. 1127). Judge Brown considered at length the defendants' lease system and expressed his concurrence with the opinions of his associates (R. Vol. 1, p. 1160).

In accordance with the opinions of the court a decree was entered on May 14, 1915, dismissing the bill (R. Vol. 1, p. 1188).

The evidence taken in open court has been condensed and is contained in Vol. 1 of the Record. The evidence as to patents by direction of the court was not condensed and is contained in Vol. 2 of the Record. The exhibits are found in Vols. 3 to 5. There are also a large number of physical exhibits which could not be reproduced in the record.

II. PARTIES DEFENDANT.

The petition names twenty corporate defendants and twenty-three individual defendants.

On motion of the United States the petition was dismissed against nine of the corporate defendants prior to the taking of testimony (R. Vol. 1, pp. 1061, 1062).

The corporate defendants now parties are the following:—

United Shoe Machinery Company.
United Shoe Machinery Corporation.
United Shoe Repairing Machine Company.
United Shoe Machinery Company of Maine.
United-Xpedite Finishing Company.
O. A. Miller Treeing Machine Company.
W. W. Cross & Co., Inc.
Ross-Moyer Manufacturing Company.
J. K. Krieg & Company.
Booth Brothers Company.
Ellis Lacer Company.

United Shoe Machinery Company, hereinafter called the "United Company," a New Jersey corporation, incorporated in 1899, is the principal defendant. It manufactures, leases, and sells certain types of patented shoe machinery and supplies, and has specialized in machinery for making Goodyear Welt and Goodyear Turn shoes and is the owner of the trademarks "Goodyear Welt" and "Goodyear Turn."

United Shoe Machinery Corporation, a New Jersey corporation, incorporated in 1905, owns most of the stock of the United Shoe Machinery Company. It is not an operating company, and it does not manufacture, sell, or lease machinery or supplies.

The other corporate defendants are subsidiaries of the United Company, or companies in which it holds a majority of the stock; they conduct minor departments of the United Company's business. No one of these companies competes with the United Company or with any of the others. Practically no evidence was introduced as to most of them, and they may be disregarded so

far as the present argument is concerned. Their business is as follows:—

The United Shoe Repairing Machine Company was organized by the United Shoe Machinery Company to take over and carry on that part of the business of the United Shoe Machinery Company which consisted in supplying machines to cobblers and others for use in repairing shoes (R. Vol. 4, P.'s Ex. 187, p. 1239).

The United Shoe Machinery Company of Maine operates as a branch of the United Shoe Machinery Company, leasing machines in certain States of the United States (R. Vol. 4, P.'s Ex. 187, pp. 1238–1239).

The United-Xpedite Finishing Company is engaged in the business of manufacturing and dealing in a heel-finishing machine known as the Xpedite Finishing Machine (R. Vol. 4, P.'s Ex. 187, pp. 1239, 1240).

The O. A. Miller Treeing Machine Company manufactures treeing machines and shoe trees on which shoes are cleaned and polished before packing (R. Vol. 4, P.'s Ex. 187, pp. 1234–1235; R. Vol. 1, pp. 97, 98).

W. W. Cross & Co. makes tacks and nails for use in shoe machines and sells practically its entire output to the United Company (R. Vol. 4, P.'s Ex. 187, p. 1233).

The Ross-Moyer Manufacturing Company, prior to the formation of the United Company, was the agent in Ohio of two of the constituent companies taken over by the United Company. It is now the agent for the service department of the United Company in Cincinnati and Chicago. It also deals in various findings and manufacturing accessories (R. Vol. 4, P.'s Ex. 187, p. 1235; R. Vol. 1, p. 34, lines 17–18; pp. 100, 101).

The J. K. Krieg Company acts as agent for the United Company in New York and sells findings and general merchandise in New York. It took over the business of a partnership of the same name which had acted as agent for two of the constituent companies prior to the formation of the United Company (R. Vol. 4, P.'s Ex. 187, p. 1234; R. Vol. 1, p. 34, lines 15–16; pp. 92, 93, 95, lines 30 ff.).

Booth Bros. Co. makes upper beading and fudge-edge machines (R. Vol. 4, P.'s Ex. 187, p. 1232; R. Vol. 1, p. 33, lines 28–32; p. 88).

The Ellis Lacer Company has been dissolved and is out of business (R. Vol. 1, p. 35, lines 17–18).

Of the individual defendants no evidence whatever was offered against the following:—

Wallace F. Robinson,
Louis A. Coolidge,
Frank L. Babbott,
Edmund LeB. Gardner,
John H. Hanan,
Joseph C. Kilham,
Edward N. Chase,
Rudolph Matz,
Charles G. Rice,
Alfred R. Turner,
Samuel Weil,
Frank Wood,
William Woodward,
Harold G. Donham,

except that they were at some period directors or officers of some of the corporations originally mentioned as defendants.

The only remaining individual defendants with respect to whom there is any further evidence in the record are:—

Sidney W. Winslow,
Elmer P. Howe,
William Barbour,
Edward P. Hurd,
George W. Brown.

III. THE PETITION.

1. ALLEGATIONS OF THE PETITION.

The petition makes a general charge of a combination to monopolize the entire field of shoe machinery. The principal allegations of the petition are:—

That the defendants have combined, contracted, and conspired to restrain interstate and foreign trade and commerce, and have monopolized and attempted to monopolize the same, all as hereinafter set forth. . . .

That for twenty-five years, last past, practically all of the boots and shoes worn by the people of the United States have been manufactured by the aid and use of several different kinds of machines. . . . The principal essential machines are:—

Lasting Machines, for lasting the uppers of boots and shoes.

Welt Sewing Machines and Outsole Stitching Machines, for attaching the upper and welt to the insole of a welt shoe, and sewing the welt to its outsole.

Heeling Machines, for preparing and attaching heels.

Metallic Fastening Machines, for preparing and inserting metallic fastenings.

For many years prior to February, 1899, a large number of persons and corporations were engaged in the manufacture of shoe machinery in competition with each other. The principal concerns so engaged were:—

Goodyear Shoe Machinery Company, which, with its subsidiaries, the International Goodyear Shoe Machinery Company of Maine and the Goodyear Shoe Machinery Company of Canada, manufactured 60% of the machines made in the United States for sewing the upper and the welt to the insole, and the welt to the outsole, of a welt shoe; and 10% of the lasting machines.

The Consolidated & McKay Lasting Machine Company, which manufactured 60% of the lasting machines.

McKay Shoe Machinery Company, which manufactured 70% of the heeling machines and 80% of the metallic fastening machines.

The Eppler Welt Machine Company, and its subsidiary, the International Eppler Welt Machine Company, which manu-

factured 10% of the machines for sewing the upper and welt to the insole, and the welt to the outsole, of a welt shoe.

The Davey Pegging Machine Company, which manufactured 75% of the pegging machines made in the United States, and which was owned and controlled by the Consolidated & McKay Lasting Machine Company.

Early in 1899 these companies were manufacturing their machines under Letters Patent of the United States and other countries. Many of the basic patents on the principal machines owned and controlled by them were about to expire, and, in the ordinary course of events, the general public would have acquired, in the near future, the right to the free manufacture and use of such machines. *The lawful monopoly of such machines theretofore enjoyed by virtue of the patents would have come to an end,* and the system of demanding large royalties for their use would have been replaced by their general manufacture and outright sale under competing conditions.

The defendants, not being satisfied with the benefit *of the lawful monopolies and rights belonging to them under Letters Patent of the United States* and of other countries, *which they had enjoyed for many years, determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery,* and through unlawful combinations and agreements to exclude all others from said trade and commerce. For the accomplishment of this purpose *they conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery, and then to refuse to sell or lease any of the essential machines to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery of whatever kind necessary or useful to such manufacturer of shoes,* and thereby *to monopolize the trade and commerce therein* among the States and with foreign countries. The various contracts, combinations, conspiracies, and acts hereinafter described were steps in carrying out the above-mentioned unlawful project.

That the United Shoe Machinery Company was organized in February, 1899, and, by exchange, acquired the stock of the Goodyear Company, the Consolidated & McKay Lasting Machine Company, and McKay Shoe Machinery Company, and cash was provided to purchase the capital stock of the Eppler Company.

By the means above described the defendants acquired control of the greater portion of the manufacture and the trade and commerce in the machines included in the groups of machines above described.

Prior to the organization of the United Company, shoe manufacturers purchasing or leasing machines from one of the constituent companies were not compelled to use exclusively the machines of any other company. The defendants, *with the intent to acquire complete control of the business of manufacturing and selling or leasing shoe machinery, discontinued the sale to boot and shoe manufacturers of each and all of the machines included in said groups* of machines, and unlawfully adopted, and put into effect, arbitrary, oppressive, and unreasonable agreements, which boot and shoe manufacturers have been required to agree to in order to obtain from said defendants any of the machines included in said groups. These agreements contain provisions not found in their former agreements, *which compel boot and shoe manufacturers leasing any of such machines from defendants to agree to use exclusively one or more of the classes of machines included in said groups of machines owned and controlled by them*, upon penalty of having all the machines included in said groups so leased to them by defendants immediately taken away. These contracts further require boot and shoe manufacturers to take each of said machines for a period of not less than seventeen years, regardless of the terms of the patents relating thereto.

Lessees thereafter were also required to take duplicate parts at exorbitant prices; and the defendants have continually, persistently, and arbitrarily enforced the provisions of said leases.

The defendants, in pursuance of their general purpose, inserted in and made a part of each lease and license agreement, provisions reserving to themselves the right to forthwith terminate and cancel all existing lease and license agreements between them and the boot and shoe manufacturers, if the latter should fail or cease to use exclusively, and to their full capacity, machines leased or controlled by defendants.

The defendants have, by misrepresentation and threats, induced customers of their competitors to abandon them; have threatened that they would use their financial resources and power to secure the patronage of such competitors, and by threats have prevented others from entering into the business

with them; have acquired Letters Patent for valuable inventions, and have held the same for long periods of time without using them; have offered and granted rebates to shoe manufacturers who used exclusively one or more of the machines owned or controlled by them; have bought the business of competitors and paid exorbitant prices therefor.

In pursuance of their purpose to monopolize the shoe machinery industry, defendants have absorbed many competitors and driven others out of business, and have deterred and prevented others from entering the business, and thus made competition with themselves practically impossible. They have acquired some fifty-eight other businesses, and have taken from substantially all, covenants in writing not to engage for long terms in commerce in shoe machinery, and have required vendors to agree that, if they shall invent or patent machines for the manufacture of boots and shoes, they will assign all such inventions and patents to the defendants.

In April, 1905, the defendants organized the United Shoe Machinery Corporation, which acquired substantially all the stock of the United Shoe Machinery Company.

The result of the combinations, conspiracies, and monopolies described has been enormous and unreasonable profits.

That, by reason of the unlawful contracts and combinations above described, defendants control all the large and important establishments in the United States which were formerly engaged in the manufacture, sale, and lease of machines designed and used for attaching the bottoms to the uppers of shoes, and kindred and auxiliary machines, and have acquired a monopoly of interstate and foreign trade and commerce in shoe machinery.

The prayer of the petition is for dissolution and an injunction against the practices complained of.

Defendants' Answer.

The defendants denied the allegations of the petition, and further answering said (R. Vol. 1, p. 1044):—

That the organization of the defendant corporations and the acquisition of the businesses of the several constituent companies "was simply the fusion of several corporations owning noncompeting, complementary machines, covered by Letters Patent

of the United States, into one corporation, and was made with the expectation of an increase in business, economies in administration, and decrease in expenses, and cessation of patent litigation between the companies purchased, which had been expensive to them and annoying to shoe manufacturers; which results it was expected could be attained without increase of cost to the users of machinery . . . , and that better attention to the care of the machines and assistance to the users could be afforded. . . .

"That said organization and acquisition was nothing more than the combination of various elements of machinery all relating to the same art and the same school of manufactures, for the purpose of constructing economically and systematically, and of furnishing a lessee the whole or any part of a gradually developed system of machines for use in the manufacture of shoes, and was and is in strict and normal compliance with modern trade progress."

2. THE BASIC CHARGE OF THE PETITION.

The basic charge of the petition therefore is that

1. The constituent companies having lawful patent monopolies under which they did the greater part of the business of the country in the principal essential shoe machines, viz. (a) lasting machines, (b) welt-sewing and outsole stitching machines, (c) heeling machines, and (d) metallic-fastening machines, and finding these patents about to expire, planned to extend their monopolies unlawfully and to obtain a monopoly of all shoe machinery by

(A) Combining and acquiring all concerns engaged in the shoe machinery business, and then

(B) Refusing to sell or lease any of said so-called essential machines to a shoe manufacturer except on condition that he take from them practically all other machinery which he required and that

2. The United Company carried out said plan and thereby did acquire a monopoly of shoe machinery.

The various acts specified in the petition are alleged to be only "steps in carrying out" this unlawful project and are ma-

terial only if and in so far as they afford evidence of this plan and its accomplishment.

3. ATTEMPT OF THE UNITED STATES TO LIMIT SCOPE OF THE PETITION.

The United States During the Course of the Trial Admitted of Record That It Could Not Prove Its Charge of a Monopoly of all Shoe Machinery, and Attempted to Limit the Scope of the Petition to a Charge of Monopolizing Machines for Preparing and Attaching the Bottoms to the Uppers of Shoes, Eyeletting Machines and Clicking Machines.

The petition as stated above charges a monopoly of all shoe machinery, and the United States presented its direct case on this theory.

During the introduction of the Government's case in chief, statements were repeatedly made by counsel for the United States to the effect that the petition charged a general combination to obtain a monopoly of the entire field of shoe machinery; to illustrate:—

R. Vol. 1, p. 39, lines 4–8, Mr. Gregg, of counsel for the United States, said, referring to the so-called "acquisitions," which related not only to machinery of various kinds but to supplies and findings,—

> "Our position, if the court please, is that all of these acts of acquiring the business of other concerns were all part of a plan to monopolize the shoe machinery business.
> "PUTNAM, J. All; big and little?
> "Mr. GREGG. Big and little."

Again, Mr. Gregg said, R. Vol. 1, p. 52, lines 7–9:—

> ". . . We have alleged in the petition that each and every one of these acts, all taken together, was a part of a plan to monopolize."

Again, Mr. Gregg said, R. Vol. 1, p. 113, lines 16 ff.:—

> ". . . I suppose their defence will be: 'We didn't intend to get all the business.' . . . I assume that is what it will be: 'We didn't intend to monopolize the shoe machinery business, we were not making any attempt to get it all.' And I think

this conversation with the president of the Company is certainly competent to show that it was their intent at that time to monopolize the shoe machinery business, that they wanted to have it all, and that that was the very purpose of the tying clauses of the leases."

Again, R. Vol. 1, p. 202, lines 1–9, Mr. Fowler said:—

"Here is our position: this bill attacks this concern as being a monopoly, and it is alleged that they formed this combination back in 1899, and from 1899 up to the present time they have been doing various things for the purpose and with the intent of monopolizing. . . . This particular fact [a fact which Mr. Fowler urged leave to introduce in evidence] . . . . tends to show the purpose of the original organization."

As during the course of the trial the evidence presented by the United States showed that the defendants not only had no monopoly of certain large classes of machinery, but that the defendants did not even manufacture and had never attempted to manufacture many classes of important machinery, especially machinery used in sewing the uppers of shoes, and that there were scores of other machinery manufacturers greater in number and capacity than were in business when the United Company was formed, the United States undertook to limit the scope of the petition.

After the closing of the case of the United States in chief, and the opening of the defendants' case, Mr. Gregg, of counsel for the United States, made the following admission (R. Vol. 1, p. 414, lines 19 ff.):—

"If the court please, taking the whole bill together, the only charge that we make there and the only thing that we contend for is that they have monopolized machinery designed and adapted for use in the manufacture and attaching, preparation and attaching, bottoms to the uppers of shoes, the clicking machine and the eyeletting machine."

A little later, R. Vol. 1, p. 414, lines 31–33, Mr. Gregg said,—

"We make no contention that they designed or intended to monopolize machinery used for sewing the uppers to the shoe at all."

On R. Vol. 1, p. 435, lines 7–9, Mr. Fowler said,—

> "I never have understood that the purpose of this litigation was to go further than was stated by Mr. Gregg this morning."

And again, R. Vol. 1, p. 837, lines 40 ff., Mr. Fowler said:—

> "So far as the actual monopoly is concerned, it is limited to the machines fastening the soles and the uppers together, and to the clicking machines and the eyeletting machines. Mr. Gregg says he wants to state it.
>
> "Mr. GREGG. Machines for preparing and attaching the bottoms to the uppers of shoes, and eyeletting machines and dieing-out machines, otherwise known as clicking machines. Machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines."

A little later the following colloquy took place between the court and counsel for the United States, R. Vol. 1, p. 839, lines 9–22:—

> "PUTNAM, J. Do you admit that you don't claim a monopoly in trade and commerce, either in the United States or foreign countries, of anything except the bottoming machinery and the eyeletting machinery?
>
> "Mr. GREGG. Machines for preparing and attaching the bottoms to the uppers of boots and shoes, the eyeletting machines and the clicking machines, and, as I stated, when I opened the case for the Government—
>
> "PUTNAM, J. One moment. Do you admit that that is all you claim?
>
> "Mr. GREGG. Yes sir. We make no contention—
>
> "PUTNAM, J. Can that go in the record?
>
> "Mr. GREGG. Yes, sir; I am perfectly willing for that to go in the record."

Still later, and when the defendants had nearly completed their introduction of evidence, and just before the close of the case, the United States presented a request for leave to amend its petition (R. Vol. 1, p. 881; motion to amend, R. Vol. 1, p. 1101).

The proposed amendment charges only a combination to acquire a monopoly of shoe machinery used in adjusting and attaching the upper to the last, in preparing the bottom and the heel

and fastening them to the upper, and in finishing the bottom and the heel of the shoe after said operations had been performed, and the claim with respect to the extent of the monopoly actually achieved was of all the principal and auxiliary machines used for adjusting and attaching the upper to the last preparatory to attaching the upper to the bottom, for preparing the bottom and heel and attaching them to the upper, and machines for finishing the bottom and heel, and clicking and eyeletting machines.

This request for leave to amend was disallowed by the trial court (R. Vol. 1, p. 1109).

These various shifts of position made by the United States during the course of the trial show its complete failure to prove its charge as made by the petition, and its attempt to succeed by making a different case.

The defendants contended below, and still contend, that the United States was required to prove its case as charged; that the defendants' defence was directed against the charge of an attempt to monopolize and of a monopoly of all shoe machinery; and that the limitation of this charge to a charge of an intent to monopolize, and a monopoly of, only a portion of the field of shoe machinery, constituted a material variance not permissible during the course of the trial.

Without waiving this contention, the defendants submit

(1) The United States utterly failed to prove a combination to monopolize or a monopoly of all shoe machinery.

(2) The United States admitted of record that it claimed no monopoly of all shoe machinery, and is therefore debarred from making any such charge.

(3) The United States failed to prove a combination to monopolize or a monopoly of machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines and clicking machines, to which the United States of record limited its charge (R. Vol. 1, p. 839, lines 9–22).

IV. PRELIMINARY STATEMENT.

Charge made by the Petition.

As stated above (*supra*, p. 10) the charge of the petition is,—

1. That the defendants planned to extend their lawful patent monopolies and acquire an unlawful monopoly of all shoe machinery by,—

(*a*) Combining and acquiring all concerns engaged in the shoe machinery business, and then

(*b*) Refusing to sell or lease any of said so-called essential machines to a shoe manufacturer except on condition that he take from them practically all other machinery which he required; and

2. That they carried out said plan and did thereby acquire a monopoly of shoe machinery.

The various acts set out in the petition are alleged to be only "steps in carrying out" this unlawful project.

The issue in the present case is whether or not this unlawful project was entered into by the defendants and carried out.

The record clearly establishes that the charge is entirely unfounded.

The record shows conclusively that the defendants did not attempt to acquire all concerns engaged in the shoe machinery industry. On the contrary, it shows that the United Company declined to purchase over 75 concerns offered to it for sale, many of them its largest competitors furnishing full lines of machines (*infra*, pp. 427–430). It also shows conclusively that the United Company did not attempt to acquire all concerns engaged in manufacturing machines used for preparing and attaching the soles to the uppers of shoes, eyeletting machines and clicking machines, to which the United States during the course of the trial attempted to limit its charge. Many of the concerns which the United Company refused to purchase were making machines of some of these classes and included the United Company's largest competitors. The shoe machinery concerns it did acquire were not competing, and were acquired to enable it to put out new machines, or to obtain patents necessary to perfect its own machines.

The United Company did not refuse to lease its so-called essential machines except on condition that the shoe manufacturer took practically all other machinery from it. On the contrary it continued to offer these machines on the same or better terms than were offered by the constituent companies prior to its formation (*infra*, pp. 358–359). The so-called restricted leases relied on by the United States in support of its charge were, in the first place, only alternative forms of lease, and in the second place, did not have the effect alleged (*infra*, pp. 346–357). The District Court found that there was no evidence whatsoever of any plan to deprive shoe manufacturers of the right to use some machines unless they would also use others, saying,—

> "As the leases prove no such plan, whether of the extent alleged or of less extent, and as the evidence proves the exact contrary of what is charged, we think the United Shoe Machinery Company is, upon the merits, entitled to a full clearance from this charge" (R. Vol. 1, pp. 1163–1164).

As then the record fails to show any such unlawful project as that alleged or any attempt to carry out any such project, it necessarily follows that the United Company has obtained no unlawful monopoly by means of any such unlawful plan or project. But further than this the record shows that the United Company has no unlawful monopoly obtained in any other way. The charge of the petition is that it has an unlawful monopoly of all shoe machinery. The record, however, shows that the United Company does not manufacture machines for sewing the uppers of shoes and certain other kinds of machines at all, and that it manufactures less than 50% of the machines required in an ordinary shoe factory (*infra*, pp. 557–559). The United States during the course of the trial attempted to limit the scope of the petition to a charge of monopolizing machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines. As to these classes of machines it was also shown that there were numerous competitors furnishing such machines (*infra*, pp. 562–567). It was further shown that while the United Company's machines are most desired by shoe manufacturers and, therefore, most in use, this is because its machines are the best machines made,

because they are patented and no other machines equally efficient have been invented, because they are adapted for use together, because the United Company furnishes a service with its machines which is vital to shoe manufacturers and which is furnished by no other company, because of the large sums it spends on its inventive department, the constant improvement of its machines, and the favorable terms it offers its lessees.

As we have stated, the evidence in the case is material only in so far as it bears on the issue above referred to which is the only issue raised by the petition. The United States, however, has not limited its contentions to this issue. But we submit that the record is barren of evidence justifying any other charge of an unlawful plan, or any unlawful monopoly under the Sherman Act, even if it be open to the United States to change the issue made by the petition.

The Present Case is Unique in Several Respects.

No case in any way resembling the present has heretofore been decided by this court with the exception of *United States* v. *Winslow*, 227 U. S. 202, in which it was held that the formation of the United Company was not only lawful, but so self-evidently a legitimate effort after a greater efficiency, and so inherently innocent that no intent on the part of its organizers could make it unlawful.

In the first place, the shoe machinery industry originated within recent years by reason of patented inventions, and it is entirely dominated by patents. As a result, no one can engage in the business successfully unless he does not infringe the patents of others, and holds patents which enable him to manufacture machines superior to or as good as those already on the market. In an unpatented industry, such as the tobacco, oil, cotton or woolen goods industries, competition is to be expected, and its absence raises a suspicion of an unlawful combination or of unlawful methods of competition. In a patented industry, like the shoe machinery industry, it is as natural that a company like the defendant United Shoe Machinery Company, which manufactures the best machines known to the art under patents so that its competitors can offer only inferior machines, should have a large share of the business, as it was natural that

the Telephone Company, as owner of the Bell Patent, lawfully dominated the telephone field.

In the second place, the United Company was a combination of non-competing concerns, each making different kinds of machines used for different purposes. The effort on the part of the United States to prove competition between a few of the machines put out by the constituent companies shows only a trivial and negligible overlapping of the fields of a few machines designed for making different types of shoes.

The formation of the United Company did not eliminate competitors previously in the field. The petition itself alleges, and the record establishes that the constituent companies had lawful patent monopolies under which they supplied the greater part of the machines used for the particular purposes for which the machines they manufactured were adapted. As a result, the United Company, in taking over these non-competing companies, acquired patents under which its constituent companies were doing, and under which it continued to do the greater part of the business of the country in these types of machines. It did not eliminate competitors formerly in the field; it did not create a monopoly. It merely continued a business which it is admitted was already lawfully existing. The monopoly charged in respect to the machines which had been put out by the constituent companies is the same monopoly which the petition avers, and the record establishes existed lawfully at the date the United Company was formed.

Findings of Fact by the District Court.

The decision of the District Court is based on the facts found by the court and set forth in the opinions. These facts, if accepted, completely dispose of the present case.

They establish not only that the contentions of the United States are utterly unfounded, but also that the development and success of the United Company's business has been due solely to the merits of its patented machines, which have been developed for use together as a unit, to the efficient service which it renders with its machines without cost to the shoe manufacturer, to the constant development and improvement of its machines by its inventive department, and to the favorable terms offered

shoe manufacturers under its lease system which enable them to equip their factories without initial cost, paying for the machines only a royalty based on their use. Quotations from the opinions of the District Court, showing the facts found by the District Court in respect to the principal allegations of the petition and the contentions of the United States, are set out below (*infra*, pp. 55–80).

The facts found by the District Court should be accepted so far as there is any testimony consistent with the findings (*infra*, pp. 81–87). Even in the ordinary equity case heard by the lower court on printed depositions prior to the adoption of the new equity rules, facts found by the lower court were treated as presumptively correct. In the present case there are the strongest possible reasons why the facts found by the District Court should be accepted.

The evidence, with the exception of certain technical testimony relating to patents, was heard orally in open court, and the District Court, therefore, had an opportunity to judge of the credibility of the witnesses.

Practically all of the oral testimony introduced by the United States which was material to the issue was disputed. The United States, as the District Court observed, made "efforts which may fairly be described as extraordinary" (R. Vol. 1, p. 1152) to bring before the court all persons who felt or expressed any grievance against the United Company. Practically all of the witnesses for the United States, except certain officials of the United Company, were hostile to the United Company, being competitors of the company, inventors or shoe machinery manufacturers who had endeavored to sell out to the United Company and whose offers had not been accepted, lessees who had violated their agreements with the United Company, or other persons with whom the United Company had had litigation or disputes, or members of the Shoe Manufacturers' Alliance, an association composed of large shoe manufacturers who desired on account of their size to obtain better rates from the United Company than their smaller competitors, who were themselves interested in a shoe machinery concern, and who showed a strong bias against the United Company. Such were the witnesses on whom the United States relied to sustain its charges. The credibility of their testimony and the

extent of their bias are questions which can best be determined by a trial court which hears the testimony and observes the witnesses.

The evidence relates to the details of the conduct of an immensely complicated business over a period of more than twelve years. Hundreds of transactions are involved. A determination of whether or not these transactions were undertaken in the normal and orderly development of the United Company's business, and of the motives and purposes of the defendants, is possible only if based upon a thorough understanding of this complicated business. The trial in open court occupied nearly three months, and the findings of the District Court are, therefore, based upon months of exhaustive and careful study of the entire situation.

Special Characteristics of the Shoe Machinery Industry.

The shoe machinery industry has special characteristics which differentiate it strikingly from any other industry in the country. These characteristics existed when the United Company was formed, and its methods of business were necessarily adapted to meet them. In considering whether the defendants' methods were "usual," "normal," and "orderly," whether they were entered into "with the legitimate purpose of reasonably forwarding personal interest and developing trade," or "on the contrary were of such a character as to give rise to the inference or presumption that they had been entered into or done" with unlawful intent (*Standard Oil Case*, 221 U. S. 1, 58), it is essential to bear in mind constantly the particular conditions with which the defendants dealt. The test in the present case is not what would be normal, reasonable and legitimate in the tobacco or cotton goods business, but solely what was normal, reasonable and legitimate in dealing with the conditions peculiar to the shoe machinery industry.

Some of the most striking characteristics of the shoe machinery industry are as follows:—

1. A great variety of different machines are used in the manufacture of each shoe. Thus on certain classes of shoes over 100 different operations are performed by different machines (Defs.' Ex. 235, R. Vol. 5, pp. 531–671).

There is also a great variety of types of shoes made, such as McKay sewed shoes, in which the upper is united to the sole by a seam running through both outsole and insole inside the shoe; the welt shoe, in which a narrow strip of welt is attached to the upper and innersole, and the outersole then attached to the welt so that the foot does not rest on the seams which attach the sole; the turn shoe, which has a single sole to which the upper is sewed while the shoe is inside out, the shoe being then turned during the process of manufacture; the pegged shoe, in which the sole is attached by wooden pegs; the nailed shoe in which it is attached by nails; the Standard Screw shoe, in which it is attached by screws; and also various modifications of these types, such as the mock welt. Each type of shoe requires to a large extent different machines.

In addition there are various styles of each type of shoe and new styles are constantly developing. Thus we have men's and women's shoes, low and high-heeled shoes, slippers, pumps, laced and button shoes, high-legged shoes and low shoes, bull-dog toes, shoes with different kinds of insoles, shoes made of different materials such as calf, kid, patent leather and canvas, and a great variety of other styles. Many of these styles require certain special machines for their manufacture.

The result is that a great variety of machines are required in the shoe trade. The United Company, which has specialized in bottoming machines and which does not manufacture any machines for sewing the uppers of shoes, and which manufactures and furnishes only from 30% to 50% of the total number of machines used in the ordinary factory, nevertheless makes over 300 different kinds of machines.

2. The shoe machinery business, as stated above, is of recent origin. Previously to 1850 or 1860 shoes were made almost entirely by hand. The development of shoe machinery began about 1863, the McKay Sewing Machine being the first important machine (R. Vol. 1, p. 521, lines 15–17). The various machines have been invented and developed gradually from that date. The Goodyear Welt Machines ran back to 1870 or 1868. They were greatly improved about 1888. However, in 1899, when the United Company was formed, welt shoes constituted only about 10% of the total number of shoes made. Since 1899 the United Company has greatly improved its welter

and stitcher, and has developed 22 new welt auxiliary machines and 6 new turn auxiliary machines (*infra*, p. 197). Lasting machines date practically from 1890. In 1899 they were only partially developed, and half the shoes made were still lasted by hand. The United Company, since its organization, has invented and put out 150 new machines (*infra*, p. 195).

Practically all of these machines have been at all times patented. In the continuous patent development of the industry the machines in use have given place to new and improved machines, which do better work and have greater capacity, and new machines to take the place of hand work have been developed with the result that the best machines available, the machines which manufacturers demand and use, have at all times been effectively protected by patents (*infra*, pp. 222-234).

3. From the very beginning of the industry the principal shoe machines have been leased and not sold, the lessor depending for his return on a royalty of a certain specified sum for each pair of shoes on which the leased machine was used. Originally an initial payment was also charged to cover the cost of installing the machines and instructing operatives, but this has since been eliminated largely by the United Company.

Under this lease system the entire industry of manufacturing shoes by machinery was created and developed. It was the system under which the constituent companies furnished all their machines, at the time the United Company was formed. It had been adopted because it was found most satisfactory to the shoe manufacturer, and best suited to increase the use of the machines, and, consequently, the return to the shoe machinery manufacturer; in other words, because it was best suited to the conditions of this particular industry.

Under this system the shoe manufacturer is not obliged to invest his capital in machinery. He is, therefore, able to do a far larger business on a limited amount of capital, and his money is not tied up in machinery, which depreciates rapidly, and on which, as the testimony shows, he cannot borrow money. The lease system further enables comparatively poor men of small capital to enter the business, and thus extends the use of the machinery manufacturer's machines. The royalty payments made by the shoe manufacturer, being based on the amount of use to which the machines are put, are adjusted to the amount of

business which the shoe manufacturer does. Owing to the rapid development of shoe machinery, the machines not infrequently become obsolete in a few years. If a shoe manufacturer purchased his machines outright, he might thus suffer a large loss. Under the lease system the machinery manufacturer takes this risk and not the shoe manufacturer. The principal shoe machines are extremely delicate and need constant adjustment and repairs. Under the lease system the machinery manufacturer owns the machines, and his return being based on their use, he is interested in maintaining them in proper adjustment and repair, and he is far better qualified to give this service than is the shoe manufacturer.

For a full statement of the reasons for the adoption of the lease system, see *infra*, pp. 252–257.

4. As we have stated, a large number of different machines are used in the manufacture of each shoe. In the economical management of a shoe factory the shoes flow from one machine to another in a continuous stream, and when an important machine in the line breaks down, it interrupts this flow and, therefore, not only stops work on that machine, but also stops work on all machines coming after it in the line, and as to continue operating machines preceding it in the line would merely accumulate uncompleted work which could not be finished, it likewise stops work on those preceding machines. The capacity of shoe machines is so large that most shoe manufacturers require only one machine of certain kinds. The predicament of a shoe manufacturer, one of whose machines breaks down, is obviously very serious, and his loss is heavy unless he can obtain prompt and efficient repairs. The production of his entire factory may cease, and he will be unable to keep his contracts to deliver shoes. Furthermore, his operatives, who work by the piece, will earn nothing, and the lessors of machinery, the use of which is thereby prevented, will get no royalty.

It is, therefore, of the utmost importance that each machine in the line be well constructed and well cared for, so that it will not break down or get out of adjustment, and it is furthermore of the utmost importance that a machine be repaired at once if it does break down or get out of adjustment, so that the work will be interrupted for as short a time as possible.

The advantages of a well-constructed line or series of machines

which receive proper repair service are especially pronounced in respect to the principal bottoming machines such as welters, stitchers, and lasting, metallic fastening and heeling machines, which perform delicate and difficult operations, handle material like thread, wire, and nails, and which themselves are necessarily delicate machines, having a large number of moving parts liable to get out of adjustment or repair.

Furthermore, the machines are so complicated, and the variety of machines so great that the ordinary shoe manufacturer, who does business on a comparatively small scale and even the large manufacturer, cannot afford to keep in his employ skilled mechanics acquainted with the intricacies of all his machines, nor can he afford to keep on hand the great variety of duplicate parts which may at any time be required for repairs and replacements. This repair service to be effective must be furnished by the shoe machinery manufacturer who can do it on a large scale, and who can maintain skilled mechanics and a stock of repair parts in or near the various shoe centers.

For a statement as to the importance of an efficient series of machines, and of an adequate service, see *infra*, pp. 179–194, 333–340.

5. Each machine in the line or series of machines must also be so organized as to operate efficiently upon the shoe in the condition in which it has been left by the preceding machine, and so as to leave the shoe in condition to be operated on by the succeeding machines. In other words, the important machines to work effectively must be adapted for use together. The machines all co-operate in a single continuous process and constitute for practical purposes parts of a single machine rather than distinct and independent machines. It is as important that each machine of the series be adapted to use with the other machines of the series, and be well constructed and maintained in proper repair, as it is that each part of a single machine be so adapted, constructed, and maintained. If an outside principal machine not adapted for use with the other principal machines of the series is interjected into the series, both the quality of the work and the speed of the machines are seriously interfered with (*infra*, pp. 335–338).

6. Most shoe manufacturers are men of comparatively small capital, who operate on a small scale. The United Company

in 1911 had over 1,000 lessees, about half of whom made less than 300 pairs of shoes per day (R. Vol. 1, pp. 454–455).

Formation of the United Company.

The United Company was organized February 7, 1899. It was a consolidation of the Goodyear Company, the Consolidated & McKay Lasting Machine Company, and the McKay Shoe Machinery Company, essentially non-competing companies, making different types of machines used for different purposes. After the formation of the United Company was agreed upon it was found that the Eppler Company could be purchased, and it was acquired in March, 1899.

The Goodyear Company manufactured the Goodyear Welter and Stitcher used in attaching the soles to the uppers of Goodyear Welt shoes. The welter was also used in the manufacture of Goodyear Turn shoes. The Goodyear Company also supplied 13 welt auxiliary machines and 3 turn auxiliary machines, machines developed to assist the work of the principal machines. The Goodyear Company also manufactured the Ideal Lasting Machine, designed for lasting women's welt shoes. This was purely incidental to i s main business of furnishing welt sewing and outsole stitching machines. Only 248 Ideal machines were outstanding out of approximately 4,300 lasting machines of all kinds in use.

The Consolidated & McKay Lasting Machine Company made three kinds of lasting machines: (1) the Chase; (2) the McKay and Copeland; and (3) the Hand Method McKay Machine.

The Chase Machine was designed and developed for lasting men's welt shoes and was used almost exclusively for this purpose.

The McKay and Copeland Machine was designed and adapted for lasting men's heavy brogans and was used exclusively for this purpose.

The Hand Method McKay machine was designed and adapted for lasting McKay shoes and was used exclusively for this purpose.

The company also had endeavored to develop a hand method machine for lasting welt shoes. Owing to the difference in structure between a welt and a McKay shoe, the Consolidated Company had not succeeded in making this machine a com-

mercial success. Only 34 machines had been placed in factories, and they were experimental and not commercially successful.

The Davey Pegging Machine Company, owned by the Consolidated Company, made machines for attaching soles by wooden pegs.

The McKay Shoe Machinery Company manufactured and leased machines for inserting metallic fastenings in shoes and heeling machines used for preparing and attaching heels.

These three companies had originated and developed under their patents the business of manufacturing these special types of machines and were furnishing practically all the machines of these types in use by shoe manufacturers.

The Eppler Company, the purchase of which was arranged after the formation of the United Company was agreed upon, manufactured a welter and stitcher and a few auxiliary machines for making the Eppler Welt shoe, a shoe constructed quite differently from the Goodyear Welt shoe. The Eppler Company used a method which had been abandoned many years before by the Goodyear Company. Its machines were definitely inferior to the Goodyear Company's machines and, furthermore, they infringed the Goodyear Company's patents, and various patent suits had been brought by the Goodyear Company which its counsel was confident would succeed. The Eppler Company was commercially unsuccessful and had only about 30 or 40 welters outstanding.

For a statement of the business done by the foregoing companies see *infra*, pp. 109–113.

Machines not Manufactured by the Constituent Companies.

The constituent companies which were consolidated into the United Company covered only a portion of the shoe machinery field. They manufactured no machines for sewing or preparing the uppers of shoes. They did not manufacture the McKay Sewing Machine, the principal machine used in bottoming more than half the shoes then made. They made no General Department Machines, of which the United Company now manufactures more than 170 different kinds.

Defendants' Exhibit 221 A (R. Vol. 5, p. 370 A) gives a list of 85 different dealers in shoe machinery and supplies, adver-

tising in the trade papers between 1899 and 1902, which the United Company neither acquired nor attempted to acquire. The list includes such important concerns as the Wheeler & Wilson Sewing Machine Company, which supplied 90% of the machines which sewed the uppers of shoes; the Reece Button Hole Company, which furnished probably every machine used for making button-holes in shoes and for finishing the button-holes; and the Stanley Company, which manufactured the McKay Sewing Machine (*infra*, p. 117).

In the organization of the United Company, therefore, the defendants obviously made no attempt to acquire all concerns engaged in the shoe machinery business.

The Formation of the United Company held Lawful in United States v. Winslow, 227 U. S. 202.

The formation of the United Company was before this court in *United States* v. *Winslow*, 227 U. S. 202. The indictment in that case sets forth almost precisely the same facts with reference to the organization of the company as the present petition. The only material difference is that it omits reference to the Eppler Company.

This court held in *United States* v. *Winslow*, supra, that the combination was on its face "simply an effort after greater efficiency," lawful under the Sherman Act, and that the allegation of unlawful intent could not make it unlawful. The court further said:—

> ". . . we can see no greater objection to one corporation manufacturing 70% of three non-competing groups of patented machines collectively used for making a single product than to three corporations making the same proportion of one group each. The disintegration aimed at by the statute does not extend to reducing all manufacture to isolated units of the lowest degree. It is as lawful for one corporation to make every part of a steam engine and to put the machine together as it would be for one to make the boilers and another to make the wheels."

The United States has attempted to differentiate the present case by contending that competition existed between certain of the constituent companies and arguing that the elimination of this competition was a wrongful motive for the combination.

It contends that the Ideal Lasting Machine of the Goodyear Company competed with the Chase Machine and the experimental Hand Method Welt Lasting Machine of the Consolidated Company, and that the welt machines of the Goodyear Company competed with the machines of the Eppler Company.

It is conceded that the McKay Company did not compete with any of the other companies.

While no reference was made in the indictment in *United States* v. *Winslow*, supra, to the acquisition of the Eppler Company, it should be noted that the indictment did allege that the Goodyear Company made 10% of all the lasting machines used, and that the Consolidated Company made over 60% of all the asting machines used.

Alleged Competition in Lasting Machines.

The Chase Lasting Machine of the Consolidated Company was designed to last men's welt shoes. It was not structurally adapted to last women's welt shoes, and there is no evidence that it was ever used for this purpose.

The Ideal Machine of the Goodyear Company was designed to last women's welt shoes. While it was possible to use it on men's welt shoes, it was not structurally adapted for such use. Men's shoes are heavier and larger than women's shoes and require a stronger machine of greater power than the Ideal Machine. Furthermore, the box toe on a man's shoe is heavier and stiffer, and the Ideal machine could not successfully wipe over such toes. For these reasons it was not commercially successful on men's shoes, and its use for such purpose was purely incidental and outside of the field for which it was designed. It offered no commercial competition outside of its own field.

The Goodyear Company had put out only 248 Ideal Machines. Of these nearly 200 were in factories where only women's shoes were made and only about 40 were in factories where men's shoes were made. A total of nearly 4,300 lasting machines were in use so that the number of Ideal Machines outstanding was only 5 or 6 per cent. of the total lasting machines in use. The total number of shoes lasted on the Ideal Machine in 1899 and on the Copeland Rapid Machine, which was an earlier type of machine put out by the Goodyear Company, was only

.77 of 1 per cent. of the shoes lasted by machines in that year. Not more than one-half of the total number of shoes made in 1899 were lasted by machines so that less than .40 of 1 per cent. of the shoes made were lasted on the Ideal. As it appears that not more than 40 of the Ideal machines were used on men's shoes, the total number of men's welt shoes on which the Ideal Machine was used did not exceed .07 of 1 per cent. of the total shoes made. This is the extent of the alleged competition claimed with the Chase Machine.

It may be added that both the Chase and Ideal Machines have become obsolete, having been superseded by new and much improved machines.

The Hand Method Welt Machine of the Consolidated Company was in an experimental stage in 1899. It was not of the bed type, and was entirely different in structure from the Ideal Machine, which was of the bed type. The Consolidated Company had been unable to develop the machine so that it would last the toes of welt shoes properly. Only 34 machines were under lease or .08 of 1 per cent. of the total lasting machines in use, and they had been taken experimentally and were being constantly returned. The record does not show a single instance of the use of these machines on women's welt shoes, the field of the Ideal. The machine was not commercially successful until a new device for wiring the toes was adopted in 1900, long after the formation of the United Company, a device not known or reasonably to be anticipated in 1899, when the United Company was formed.

This insignificant overlapping of the fields of use of the Ideal and the Chase Machines and the trivial use of the experimental Hand Method Machine on welt shoes can hardly be termed competition. If it did constitute an incidental and negligible competition, it certainly does not show that the United Company was formed to eliminate this competition. The primary business of the Goodyear Company was the manufacture of welt machines, and its manufacture of Ideal Machines was of insignificant proportions and purely incidental to its main business. It is obvious that the purpose in taking over the Goodyear Company was to acquire its welt machine business. The acquisition of the Ideal Machine was purely incidental.

Furthermore, the United Company was clearly entitled to ac-

quire the Ideal Machine even if it had been the only machine manufactured by the Goodyear Company. The Ideal Machine was the only machine then invented which could last women's welt shoes commercially. It was patented and only by acquiring the patents could the United Company manufacture it. To hold that the United Company could not acquire these patents would be to hold that the United Company could not furnish a machine for lasting women's welt shoes, because such machines could also be used incidentally, though not successfully, for lasting men's welt shoes for which the United Company had another machine.

The Hand Method Welt Machine in 1899 was an unsuccessful experimental machine. It is quite obvious that the purpose in taking over the Consolidated Company was to acquire its three successful machines which were in general commercial use. The acquisition of this experimental Hand Method Welt Machine was purely incidental and no actual competition was thereby eliminated.

For a detailed statement as to this alleged competition in asti ng machines, see *infra*, pp. 119–151.

Alleged Competition between the Goodyear Company and the Eppler Company.

The Eppler Company's machines were patented machines of a different type from the Goodyear machines and made a shoe which differed structurally from the Goodyear Welt shoe. The Eppler machine laid the bulky double chain of the chain stitch in a prepared channel in the innersole on which the foot rested, while the Goodyear machine laid it on the welt outside of the surface on which the foot rested.

The Eppler machines were far inferior to the Goodyear machines, and the Eppler Welt shoe which they made was also inferior to the Goodyear Welt shoe, as the seam laid in the innersole was likely to cause discomfort. Furthermore, the Eppler Company had no satisfactory set of auxiliary machines which were essential to the commercial success of the system.

The result was that, though the Eppler Company's machines had been on the market about seven years, only between 30 or 40 of its welters were outstanding, of which one-third were in

the factory of the president of the company. The Eppler Company was not a success and was inevitably doomed to failure. The Eppler method was only one method of attaching the soles of shoes, used on a wholly insignificant portion of the total shoes made. It offered insignificant competition, if any. The real competition met by the Goodyear Company was the McKay method of sewing the sole to the upper, by which method half the shoes made were manufactured.

Furthermore, such competition, if any existed, was unlawful, as the Eppler machines infringed the Goodyear Company's patents. Patent suits had been brought and counsel for the Goodyear Company had every expectation of success. In continuing these suits the United Company would have been obliged to bring suit against certain of its own customers who were using Eppler machines and also the United Company's lasting, heeling, and metallic machines. The purchase was made in order to terminate this litigation which would necessarily cause friction between the United Company and its customers. An incidental reason was to acquire the Eppler patents and thus enable the United Company to furnish machines to make shoes by the Eppler method if any one so desired. That the United Company was not formed to eliminate this insignificant competition of the Eppler Company is conclusively shown by the fact that the organization of the United Company was arranged before the acquisition of the Eppler Company was thought of.

For a detailed statement as to this alleged competition with the Eppler Company, see *infra*, pp. 152–170.

Purposes for which the United Company was Formed.

Mr. Winslow testified that the fundamental reasons for the formation of the United Company were (*infra*, p. 171),—

First: To increase the productive efficiency of the machines.

Second: To economize in the manufacture of the machinery by bringing that manufacture into one modern factory and standardizing the manufacture.

Third: To encourage and increase the manufacture of Goodyear Welt shoes by the development of new machines to assist in their manufacture, and new methods to lower the cost, to

aid and assist those manufacturers who were making those shoes and induce other manufacturers to enter into their manufacture. It was contemplated in this connection to lower the cost of installation of the Goodyear machines and instruct manufacturers in the manufacture of welt shoes.

Fourth: To develop a better service for the instruction of operatives in the use of machines and for maintenance of the machines and at the same time decrease the expense of that service by avoiding duplication of depots and men employed in that work.

A further reason was that the Goodyear Company was being managed by Mr. Elmer P. Howe, an eminent patent attorney in active practice, who desired to get rid of this burden, and that the McKay Company was managed by Mr. Brooks, who was seventy years old, able to devote only a few days a week to the business, and who wished to retire (*infra*, p. 172).

The defendants specifically denied any attempt to monopolize or any plan such as that alleged in the petition (*infra*, p. 174).

Extent to which Purposes for which the United Company was Formed have been Carried Out.

The extent to which the purposes for which the United Company was formed have been carried out is important in two respects: first, in confirming the testimony of the defendants as to the reasons for forming the Company, and, second, in accounting for the success of the Company.

Concentration in one Factory.

Immediately following the organization of the Company a committee of experts was selected to visit manufacturing plants throughout the United States and gather data as to the best methods of machinery manufacture. As a result of their work the company built a large concrete factory at Beverly, Massachusetts, the first of its kind in the United States. The manufacturing business of the three principal constituent companies was thereafter carried on at the new factory. The Consolidated Company's business had previously been carried on in leased premises at Beverly. The McKay factory had been

in Winchester, a place unsuited to manufacturing business, as there was no labor at hand. The Goodyear Company had been situated in Boston but had no room to develop its factory.

Immediately the work of standardizing the parts for the manufacture and repair of the various machines was accomplished, and the necessity for making and carrying an infinite variety of screws, bolts, castings, and other parts, with the attendant expense, delay, and inconvenience, was obviated (*infra*, pp. 176–179).

Organization and Improvement of Service.

We have shown above the vital importance to shoe manufacturers of service. Such service consists in furnishing skilled mechanics to repair and readjust machines, in maintaining at convenient places a stock of duplicate parts to replace any broken parts, in instructing operatives in the use of machines, and generally in acting as engineers for shoe manufacturers.

Prior to the formation of the United Company each of the constituent companies had attempted to furnish service with its machines, but no one of them was sufficiently large or did a sufficient business in any one factory to furnish a satisfactory service. One of the principal reasons for the formation of the United Company was the belief that a single company furnishing these different types of machines would be able to unify and reduce the cost of this service so that it could be made vastly more efficient. After the consolidation a single organization would be able to take care of all three sets of machines.

Immediately after the formation of the United Company attention was given to the unification and improvement of the service. The best man was put in charge of each district, and arrangements made to render the service from one office in each district. Depots were established in 27 shoe manufacturing centers in 13 different States from Maine to California, and at all these places stocks of repair parts were established and skilled men kept to repair or adjust machines and instruct operatives immediately when a shoe manufacturer requested such assistance. This service was rendered free of charge by the United Company. A charge was made for new parts to take the place of those which were broken, but for the salaries

and expenses of the hundreds of men employed to render this service—608 in 1911—no charge was made.

During 1911 the number of calls by shoe manufacturers for the services of these men was 192,524. The time occupied in the work was 1,110,593 hours. The number of new operatives instructed was 8,889. The cost to the United Company for the year was $1,196,494.86 (*infra*, pp. 186–187). The vital importance of this service to the efficient conduct of the shoe manufacturer's business was testified to by many shoe manufacturers.

For a full statement as to the necessity for this service, and the character of the service, see *infra*, pp. 179–194.

Inventions and Improvements.

Soon after the formation of the United Company the development of inventions and the improvement of machines was placed in charge of a committee composed of three or four inventors experienced in the art of shoe machinery invention. To that committee every new idea or invention was submitted, investigation was made by them, and they reported their findings to the head of the department which had charge of placing those machines in the field, and a conclusion was arrived at as a result of which either an inventor was placed at work to develop that idea or it was filed as not practicable or not of commercial value. This work has been carried on consistently and continuously to the present time.

A large organization has given its entire time and attention to the development of ideas of the company's own men, or ideas suggested to the company, and to the consideration of inventions offered to the company.

Everything that the company has known how to do to advance the art of making shoes by machinery has been done from the organization of the company to the present time, and as soon as a new or improved machine has been developed which performs an operation already performed by some machine outstanding in the hands of lessees, the new machine has been substituted for the old machine without charge, and the old machine has been taken back and scrapped.

In the five years from 1907 to 1911, inclusive, the company expended upon this Experimental Department $2,467,954.70.

During fifteen years the company has brought out an average of seven or eight *new* machines a year. It has developed 150 different new machines of various types which have been supplied to customers (Defs.' Ex. 246). It has acquired or devised and leased or sold at the option of the shoe manufacturer 172 different General Department machines (Defs.' Ex. 227).

For a statement as to the inventions made by the United Company, see *infra*, pp. 194–197.

Increased Efficiency of Machines.

By reason of the invention of new and improved machines and of the service rendered by the United Company with its machines, the efficiency of the United Company's principal machines has been enormously increased. For example each Goodyear welter, each Goodyear stitcher, and each heeler operated on 60% more shoes in 1910 than in 1899 (*infra*, pp. 197–198).

The direct saving to shoe manufacturers by reason of the increased efficiency of the machines amounts to more than the total royalties paid to the United Company (*infra*, pp. 198–202).

In addition the United Company has eliminated initial payments required by the constituent companies in 1899 and in various cases reduced the royalties. It has not increased either initial payments or royalties charged in 1899, although the cost of manufacturing the machines, as is well known, has greatly increased and the capacity of the machines, and the quality of their work has vastly improved, so that they are worth much more to-day than they were worth in 1899.

The shoe operatives are generally paid by the piece, and the increased efficiency of the machines has, therefore, added materially to their earnings, although in many instances the piece price has been actually reduced (*infra*, pp. 202–203).

Development of Goodyear Method of Making Shoes.

One of the purposes in forming the United Company was to encourage and increase the manufacture of Goodyear Welt shoes. By eliminating the initial payments charged in 1899 by the Goodyear Company, and by inventing new auxiliary machines to

assist the work of the principal machines, and by enormously increasing the capacity of the principal machines, the United Company has succeeded as planned in greatly encouraging and increasing the manufacture of Goodyear Welt shoes which are unquestionably the best type of shoe made. In 1899 only 22,700,000 pairs of welt shoes were made, while in 1910 86,231,000 pairs were made (*infra*, p. 203).

The Patents on the Constituent Companies' Machines were not About to Expire in 1899.

The petition alleges that early in 1899 many of the basic patents on the machines put out by the constituent companies were about to expire and the United States contends that this furnished a motive for the formation of the United Company, the intent being, by some method not made clear by the petition, to create a new and unlawful monopoly in these machines to take the place of the lawful monopoly held under the patents.

The United States utterly failed to substantiate its charge that the basic patents were about to expire. On the contrary, it was shown that at the date of the formation of the United Company the machines which the petitioner's patent expert selected to sustain its charge embodied patents which had more than fourteen years to run. The District Court found that the allegation was not proved and said:—

> "It seems obvious, therefore, that the allegations in question could not have been founded, when they were made, upon any adequate or complete investigation of the facts."
>
> . . . . . .
>
> . . . "I must regard the allegations here in question as not sufficiently supported by proof; and hold that no such motive is shown to have prompted either the organization of the United Company, or any of its subsequent doings" (R. Vol. 1, pp. 1133, 1134).

Furthermore, the defendants showed that owing to the continuous patented development of the shoe machinery art, and the development and the invention of new and improved machines to take the place of hand work, the machines of the United Company have at all times since 1899 been protected by strong patents, and at the date this suit was brought they were as strongly, or even more strongly, protected than ever before.

(For a discussion of the patents, see *infra*, pp. 204–237.)

The Lease System.

As we have stated above the method of marketing the principal shoe machines by leasing rather than selling was employed from the very beginning of the shoe machinery industry, and the entire business of manufacturing shoes by machinery had been created and developed under this system. The system had been originated and maintained because it best suited the conditions of the industry, and had been shown by experience to be the most satisfactory to shoe manufacturers.

The exact form of the leases has been the result of an historical development and growth extending over many years. The various provisions have, of course, from time to time been modified and amended as new conditions arose or experience showed just what provisions were necessary to provide a satisfactory system and at the same time protect the lessor.

At the date of the formation of the United Company this lease system had long been definitely established. The United Company necessarily continued it, not only because it was accepted as the most satisfactory method of marketing machines, but because the United Company could not have given up the system without demoralizing the entire shoe industry. Many manufacturers had embarked in business because they could get their machines without capital expenditure, and in the expectation that as their business increased they could get additional equipment on the same terms. Had the United Company at or after its formation required shoe manufacturers to purchase outright the machines they then held, and which they desired in the future, it would undoubtedly have ruined many shoe manufacturers of slender capital and would have caused great hardship to all of them.

The fundamental basis of the lease system, which makes it so satisfactory to the shoe manufacturer, is that the machinery manufacturer installs the machines in the lessee's factory without charge, or, in some cases, for a small initial payment, and depends for his return upon a royalty of a certain sum for each pair of shoes on which the machines are used. The United Company has some $40,000,000 in machines in lessees' factories on these terms.

Under such a system it is obvious that the leases of the ma-

chines must contain provisions carefully protecting the lessor in respect to the use and care of the machines and the return to be paid for them.

It will be found that the provisions of the leases were all adopted to enable the lessor to furnish machines under this unique system, so obviously favorable to shoe manufacturers, on the best possible terms, and at the same time fairly to protect itself.

As stated above, the United Company found the lease system established. It continued the system, making no modifications at all in the leases for more than a year, and thereafter making modifications only from time to time to enable it to offer its lessees better terms, or to meet new conditions, just as the constituent companies had from time to time modified their leases prior to the organization of the United Company.

These modifications have not changed the essentials of the system which was established at the time of the formation of the United Company. In a number of instances they have eliminated or relaxed protective clauses which the constituent companies had required and believed necessary for their benefit.

The charge made by the petition that the United Company upon its formation discontinued the sale of machines was absolutely unfounded. The constituent companies did not sell a single machine, while the United Company, on the contrary, sells over 170 different types of machines which it has developed since its organization. This allegation is only an illustration of the reckless character of the charges made by the United States, obviously without any investigation of the facts.

The provisions of the leases, to which the United States took exception, neither support the charge made by the petition, that the United Company refused to lease its essential machines defined as welt sewing, outsole stitching, lasting, metallic, and heeling machines, unless the shoe manufacturer took practically all other machinery of it, nor do they establish a foundation for any charge not made by the petition.

Before considering the clauses objected to by the United States, one further word of explanation as to the lease system employed by the United Company will be useful. The United Company, for convenience, has grouped its machines into different

departments. Thus the Goodyear welt and turn machines are in the Goodyear Department, the lasting machines in the Lasting Department, the metallic machines in the Metallic Department, the heeling machines in the Heeling Department, the eyeletting machines in the Eyeletting Department, the pulling-over machines in the Pulling-over Department, and various miscellaneous machines in the General Department.

There are separate forms of lease for each department which differ from each other according to the character of the machines and their use, and there are different forms used in each department, both alternative forms and forms for different machines.

It is impossible in this preliminary statement to describe in detail the various clauses recited in the petition to which the United States objects. A thorough study of their history, of the complications of leasing so many different kinds of machines adapted for use together, and used in making a great variety of different kinds of shoes, for royalties based on the actual use of the machines, is essential to an understanding of the reasons for the adoption of the various clauses and their necessity. The leases are discussed in detail *infra*, pp. 238–422, and at this point we give only a brief outline of the principal clauses to which the United States takes exception.

1. The Full Capacity Clause. This clause required the lessee to use the particular machine leased to full capacity so far as the lessee has work for it to perform, and on which it can be used without violating any other provisions of the lease.

This is the only clause contained in the leases of the United Company at the time suit was brought, or for some years previously, which requires the lessee to use the United Company's machines at all.

Its purpose is obvious. The lessee obtains the leased machine, agreeing to pay a royalty based on its use. Unless the lessee uses it, the lessor will receive no royalty. It is obvious that the lessor cannot manufacture and install an expensive machine on these terms, unless the lessee will agree to use it when he has work which it can perform.

That the clause is employed solely to provide an adequate amount of royalty to the lessor is conclusively shown by the fact that this clause is not used in leases of machines which do not provide for a royalty based on the use of the machine.

This clause was used in various leases of the constituent companies.

For a full discussion of this clause and its effect, see *infra*, pp. 306–311.

2. The Exclusive Use Cancellation Clause. This clause permits the lessor to withdraw its machines of a certain kind or department, when other machines of that same kind are used by the lessee. It is not an agreement on the part of the lessee, but merely the reservation of an optional right by the lessor. It does not forbid the use of such other machines by the lessee; it only reserves an option to the lessor to withdraw its own machines of this particular kind if he deems such action necessary for his protection.

When other machines of the same kind as those leased are used by the lessee in the same factory with the leased machines, experience has shown that the lessee may actually do most of his work on the lessor's machines, but carelessly or dishonestly report it as done on his other machines, or he may use the leased machines only on slow or difficult work, or only during his busy seasons, or use them as a threat to reduce the prices of hand labor. Under these conditions the lessor may not get a proper return on his machines, and the constituent companies, therefore, found it necessary to insert in most of their leases a clause known as the Additional Machinery Clause, requiring the lessee to take additional machines of the same kind from them if needed (that is, to use their machines of the kind leased exclusively), or a clause known as the Exclusive Use Cancellation Clause, giving the lessor an option to cancel its leases if the machines were not used exclusively. The United Company found that the Exclusive Use Cancellation Clause gave it sufficient protection against the abuses outlined above, and therefore employed this clause, discarding entirely after 1907 the use of the Additional Machinery Clause, which it had continued to use up to that time only to a limited extent. It thus eliminated from the lease system the only clause employed by the constituent companies requiring an exclusive use of any of their machines.

For a discussion of the Exclusive Use Cancellation Clause and its effect, see *infra*, pp. 311–323.

3. The Cancellation for Breach Clause. This clause permits the lessor to withdraw all its leased machines and cancel all

its leases if the lessee violates his agreements which he has obligated himself to perform.

It is obvious that the lessor who installs his own machines without charge in the lessee's factory, to be paid for only when used, must have a right to withdraw them if the lessee acts in bad faith and violates his agreements. A similar clause was contained in all the leases of the constituent companies.

For a discussion of this clause and its effect, see *infra*, pp. 326–330.

4. The Restricted Use Clause. This clause is used in leases of machines of certain departments, restricting their use to use on shoes operated on by certain principal machines of other departments. The leases containing this clause are alternative forms of lease offered lessees who wish to use a series or team of the United Company's machines. Where certain principal machines are so used as a team and each machine of the team is kept in repair by the United Company, each machine does more and better work and produces a larger royalty than if used with machines not adapted for use together, and not properly cared for and maintained in efficient working condition. Where a team of machines is used, the United Company can also furnish service at less cost for each machine than where only a part of the series is used. This clause, therefore, merely provides a wholesale rate where the lessee desires to use a team of machines as a unit, *i.e.*, in a wholesale manner. Where so used, as we have stated, each machine produces a larger royalty for the United Company, and this clause enables shoe manufacturers to benefit and share in the increased economies resulting from a use of a team of the United Company's machines (*infra*, pp. 333–340).

The clause has an extremely limited effect as it only restricts the use of certain principal machines, which the petition calls essential machines, to use with each other and of certain other machines to use with certain of such so-called essential machines. No machines are restricted to use with the majority of the machines manufactured by the United Company. For example, no machines are restricted to use with over 170 General Department machines, with the 43 Goodyear Auxiliary machines, or with the eyeletting, clicking, or McKay sewing machines (*infra*, pp. 366–373).

The United States relied wholly on this clause to prove its fundamental charge in the petition that the United Company refused to lease its essential machines except on condition that the lessee take all other machinery of it, but, as found by the District Court, the clause had no such effect. In the first place, leases containing this clause were only alternative forms of lease, and machines without these restrictions were offered lessees on terms as favorable or more favorable than were offered by the constituent companies prior to the formation of the United Company (*infra*, pp. 357–364).

In the second place, the machines defined by the United States as essential machines, which it was contended the United Company used to compel the taking of other machines, defined as non-essential, were not restricted to use with such other machines. The restrictions ran the other way; that is, with two minor exceptions the so-called essential machines were not restricted to use with any of the so-called non-essential machines, but on the contrary the restrictions were solely restrictions either restricting the so-called essential machines to use with other essential machines, or restricting the so-called non-essential machines to use with certain of the essential machines (*infra*, pp. 346–356).

These restrictive clauses were not adopted immediately upon the formation of the United Company, but only from time to time as conditions called for their use. No such clause was ever inserted in leases of the Goodyear welter and stitcher, the machines which the petitioner's patent expert testified were the only essential machines in making the Goodyear Welt shoe.

For a discussion of this clause and its effect, see *infra*, pp. 331-414.

5. The Auxiliary Restricted Use Clause was used to restrict the use of auxiliary machines to use with the principal machine or machines of the department. In every case the principal machine was first invented. Auxiliary machines to assist the work of the principal machine were developed later. It was the invariable practice to supply these new auxiliary machines, when developed, to lessees already having the principal machines without additional royalty charge, the lessor receiving his return indirectly through the increased use and capacity of the principal machines which resulted. But of course, when so furnished without additional royalty charge, it was necessary to restrict the use of the auxiliary machines to use with the prin-

cipal machine; otherwise the lessor would receive no return direct or indirect. The auxiliary machines put out by the constituent companies had always been so restricted and the United Company merely continued the practice.

For a discussion of this clause and its effect, see *infra*, pp. 373–377.

6. The Term of the Leases. The leases of the constituent companies ran in some cases for the life of the machine; in others for seventeen years and thereafter during the life of the patents at any time embodied in the machines; and in still others for the life of the patents then or thereafter embodied in the machines. Most of the machines embodied the inventions contained in pending patent applications, so that the leases in most instances ran for more than seventeen years. If new improvements were added they would run still longer. The United Company, to make its leases consistent, adopted the term of seventeen years for all its leases. This term rather decreased than increased the term of most of the leases.

A long term is essential. The shoe manufacturer who undertakes to build up a shoe business wishes an assurance that he may hold his machines for an extended term, and the lessor constructing machines for the lessee's use needs an assurance that they will be held for a sufficient time to insure an adequate return. An extended term is therefore mutually advantageous.

For a full discussion of this clause and its effect, see *infra*, pp. 302–306.

The record shows that the United Company treated its lessees with the utmost liberality, and that it enforced its leases only when essential to its protection (*infra*, pp. 414–419). During its entire existence it exercised its right to cancel its leases in only five cases apart from bankruptcy cases, and in each of these cases the lessee either flagrantly violated his agreements or had abandoned the use of his machines entirely (*infra*, pp. 417–418). An examination in detail of the history of the lease system, of the reasons for the adoption of the various provisions, and of the spirit in which the rights reserved to the lessor have been enforced, will establish conclusively that the various clauses have been adopted for proper, legitimate business reasons and not for the purpose of excluding competitors, and that these clauses, or clauses having the same effect, are essential to the

maintenance of this highly satisfactory system under which shoe manufacturers obtain machines without capital expenditure to be paid for only according to their use.

Acquisitions of other Businesses and Properties.

As was entirely natural, the United Company in dealing with shoe manufacturers in labor saving machinery and devices was led to extend its business. The United States charges that between 1899 and 1911 the company acquired sixty other concerns. As to one of these, the Boston Blacking Company, the United States abandoned the charge and dismissed the bill. The Thomas G. Plant purchase will later be considered by itself. Of the remaining fifty-eight transactions, eleven took place in 1899, eight in 1900, six each in 1901 and 1902, three each in 1903, 1906, and 1908, nine in 1904, one each in 1905, 1907, and 1909, five in 1910 and one in 1911. They were offered in evidence by the United States in support of its claim set out in the petition of a plan by the defendants, to obtain a monopoly of the entire field of shoe machinery. But this claim, as we have stated above, was utterly abandoned by the United States during the trial, and the ground of complaint was shifted to a claim of monopoly of machines for preparing and attaching the soles to the uppers of shoes, eyeletting machines, and clicking machines. This change of position renders most of the acquisitions of no importance, for few of them had any relation to machines of the kinds last above described. Of these fifty-eight so-called acquisitions, many were not acquisitions at all. They may be classified as follows:—

(1) Contracts of employment (three), contracts to commute obligations created before 1899 (two), purchases of patents only (three) and an exclusive license to sell sandpaper. No tangible property or business of any kind was acquired by any of these nine transactions.

(2) Purchases to add findings and supplies which are used by shoe manufacturers. These numbered fifteen. No shoe machinery was acquired by any of these transactions.

(3) Purchases of new machines which the United Company did not have before. These numbered twenty.

(4) Purchases of patented improvements or inventions for the purpose of enabling the United Company to supply

better machines than it had before. These numbered eleven.

(5) Of the three remaining transactions one was a purchase of experimental machines, which had never been put out, for the purpose of settling a great amount of litigation; another was a purchase of an insignificant foreign business for the purpose of settling litigation; and the third was a purchase of foreign patents on a machine for which the United Company had been agent abroad for years and which it had put out exclusively abroad.

None of the businesses acquired was in competition with the United Company, and in all cases competitors were left outstanding. Many of the concerns were not engaged in business at all, and of those engaged in business many were not engaged in the shoe machinery business, but made sandpaper, brushes, cement, eyelets, lacings, pegwood, needles, awls, rawhide mallets, nails, tacks, metallic heels and counters, or other supplies of use to shoe manufacturers who were customers of the United Company.

The company continued to produce all the supplies or machines acquired by it. None of the businesses was restricted or suppressed in any way.

During the same period the United Company had offered to it and, *refused to purchase*, the businesses of between seventy-five and eighty other concerns among which were some of the United Company's principal competitors; many of these were of great size and importance and manufactured essential machinery used by shoe manufacturers, especially machinery for preparing and attaching the soles to the uppers of shoes, and taken together they were making a complete line of shoe machinery including machines for making the uppers (*infra*, pp. 427–430).

In addition to these businesses offered to the United Company, there were between June, 1904, and December, 1911, offered to it 493 inventions for shoe machinery which it did not acquire (*infra*, pp. 429–430).

In 1911 when this suit was brought there were a very large number of concerns engaged in manufacturing shoe machines, such concerns being more numerous and larger than ever before.

For a full discussion of the acquisitions, see *infra*, pp. 423–465, and Appendix, pp. 1–87.

Covenants in Contracts of Purchase.

The petition charges that the United Company took from vendors and patentees covenants not to compete and to assign future inventions.

The covenants in question are of the usual character taken from the vendor of a business or from an inventor entering into a contract of employment or selling patent rights. Such agreements have been long recognized as essential to the protection of the vendee or employer. In the present case the covenants were in no instance shown to exceed what is usual, lawful, and necessary. They utterly fail to establish any intent to obligate either vendors or patentees unlawfully. The record shows that the officers of the company had no plan or design whatever with respect to these covenants, and that their form was left to the attorney who drew the papers.

In thirteen transactions there were no covenants as to competition or future inventions whatsoever. In most of the transactions where covenants were inserted particular pains were taken to limit the covenant strictly to the particular kind of machines or goods which were sold.

The petition seriously misstates the extent and scope of many of the covenants, although the documents themselves were in the possession of the United States for a long time prior to the bringing of the petition.

For a discussion of the covenants, see *infra*, pp. 466–475, and Appendix, pp. 82–87.

The Plant Purchase.

In September, 1910, the United Company purchased of Thomas G. Plant a large number of patented inventions, applications for patents relating to shoe machinery, and 60% of the stock of the Thomas G. Plant Company, which manufactured women's shoes, paying therefor $3,000,000 in cash and $1,500,000 in common stock of the United Company at par.

This purchase is largely relied on by the United States as showing an attempt by the United Company to obtain a monopoly

of shoe machinery. It is claimed that Plant was a competitor of the United Company and threatened to become formidable. This is not the fact. He was not a competitor and never intended or was able to compete, but he had developed valuable improvements on certain of the defendants' machines which were of great importance to the art of shoemaking and which could not be used by the defendants, because Plant had patented the inventions.

Plant had been a successful manufacturer of women's welt shoes, and a user of United Company machines for his manufacture. He had differences with the United Company and went to work to provide himself with machines of his own for making shoes. Taking the United Company machines as a basis, he made certain changes and some important and valuable improvements which he patented. This resulted in extensive patent litigation between him and the company because he was infringing its patents and they could not use his improvements without infringing his patents.

In May, 1910, he removed all the United Company machines from his factory and installed his own machines, and attempted to manufacture shoes with them. Prior to this he had offered to equip two other factories with his machines without requiring royalties for their use, but these offers had been declined. Plant had declared in 1909 that his intention was to equip these factories and his own and then sell out to the United Company.

He first approached Henry B. Endicott, a large shoe manufacturer, and offered him $250,000 if he could sell the Plant inventions and patents to the United Company. Mr. Winslow, president of the United Company, declined to consider the proposition without an opportunity to examine by experts Plant's machines and ascertain their value to the art of shoemaking. Plant declined to permit such examination unless the company put up $1,000,000 to be forfeited in case the United Company did not purchase. He was fearful of the patent litigation which might follow such an examination. Plant increased his offer to Endicott to $500,000 if he succeeded in bringing about a sale.

Finally an examination by certain shoe manufacturers who were directors in the United Company was arranged for. They saw Plant's machinery and a majority of them reported against a purchase at Plant's terms, which were then $6,500,000 for

his patents and inventions alone. Plant was notified that negotiations were at an end. Plant then tried another avenue of approach. He went to one H. W. Smith, a friend who had often urged upon him the advantages of selling out, and told him that if he, Smith, would bring him, Plant, in touch with Mr. Barbour, vice-president of the company, and Mr. Herrick, its counsel, whom Plant supposed to be the persons chiefly opposing the purchase of his inventions, so that he might overcome their opposition, he would pay Smith 5% on the price he sold for. At the same time he told Smith that he was determined to get entirely out of business and dispose of his interest in his shoe manufacturing company, which comprised 60% of its stock.

The shoe factory known as the Thomas G. Plant Company was a very successful business. It had an output of 12,000 pairs a day of a type of women's welt shoes which were very popular, and its annual net profits over a series of years ranged from $500,000 to $700,000. In one year they had reached $1,200,000. Plant authorized Smith to urge upon the United Company the advantages of owning this factory. Smith, accordingly, having persuaded Plant to waive his condition of payment of $1,000,000 for an examination of the machines, arranged meetings for Plant with Barbour and Herrick, and himself saw Winslow. Mr. Winslow and Mr. Howe and a committee of experts were permitted to make an exhaustive examination of the machinery. The experts were instructed by Mr. Winslow to examine solely with the purpose of ascertaining whether the machinery embodied inventions which if added to the United Company's machines would be of benefit to shoe manufacturers and advance the art of shoemaking. The experts reported that Plant's inventions and improvements comprised a number of important and valuable features which, added to the United Company's machines, would greatly increase the economy and efficiency of their operation, particularly of the welter and stitcher.

During all the negotiations the United Company never made Plant any offer for his properties. Finally, on September 20, 1910, Plant offered to accept $3,000,000 in cash and $1,500,000 ($25 par) in common stock of the United Company having a market value of $50 a share for all his patents and inventions and 60% of the stock of the Thomas G. Plant Company with

its very large earnings. The offer was accepted and the sale consummated, and Plant paid Smith his 5% commission, or $300,000.

Plant was not producing machines on any commercial basis. He had no factory to make them in. Such as he had had been built in a great many different machine shops and afterwards assembled. He had no selling organization. He had put out a catalogue and published advertisements threatening the United Company, but he had never sold a machine except to the factory he himself controlled. He declared repeatedly that he did not desire or intend to go into the shoe machinery business, and that his plan was to sell out to the United Company.

Though the inventions were very valuable, as we shall show, the machines themselves were mechanically defective and too lightly built to do the work. They were crude, merely experimental, constantly broke down, and caused a tremendous breakage of lasts, and made shoes by obsolete and very expensive methods, and so poorly that it was necessary to employ a large number of men to repair the shoes after the operation. So great was the expense of their operation that the profits of the shoe company were one-half less than they had been when the United Company's machines were used. After the purchase the management of the shoe factory was left entirely in the hands of Plant's former associates. These men, who were practical shoemakers of great experience, found it impracticable to continue the manufacture of shoes with Plant's machines for the reasons just stated, and of their own volition discontinued the use of the Plant machines and resumed the use of United Company machines.

Crude and unsatisfactory as Plant's machines were, he had embodied in them many extremely valuable inventions which represented important advances in the shoe machinery art and which were capable of being reorganized and incorporated in the United Company's superior machines. Plant had, however, patterned his machines after the United Company's machines, with the result that he infringed a great number of claims in approximately 100 of the United Company's patents. On the other hand, the United Company had learned that 15 of its machines infringed 20 patents owned by Plant. Also there were 23 interferences pending in the patent office between the United

Company's applications and applications owned by Plant. The record establishes that it was a realization of the great benefits which would result to the industry; first, by incorporating Plant's valuable inventions in the United Company's superior machines, and, second, by avoiding the intolerable conditions which would have resulted from the great amount of litigation, existing and threatening, on account of the infringements by each party of the other's patents, which led to the purchase by the United Company, and that those considerations were the sole reasons for the purchase.

The United Company immediately took up the Plant inventions and so far as possible added them to its machines. These resulted in great savings and increased efficiency. In the case of the welter and stitcher a saving of $800 a year per machine to the shoe manufacturer was effected. Operatives were enabled to earn more money at a less piece price. The cost of operation of the welter was reduced 25 to 30% and at the same time the wages the operative was able to earn were increased 36 to 56%. On the new stitcher the operative was able to earn 24% more, though the piece price was 40% more on the old machine. The new machine was more accurate in its operation and saved the operative's time and strength.

These improvements with their benefits to manufacturers and operatives were added to its machines as rapidly as possible by the United Company and given to the trade without extra charge.

The evidence showed conclusively that the only interest of the United Company was in making the Plant patents of benefit to its customers and the trade.

For a discussion of the Plant purchase, see *infra*, pp. 476–542.

Unfair and Monopolistic Acts.

In its petition and subsequently in a bill of particulars filed by order of the court during the trial, the United States charged the defendants with many alleged instances of conduct claimed to be oppressive, unfair, and tending to monopoly. Of many of these the United States offered no evidence whatever. Many others were entirely abandoned. Of those which the petitioner attempted to prove, the evidence was in some instances so

thoroughly discredited and in others so completely answered that nothing remained on which to justify any complaint.

For a discussion of these alleged acts, see *infra*, pp. 543–552, and Appendix, pp. 88–131.

CONCLUSION.

The history of the United Company during the twelve years of its existence has been the story of the development of an efficient, intelligently and ably managed enterprise which by normal methods has vastly improved and aided the manufacturers of certain types of shoes. Its managers perceived the needs of the trade and supplied them and created the demand for their own machines.

In a decade which has witnessed a most extraordinary increase in the cost of everything that contributes to manufactured products, the cost of machinery for making shoes alone has been lessened.

The company has invented new machines to take the place of hand work, improved and developed the art, enabled the factory operative to earn more with less effort, has treated every manufacturer alike and discriminated against none, and by its reduced costs for machinery has enabled hundreds to engage in the manufacture of shoes who would otherwise have been unable to do so.

During the same period, from 1899 to 1911, the United Company not only eliminated the necessity of paying initial premiums, but reduced the royalty charged for machines for making welt shoes three-fourths of a cent per pair. It reduced the royalty on women's and children's turn shoes 50%, while the improvements, new machines, and more efficient service of the United Company have reduced the cost of making a pair of welt shoes seven and one-half cents per pair.

Meantime, the number of other manufacturers of shoe machinery has increased, and there are many more and larger manufacturers of shoe machinery than there were in 1899 outside the three constituent companies.

No machines or businesses have been destroyed or suppressed, but everywhere waste has been eliminated, machines have been improved, made more efficient and multiplied, and the

cost of making shoes has been reduced by more than the entire royalty which the company receives for the use of its machines for making the highest priced pair of shoes. The royalties on none of its machines have ever been increased.

The United Company's royalty charges are ridiculously small. For the use of all its machines for making men's welt shoes that retail for $3 to $7 a pair it receives less than five and three-fourths cents per pair, and for this sum it furnishes the machines, keeps them in repair, supplies expert mechanical and engineering advice in arranging and planning factories, and instructs operatives. For the same machines and service for making women's and children's shoes the royalty is about one-half the sum above named. For the use of all its machines adapted for making the McKay shoe, upwards of 100,000,000 pairs of which are made annually, including the use of an improved McKay sewing machine, the company receives one and three-fourths cents per pair. Averaging all shoes made by the use of its machines, the company receives in royalty two and one-half cents per pair (R. Vol. 1, p. 503, lines 28–36; p. 866, lines 29–32).

Its success in the field in which it has specialized has been clearly due to the merits of its patented machines, its remarkable service furnished by no other shoe machinery manufacturer, its success in developing new machines, and the favorable terms it offers its lessees.

Those opposed to the United Company, from whom a large part of the testimony for the United States was obtained, consist in the main of a group of shoe manufacturers, grown rich and prosperous by the use of the machinery of the company, who have invested in a competing shoe machinery company, and have formed an alliance for the purpose, if possible, of discrediting and injuring the United Company and forcing it to give the large manufacturer more favorable terms than it gives the small ones.

Their principal spokesman, Charles H. Jones, testified that on May 24, 1906, before he joined the Alliance and when on good terms with the United Company, he gave an interview to a reporter of the Boston *Transcript*, at which time, among other things, he said as follows, referring to the United Shoe Machinery Company (R. Vol. 1, pp. 130–133; P.'s Ex. 147, R. Vol. 4, pp. 1072, 1074–7):—

"It has placed others [*i.e.*, machines] in our hands on a rental system that has saved us a very large investment of capital; it has certainly given more faithful care and attention to the running of the machines and keeping them in order; and in our country factories, where we employ a large proportion of inexperienced help, they have given us more constant and faithful attention in instructing new operators, and in the supervision of the machinery under trying conditions, than we ever obtained from any of the constituent companies. . . . As far as I recall them, the royalties demanded by the company are the same, exactly in amount, that we have always paid. It is only fair to add that they have supplied us with many additional machines to do the minor parts of the work, without any charge at all. These machines have been of considerable value to us, both in the saving of labor and increasing the uniformity of the goods, and are such machines as would undoubtedly have cost us a round sum if the United Shoe Machinery Company had not been in position to furnish them to us gratis. . . . If you wish to know whether the company is charging us an unfair price for tacks and nails, will say that this is entirely untrue. The royalty on some of their machines is derived from the price of the tacks and nails used on them; consequently, the price which they charge for the tacks and nails is certainly greater than the same thing could be bought in the market, for use by hand; but, as a matter of fact, the Shoe Machinery Company charges us no more for tacks to-day than they did many years ago, when tacks in the open market were much cheaper than to-day; in fact, my impression is that they have actually reduced the price of tacks between 25 and 30 per cent., while everyone knows that the cost of tacks and nails in the open market has advanced. . . . *I do not believe any manufacturer who has been honest and straightforward in his dealings with the company can show any clear grievance against the company, or can make out the slightest case of crowding or coercion.* On the contrary, I can say for ourselves, that the question of royalties and machinery, which was formerly one of the most vexatious and exacting departments of our business, has ceased to give us any concern at all. We were formerly obliged to examine new inventions, and were forced to make experiments with machines for months at a time, with the result that we obtained more or less bad work and were put to much useless expense, and the thought and attention of our best men was given to deciding between the merits of the old and new. We were obliged to dicker and trade with every different manufacturer of machinery all the time

with the moral certainty that somebody who had more time and attention to give to it would get a better bargain than we were able to obtain; and with it all there was an enormous and perpetual shrinkage on account of the changes made necessary by the introduction and adoption of machinery that was not thoroughly and satisfactorily developed before being placed on the market. To-day this is all changed. If we want a machine, we simply notify the company. Their agent confers with our foreman. The best machine known for doing the work is installed with little or no expense to us. We are obliged to pay a rental in some cases, which would amount to about the same as the yearly shrinkage in value of the machine if we had had to buy it, but the capital which we would formerly have been called upon to invest is still in our possession for use in our regular business. We are confident that we are getting the machine on as favorable terms as any competitor, and we are enabled to employ our own time and ability in the legitimate branches of our business, and we have not, up to this time, been obliged to pay as much for this privilege as we formerly paid, for the very much less satisfactory condition" (italics ours).

He further said that before a committee on judiciary of Congress in the winter of 1912 it was called to his attention by Mr. Higgins of the committee that he had said:—

"'The terms which the Machinery Company have recently offered their patrons on certain lines of machinery are so liberal that the outsiders cannot compete.'

"'Mr. JONES. That was right.

"'Mr. HIGGINS. Was that changed in 1907?

"'Mr. JONES. No, sir. It has not been changed up to date.

"'Mr. LITTLEFIELD. Hasn't been changed?

"'Mr. JONES. *It has not been changed up to date*'" (italics ours).

And Mr. Jones then said this statement was true so far as he knew (R. Vol. 1, p. 136, lines 2–13).

V. FINDINGS OF FACT BY THE DISTRICT COURT.

The facts as found by the District Court completely refute the charges made by the petition. These findings of fact are not only fully sustained by the evidence, but necessarily follow from the evidence. Upon the basis of these facts there are no doubtful questions of law. Unless, therefore, this court should decline to accept the facts so found, it can hardly be contended by the United States that the decree of the District Court dismissing the petition should not be confirmed.

1. THE DISTRICT COURT FOUND THAT DEFENDANTS DID NOT PLAN TO ACQUIRE A MONOPOLY OF ALL SHOE MACHINERY, AND TO REFUSE TO SELL OR LEASE ESSENTIAL MACHINES UNLESS PRACTICALLY ALL OTHER MACHINERY WAS TAKEN, WHICH IS THE CHARGE ON WHICH THE PETITION IS BASED.

We have shown (*supra*, pp. 6–10) that the charge of the petition is that the defendants having lawful patent monopolies under which they did the greater part of the business of the country in the principal essential shoe machines, viz., lasting machines, welt-sewing and outsole stitching machines, heeling machines and metallic fastening machines, and finding these patents about to expire, planned to extend their monopolies unlawfully, and to obtain an unlawful monopoly of all shoe machinery, by

(1) Acquiring all concerns engaged in the shoe machinery business, and then

(2) Refusing to sell or lease any of said so-called essential machines to a shoe manufacturer, except on condition that he take from them practically all other machinery which he required.

The various acts specified in the petition are alleged to be only steps in carrying out this unlawful project, and are material only in so far as they prove the existence of this project, and its carrying out by the defendants.

A. The District Court found that the Defendants did not plan to acquire all concerns engaged in the shoe machinery business.

As to this charge the District Court found:—

(R. Vol. 1, p. 1114.) "Referring to the allegation that the respondents 'conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery,' the utmost that the case can in any event be said to show is a purpose to acquire control of certain machinery connected with bottoming shoes, or later of certain clicking or eyeletting machines; and of this the United States became during the trial so far satisfied that it asked permission to amend the above allegation accordingly."

B. The District Court found that the Defendants did not plan to acquire all Concerns engaged in the Business of manufacturing Bottoming Machines, as to which the United States during the Trial limited its Charge of Monopoly.

As to this charge the District Court found:—

(R. Vol. 1, p. 1141.) "It further appears that, during the same period of time the cases wherein the business of a concern producing shoe machinery was offered to the United Company and refused by it were far more numerous than the cases of acquisition specified by the petitioner. As to several, at least, of these instances of refusal, the evidence warrants the belief that the business offered and refused much exceeded in importance to any such scheme of monopoly as now charged, any of the specified acquisitions. The cases in which inventions were offered and refused during the same period were many times more numerous than the patents or inventions acquired. If a monopoly of all machinery for attaching bottoms to uppers was really undertaken, it is hard to believe that opportunities would have been neglected, as they were, such as those for acquiring the Union lock-stitch machines or the welters and stitchers of the R. H. Long Company, all of them patented machines for use on welt shoes; or for acquiring a considerable business in producing McKay sewing machines, though these were unpatented and not capable of use on shoes of that kind."

C. The District Court found that the Defendants did not refuse to sell or lease Essential Machines unless practically all other Machines were Taken.

As to this charge the District Court found:—

> (R. Vol. 1, p. 1155.) "As to the allegation that the defendants contemplated a policy of refusal to lease except on condition that the lessee buy or lease of them 'practically all other machinery of whatever kind necessary or useful' to him as a manufacturer of shoes, it requires no further notice, now that the charge of restraint or monopoly in 'any and all kinds of shoe machinery' has been abandoned. The evidence abundantly shows that nothing of this kind was ever contemplated, attempted, or done, and that there was never any justification for the charge as made."

2. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY WAS NOT FORMED TO ELIMINATE COMPETITION BETWEEN ITS CONSTITUENT COMPANIES AND THAT IT DID NOT ELIMINATE SUCH COMPETITION.

The United States charges that the United Company was formed to eliminate competition between its constituent companies or that the elimination of such competition made the formation of the United Company unlawful.

The only competition claimed by the United States was an alleged competition between the Ideal Lasting Machine of the Goodyear Company and the Chase machine and an experimental Hand Method Welt Lasting Machine of the Consolidated Company, and between the welt machines of the Goodyear Company and the machines of the Eppler Company.

The District Court found that the real motive for the formation of the United Company was an effort after greater efficiency, and that if any competition could be said to exist between the constituent companies, it was trivial and of no practical importance.

The District Court found as to the business of the constituent companies:—

> (R. Vol. 1, p. 1128.) "Up to the time of their union each constituent concern had been dealing, generally speaking, in a line of shoe machinery for the most part distinct from that dealt in by the others."

As to the alleged competition between the Chase and the Ideal machines, the District Court, after showing that the Chase machine was adapted and used for men's welt shoes, and that the Ideal machine was adapted and almost wholly used for women's welt shoes, concluded:—

> (R. Vol. 1, p. 1130.) "That there was any attempt to put either machine into the market as against the other does not appear. No competition between the two in the usual sense of the term is shown. . . . I am unable to consider it established that competition in any practical sense was destroyed when the United Company became owner of both machines."

As to the alleged competition between the Ideal machine and the experimental Hand Method Welt Lasting Machine the District Court said:—

> (R. Vol. 1, p. 1130.) "With still another laster with which the Consolidated Company was experimenting in 1899 for use on welt shoes, we are not here concerned, because, though this laster was afterward further improved, developed, and finally furnished to users by the United Company, it had not been made an article of commerce in any practical sense when that company was formed."

With reference to the alleged competition between the Goodyear Company and the Eppler Company, the District Court after referring to the differences between the machines of the two companies, and the differences in the character of shoes made by them respectively, and the insignificant business done by the Eppler Company, said:—

> (R. Vol. 1, p. 1131.) "The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition as rendered it unlawful."

The District Court found as to the reasons for the formation of the United Company as follows:—

> (R. Vol. 1, p. 1131.) "No reason appears for supposing that the real purpose for which the constituent companies were

brought together, as disclosed not only by the evidence regarding all the circumstances as they existed in 1899, but by the evidence as to the course of development thereafter pursued by the United Company, was other than that stated in a circular letter to the Goodyear stockholders issued February 8, 1899, the day following the organization of the United Company (Petitioner's Exhibit 152). This dwelt upon the advantages to be secured by putting into one control 'the most efficient types' of shoe machinery."

The District Court stated its conclusion as follows:—

(R. Vol. 1, p. 1132.) "For the reasons stated, I am unable to find the charge that the United Company was unlawfully formed because of competition which it destroyed sufficiently supported by the evidence. It would, in any case, be difficult to regard this as sufficient ground for a decree dissolving the company into its component parts under a bill not filed until more than twelve years had passed since the combination complained of was accomplished. During this period, as the evidence shows, investments of a very large amount had been made, not merely by the defendants but also by the outside public, in the extension and development of the company's united business, the component companies passed out of existence, and the machines as made by them in 1899 were so far developed, improved upon, or added to by the United Company as now all to have become obsolete. To put the parties or the public back into that state of the prior art which existed in 1899 is, of course, an impossibility."

3. THE DISTRICT COURT FOUND THAT THE "BASIC" PATENTS OF THE CONSTITUENT COMPANIES WERE NOT ABOUT TO EXPIRE.

The petition charged that the patents held by the constituent companies were about to expire in 1899. This was recited as a reason for the formation of the United Company.

The District Court held that this charge was not proved and that it was not a motive for the formation of the United Company.

(R. Vol. 1, p. 1133.) "At the final arguments, however, on June 2, 1914, the statement was made by petitioner's counsel that so many machines and patents were involved that examination of more than a very few had been impossible. It seems obvious, therefore, that the allegations in

question could not have been founded, when they were made, upon any adequate or complete investigation of the facts.

"Nor can it be said that they have been sustained by the evidence before the examiner. It seems unnecessary to spend time in considering what patents could and what could not properly be regarded as 'basic,' in view of the fact that, of the patents principally relied on as such by the petitioner, those protecting the welter and stitcher of the Goodyear Company, there were two, one upon its welter, the other upon its stitcher, which ran until 1908 and 1909, respectively. The petitioner's final position, indeed, as to what was proved by the evidence before the examiner, was by no means that taken in the allegations referred to, but was only that the two machines above mentioned, and others protected in 1899 by patents not insisted on as 'basic' patents, became free to anyone to make or use—without any of the patented improvements added to them by the United Company since 1899, but nevertheless capable of successful commercial use—before the filing of this petition in 1911. In view of all the above, I must regard the allegations here in question as not sufficiently supported by proof; and hold that no such motive is shown to have prompted either the organization of the United Company, or any of its subsequent doings."

The District Court further found that the machines of the United Company have always been patented.

(R. Vol. 1, p. 1115.) "At any rate it must be accepted that from the beginning the machinery offered by the respondent corporation was, in all its essential elements, protected by patents, and that there has been no proof to the contrary. So that, for the purposes of this case, the machinery has been mainly, if not entirely, of that character."

4. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY DID NOT TAKE OVER THE CONSTITUENT COMPANIES AT EXCESSIVE PRICES.

The petition charged that the United Company took over its constituent companies "at values far in excess of real worth" (R. Vol. 1, p. 995).

The District Court found that no proof of any kind was offered in support of this charge.

(R. Vol. 1, p. 1128.) "To allegations found in the petition (p. 18) [p. 995] that the business and property of the

Goodyear Company, the Consolidated Company, and the McKay Company were taken over by the United Company 'at values far in excess of real worth,' reference is made at this point only in order to state that no proof of any kind was offered in support of them, it was not argued on the petitioners' behalf that they were true, and they therefore require no further notice for any purpose in the case. There can be no doubt that each concern had an established business already of great value and possessing great possibilities of development, or that each also owned patents and property of very great value in connection with its business."

5. THE LEASES.

A. The District Court found that the Leasing System was of Great Advantage to Shoe Manufacturers.

(R. Vol. 1, p. 1171.) "While in the early stages of the case there were some criticisms of any leasing system as opposed to a system of selling, the very great advantages to shoe manufacturers in general of being provided with machine equipment of the highest efficiency, and of being relieved of individual effort in that most costly and difficult part of manufacturing, and the general satisfaction with the system were so overwhelmingly proved, that all doubt that the leasing system in general is unimpeachable has been removed."

B. The District Court found that the United Company did not discontinue the Sale of Machines.

The petition charges that the United Company "discontinued the sale to boot and shoe manufacturers" of machines and devised arbitrary leases (R. Vol. 1, p. 997).

The District Court found that this charge was untrue and without justification.

(R. Vol. 1, p. 1153.) "None of the constituent companies were in 1899 selling outright the patented machines they manufactured. The bill alleges the contrary, and charges that one of the steps taken after 1899, in pursuance of the alleged scheme to restrain or monopolize, was to discontinue sales and compel leases. An attempt to support this charge by evidence wholly failed. Nothing of the kind was done, nor is it easy to see what grounds for making the charge could ever have been supposed to exist."

C. The District Court found that the Leases did not compel a Shoe Manufacturer taking Machines previously put out by one of the Constituent Companies to take Other Machines not previously put out by such Constituent Company.

The District Court found that the evidence completely disproved this charge.

> (R. Vol. 1, p. 1162.) "The alleged plan of a refusal of what before could be had separately, as a means of compelling the taking of other machines, was a principal ground for invoking the Sherman Act.
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> "The leases in evidence, as documents, fail to substantiate the charges either as to the contrivance of such a plan or as to its execution. It appears that after the consolidation there was no refusal or imposition of conditions as alleged, but that the defendants continued to give manufacturers terms which were substantially the same as before and in some instances better than those offered by the constituent companies before the consolidation. This is shown not only by the exhibits of 'independent' leases but by the testimony of officers of the company."
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> (R. Vol. 1, p. 1163.) "The restricted or prohibitive leases do not in themselves as documents prove the denial of the right to procure, as before, independent leases for individual machines. As matter of fact, independent leases which did give the right to use the machines with machines of other kinds, made by other machinery manufacturers, were always procurable. This was the general rule, and if there were any exceptions they were, so far as appears, inconsiderable.
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> "It is a result of the consolidation that the United Company offers more attractive contracts for a group of machines of different kinds than for machines of one kind only; but as it still offers the contract for machines of one kind on as good terms as before it is difficult to see how that is detrimental to the shoe manufacturers.
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> "The charge of this supposed scheme to deprive former customers of the right to use some machines unless they would also use others seems to have originated either in the erroneous assumption that a prohibitive lease was the only kind procurable, and that the former customer had no choice, or in disregard of the fact that it was merely an

alternative form of lease. As the leases prove no such plan, whether of the extent alleged or of less extent, and as the evidence proves the exact contrary of what is charged, we think that the United Shoe Machinery Company is, upon the merits, entitled to a full clearance from this charge."

D. The District Court found that the Provisions in the Leases were not adopted by the United Company for the Purpose of Monopolizing or Excluding the Use of Competitors' Machines.

The District Court found that the United Company made no changes in the leases as used by the constituent companies in pursuance of any arbitrary plan, but, on the contrary, the changes in each case were made because special circumstances had come to render it desirable; that the changes made in general tended to relax previous restrictions and to reduce the cost to lessees of installing the machines (R. Vol. 1, p. 1158); that the provisions were obviously prompted by the purpose of developing the company's business by offering the machines on terms more advantageous to users and were not intended to accomplish an arbitrary exclusion of competitors' machines. The District Court further found that the provisions in the leases were auxiliary to asserting rights unquestionably belonging to the lessor. It also found that there were sound mechanical and business reasons for grouping together machinery as it is grouped by the defendants' leases.

The following are a few extracts from the court's findings on this subject:—

(R. Vol. 1, p. 1159.) "Considering the clauses objected to in the light of what preceded them, and of the circumstances attending their adoption by the defendants, the petitioner has not, in my opinion, proved that the defendants' object in adopting them was the prevention of competition by others. Such prevention might, indeed, follow from the more favorable terms offered lessees, but modifications made in the existing system for the direct purpose of otherwise better adapting it to exclude competitors, would have been different in character from the modifications represented by these clauses.

"Not only would it have been unreasonable, as has been said, to expect the defendants to substitute a wholly different system from the leasing system which they found in use, but the evidence affords no reason to believe that anything

of the kind was desired by manufacturers in general. The advantages to them of not having to tie up capital in patented machines, and of paying for the privilege of their use only according to the amount of use, were advantages which they cannot be supposed desirous of surrendering.

"Modifications in the contracts offered them tending, as these are shown to have done, to enable the company, through provisions adapted to increase the number of shoes worked on by each machine, to lessen the royalty charged per pair, and to diminish or dispense with the initial payment before required, were so obviously prompted by the purpose of developing the company's business through the perfectly legitimate method of offering them on terms more advantageous to users, that it would be unjust to treat them, on evidence no stronger than that here presented, as really intended to accomplish an arbitrary exclusion of users from any dealings with others.

"If it were made to appear that the leases containing these clauses accomplished in and of themselves an unlawful restraint of trade, or necessarily secured to the defendants an unlawful monopoly, the intent to accomplish these results would, of course, be imputed to the defendants without regard to their actual purpose in adopting and using them. But the evidence seems to me insufficient for the conclusion that such results are so accomplished. The contention that they are fails, in my opinion, to take into account the defendants' rights in the field lawfully secured to them in the various patented improvements they had lawfully controlled and combined; and fails also to concede them proper scope for the rights properly incidental to their control of said improvements, to make such agreements with their lessees as would best promote the efficiency in combined operation of the machines leased, and thereby best enhance and safeguard their just return therefrom in the form of royalties."

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(R. Vol. 1, p. 1187.) "The clauses objected to are all subordinate and auxiliary to maintaining rights which unquestionably belong to the defendants; to charge their own prices and to choose as customers those who will pay those prices.

"The attack of the United States is not upon these rights, but upon the particular mode in which they have sought to exercise them. Other modes, such as the requirement of arbitrary payment for the full period of the patents, would escape all such attacks. The attack arises from the attempt

to adjust the payments to the amount of use which particular manufacturers may have for the patented inventions."

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(R. Vol. 1, p. 1184.) "If leases for machines for use as a group are offered and accepted for sound business reasons, and if, because of the greater productivity of a group and of the less cost of maintenance, better prices can be made, the defendants and the shoe manufacturers need not forego the making of such contracts for the sake of possible competitors who may have only single machines to offer. Contracts for large equipments of machinery, furniture, and other articles are too common to be condemned for such reason. . . .

"The grouping of machines in order that some may aid others in turning out a product affords a sufficient mechanical reason for installing them as groups and a sufficient business reason for dealing with them as groups.

"That there are sound mechanical and business reasons for grouping together machinery as it is grouped by a series of prohibitive leases is abundantly established. The United States fails to show that the grouping of the machines is in fact made merely as an unlawful artifice and not because of sound mechanical and business reasons. It has referred to certain leases in which there appears to be no necessary mechanical relation between some of the machines grouped. Thus to a limited extent it may be true that the grouping is for the purpose of trade or of contract rather than because of the close relation of the machines in process of manufacture; but this is insufficient to show that the principal purpose was not, as is contended by the defendants, to secure by efficient co-operation of machines a larger production of shoes."

E. The District Court found that the Leases did not result in the Arbitrary Exclusion of Competitors' Machines whatever the Intent with which they were Adopted.

The District Court found that the defendants' machines were used because of their merits and not to any substantial extent because of the lease clauses.

(R. Vol. 1, p. 1187.) "It is impossible to believe that the defendants' equipment is in so many shoe factories for any other substantial reason than the merits of what they have had to offer. To say that this is due, in any substantial degree, to the fact that its leases run beyond the terms of pat-

ents, or because of the exclusive use, prohibitive or cancellation clauses, rests largely, if not entirely, upon assumption. But that the business of these defendants rests upon the lease provisions objected to in such a substantial amount as to constitute any factor of independent force in securing or maintaining a monopoly does not appear."

F. The District Court found that the United Company did not exact Exorbitant Prices for Duplicate Parts and Exorbitant Return Charges.

The petition charges that the United Company's leases required lessees to obtain duplicate parts used in repairing the United Company's machines from the United Company and exacted "exorbitant prices" for such parts. It also charged that the leases required payment of return charges upon the termination of the lease which in some cases amounted to approximately the original cost of building the machines (R. Vol. 1, p. 997).

The District Court held there was no evidence justifying these charges.

> (R. Vol. 1, p. 1155.) "The evidence failed to show that lessees from the United Company had ever been compelled to pay exorbitant charges for repair parts, etc., or to pay any unreasonable return charges on leased machines."

G. The District Court found that the Leases have not been Arbitrarily Enforced.

The petition charges that the leases were continually, persistently, and arbitrarily enforced (R. Vol. 1, p. 997).

The District Court found that there was no proof of this charge and that, on the contrary, it appeared that the United Company had been moderate with respect to such enforcement.

> (R. Vol. 1, p. 1114.) "There is no proof that the United Shoe Company has enforced its leases in any arbitrary or unreasonable manner. On the whole, it seems to have been moderate with reference to such enforcements, and the number of cases in which anything in the way of a forfeiture has been demanded has been so small that, on looking over the great mass of the operations of the United Shoe

Company, such enforcements have been so few as to be practically negligible; and there is no evidence that the duplicate parts, extras, and other incidentals furnished by the United Shoe Company have been sold at exorbitant prices fixed by it, or that the cost involved in the return of machinery has, in any way, approximated its original cost, unless, possibly, in some exceptional instances which have not caught the eye of the court. We do not think the case as developed has turned on these particular allegations."

6. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY DID NOT MAKE ACQUISITIONS OF COMPETING CONCERNS WITH INTENT TO MONOPOLIZE.

The petition charges that the defendants in pursuance of their purpose to monopolize the shoe machinery industry absorbed many competitors. A list of 59 such acquisitions is set forth in the petition.

The District Court considered the purchase of the patents from Thomas G. Plant separately. As to the 58 other acquisitions it found that the greater part of them were acquisitions of concerns dealing in supplies or machines not made by the United Company and, therefore, not competing with the United Company, and that as to the few remaining acquisitions it was not shown in any case that actual competition existed between the device or machine acquired and any machine then being produced or experimented with by the United Company of such consequence as justifies either the conclusion that the acquisition was for the purpose of suppressing competition or the conclusion that a material restraint of trade was thereby accomplished, or that such acquisition contributed anything essentially important to the success obtained by the United Company.

The court after dismissing as immaterial a number of unimportant acquisitions because not related to the classes of machines to which the United States now limits its claim of monopoly or because no foundation for a charge of competition with the United Company existed, said:—

(R. Vol. 1, p. 1139.) "The instances then remaining in which the United Company was at the time producing or trying to develop for production a patented machine for doing work

more or less similar to that for which the invention of the machine acquired was intended, are the only ones capable of being regarded as of any possible significance for the purposes of the petitioner's case. In all such cases it appears that the acquisitions made were of patented improvements, whether or not embodied in an actual machine, enabling the United Company to increase the efficiency of its own machines, or to complete the development of others with which it was then experimenting or had not yet succeeding[ed] in rendering commercially successful.

"No case, however, is found among the acquisitions of the character last described wherein it has fairly been made to appear that actual competition existed between the device or machine acquired and any machine then being produced or experimented with by the United Company, of such consequence as justifies either the conclusion that the acquisition was for the purpose of suppressing such competition, or the conclusion that a material restraint of trade was thereby accomplished. In most of the cases of this sort the machine or device acquired was claimed to infringe patents belonging to the United Company, or the patent acquired was one which some machine belonging to it was claimed to infringe, or the application acquired was in interference with applications of its own; and the object of the acquisition is shown to have been the avoidance or compromise of pending or threatened litigation. In such cases it is still less possible to say that any wrongful absorption of a 'competitor's' business has been proved.

"The acquisitions above regarded as the only ones of any possible significance in the case were made at various separated times during the period of eleven years or thereabouts above referred to. It can not be said that the later ones were in contemplation when the earlier acquisitions were made, because there is nothing to show that the circumstances attending any of them were such as could have been anticipated as likely to occur at the time of the preceding acquisitions. The most that can be said is, that as, in the progress of events, the needs of the United Company became manifest and these opportunities presented themselves, they were availed of.

"Taken together, the acquisitions of this class are, in importance and amount, only of a consequence relatively small in proportion to the entire field then lawfully belonging to the United Company. It does not appear that they contributed anything essentially important to that degree of commercial success obtained by the company as above. If they assisted in obtaining it, it was by assisting the

development of the machines to whose ultimate efficiency it was due. It can hardly be said as to any of them that they afforded anything more than a basis whereon to build. Speaking of them generally, it may be said that the invention or machine obtained required further development in the company's hands before it could be properly used."

7. THE DISTRICT COURT FOUND THAT THE PURCHASE FROM THOMAS G. PLANT WAS NOT MADE IN PURSUANCE OF THE ALLEGED SCHEME TO MONOPOLIZE.

The District Court found that the purchase of patents from Thomas G. Plant in 1910 was made by the United Company to obtain the benefit of Plant's inventions and to settle and avoid serious patent litigation, and not for the purpose of suppressing competition.

(R. Vol. 1, p. 1142.) "The evidence does not show Plant to have been a competitor in the ordinary sense. He was not carrying on any going business in shoe machinery. He was neither producing his machines nor supplying them to users upon any commercial scale, nor was he prepared so to supply them, though he had issued an illustrated catalogue of them. The petition alleges that he had been inventing and patenting his improvements for at least two years before 1910. In one factory only were machines embodying them being operated; this belonged to the Thomas G. Plant Company, whereof he owned a majority of the stock. He installed them there in May, 1910, displacing the United Company's machines previously used there in order to do so. Before he installed them there, he had offered to equip two other factories with them without requiring royalties for their use, but these offers had been declined."

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(R. Vol. 1, p. 1143.) "The evidence regarding Plant's negotiations with the defendants sufficiently proves that they were never sought by the defendants and that there was never any attempt on their part to get Plant to sell them his inventions or machines or anything else; but that, on the contrary, all the efforts toward such a purchase were made by him. The first overtures toward it came from him; he began them soon after he had put his machines into the Plant factory; they led to interviews, all of which he sought and at which his proposals were declined without encouragement to renew them. Nowhere in the evidence is any

indication found that before Plant's overtures were thus made any purchase whatever from him had been suggested to or considered by the defendants.

"Whatever the merit of Plant's inventions, these machines in which he had first embodied them are not shown by the evidence to have been commercially successful in September, 1910, or to have been capable of such success in their then stage of development. They are shown to have been lightly built, not adapted to produce men's shoes, and by no means satisfactory in making women's shoes, the kind of work to which the Plant factory was devoted. The evidence is uncontradicted that, while operated there, they fell behind the United Company's machines, which they had supplanted, in efficiency—that breaking down and defective work was more frequent with them—and the cost per pair of making shoes with them distinctly greater. Though some of them, as later developed and improved by the United Company, proved to have merit, the most that can be fairly said of them in 1910, on the evidence, is that they were more or less promising experimental machines. There was no complete set of them for combined operation; for that purpose several important machines were yet to be developed. In the state in which the United Company took them over, they were not found capable of profitable use. Nothing is found in the evidence which affords reasonable support for the petitioner's contention that they were 'right at the threshold of extensive competition with the United Company.'"

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(R. Vol. 1, p. 1144.) "The terms finally agreed on with Plant were so much more favorable to the United Company than any he offered when he first approached them, and so inconsistent with his previous attitude toward them, as to leave no reasonable ground for believing that the defendants had ever sought, expected, or planned for the transaction as carried out. And in what they were thus unexpectedly enabled to acquire from him, there was included so much that was plainly of far greater consequence to them than could have been the avoidance of such competition as they can reasonably be supposed to have apprehended from his incomplete and undeveloped line of inventions—patents and machines also included—as to leave no sufficient ground for believing that avoidance of competition was their principal motive in accepting the opportunity offered. The normal, natural, and obvious business reasons, of wholly different kinds, why they should accept instead of refusing it, appear to have been so complete and sufficient as to

render the conclusion unreasonable that it was accepted in order to escape competition."

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(R. Vol. 1, p. 1145.) "The evidence that among these patented improvements obtained from Plant there were enough of sufficient value, in the defendants' hands and used as they only could have used them in further developing and perfecting the machines they were then producing or trying to produce, to make this part of the total acquisition extremely profitable to the United Company, was not met by any sufficient proof to the contrary. The agreement to take the patents and inventions was not made until after a careful examination and report as to their merits. The belief thereon founded that, used as above, they would be worth acquiring upon the terms proposed, is shown to have been justified by the result, and the acquisition can not be criticised so far as it was occasioned by that belief. As developed and added to its own machines by the United Company, some of the inventions acquired have proved to be of a value such as fairly justifies their claim that the patents acquired were the controlling feature of the purchase.

"The evidence shows also, without serious contradiction, that one result of the bargain made with Plant was to relieve the United Company from an amount of litigation, then pending or in prospect, which would otherwise have burdened and hindered it to an extent far greater than it had ever had reason to apprehend from any litigation with which it had before been concerned."

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(R. Vol. 1, p. 1145.) "It was part of the bargain with Plant, or followed from it as a result, that the above controversies were settled or avoided. That the prospect of accomplishing this result was a further normal, natural, and powerful inducement to the agreement made with him can not be reasonably doubted. In so far as the agreement was thus intended, no criticism of it can be valid.

"The above reasons, none of them open to any charge of illegality, seem to me to have been the really operative reasons which must have induced the defendants to enter into the Plant bargain upon the terms which he finally offered them. They appear so adequate as legitimate business reasons for doing this as in my opinion to leave no reasonable ground for holding, against the defendants' denial, that it was really a purchase to suppress competition. No such competition or prospect of competition at the time is proved as would justify such a conclusion. The competi-

tion threatened by Plant and his efforts to induce the defendants, in order to avoid it, to buy his machines and patents by themselves were wholly ineffectual. They met with nothing but refusal on the defendants' part to consider his proposals. It was not until he offered, through the intermediary he last employed (Smith), the shoe manufacturing business of the Plant Company as well that the defendants consented to deal with him.

"While it may have been his plan to realize a profit by threatening competition, it was not until this proposition, based upon tangible property of substantial value and of patent rights, was made, that any sale was effected. The property acquired being proved to have been worth the amount paid, the argument that the defendants were so anxious to hold a monopoly as to be willing to pay $6,000,000, or any other large sum, in order to get rid of a competitor, or that this was done in pursuance of a general plan conceived in 1899, fails completely."

8. THE DISTRICT COURT FOUND THAT THE ACQUISITIONS WERE NOT MADE AT EXORBITANT PRICES.

The District Court held that this charge was not established.

(R. Vol. 1, p. 1147.) "The charge that competitors have been bought out at 'exorbitant prices' is found not established in the case of the Plant acquisition, as has just been stated. Nor is evidence found sufficient to establish it in the case of any one of the numerous minor acquisitions specified in the petition. It has not been insisted on in argument that this charge is proved as to any one of them."

9. THE DISTRICT COURT FOUND THAT UNLAWFUL COVENANTS WERE NOT TAKEN FROM THOSE WHOSE BUSINESS WAS PURCHASED OBLIGATING THEM NOT TO COMPETE AND TO ASSIGN INVENTIONS TO UNITED COMPANY.

The District Court held that these covenants did not exceed what the law sanctions as necessary to protect the parties.

(R. Vol. 1, p. 1141.) "The petition charges generally that covenants in writing were taken from substantially all those whose business was acquired as specified, (1) not to engage for long terms of years in competition with the

defendants in commerce in shoe machinery, (2) to convey all inventions or patents in shoe machinery which they might make or acquire during such terms to the defendants.

"These charges are not justified by the documents themselves, which have been produced. They are by no means uniform in their terms, there was no generally prescribed form for them, nor were they all the work of the same hands. Each was framed according to the circumstances of the particular transaction. In many cases, at least, the agreements required only that there should be no competition in the line of business involved in the particular transaction, or that all patents or inventions thereafter made in the particular line to which the acquired invention belonged should be transferred. There are enough of the agreements in these cases which are without covenants of the kind described, to leave the allegation unjustified that such covenants were required in substantially all. And of the instances wherein covenants are found in any degree answering the alleged description, it may be said generally that none are clearly shown to have exceeded what the law permits. Still less reasonable would it be to regard what is found in them as indicating a consistent purpose on the defendants' part to exclude all those with whom the agreements were made from all possible future competition with the United Company."

10. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY DID NOT COMMIT OTHER UNFAIR, MONOPOLISTIC AND OPPRESSIVE ACTS.

In paragraph VI of the petition (R. Vol. 1, p. 999) the defendants are charged with committing various other acts described as "unfair, oppressive," and "monopolistic." These acts are not specified in the petition. A bill of particulars setting forth such alleged acts relied on by the United States was filed during the trial (R. Vol. 1, p. 1075). As to the majority of acts so specified in the bill of particulars no evidence whatsoever was introduced by the United States. As to those acts in support of which the United States attempted to introduce evidence, comparatively few were relied upon in the argument before the District Court or in the brief of the petitioner filed in the District Court (R. Vol. 1, pp. 1146–1147).

The District Court sets forth in its opinion the facts in respect to those transactions which were relied upon by the United

States at R. Vol. 1, pages 1147–1152. It then summarizes its findings in respect to these charges as follows:—

> (R. Vol. 1, p. 1152.) "The history of the proceedings in this case indicates that efforts which may fairly be described as extraordinary have been made to bring before the court, so far as possible, all sayings or doings of any of the numerous defendants or their representatives, during the period beginning with 1899 and ending with 1911, which might afford ground for charging them with oppressive, coercive, or like unfair conduct toward competitors of the United Company or the public. In view of the long period and wide fields thus searched, the numerous abandoned attempts to prove something of the kind above indicated, and the insignificant result of the evidence actually offered and finally relied on, the conclusion seems fully justified that the policy and methods pursued by the defendants and by the United Company have been, in general, above reproach in any of these respects."

II. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY DID NOT MAKE ENORMOUS AND UNREASONABLE PROFITS.

The petition charges that the United Company made "enormous and unreasonable profits" as a result of the alleged unlawful acts charged in the petition (R. Vol. 1, p. 1026).

The District Court held that this charge was not established:—

> (R. Vol. 1, p. 1135.) "No support is found in the evidence, for the charge in the petition (Par. X) that 'enormous and unreasonable profits' have been made. This allegation is made in connection with and apparently depends upon the allegation of which, as above stated, there is no proof, that the properties combined in 1899 were taken over at excessive valuations. Nothing shown by the evidence warrants the conclusion that profits unreasonably out of proportion to the extremely large cost at which the business has been developed and is maintained, the great investment of capital it has required, and the enterprise, inventive skill, and business ability devoted to it, have been realized. Nor has it been made to appear that the charges made for the privilege of using the machines are exorbitant or unreasonable; especially in view of the great benefit to manufacturers using them, in lessening their cost of production."

12. THE DISTRICT COURT FOUND THAT THE DEFENDANTS DID NOT HAVE AN UNLAWFUL PLAN AND PURPOSE.

The petition charges an unlawful plan to monopolize shoe machinery (R. Vol. 1, p. 994). The United States contended in the District Court that, even if all the acts and transactions as to which evidence was introduced were lawful if considered singly, the unlawful plan in pursuance of which it was alleged they were carried out made them unlawful.

The District Court held that there was no direct evidence of such unlawful plan, that whether it existed must be judged by "the necessary results of all the steps proved to have been taken by them [the defendants] as a whole" (R. Vol. 1, p. 1133), and that the evidence disclosed no unlawful purpose.

> (R. Vol. 1, p. 1133.) "Of their actual intent in forming it and in taking the various steps which they have taken as above in connection with it, there is no direct proof overcoming their denial that it was such as the petition charges, and no way of judging except from the necessary results of all the steps proved to have been taken by them, as a whole."
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> (R. Vol. 1, p. 1119.) "Nevertheless, we fail to find in the development of the United Shoe Machinery Company, and its operations, any support for the alleged charges in the bill of intended oppression, arbitrary conduct, or anything of that nature, especially so far as any allegations cover any attempts to destroy or cripple competitors. Looking at the great mass of facts proven in the case, and the immense number of transactions of the United Shoe Machinery Company, the evidence offered in that direction is so ineffectual that its weakness furnishes of itself satisfactory proof against what was intended to be established thereby. We find no evidence of what was shown especially in the Tobacco Company cases, namely, a purpose to destroy what could not be acquired by straightforward methods. The fact that the United Shoe Company has acquired so large a percentage of the business of the country to which it devoted itself comes so largely from the use of extraordinarily competent methods as to shut out from the eyes of the impartial investigator suggestions of other methods. So we lay aside that part of the case, and deal only with the proven facts, and the legitimate results of those facts, with

little consideration, however, for any charges in this connection, or elsewhere, of intended oppression or unreasonable course of procedure, or of results which can be attributed to any unworthy motive."

13. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY HAS NOT OBTAINED AN UNLAWFUL MONOPOLY.

A. The District Court found that the United Company has no Monopoly of all Shoe Machinery.

The petition charges a plan to monopolize all shoe machinery and that such monopoly has been obtained. As we have stated above, the United States has abandoned this charge during the course of the trial. The District Court said:—

(R. Vol. 1, p. 1127.) "The restraint or monopoly alleged in the petition is restraint or monopoly of interstate commerce in 'any and all kinds of shoe machinery,' *i.e.*, in shoe machinery generally.

"But it appeared early in the trial that no such charge could be proved, because neither the business of the component companies in 1899 nor that of the United Shoe Company from its beginning until the bill was filed related to 'all kinds of shoe machinery.' Both were always limited to certain kinds only. This was finally conceded, and the field of trade in shoe machinery with which this case is concerned limited by concession of the complainant's counsel to machines of the following kinds: (1) Lasting or 'pulling-over' machines, used for adjusting and attaching the upper of a shoe in process to a last; (2) machines for preparing bottoms and heels and fastening them to uppers; (3) machines for finishing bottoms and heels after they have been so fastened; (4) eyeletting machines for inserting eyelets in uppers; (5) 'clicking machines' for cutting out uppers. The 'shoe machinery' as to which restraint or monopoly is charged, therefore, includes machines of the above kinds only, for the purposes of all questions hereinafter considered. It is to be noted that such machines are insufficient for the making of a complete shoe, and that no attempt to control machines for stitching uppers is charged."

B. The District Court found that the United Company has no Monopoly of Bottoming Machines to which the United States limited its Charge during the Trial.

The District Court found on this point:—

> (R. Vol. 1, p. 1135.) "It is nevertheless true that, considering the whole field of machinery for stitching together the bottoms and uppers of shoes, there has all the time been free competition. The use of other machinery to accomplish the purpose has always been open to shoe manufacturers. In that part of the field of trade in shoe machinery to which the case is now limited as above, the defendants have been not monopolists but competitors. Their only means for holding the field have been legitimate means—better machines. Their specialization in machines for bottoming shoes, and not a monopoly of such machines, has been the cause of their success."

C. The District Court found that the United Company's Success has been due solely to the Merits of its Patented Machines and the Service it renders with Them.

The District Court found that the success of the United Company's machines was due to the merits of the machines themselves and the service rendered with them, and that the "proof is complete" that such success "has been in fact reached by the use of methods entirely lawful" (R. Vol. 1, p. 1136).

> (R. Vol. 1, p. 1187.) "It is impossible to believe that the defendants' equipment is in so many shoe factories for any other substantial reason than the merits of what they have had to offer."
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> (R. Vol. 1, p. 1134.) "The combined business of the component companies as conducted and developed since 1899 by the United Company, related most largely to the machines used in producing welt shoes. The use of such machines (and thereby the production of and demand for such shoes) is shown to have been very greatly promoted by patented improvements made upon the machines of 1899 by that company, greatly increasing their efficiency and capacity, and by improvements effected by that company since 1899 in the methods of manufacturing them. It appears that the

total number of welt shoes produced in this country in 1899 was about 17 million pairs; in 1910 about 86 million; the total production of all kinds of shoes increasing during the same period from about 175 to about 280 million; the Goodyear welt shoe being all this time in direct competition with the McKay sewed shoe.

"It is further shown that the above improvements in the machines and their manufacture were accomplished by means of constant investigation, experiment, testing, and invention by competent experts employed by this company, involving a very large expenditure on its part. These efforts were directed not only toward making each machine as efficient as possible by itself, but also toward increasing its efficiency for so performing its own operation upon a shoe as best to combine it with the work upon the same shoe by the numerous other machines required for performing the remaining necessary operations, in order that all the many successive operations performed should cooperate toward the most economical and efficient accomplishment of the best final result in product. And besides thus developing and improving the machines of 1899, the company kept pace with the requirements of manufacturers by the invention and production of many other machines or improvements, unknown in 1899, as the need for them became apparent.

"There is no question that the above-described development of the United Company's business has resulted in a very great commercial success. Its machines, as was the case with those produced by the component companies in 1899, have ever since been those which shoe manufacturers in general can use to the best advantage and therefore prefer. The increase in the number of its machines in the hands of users has been very large. Nor is there any question that of all the machines, of the kinds to which this case relates, in use when the petition was filed, those of the United Company constituted all but a very small proportion.

. . . . . .

(R. Vol. 1, p. 1135.) "If there is any sense in which the result attained as above can be called a 'monopoly,' it does not follow, in view of the circumstances shown, that the defendants have either restrained trade or been guilty of monopolizing or attempting to monopolize within the meaning of the act. Nor can I regard the case as one in which any presumption arises, from the fact that so large a proportion of the users of these machines use the defendants'— that the defendants have committed any of the above forbidden acts in accomplishing the above result. The proof is too complete that it has been in fact reached by the use

of methods entirely lawful, the leading features whereof are below indicated. As has been said, the field they have occupied is a special field, and the product for which their machinery is adapted is of higher price and quality than the product of the machinery of others.

"The business which the defendants have developed and established is not, and has never been, one in which everybody might freely engage. No one else could lawfully make or use machines containing improvements covered by the defendants' patents. Nor can it be said that the demand for such machines which they have supplied existed independently of the defendants; on the contrary, they have created it by the new methods of shoe manufacture which their improvements have educated and enabled manufacturers to follow. It cannot justly be said that the case is one in which a field of commerce normally belonging to all has been captured by a single concern. The principles applying in such cases can not justly be applied here. In so far as the defendants' occupation of the field has been due to the greater desirability of their patented machines and to the superiority of their methods of making and supplying users with such machines, no reason appears for holding it unlawful, whatever its extent.

"Supplementing the production and development of its various patented machines, methods introduced by the United Company for keeping them in efficient operating condition while in the hands of their various users throughout the country have most effectively aided the development of its business. It has undertaken not only to train operatives in the proper use of the machines and to secure the prompt repair of any machine disabled in use, but also to supply each user from time to time with the latest improvements, either by adding them to the machines or by substituting improved for superseded machines, without extra cost to the user. This service it has furnished by maintaining at central points bodies of competent employees who attend to the above matters whenever and wherever they are notified by users that such attention is desired.

"A system of standardization, introduced since 1899, whereby corresponding parts of the various machines have been so constructed as to be interchangeable whenever possible, has, in connection with the service furnished as above, effected a great reduction in the time lost by machines in waiting for repair. The introduction of such a system could not have been effected by the component companies because each carried on the manufacture of its machines at a different place. While each of them rendered

to its users some service of the character described, this was done to a limited extent only; and the maintenance of any such system of rendering it as the United Company has pursued would have been impossible to them because of the heavy outlay involved.

"The service secured to users of the machines by the system just described has been furnished to users without charge in addition to the royalties paid by them under the leases of their machines. For duplicate parts, extras, etc., required in operation, repair, or renewal, the terms of the leases required payment. Allegations in the petition that exorbitant prices were charged for such duplicate parts, etc., were not sustained by the evidence, and have not been insisted on in argument.

"That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question. It is not disputed that, when the petition was filed, its machines represented, in number and amount, the highest development ever reached in the art to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason."

VI. THIS CASE WAS HEARD ORALLY, ALL MATERIAL TESTIMONY INTRODUCED BY THE UNITED STATES WAS CONTRADICTED BY THE DEFENDANTS' TESTIMONY, THE RECORD IS BEFORE THIS COURT IN A CONDENSED FORM, AND THE FINDINGS OF FACT BY THE DISTRICT COURT WHICH HEARD THE WITNESSES SHOULD BE ACCEPTED BY THIS COURT UNLESS MANIFESTLY WRONG.

I. THE LAW.

While an equity appeal brings to the Appellate Court questions both of law and of fact, the general principle has nearly always been recognized in equity appeals, whether the evidence was taken in the court of first instance by deposition or by oral testimony, that the findings on matters of fact of the lower court are presumptively correct and should not be reversed on appeal unless manifestly wrong.

Dade v. *Irwin*, 2 How. 383, 391, per Story, J.
Hewitt v. *Campbell*, 109 U. S. 103.
Lawson v. *U. S. Mining Co.*, 207 U. S. 1, 11, 12.
United States v. *Marshall*, 210 Fed. 595, 597 (C. C. A., 8th Circ.).
Tobey v. *Kilbourne*, 222 Fed. 760, 763 (C. C. A., 9th Circ.).
American Rotary Valve Co. v. *Moorehead*, 226 Fed. 202 (C. C. A., 7th Circ.).
Hartley v. *Richardson*, 91 Me. 424.
Barnes & Jessup Co. v. *Putnam*, 64 Fla. 190, 200.
Compare *Colonial Securities Trust Co.* v. *Massey*, (1896) 1 Q. B. 38.

There are two obvious reasons why this should be so, even when the evidence was not heard orally, and the Appellate Court has all the evidence before it in the same form in which it was presented to the trial court. In the first place, the burden of proving error is on the appellant, and where the Appellate Court is

wholly in doubt where the truth lies it must necessarily sustain the finding below on the ground that the appellant has not sustained his burden. But beyond this there is the consideration that the hearing of the case in the trial court would be little more than an empty form if its conclusions were given no weight in the court above, and the findings of a chancellor or trial judge who had carefully weighed and considered all the evidence were not accepted as at least highly persuasive in the Appellate Court. As pointed out in the Marshall Case, *supra*, to give such findings no weight would be in effect to make the Appellate Court a court of first instance. "The District Court is not in such matters a mere conduit. It, not this court, is the trial court. Our functions are simply to guard against manifest error on its part, and this is true whether such arises upon hearing witnesses or upon reading a record."

Since the establishment of the Circuit Courts of Appeals, equity appeals have generally come before this court after the decision of two courts below, and the rule has long been established that the concurrent findings of two courts on questions of fact would not be reversed in this court except in a case of manifest error.

Dun v. *Lumbermen's Credit Asso.*, 209 U. S. 20, 24, and cases cited.
First National Bank v. *Littlefield*, 226 U. S. 110.

The attitude of this court, under the old rules, when findings of only one lower court were before it, is shown by the cases above cited.

The adoption of the new equity rules, making it the general practice to hear evidence in equity cases orally in open court, has materially changed the situation, and greatly increased the force of the presumption in favor of the trial court's findings of fact. Authorities everywhere are agreed that where the testimony in an equity case is given by witnesses in open court, with the consequent opportunity for the trial judge to see and hear the witnesses and judge of their character, bias, and credibility, this circumstance, at least on any point on which there was conflicting testimony, adds greatly to the weight which should be given to the findings of the trial judge; and many

strong courts have held expressly or in effect that, whether or not the upper court would have reached the same conclusion from the printed record, findings of the trial court made under such circumstances should not be set aside on appeal if there was any evidence to justify the finding.

Espenschied v. *Baum*, 115 Fed. 793 (C. C. A., 7th Circ.).
Finlayson v. *Barrows*, 221 Fed. 936 (C. C. A., 5th Circ.).
Tobey v. *Kilbourne*, 222 Fed. 760 (C. C. A., 9th Circ.).
Nichols v. *Elken*, 225 Fed. 689 (C. C. A., 8th Circ.).
Brookheim v. *Greenbaum*, 225 Fed. 763 (C. C. A., 2d Circ.).
Gibson v. *American Graphophone Co.*, 234 Fed. 633 (C. C. A., 2d Circ.).
Gutlon v. *Marcus*, 165 Mass. 335 (per Holmes, J.).
Dickinson v. *Todd*, 172 Mass. 183.
Elmstedt v. *Nicholson*, 186 Ill. 580, 584.
Nichols v. *Hoxie*, 33 R. I. 77, 78, 81.
Shepard v. *Shepard*, 164 Mich. 183, 198.
Protzman's Executor v. *Joseph*, 65 W. Va. 788, 789.
Khoo Sit Hoh v. *Lim Thean Tong*, (1912) A. C. 323, 325.
Smith v. *Land, etc., Corporation*, 28 Ch. Div. 7.
In re *Wagstaff*, 77 L. J. Ch. 190, 192.
Duffin v. *Duffin*, 44 Ch. Div. 76, 83.

In *Dickinson* v. *Todd*, supra, the court said (p. 184):—

"An appeal in equity brings to the appellate court questions of fact which arise upon the record, as well as questions of law. But the practice which has long prevailed in Massachusetts of presenting the testimony in suits in equity orally instead of in writing has materially changed the effect of appeals in such suits upon questions of fact. Under the old practice of presenting all the testimony by deposition, the appellate tribunal had before it the evidence in the same form as when it was considered by the lower court. But under the present system the judge who sees and hears the witnesses has a great advantage in the search for truth over those who can only read their written

or printed words. For this reason the rule has long been established that upon an appeal from a decree of a judge in equity upon questions of fact arising on oral testimony heard before him, his decision will not be reversed unless it is plainly wrong."

In *Brookheim* v. *Greenbaum*, supra, the court said (p. 763):—

"The judge had the witnesses before him and is much better able to judge of their credibility than a court which sees only their statements on paper. We should not reverse his finding upon a pure question of fact, where the evidence justifies the finding, even if we might have reached a different conclusion upon the evidence."

In *Tobey* v. *Kilbourne*, supra, the court said (p. 763):—

"It is the established rule that the findings of the trial court in a suit in equity must be taken as presumptively correct, and that unless an obvious error has intervened in the application of the law, or some serious or important mistake has been made in the consideration of the evidence, the findings will not be disturbed by the appellate court. This rule is especially applicable in a case in which, as here, the testimony was taken in open court, where the trial court had the opportunity to observe the demeanor of the witnesses and their manner of testifying, and the appellate court has before it only a condensed printed statement of the evidence as it is presented under the new equity rule. Thorndyke v. Alaska Perseverance Mining Co., 164 Fed. 657, 90 C. C. A. 473; Brandt v. United States, 198 Fed. 449, 117 C. C. A. 208; Harper v. Taylor, 193 Fed. 944, 113 C. C. A. 572."

In *Smith* v. *Land, etc., Corporation*, supra, Fry, L. J., said (p. 17):—

"The second question is whether the purchasers purchased on the faith of that representation. The learned Judge has found that they did. On that question I feel the same difficulty as Lord Justice Bowen, and on the evidence as read before us I should have felt inclined to come to the conclusion that the contract was not induced by that representation; but as Mr. Justice Denman, who saw and heard Alderman Knight, was satisfied with his evidence, I cannot give my voice for reversing his decision."

In *Gutlon* v. *Marcus*, supra, the court said (p. 335):—

> "The ground of the bill is a fraudulent conspiracy. For proof it depends wholly upon oral testimony, and the judge who heard and saw the witnesses was not convinced by them. On the well known rule by which this court is governed in dealing with such evidence on appeal, we hardly need to go further to show that the plaintiff cannot prevail."

Presumably one of the most important objects sought to be secured by the change in the usual method of hearing equity cases, which was introduced by the new equity rules, was this very advantage in getting at the truth which would result from affording the trial court an opportunity to see and hear the witnesses on contested issues of fact and judge from their appearance and demeanor what weight and value should be given to their testimony. It was undoubtedly assumed that under this practice and in accordance with the well-established rule in other courts the Federal Appellate Courts would give due weight to the advantage thus afforded to the trial judge and would not undertake to reverse his findings on conflicting testimony unless clearly unwarranted by the evidence before him. This is indicated by the provision in Rule 75 that the "evidence to be included in the record shall not be set forth in full, but shall be stated in simple and condensed form," and that as a general rule the testimony of witnesses shall be stated only in narrative form. This provision is plainly adapted to simplify very greatly the labors of the Appellate Court, provided its inquiry is in general to be limited to the question whether there was evidence to justify the findings and to the questions of law arising on the facts found; but it would place the Appellate Court at a further disadvantage as compared with the trial court if the Appellate Court were expected to try all the facts *de novo* without the strongest possible presumption in favor of the findings of the court below. It is impossible to escape the conclusion that this rule was adopted in recognition of the fact that it would serve no useful purpose to set forth all the evidence in full, for the very reason that the findings of the judge who heard the witnesses ought not to be set aside if there was evidence adequate to support these findings. The following comments of this court in a case arising out of a hearing before the Interstate Commerce Commission strongly support the above conclusions:—

"The facts involved have been so fully stated by the Commission (28 I. C. C. 533) and by the court below (216 Fed. Rep. 672) that it is unnecessary here to repeat them. The Railroad Companies did not offer all of the evidence which was considered by the Commission; and on this appeal they do not include in the record all of the hundreds of pages of testimony which had been submitted to the Commission, but—conceding that the evidence was conflicting and tended to support the findings of the Commission—they insist that the facts found were insufficient in law to sustain the orders which were made. This most commendable practice not only saved the expense of printing many volumes of testimony, but saved the substantial points in the case from being submerged in a flood of testimony—much of which was explanatory before the Commission and most of which was wholly immaterial in an Appellate Court which cannot reverse findings when supported by substantial—though conflicting—evidence. The practice is also in compliance with the spirit of the new Equity Rules (75, 76, 77) which call for just such a winnowing out of the useless; the presentation of only the relevant parts of exhibits, documents, tables, and reports; the elimination of all reduplications in written and oral testimony and a condensation into narrative form of what is material to the then issue before the court."

Louisville & Nashville R.R. Co. v. *U. S.*, 238 U. S. 1, 10.

Where an equity case is tried in the District Court on oral testimony the situation in an appellate court is substantially the same as where a case is heard before a master, not under the usual order merely to take and report testimony, but by consent of the parties to hear the evidence and report his findings of fact to the court. In such a case it was held in

Kimberly v. *Arms*, 129 U. S. 512, 524, 525,

and again in

Davis v. *Schwartz*, 155 U. S. 631, 636, 637,

that the master's findings, unless shown to be unsupported by the evidence, should be treated as conclusive. And this was put upon the analogy of the master's report to the findings of a lower court, on the ground that "where the parties select and agree upon a special tribunal for the settlement of their controversy, there is no reason why the decision of such tribunal, with respect to the facts, should be treated as of less weight than that

of the court itself, where the parties expressly waive a jury, or the law declares that the appellate court shall act upon the finding of a subordinate court." And accordingly it was said in the case last cited that the finding of the master,—

> "so far as it involves questions of fact, is attended by a presumption of correctness similar to that in the case of a finding by a referee, the special verdict of a jury, the findings of a Circuit Court in a case tried by the court under Rev. Stat. Sec. 649, or in an admiralty case appealed to this court."

See also on the same point,

> *Crawford* v. *Neal*, 144 U. S. 585, 596.
> *Furrer* v. *Ferris*, 145 U. S. 132.

It hardly needs demonstration that the findings of the District Court itself on oral evidence heard before it are entitled to at least equal weight with those of a master appointed by that court, even though by consent of the parties; and the rule has been expressly applied to such findings in a recent decision of this court. In

> *Adamson* v. *Gilliland*, U. S. Adv. Ops. 1916, p. 169,

a patent case heard by the District Judge on oral testimony, "the practical rule," which this court applied, was said to be (quoting from *Davis* v. *Schwartz*, supra), that

> "so far as the finding of the master or judge who saw the witnesses 'depends upon conflicting testimony or upon the credibility of witnesses, *or so far as there is any testimony consistent with the finding*, it must be treated as unassailable.'"

2. STRONGEST POSSIBLE REASONS IN PRESENT CASE FOR ACCEPTING FINDINGS OF FACT BY DISTRICT COURT UNLESS WHOLLY UNWARRANTED.

In the present case there are the strongest possible reasons why the findings of fact of the District Court should be accepted as decisive unless shown to be wholly unwarranted by the evidence.

Testimony Heard Orally.

1. All of the testimony was heard in open court with the exception of certain technical testimony relating to patents. The District Court, therefore, had a full opportunity to judge of the credibility of the witnesses.

Testimony Disputed and Witnesses Biassed.

2. Every issue material to the present case as to which the United States introduced testimony was disputed by the defendants. The witnesses for the United States whose testimony was material to these issues, outside of certain officials of the United Company, were practically all hostile to the United Company. The extent of their prejudice or bias, the credibility of their testimony, and the weight, if any, to be given to it, are questions which can far better be determined by the District Court which heard the testimony and observed the witnesses than it can be by the Appellate Court upon a consideration of a condensed printed record.

The United States, as the District Court observed, made "efforts which may fairly be described as extraordinary" (R. Vol. 1, p. 1152) to bring before the court all persons who felt or expressed any grievance against the United Company. Thus, the witnesses for the United States consist principally of the following classes:—

(*a*) Competitors of the United Company. These include R. H. Long, who manufactures a complete set of shoe machinery; J. J. Doidge, manager of Long's Company; C. A. Hamel, who puts out a complete line of machines; Edwin A. Webster of the Haverhill Shoe Machinery Company, which puts out a complete line of machines; George W. Maloy, Charles S. Johnson, and John Cavanaugh of the Boylston Manufacturing Company, a competitor of the United Company; Frank W. Merrick, president, and Clarence S. Luitweiler, treasurer, of the Union Lockstitch Company; Lorenze Muther of the Peerless Machinery Company, which manufactures eyeletting machines, tip press and tip perforating machines, cementing machines, folding machines, and others; Nelson H. Seelye, who manufactures dieing-out machines; Solomon M. Cutter, who was general manager, and James

N. Darrah, director and chairman of the executive committee, of the Standard Shoe Machinery Company, which manufactured a full line of bottoming machinery until it went out of business in 1901; Charles H. Morse, of the Fifield Shoe Machinery Company, which manufactured some fifty shoe machines; Alex Stone, export manager for the Atlas Works, of Leipzig, Germany, which makes a complete line of shoe machinery; William F. Donovan, president of the Atlas Tack Company, manufacturers of eyelets; all of which concerns were competitors of the United Company.

(*b*) Inventors or shoe machinery manufacturers who had endeavored to sell or entered into negotiations to sell out to the United Company and whose offers had been declined. These include Harry E. Cilley, George H. Clark, Zotique Beaudry, and Joshua S. Holt; also the following-named under paragraph (*a*), —R. H. Long, Frank W. Merrick, Clarence S. Luitweiler.

(*c*) Lessees who had violated their agreements with the United Company, or other persons with whom the United Company had had litigation or disputes. These include George R. Harsh; John E. Williams; William A. Hogan; S. Burton McNamara; Peter Tessier; Frank R. Hilliard; Ernest Bottomley; Irving A. Hadley; George A. Learned; Frank Morrison; Charles G. Ross; Abram Sochat; Herbert E. Chase; Frederick W. Herrick; Ira J. Webster; Thomas H. Shinn; Frederick W. Curtis.

(*d*) Members of the Shoe Manufacturers' Alliance, an organization of large shoe manufacturers opposed to the United Shoe Machinery Company. This Alliance consisted of Jackson Johnson of the Roberts, Johnson & Rand Shoe Company; A. D. Brown of the Hamilton-Brown Shoe Company; George Brown of the Brown Shoe Company; Henry N. Peters of the Peters Shoe Company; Milton S. Florsheim of the Florsheim Shoe Company; Emanuel F. Selz of the Selz, Schwab Shoe Company; C. H. Jones of the Commonwealth Shoe & Leather Company (R. Vol. 1, pp. 119, 114–115); and Pearl E. Selby of the Selby Shoe Company (R. Vol. 1, p. 213). Practically all of the members of this Alliance testified for the United States against the defendants.

Since 1910 the members of this Alliance have been active in agitating against the United Company. Jones and others have

appeared before Committees of Congress attacking the Company (R. Vol. 1, pp. 121–122). Their counsel has appeared before one or more Committees of Congress for the same purpose (R. Vol. 1, p. 122). Its members have been to the Department of Justice with respect to the United Company (R. Vol. 1, p. 121).

All of them are financially interested in the Boylston Manufacturing Company, which is a shoe machinery company with a capital of $500,000 or $600,000 (R. Vol. 1, p. 122).

The members of this Alliance showed in their testimony a strong bias against the United Company, due apparently to two causes: first, a desire to obtain, on account of their size, better rates of royalty than were granted to other manufacturers; and second, a desire to engage themselves in the manufacture of shoe machinery.

The change in Mr. Jones's attitude is well illustrated by the interview given by him to the Boston *Transcript* in 1906 in which he expressed the greatest satisfaction with the United Company (R. Vol. 1, pp. 130–133, *supra*, pp. 53, 54). At that time Jones said the only persons who could be behind attacks on the United Company must be people who wanted to manufacture machinery.

Jonathan Brown testified that Jones said to him in the summer of 1911, "It is time we big manufacturers should pay less royalty than the smaller ones" (R. Vol. 1, p. 733, lines 28–32). James W. Hitchings was present at the time and testified to the same effect (R. Vol. 1, p. 735, lines 32–37).

Immediately after the purchase by the United Company of the patents and inventions of Thomas G. Plant, Jackson Johnson, and Milton S. Florsheim, members of the Alliance, called upon Mr. Winslow, president of the United Company, and suggested that they would like to furnish the $3,000,000 that the United Company had paid Plant and that in return the United Company should give them its stock at $25 a share, the stock being worth $50 a share. In other words, their proposition was to obtain stock of the United Company worth $6,000,000 for a cash payment of $3,000,000. The substance of the talk was that some means should be found for giving the manufacturers whom they represented a large interest in the United Company, and it was said in a way that made Mr. Winslow understand that if he didn't there would be trouble (R. Vol. 1, p. 493).

Testimony as to Motives.

3. The question of the purposes and motives which actuated the transactions in question in this suit is of the utmost materiality. Mr. Winslow, president of the United Company, Mr. Howe, one of the executive committee and its counsel, and other officials testified fully as to the intent and purposes with which the various transactions were undertaken. The District Court, which heard and observed them, was in a position to judge of their credibility.

District Court's Findings Based on over Three Months' Investigation.

4. The transactions in question in this suit involve the detailed conduct of an extremely complicated business over a period of more than twelve years, including an examination of the situation existing at the time of the formation of the United Company, the objects and purposes of the company, and the extent to which such objects and purposes have been carried out, the origin and reasons for the lease system and the causes for the modifications made therein, the reasons for the purchase of various patents, contracts with inventors and other acquisitions, and the dealings of the United Company with over 1,000 lessees. Hundreds of transactions are involved, and an understanding of most of them is only possible upon a detailed examination of the facts relating to them. An understanding of the real purposes and motives of the company and its officials, of the greater efficiency resulting from the formation of the United Company, and of the necessity for the lease provisions and the various acquisitions is only possible when based upon a thorough understanding of the shoe machinery industry and the difficulties involved in developing patented machines and in furnishing a vast variety of machines adapted for different uses upon a lease system.

The District Court, composed of three judges, devoted many months to this task. They heard evidence in open court for nearly three months. Their conclusion as to the intent and

purposes of the United Company, the situation of the industry, and the necessity for and effect of the leases and acquisitions and of the other transactions involved in the suit, arrived at after months of study, should not be disturbed unless this court is clearly satisfied that it cannot be sustained upon the evidence.

VII. GENERAL APPLICATION OF THE SHERMAN ACT TO THE PRESENT CASE.

Only such transactions are condemned by the Sherman Act as prejudice the public interests because by their inherent nature they materially and unduly restrict competition or obstruct the course of trade, or because by reason of the intent with which they are done they accomplish this result.

Transactions which are normal and usual, which seek to further trade by normal or reasonable methods, or which are entered into and performed for the legitimate purpose of reasonably forwarding personal interest and developing trade are not within the act.

In *Standard Oil Company* v. *United States*, 221 U. S. 1, the court said (pp. 58, 62):—

> "Without going into detail and but very briefly surveying the whole field, it may be with accuracy said that the dread of enhancement of prices and of other wrongs which it was thought would flow from the undue limitation on competitive conditions caused by contracts or other acts of individuals or corporations, led, as a matter of public policy, to the prohibition or treating as illegal all contracts or acts which were unreasonably restrictive of competitive conditions, either from the nature or character of the contract or act or where the surrounding circumstances were such as to justify the conclusion that they had not been entered into or performed with the legitimate purpose of reasonably forwarding personal interest and developing trade, but on the contrary were of such a character as to give rise to the inference or presumption that they had been entered into or done with the intent to do wrong to the general public and to limit the right of individuals, thus restraining the free flow of commerce and tending to bring about the evils, such as enhancement of prices, which were considered to be against public policy."
>
> " . . . And it is worthy of observation, as we have previously remarked concerning the common law, that although the statute by the comprehensiveness of the enumerations embodied in both the first and second sections makes it certain that its purpose was to prevent undue restraints of every kind or nature, nevertheless by the omission of any direct prohibition against monopoly in the concrete it indicates a consciousness that the freedom of the individual right to contract when not unduly or improperly exercised

was the most efficient means for the prevention of monopoly, since the operation of the centrifugal and centripetal forces resulting from the right to freely contract was the means by which monopoly would be inevitably prevented if no extraneous or sovereign power imposed it and no right to make unlawful contracts having a monopolistic tendency were permitted. In other words that freedom to contract was the essence of freedom from undue restraint on the right to contract."

In *United States* v. *American Tobacco Co.*, 221 U. S. 106, the court said (p. 179):—

> "Applying the rule of reason to the construction of the statute, it was held in the *Standard Oil Case* that as the words 'restraint of trade' at common law and in the law of this country at the time of the adoption of the Anti-trust Act only embraced acts or contracts or agreements or combinations which operated to the prejudice of the public interests by unduly restricting competition or unduly obstructing the due course of trade or which, either because of their inherent nature or effect or because of the evident purpose of the acts, etc., injuriously restrained trade, that the words as used in the statute were designed to have and did have but a like significance. It was therefore pointed out that the statute did not forbid or restrain the power to make normal and usual contracts to further trade by resorting to all normal methods, whether by agreement or otherwise, to accomplish such purpose."

In *Nash* v. *United States*, 229 U. S. 373, the court, referring to the Standard Oil and Tobacco Cases, said (p. 376),—

> "Those cases may be taken to have established that only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade."

In *Eastern States Lumber Ass'n* v. *United States*, 234 U. S. 600, the court said (pp. 609–610),—

> "It [the Sherman Act] broadly condemns all combinations and conspiracies which restrain the free and natural flow of trade in the channels of interstate commerce. It is true that this court held in the *Standard Oil* and *Tobacco Cases, supra*, and in the subsequent cases following them,

that in its proper construction the act was not intended to reach normal and usual contracts incident to lawful purposes and intended to further legitimate trade. . . ."

Public Interest must be Prejudiced.

It is essential that the public interest be prejudiced. A restraint which is not of such a character as to prejudice the public interests is not covered by the statute.

In *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, the court said (p. 174),—

> "In other words, founded upon broad conceptions of public policy, the prohibitions of the statute were enacted to prevent not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented, and hence not only the prohibitions of the statute but the remedies which it provided were co-extensive with such conceptions."

Sherman Act must be Interpreted to Carry out its Purpose.

The statute is general in its terms and as held in the Standard Oil and Tobacco Cases must be interpreted so as to carry out the public policy which it manifests. In the Tobacco Case the court said (p. 181),—

> ". . . it was pointed out [in the Standard Oil Case] that the generic designation of the first and second sections of the law, when taken together, embraced every conceivable act which could possibly come within the spirit or purpose of the prohibitions of the law, without regard to the garb in which such acts were clothed. That is to say, it was held that in view of the general language of the statute and the public policy which it manifested, there was no possibility of frustrating that policy by resorting to any disguise or subterfuge of form, since resort to reason rendered it impossible to escape by any indirection the prohibitions of the statute."

For the same reason it follows that no transactions whatever their garb and whether new or old in character are condemned unless they are prohibited by the spirit or purpose of the statute. In other words, the particular circumstances of each case must be examined to determine the character of the acts.

Incidental Restraints not Unlawful.

All restraints are not covered by the act. Those that are incidental to a legitimate purpose, which are the result of reasonable normal or usual transactions entered into for the legitimate purpose of furthering trade or personal interests, are permissible. As said in *United States* v. *Joint Traffic Asso.*, 171 U. S. 505 (p. 568):—

> ". . . to treat the act as condemning all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased, would enlarge the application of the act far beyond the fair meaning of the language used. The effect upon interstate commerce must not be indirect or incidental only. An agreement entered into for the purpose of promoting the legitimate business of an individual or corporation, with no purpose to thereby affect or restrain interstate commerce, and which does not directly restrain such commerce, is not, as we think, covered by the act, although the agreement may indirectly and remotely affect that commerce."

Importance of Intent.

Certain acts by their very nature are of such a character as necessarily to prejudice the public interests and unduly restrain trade or create a monopoly. In such instances the intent to violate the statute may be conclusive.

In all other instances the intent to accomplish the unlawful purpose must be shown either directly or inferentially from the circumstances of the case.

Thus where the acts alone might not produce the unlawful result such intent is required.

Swift & Co. v. *United States*, 196 U. S. 375.

Where the transaction is of a doubtful character, that is, where the transaction might be entered into for the purpose of prejudicing the public and wrongfully restraining trade or excluding others from the business or might be undertaken for the legitimate purpose of fostering trade, the intent as shown by direct evidence or by inference from the circumstances of the case may determine the legality of the transaction.

Thus in *United States* v. *Reading Co.*, 226 U. S. 324 (p. 370), the court said:—

> "Whether a particular act, contract or agreement was a reasonable and normal method in furtherance of trade and commerce may, in doubtful cases, turn upon the intent to be inferred from the extent of the control thereby secured over the commerce affected, as well as by the method which was used. Of course, if the necessary result is materially to restrain trade between the States, the intent with which the thing was done is of no consequence. But when there is only a probability, the intent to produce the consequences may become important. *United States* v. *St. Louis Terminal Association*, 224 U. S. 383, 394; *Swift & Co.* v. *United States*, 196 U. S. 375."

The Standard Oil Case and the Tobacco Case also show the importance of intent.

In the Standard Oil Case it appeared that the Standard Oil Company had acquired by purchase and combination a large and controlling portion of the oil business of the country and eliminated competition between the companies acquired. This alone, however, was not held to constitute an illegal restraint of trade or monopoly. The court held that these circumstances gave rise in and of themselves, "in the absence of countervailing circumstances, to say the least, to the *prima facie* presumption of intent and purpose to maintain the dominancy over the oil industry, not as a result of normal methods of industrial development . . ." (221 U. S. 75), and that this "*prima facie* presumption of intent to restrain trade, to monopolize and to bring about monopolization" was "made conclusive by considering" the conduct of the persons and corporations, the proof as to what was done under the various agreements and the modes in which the power vested in the Standard Oil Company was exerted and the results arising from them (221 U. S. 75). It was held that the transactions prior to the formation of the trust agreements of 1879 and 1882, including those agreements showed

> "an intent and purpose to exclude others which was frequently manifested by acts and dealings wholly inconsistent with the theory that they were made with the single conception of advancing the development of business power by usual methods, but which on the contrary necessarily

> involved the intent to drive others from the field and to exclude them from their right to trade and thus accomplish the mastery which was the end in view" (221 U. S. 76).

The transactions up to the time of the formation of the New Jersey Corporation were held to make manifest "the continued existence of the intent," and the exercise of the power of the corporation was likewise held to show this purpose and intent (221 U. S. 76, 77).

In the American Tobacco Case the American Tobacco Company had by purchase and combination acquired a dominating control of the tobacco industry. Here again the court reached the conclusion of wrongful purpose. It said (221 U. S. 182):—

> "We say these conclusions are inevitable, not because of the vast amount of property aggregated by the combination, not because alone of the many corporations which the proof shows were united by resort to one device or another. Again, not alone because of the dominion and control over the tobacco trade which actually exists, but because we think the conclusion of wrongful purpose and illegal combination is overwhelmingly established by the following considerations:"

The court then goes on to recite the circumstances showing an "ever-present manifestation . . . of the purpose to restrain others and to monopolize . . . trade" (221 U. S. 182).

VIII. SPECIAL CONSIDERATIONS APPLICABLE TO THE PRESENT CASE.

In determining the questions involved in the present case the following considerations must be borne in mind:—

1. PRESENT CASE UNIQUE IN THAT (A) SHOE MACHINERY BUSINESS IS DOMINATED BY PATENTS, AND (B) NO COMPETITION PREVIOUSLY EXISTING WAS ELIMINATED.

The present case is unique in two important particulars: no case resembling it has ever before been decided by this court under the Sherman Act, except the case of *United States* v. *Winslow*, 227 U. S. 202, in which the formation of the present United Company was considered and held lawful. (*A*) In the first place, in every case heretofore decided in which a monopoly has been charged the business has been one in which any one having sufficient capital might freely engage on equal terms. In the present case the product which the defendant is accused of monopolizing is protected by dominating patents which restrict competitors to the marketing of machines of a different and inferior type. (*B*) In the second place, in every other case in which a monopoly has been charged the defendant has obtained a large or dominating share of the business previously carried on by various competitors. In the present case at the time the United Company was formed, the constituent companies each did the greater portion of the business in its particular field, under lawful patent monopolies, and the United Company merely took over and continued this business.

Industry Dominated by Patents.

A. In the present case the machines which the defendant is accused of monopolizing are protected by dominating patents so that competitors cannot manufacture them. There is a natural presumption that the general use of the defendants' patented machines and their success is due to their superiority

over other types of machines if such exist, and not to any illegal restraint of trade. As said of these machines by the court in *United States* v. *Winslow*, 227 U. S. 202 (p. 217),—

> "The machines are patented, making them is a monopoly in any case, the exclusion of competitors from the use of them is of the very essence of the right conferred by the patents, *Paper Bag Patent Case*, 210 U. S. 405, 429, **and it may be assumed that the success of the several groups was due to their patents having been the best.**" (Black letters ours.)

The shoe machinery industry is not one in which any person may normally engage on equal terms. It is of very recent origin. The machines do work until recently done by hand. These machines have been originated and created and are now manufactured under the protection of lawful patent monopolies. No one can enter or engage in this business successfully unless he holds patents enabling him to make machines superior to or as good as those already in the market. In such an industry no competition on equal terms is possible. The machines offered by two different manufacturers must necessarily differ, as neither can manufacture machines of the type made by the other, and inevitably one manufacturer will have an advantage due to the superiority of the patented inventions under which his machines are manufactured. It is, therefore, natural and to be expected that in such an industry the machines of one manufacturer will be superior to other machines and will be generally used by shoe manufacturers. That one manufacturer will have most, if not all, of the business is as natural as it was that the Bell Telephone Company, after the invention of the telephone, was the only company manufacturing telephones.

No Previous Competition Eliminated.

B. In the present case we do not find that previously to the formation of the United Company there were numerous competitors engaged in furnishing machines in competition to shoe manufacturers and that upon the formation of the United Company these competitors were eliminated and the United Company took over their business. In such a case there might be a natural presumption of unlawful purpose or that unlawful

methods were used to acquire the monopoly which would require proof to the contrary. In the present case, however, the petition itself alleges and the record establishes that the constituent companies were essentially non-competing, and that they had lawful patent monopolies under which they did the greater part of the business of the country in the machines which they manufactured. The United Company in taking over these non-competing companies therefore lawfully acquired patent monopolies under which it did the greater part of the business of the country in these machines. It did not eliminate competitors formerly in the field; it did not create a monopoly. It merely continued a business already lawfully existing. The monopoly charged in respect to these machines is the same monopoly which the petition alleges and the record establishes was lawfully held by the constituent companies at the time of the formation of the United Company. Indeed, far from showing that the United Company has acquired a monopoly in shoe machinery, the record shows that on December 12, 1911, when the petition was filed there were more and larger shoe machinery manufacturers engaged in business in competition with the United Company than existed in 1899 outside the constituent companies.

2. CONDITIONS PECULIAR TO THE INDUSTRY MUST BE CONSIDERED.

It is necessary in determining whether or not the various acts and transactions of the defendants prejudiced the public interest or were entered into with the legitimate purpose of forwarding personal interest and developing trade and were normal and usual, to bear in mind the peculiar character of the shoe machinery business. In this business we find, among other things, a great variety of machines used in making each shoe; we find the entire industry based upon patents; we find that the principal machines are of such a delicate character that they require constant attention and care in order to give satisfactory service; we find a system of leasing machines for a royalty based upon the extent of the use which had grown up with the industry, which had proved itself of great benefit to shoe manufacturers, and which a shoe machinery manufacturer was obliged to follow in order to furnish shoe manufacturers machines on terms satis-

factory to them. This combination of conditions is peculiar to this particular business and exists in no other business in the country.

These were the conditions with which the defendants were dealing, and the various transactions must be judged in view of these particular conditions. What would be legitimate or normal in some other business—for instance, the cotton machine business or the steel business—would not be a test of what was legitimate or normal in the shoe machinery business.

3. TRANSACTIONS ARE MATERIAL ONLY IF THEY PROVE THE CHARGE OF THE UNITED STATES.

The petition charges a plan formed in 1899 and carried out by a series of steps or acts extending over a period of twelve years. An immense number of transactions covering the defendants' conduct of its business and the acts of its officers and agents during this entire period have been put in evidence. We believe the record is barren of any wrongful incident. However, if the record showed that during this extended period there were sporadic instances in which some agent or officer of the defendant company exceeded his rights or some agreement was entered into not necessary for the protection of the company's rights or the development of its business, such sporadic instances would not be sufficient to show a plan to monopolize such as is charged by the petition, nor would such acts by themselves be sufficient to accomplish a wrongful monopoly as charged by the bill.

In other words these various transactions are material only in so far as they prove the charge of the petition, viz., that they were steps in carrying out the alleged plan

(1) to acquire all concerns engaged in the shoe machinery business, and then

(2) to refuse to sell or lease any so-called essential machinery to a shoe manufacturer except on condition that he take from them practically all other machinery which he required.

PART TWO.

FACTS AND ARGUMENT.

I.

FORMATION OF THE UNITED COMPANY.

1. THE CONSOLIDATION OF THE GOODYEAR SHOE MACHINERY COMPANY AND ITS SUBSIDIARY COMPANIES WITH THE CONSOLIDATED & MCKAY LASTING MACHINE COMPANY AND THE MCKAY SHOE MACHINERY COMPANY INTO THE UNITED COMPANY IS THE SAME CONSOLIDATION HELD LAWFUL AND VALID AND NOT CONTRARY TO THE SHERMAN ACT IN UNITED STATES v. WINSLOW, 227 U. S. 202.

In *United States* v. *Winslow*, supra, the indictment charged that for twenty-five years last past practically all the shoes worn by people of the United States were manufactured by the aid of several different kinds of machines, namely,

lasting machines,
welt sewing machines,
outsole stitching machines,
heeling machines,
metallic fastening machines;

that the Goodyear Shoe Machinery Company manufactured 80% of all the welt sewing and outsole stitching machines, and 10% of all the lasting machines; that the Consolidated & McKay Lasting Machine Company manufactured 60% of all the lasting machines, and the McKay Shoe Machinery Company manufactured 70% of all the heeling machines and 80% of all the metallic fastening machines, and that these companies manufactured their machines under United States patents, that they were combined into the United Company in pursuance of a conspiracy to extend the defendants' monopolies and rights unlawfully, to oppress shoe manufacturers and restrain trade, and that their combination in the United Shoe Machinery Company was an unlawful combination in violation of the Sherman Act.

In the present case the petition charges almost in the language of the indictment that for twenty-five years all boots and shoes worn by people of the United States had been manufactured by the aid of machinery; that the principal machines so used are lasting machines, welt sewing machines and outsole stitching machines, heeling machines and metallic fastening machines; that some of such shoe machinery is manufactured under letters patent; that prior to February, 1899, a large number of persons and corporations were engaged in the manufacture of shoe machinery in competition with each other; that the principal concerns so engaged were the Goodyear Shoe Machinery Company and its subsidiaries, manufacturing 80% of welt sewing and outsole stitching machines and 10% of the lasting machines, the Consolidated & McKay Lasting Machine Company, manufacturing 60% of all the lasting machines, and the McKay Shoe Machinery Company, manufacturing 70% of all heeling machines and 80% of all metallic fastening machines, and the Eppler Welt Machine Company, manufacturing 10% of the welt sewing and outsole stitching machines, and the Davey Pegging Machine Company, manufacturing 75% of the pegging machines, and that all the above-named companies manufactured their machines under letters patent of the United States; that many of the "basic" patents were about to expire and the lawful monopoly of such machines about to come to an end; and the individual defendants as owners of the above-mentioned companies, not being satisfied with the benefit of the lawful monopolies and rights belonging to them under letters patent, combined and conspired to acquire a monopoly in the manufacture of shoe machinery.

There is no allegation in the petition that the companies that were combined in the United Shoe Machinery Company were in competition with each other, and the only difference between the two cases so far as the organization of the United Shoe Machinery Company is concerned is that the petition adds the name of the Eppler Welt Machine Company, which it is claimed manufactured 10% of the welt sewing and outsole stitching machines, and the Davey Pegging Machine Company, which manufactured 75% of the pegging machines and which on the face of the petition was not in competition with any of the other companies. (This last-named company at the time of the con-

solidation and for a long time prior thereto was wholly owned by the Consolidated & McKay Lasting Machine Company and it did not compete with any of the other companies.—R. Vol. 1, p. 32, line 30.)

In *United States v. Winslow*, supra, the court said, page 217:—

> "On the face of it the combination was simply an effort after greater efficiency. The business of the several groups that combined, as it existed before the combination, is assumed to have been legal. . . . The disintegration aimed at by the statute does not extend to reducing all manufacture to isolated units of the lowest degree. It is as lawful for one corporation to make every part of a steam engine and to put the machine together as it would be for one to make the boilers and another to make the wheels. Until the one intent is nearer accomplishment than it is by such a juxtaposition alone, no intent could raise the conduct to the dignity of an attempt."
>
> (*Ib.* p. 217.) "The machines are patented, making them is a monopoly in any case, the exclusion of competitors from the use of them is of the very essence of the right conferred by the patents, *Paper Bag Patent Case*, 210 U. S. 405, 429, and it may be assumed that the success of the several groups was due to their patents having been the best. . . . It is said that from seventy to eighty per cent of all the shoe machinery business was put into a single hand. This is inaccurate, since the machines in question are not alleged to be types of all the machines used in making shoes, and since the defendants' share in commerce among the states does not appear. But taking it as true we can see no greater objection to one corporation manufacturing seventy per cent. of three non-competing groups of patented machines collectively used for making a single product than to three corporations making the same proportion of one group each."

The United States now seeks to differentiate the petition in the case at bar from the indictment by claiming that there was competition between the Eppler Company, making 10% of the welting and outsole stitching machines, and the Goodyear Company, manufacturing 80% of welting and outsole stitching machines; and also by making a very much belated claim that there was competition between the Ideal Laster of the Goodyear Company and the Chase Laster of the Consolidated & McKay Company, and that elimination of this competition was the motive for the consolidation of these companies into the United Shoe Machinery Company.

Upon this point the District Court, which saw and heard the witnesses and is the best judge of their credibility, said, by Dodge, J. (R. Vol. 1, p. 1130):—

"(1) As to the alleged competition in lasting machines, it is not claimed that there was any, so far as two of the three kinds made by the Consolidated Company are concerned. These are the 'McKay-Copeland' laster for lasting heavy metallic fastened or pegged shoes or brogans and the 'hand method McKay' laster for McKay sewed shoes; and neither of them could be used to last welt shoes, for which purpose alone the Goodyear Company's 'Ideal' laster was adapted. The only question here is whether the latter machine can be regarded as competing with the remaining laster of the Consolidated Company (the 'Chase'). With still another laster with which the Consolidated Company was experimenting in 1899, for use on welt shoes, we are not here concerned, because, though this laster was afterward further improved, developed, and finally furnished to users by the United Company, it had not been made an article of commerce in any practical sense when that company was formed.

"There is no proof of any actual use of the 'Chase' laster otherwise than for its intended purpose of lasting men's welt shoes. It could not work well for use with the lighter leather whereof women's shoes are made. The 'Ideal' laster, used almost exclusively for its intended purpose of lasting women's welt shoes, could not be relied on to work well with the heavier leather whereof men's shoes are made. The proof relied on to show that it competed with the 'Chase' went no further than to show that a number of 'Ideal' machines, small in proportion to the total number then in use, were being used in a few factories on men's shoes, notwithstanding their want of adaptation to such use. That there was any attempt to put either machine into the market as against the other, does not appear. No competition between the two in the usual sense of the term is shown. After the consolidation, by the addition of a patented 'hold down attachment' added by the United Company to the 'Ideal' in 1901 or 1902, some of the defects referred to were removed, but not until then can it be said to have been commercially successful for work on men's shoes. Before this improvement, it possessed at most a limited possibility of such use. I am unable to consider it established that competition in any practical sense was destroyed when the United Company became owner of both machines.

"(2) As to the alleged competition in welt-sewing ma-

chines, the question is to what extent the Eppler welting machinery can be regarded as competing with the Goodyear welting machinery. Outside of that produced by these two concerns, no other welting machinery appears to have been on the market at the time.

"The Eppler machines were adapted to produce men's thick-soled welt shoes only. They could not produce women's welt shoes (except perhaps those having the thickest soles), nor turn shoes of any kind, nor Goodyear welt shoes, either men's or women's, because of the difference between the respective machines in the character and position of the seam left in the inner sole of the shoe. The Goodyear machines could produce shoes of all the above kinds. The differences referred to resulted from differences in the character and operation of the machinery belonging to the different systems. These differences in character and in possible field of use had resulted when the United Company was formed in 1899 in the fact that over 2,500 Goodyear welting machines were in use, as against thirty or forty Eppler machines, one-third of these being used in the factory of the president of the Eppler Company. The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition as rendered it unlawful. The Eppler machines were not suppressed by the United Company. It continued to supply them until the progress of improvement in such machinery superseded them. The patents covering them have long since expired, and it is open to anyone to make and use such machines if he desires. There is no present monopoly in them, and no action taken by the court could restore them to the field of competition, or encourage or create competition by them.

"Nor, if such competition as is shown to have existed between the 'Chase' and the 'Ideal' laster be taken together with that shown to have existed between the Eppler welting machinery and the Goodyear welting machinery, I find it credible that the avoidance of both amounted to a consideration of any substantial importance, so far as the formation of the United Company was concerned. No reason appears for supposing that the real purpose for which the constituent companies were brought together, as disclosed not only by the evidence regarding all the circumstances as they existed in 1899, but by the evidence as to the course of development thereafter pursued by the United

Company, was other than that stated in a circular letter to the Goodyear stockholders issued February 8, 1899, the day following the organization of the United Company. (Petitioner's Exhibit 152.) This dwelt upon the advantages to be secured by putting into one control 'the most efficient types' of shoe machinery. In *U. S.* v. *Winslow*, above cited, which was decided more than a year after the present bill was filed, it was said that the combination here in question was, on its face, 'simply an effort after greater efficiency,' and the legality of combination for such a purpose is fully recognized.

"Under their respective patents upon the 'Chase' and the 'Ideal' lasters there was litigation pending in 1899 between the Consolidated Company and the Goodyear Company, each claiming that the other's machine infringed its patents. Also under the patents covering their welt-sewing machines there was similar litigation pending between the Eppler Company and the Goodyear Company. A result sought to be attained by both parties to these controversies, and accomplished by them through the acquisition of all the patents by the United Company, was the termination of all this litigation. Reference is made below to other later acquisitions by the United Company, an important feature of which was that litigation, troublesome and expensive on both sides, was avoided or terminated. In so far as any of the defendants' transactions were in order to accomplish results of this kind, it can not be said that their purpose was unlawful.

"For the reasons stated, I am unable to find the charge that the United Company was unlawfully formed because of competition which it destroyed sufficiently supported by the evidence. It would, in any case, be difficult to regard this as sufficient ground for a decree dissolving the company into its component parts under a bill not filed until more than twelve years had passed since the combination complained of was accomplished. During this period, as the evidence shows, investments of a very large amount had been made, not merely by the defendants but also by the outside public, in the extension and development of the company's united business, the component companies passed out of existence, and the machines as made by them in 1899 were so far developed, improved upon, or added to by the United Company as now all to have become obsolete. To put the parties or the public back into that state of the prior art which existed in 1899 is, of course, an impossibility."

To Aid the Court in an Examination of the Issue thus Decided by the District Court, We Shall Consider Below:—

The Business Done by the Constituent Companies;

The Organization of the United Company;

The Evidence Relating to the Alleged Competition Between the Constituent Companies;

The Purposes for Which the United Company was Formed, and the Manner in Which These Purposes have been Carried Out.

2. BUSINESS DONE BY THE CONSTITUENT COMPANIES.

A. The Goodyear Company.

The Goodyear Company manufactured and leased machines for attaching the welt to the upper and the outsole to the welt of Goodyear Welt shoes. It had two principal machines—the Goodyear Welt and Turn Machine (called the welter) for attaching the welt to the upper, and the Goodyear Outsole Rapid Lockstitch Machine (the stitcher) for attaching the outsole to the welt. The welter was used also in the manufacture of Goodyear Turn shoes. The Goodyear Company had also thirteen auxiliary machines used in connection with its welter and stitcher in the manufacture of Goodyear Welt shoes, and three auxiliary machines used in connection with its welter in the manufacture of Goodyear Turn shoes (R. Vol. 5, Defs.' Ex. 242, p. 681; Defs.' Ex. 244, p. 683).

The Goodyear Company also manufactured and leased the Ideal Lasting Machine. The Ideal was designed and adapted for lasting women's welt shoes, which no machine in the market at the time it was developed could do successfully (R. Vol. 1, p. 397, lines 41–43; p. 626, lines 44–45). It was not adapted for lasting men's welt shoes commercially (R. Vol. 1, p. 398, line 32). The Ideal Machine had a comparatively small use. Only 248 Ideal Machines were outstanding out of a total of 4,300 lasting machines of all kinds outstanding, and only 0.77 of 1% of the shoes lasted on machines in 1899 were lasted on the Ideal (R. Vol. 1, p. 975, lines 36–41).

The Goodyear system for welt and turn shoes ran back to 1870 or 1868 (R. Vol. 1, p. 625, line 20).

Prior to the development of the Goodyear System there was no system for making welt shoes by machinery. The machines of the Goodyear Company, including the auxiliary machines, were adapted to making welt shoes only and could not be used on any other kind of shoes (R. Vol. 1, p. 625, lines 17–19), except that the welter was used on turn shoes and three of the auxiliaries were designed for use on turn shoes, and except that the Hadaway Stitch Separator, an auxiliary machine, could be used also in pricking imitation stitches on mock welts and McKay shoes (R. Vol. 1, p. 625, lines 15–17).

The auxiliary machines were designed and adapted to assist the work of the principal machines, the welter and stitcher, by preparing the work for the operation of these machines or finishing it afterwards (R. Vol. 1, pp. 624–625).

Prior to the invention of the Goodyear Welt System welt shoes were made by hand. The Goodyear System imitated the exact process by which a hand workman made a welted shoe (R. Vol. 1, p. 626, lines 3–8).

The Goodyear Company owned as trademarks the names "Goodyear Welt" and "Goodyear Turn" as applied to shoes made by its machines. Its lessees of shoe machinery were given the right to use that trademark on shoes made by the Goodyear machines (R. Vol. 1, p. 625, line 44; p. 626, line 2).

Shortly after 1888 the Goodyear Welter and Stitcher were both greatly improved and the Goodyear Company's business developed rapidly (R. Vol. 1, pp. 691–692). The Goodyear Welt shoe was a better grade of shoe than the McKay, pegged or Standard Screw shoes, which were the classes of shoes generally made by machines, but the Goodyear Welt shoe was more expensive to manufacture. It gradually proved its merit, but in 1899 only 22,700,000 pairs of welt shoes were made out of a total production in the country of 172,786, 000 pairs of shoes of all kinds, of which 82,457,000 were McKays (R. Vol. 5, Defs.' Ex. 215, p. 322). In 1898, just prior to the formation of the United Company, only about 17,000,000 pairs of welt shoes were made (R. Vol. 1, p. 414, lines 36–37).

The Goodyear Company, therefore, occupied a comparatively limited and special field which it had itself created and which

it lawfully controlled by reason of its patents. The process of making Goodyear Welts is only one of a number of methods of attaching the soles to the uppers of shoes by machinery, and this method was used in 1898 on only about 10% of the total shoes manufactured in that year.

B. The Consolidated & McKay Lasting Machine Company.

This company manufactured and leased three kinds of lasting machines, namely, the Chase, the McKay & Copeland, and the Hand Method McKay Machine.

The Chase Machine was especially adapted to and was developed for lasting men's welt shoes (R. Vol. 1, p. 397, lines 39–40).

The McKay & Copeland Machine was commercially adapted only for lasting heavy brogans (R. Vol. 1, p. 399, lines 13–14), that is, very heavy coarse shoes (R. Vol. 1, p. 397, line 14).

The Hand Method McKay Machine was designed and adapted for lasting McKay sewed shoes (R. Vol. 1, p. 399, line 22). It could not be used for lasting welt shoes (R. Vol. 1, pp. 399–400).

The Consolidated Company in 1899 had been endeavoring to develop a hand method welt lasting machine. This machine had been developed to a point where it could last the heel, shank and ball of the shoe satisfactorily, but it could not last the toes satisfactorily (R. Vol. 1, p. 400, lines 27–32). Thirty-four machines had been placed in factories, but they were experimental and not successful commercially (R. Vol. 1, p. 969, lines 1–6).

The Consolidated Company also furnished a few minor auxiliary machines (R. Vol. 1, p. 400, line 40).

The use of machines for lasting shoes was of a very recent development. In 1890 very few shoes were lasted by machinery, except heavy shoes lasted on the McKay and Copeland machine. Manufacturers and operatives were at that time sceptical as to the possibility of developing a machine which would last shoes. Lasting was a real handicraft operation requiring great skill. There was also considerable difficulty in introducing lasting machines, due to the opposition of the operatives. After machines were introduced and the operatives instructed in their use the operatives would strike or agree to last by hand for a reduction in pay and the machines would be stopped (R. Vol. 1, pp. 401–402). The result was that by 1899

only about one-half the shoes made were lasted by machine (R. Vol. 1, p. 402, lines 14–18).

The Davey Pegging Machine Company, which was owned by the Consolidated Company, made machines for attaching the soles of shoes by wooden pegs (R. Vol. 1, p. 415, lines 18–20; p. 534, lines 45–46).

C. The McKay Shoe Machinery Company.

This company manufactured and leased metallic fastening machines, used to insert metallic fastenings, and heeling machines, used for the preparation and attaching of heels. It operated through the McKay-Bigelow Heeling Machine Association and the McKay Metallic Fastening Association, both of which it owned (R. Vol. 1, p. 4, lines 23–36).

D. The Eppler Welt Machine Company.

This company, hereafter called the "Eppler Company," was not one of the constituent companies but was acquired after the formation of the United Company (R. Vol. 1, p. 530, lines 22–26; pp. 675–676). It manufactured and leased a welter, a stitcher, and a few auxiliary machines used in connection therewith. These machines were used for the manufacture of Eppler Welt shoes, and the leases under which they were put out limited their use to this purpose (R. Vol. 3, P.'s Ex. 59, p. 507).

The Eppler Welt shoe was of an entirely different construction from the Goodyear Welt shoe made by the Goodyear machines. It differed almost as radically as the McKay sewed shoe. This difference was due to a difference in the construction of the two welters put out by the respective companies. The Eppler machine placed the chain of the stitch used in attaching the welt in the channel made in the innersole. The Goodyear Machine laid the chain of the stitch on the welt so that the foot did not rest upon it (R. Vol. 1, p. 415, lines 26–43).

The Eppler Company had outstanding only between thirty and forty welt machines, one-third of which were in the factory of the president of the company (R. Vol. 1, p. 389, lines 6–9). The Goodyear Company had outstanding on March 1, 1900 (the nearest date to the formation of the United Company in evi-

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dence), 2,531 welters and stitchers (R. Vol. 5, Defs.' Ex. 226, p. 424).

The Eppler machines could not be used for turned shoes or for women's welt shoes and were unsatisfactory for use on men's shoes (R. Vol. 1, pp. 169–170, 531, lines 4–5).

The Eppler machines, therefore, occupied a small and very limited field.

E. The Machines manufactured by the Constituent Companies were protected by Patents, were the best Machines made, and, therefore, were used principally by Shoe Manufacturers for the Purposes for which they were Adapted.

The petition alleges,

> "Early in 1899 the companies above mentioned and described were manufacturing their machines, and parts thereof, under letters patent of the United States and of other countries" (R. Vol. 1, p. 993).

The petition further alleges that the principal concerns engaged in the business were the constituent companies (R. Vol. 1, p. 992), and that the United Company by the acquisition of the constituent companies "acquired control of the greater portion of the manufacture of, and trade and commerce in, the machines included in each and all of the groups of machines mentioned" (R. Vol. 1, p. 996).

A full discussion of the strong patents covering the machines is given at pages 204–237 of the Brief.

The machines put out by the constituent companies had been gradually developed by them or their predecessors in accordance with patents covering the machines. Each company had a lawful monopoly granted by the patent law covering the manufacture of its own machines, and of course no one else could manufacture these machines.

The shoe machinery industry was of very recent origin, all the work on shoes having previously been done by hand. The trade in machines of the kind manufactured by the constituent companies had been created by reason of and under the inventions for which the constituent companies held patents. No one else

had invented other types of machines which could do equally good work, and the machines put out by the constituent companies were, therefore, the best machines in the market (R. Vol. 1, p. 532, lines 16–18, 29–32). As a result, at the time of the formation of the United Company the Goodyear Company's machines were doing practically all the welt sewing and outsole stitching, the Consolidated Company's machines were doing practically all the lasting, and the McKay Company's machines were doing practically all the metallic fastening that was being done in the United States (R. Vol. 1, p. 537, lines 32–37). The McKay Company was also putting out all of the heeling machines that were being made in the United States at that time (R. Vol. 1, p. 851, lines 27–30).

3. ORGANIZATION OF THE UNITED COMPANY.

The United Company was organized on February 7, 1899.

The preliminary arrangements were made by Mr. Winslow, who was a member of the Executive Committee of the Consolidated Company (R. Vol. 1, p. 406, line 25), and Mr. Howe, who was vice-president of the Goodyear Company and in general charge of its business (R. Vol. 1, p. 466, lines 32–39).

Some time about July, 1898, they first discussed consolidating the businesses of the Goodyear Company and the Consolidated Company (R. Vol. 1, p. 629, line 19). This consolidation was agreed upon some time in January, 1899 (R.Vol. 1, p. 629, line 34). It was not originally planned to take over the McKay Company, and this question was only taken up after the formation of the United Company and the acquisition by it of the Goodyear and Consolidated Companies had been arranged (R. Vol. 1, p. 406, lines 36–40). It was not until the United Company had been agreed upon and about the time that it was organized that it was found the Eppler Company could be purchased and arrangements were made for its acquisition (R. Vol. 1, p. 633, line 5).

The United Company was organized with $25,000,000 authorized capital stock, of which $12,500,000 was preferred and $12,500,000 was common (R. Vol. 3, P.'s Ex. 1, p. 4).

The United Company at once took over the stock and later the properties of the Goodyear Company, the Consolidated Company, and the McKay Company, and likewise the International Goodyear Company, the Goodyear Company of Canada, and the Davey Pegging Machine Company, which were affiliated with the three principal companies. In March it took over the Eppler Company and the International Eppler Company.

The Goodyear Company, Consolidated Company, and the McKay Company, and such stock of the International Goodyear Company as was not owned by the Goodyear Company itself were paid for in stock of the United Company. In addition stockholders of the Consolidated Company received a small cash payment to adjust dividends. $2,395,435 of stock was issued for cash which was used to pay the expenses of organization, the floating debts of all the constituent companies, the

purchase of the capital stock of the Eppler Company, the International Eppler Company, and the Goodyear Company of Canada, and to provide $500,000 working capital for the United Company (R. Vol. 1, pp. 31–33).

The stock of the United Company was issued as follows:—

For $3,000,000 stock of the Goodyear Company .	$4,631,560
For minority stock of the International Goodyear Company not owned by the Goodyear Company	287,105
For $2,850,000 stock of the Consolidated Company	4,432,900
For $5,000,000 stock of the McKay Company .	5,500,000
To Syndicate for cash at par used to purchase Eppler Company, International Eppler Company, Goodyear Company of Canada, for payments of debts, organization expenses, and $500,000 working capital	2,395,435
Total,	$17,247,000

A. No Watered Stock was Issued.

The petition alleges that the constituent companies were taken over "at values far in excess of real worth" (R. Vol. 1, p. 995). This charge is absolutely unfounded.

The stock of the United Company was issued for value and was not watered (R. Vol. 1, p. 533, lines 31–32). The book values of the Goodyear and McKay companies, so far as could be judged, were far in excess of the prices paid by the United Company (R. Vol. 1, pp. 629–630). The stock of both companies had sold above par for a long time (R. Vol. 1, p. 533, lines 38–40). The McKay Company stock had sold at $8 or $9, but it was worth at least $11 a share, on which basis it was taken in (R. Vol. 1, p. 533, line 40–p. 534, line 4; p. 633, line 41–44). The stock issued to the syndicate was paid for in cash at par (R. Vol. 1, p. 32, lines 1–4).

The first statement of the United Company, issued in 1901, shows that it carried no item of good-will, and that it carried its valuable patents at only $745,269.27, and that the company had a substantial surplus (R. Vol. 4, P.'s Ex. 180, p. 1225).

B. Machines not Manufactured by the Constituent Companies.

The machines manufactured by the constituent companies which were acquired by the United Company covered only a portion of the shoe machinery field, and, as we have stated above, each had its own particular field which it had developed under its own patent monopolies. The constituent companies did not even manufacture all the machines used in bottoming shoes. Thus they did not manufacture the McKay Sewing Machine used to attach the soles to McKay shoes, which constituted substantially one-half the total number of shoes manufactured in 1899. They manufactured no machinery for cutting out or stitching or making uppers. They made no General Department machines, of which a large number were then manufactured, and of which the United Company now manufactures over one hundred and seventy different kinds.

Defendants' Exhibit 221A (R. Vol. 5, p. 370A) gives a list of eighty-five different dealers in machinery findings and supplies advertising in the trade papers in the years 1899 to 1902, which the United Company did not purchase and made no attempt to purchase. This list includes such important companies as the Wheeler & Wilson Sewing Machine Company, which supplied probably 90% of the machines which united the parts of the upper of the shoe (R. Vol. 1, p. 415, lines 12–14), and the Reece Button Hole Machine Company, which furnished probably every machine used for making buttonholes in shoes and for finishing the buttonholes (R. Vol. 1, p. 415, lines 15–17). The United Company also did not take over the Stanley Manufacturing Company, which put out the McKay Sewing Machine used to attach the soles of about one-half the shoes made (R. Vol. 1, p. 415, lines 4–12).

The fact that the United Company took over companies occupying only a portion of the shoe machinery field and made no attempt to acquire these other important companies establishes conclusively that the United Company was not formed to obtain a monopoly of all shoe machinery as charged in the petition.

4. ALLEGED COMPETITION BETWEEN CONSTITUENT COMPANIES.

The Government contends that there was competition between certain of the constituent companies of the United Company which made the formation of the United Company unlawful.

The brief statement given above of the business conducted by the constituent companies shows the unsubstantial character of this contention. However, as the United States has claimed that there was competition, we will consider it in detail.

The competition which the United States contends existed was (1) between the Ideal Lasting Machine made by the Goodyear Company and the lasting machines of the Consolidated Company, and (2) the welt machines of the Goodyear Company and the welt machines of the Eppler Company.

It is admitted that the McKay Company did not compete with any of the other companies.

A. ALLEGED LASTING MACHINE COMPETITION BETWEEN THE GOODYEAR COMPANY AND THE CONSOLIDATED & McKAY LASTING MACHINE COMPANY.

(I) INTRODUCTORY STATEMENT.

The only claim of competition in 1899 between the Consolidated & McKay Company and the Goodyear Company is the petitioner's claim that there was competition between lasting machines of these companies. It is admitted that the great bulk of the business of the Goodyear Company was in welt sewing and outsole stitching machines and their auxiliaries, and that the sole business of the Consolidated & McKay Company was in lasting machines. Indeed, so comparatively insignificant was the lasting machine business of the Goodyear Company that, as Mr. Howe testified, it treated its lasting machine "as an auxiliary to its welt and turn machine and its outsole stitcher" (R. Vol. 1, p. 626, lines 42–43).

The Consolidated Company in 1899 was putting out three different lasting machines:—

The McKay & Copeland Machine;
The Chase Machine;
The Hand Method McKay Machine.

It was also experimenting on a hand method welt machine.

The Goodyear Company was putting out the Ideal lasting machine.

All of these machines were patented (R. Vol. 2, pp. 2365, 2383, 2387–9, 2391–3, 2400–2).

The McKay & Copeland machine was designed and adapted for men's heavy standard screw, pegged and loose nailed shoes (R. Vol. 1, p. 523). The hand method McKay machine was designed and adapted for McKay sewed shoes (R. Vol. 1, p. 524, lines 1–3; Vol. 2, p. 2399). It is admitted that the use of each of these machines was confined to the particular field for which it was designed and that neither competed with the Ideal

machine of the Goodyear Company. *The only contention of the United States*, therefore, is that there was competition between the Ideal machine of the Goodyear Company and the Chase machine of the Consolidated Company, and that the Ideal machine also competed with the hand method welt machine on which the Consolidated Company was experimenting.

In considering petitioner's contention that there was competition between lasting machines of the Consolidated & McKay Company and the Ideal lasting machine of the Goodyear Company, the court will, of course, bear in mind that this case relates to a highly specialized industry in which hundreds of entirely different machines are used on the various types of shoes, and that each kind of shoe requires for its successful manufacture machines designed *particularly just for that kind of shoe*. Nothing is more thoroughly established by the record than these vital and fundamental facts.

Petitioner's case on this issue depends primarily on the assumption that merely because two different machines were called lasting machines and were used in lasting shoes, each of them as a matter of course could be used in lasting any kind of shoes, despite the fact that one was designed for use on one particular and peculiar type of shoes and the other for use on another particular and peculiar type of shoes. This is hardly more reasonable than it would be to contend that the welt sewing and outsole stitching machines of the United Company compete or could compete with the upper stitching machines of the Singer Sewing Machine Company, because all of these machines sew together parts of boots and shoes.

Obviously, to establish that in February, 1899, there was existing or potential lasting machine competition between the Goodyear Company and the Consolidated & McKay Company, it must be clearly proved that a lasting machine of one of those companies was actually used in 1899, or at that time plainly could be used, to do with commercial success the work of a lasting machine of the other company, or that such competing use was then imminent or threatened.

That the alleged lasting machine competition was utterly trivial and insignificant will be shown by reviewing evidence, proving that the overlapping use in 1899 of the Chase and Ideal machines could not at the most have exceeded .13 of 1% of all

the shoes lasted by machines, or .07 of 1% of all the shoes made in 1899, and that the number of hand method welt lasting machines out in 1899 was less than .8 of 1% of all lasting machines in use in 1899.

Since the indictment which was before the court in *United States* v. *Winslow* charged that the Consolidated & McKay Company made 60% of all the lasting machines made in the United States and that the Goodyear Company made 10% of all the lasting machines, it would seem a waste of time to argue about alleged competition so trivial and insignificant as we have indicated; but in view of petitioner's contention on this issue, and since the court is entitled to assistance in reviewing the considerable amount of evidence of more or less technical character, it seems to be necessary to review and correlate this evidence.

It is proposed to discuss first the alleged competition between the Ideal lasting machine and the Chase lasting machine.

(2) THE EVIDENCE AFFORDS NO FOUNDATION FOR PETITIONER'S CLAIM THAT THERE WAS ANY COMPETITION BETWEEN THE IDEAL LASTING MACHINE OF THE GOODYEAR COMPANY AND THE CHASE LASTING MACHINE OF THE CONSOLIDATED & McKAY COMPANY.

(a) Introductory Statement.

With regard to the field of the Ideal lasting machine in 1899, Mr. Winslow testified:—

> "The Ideal was developed for the express purpose of lasting women's welt shoes, there being at that time no machine in the market which was adapted to that purpose" (R. Vol. 2, p. 2909, Int. 18).

Mr. Howe testified:—

> "The Ideal laster was adapted to work on women's welts, light leather which no machine in the market at that time would do successfully. . . . The machine was designed and almost wholly used for lasting women's welts" (R. Vol. 1, p. 626, lines 44–45; p. 627, lines 1–3).

Mr. Howard testified:—

> "It was especially designed for the lasting of women's welt shoes and in February, 1899, substantially all women's welt shoes which were lasted by machine were being lasted on the Ideal lasting machine" (R. Vol. 2, p. 2387).
>
> "That machine practically had the women's welt shoe field to itself" (R. Vol. 1, p. 966, lines 22–23).

Mr. Donham testified:—

> "It [the Goodyear Company] also had a specially designed lasting machine, which it had originated for the purpose of enabling women's Goodyear welt shoes to be lasted by machine, there being at that time no other lasting machine adapted for lasting that class of work" (R. Vol. 1, p. 2, lines 19–22).

The Chase lasting machine was primarily adapted and used almost exclusively for lasting men's welt shoes.

Mr. Winslow testified that—

> "the Chase machine was especially adapted to and was developed for the lasting of men's welt shoes" (R. Vol. 2, p. 2909, Int. 17).

Martin E. Welch, a witness for the defendants, who manufactured women's shoes, testified:—

> "We did not use the Chase lasting machine; we don't use it on women's work" (R. Vol. 1, p. 711, lines 32–33).

Mr. Howe testified:—

> "The Chase machine was designed for and used almost exclusively on men's welts" (R. Vol. 1, p. 627, lines 12–13).

It is not disputed that the Ideal lasting machine was developed, especially designed, and principally used for lasting women's welt shoes. It is also not disputed that the Chase lasting machine was developed, especially adapted, and principally used for lasting men's welt shoes.

The petitioner claims, however, that the Chase was also used in the field of the Ideal and that, conversely, the Ideal was also used in the field of the Chase.

That the petitioner's claim of competition between the Chase and Ideal lasting machines was not taken seriously even by petitioner is at least indicated by the belated attempt of petitioner to prove such competition. Throughout its direct case petitioner offered no evidence showing any use of either of these machines in the field of the other.

In its rebuttal case, petitioner made an effort to show some use of each of these lasting machines in the field of the other. It called three witnesses to establish use of the Chase machine in the field of the Ideal machine, O'Keefe, Lemay and Springer (R. Vol. 1, pp. 934, 947). We shall show that none of these witnesses testified that the Chase machine was used on women's *welt* shoes, the field of the Ideal, and that at the most they merely expressed opinions that it could be so used, and such opinions, in the light of strong evidence that it was not adapted for such use, obviously have no probative value.

In its rebuttal case petitioner also called nine witnesses, Snow (R. Vol. 1, p. 895), Worsencroft (R. Vol. 1, p. 913), Whitman (R. Vol. 1, p. 915), Heffernan (R. Vol. 1, p. 917), Jordan (R. Vol. 1, p. 932), Murphy (R. Vol. 1, p. 933), O'Keefe (R. Vol. 1, p. 934), Florsheim (R. Vol. 1, p. 935), Fletcher (R. Vol. 1, p. 937), in the effort to show use of the Ideal machine in the field of the Chase on men's welt shoes, but much of their testimony either related to use of the machine *after 1899*,—that is, after the United Company was formed,—with the addition of improvements which better adapted the machine for men's welt shoes, and upon a new shape of shoe which was introduced after 1899; or it related only to use of the Copeland Rapid laster, which was practically obsolete before the United Company was formed and which the Goodyear Company was not putting out at all. This evidence in no way refutes the testimony of defendants' witnesses, corroborated by several of petitioner's witnesses, that the Ideal machine was developed and designed and chiefly used for lasting women's welt shoes, and that while it actually was used to a small extent on men's welt shoes, it was not adapted for that use and such use was utterly insignificant.

(b) The Chase Lasting Machine was Neither Adapted nor Used for Lasting Women's Welt Shoes and therefore was not Used at all in the Field of the Ideal Lasting Machine.

There is absolutely no proof in the record that the Chase lasting machine was ever used for lasting women's *welt* shoes.

On the contrary, such slight use of the Chase lasting machine on women's shoes as the record shows was altogether on women's *McKay-sewed shoes*, and *there is no evidence in the record and no claim is made that the Ideal lasting machine was ever used on women's McKay shoes.*

The petitioner relies upon three witnesses to establish alleged use of the Chase machine in the field of the Ideal lasting machine.

Petitioner's witness O'Keefe, after naming four different factories in each of which he testified he had used Chase lasting machines for lasting *men's welt shoes*, testified that in one only of those factories were Chase lasting machines used on women's work. That use was "for a short time" only (R. Vol. 1, p. 934, lines 36–40; p. 935, lines 8–9, 18–20). There is no intimation in O'Keefe's testimony that those women's shoes were *welt shoes*. Petitioner's witness Lemay testified:—

> "I know of no reason why the Chase machine could not be used successfully in lasting women's shoes" (R. Vol. 1, p. 947, lines 37–39).

But that mere statement of opinion does not in the least discriminate between women's *welt* and women's *McKay* shoes, and further such statement of mere opinion on the part of a witness who, so far as the record shows, *never even saw a woman's shoe of any sort lasted on a Chase machine* is obviously entitled to no weight. Furthermore, it is answered by that witness's own testimony that the only women's shoes made in any factory where he worked were McKays and were lasted on the hand method McKay lasting machine (R. Vol. 1, p. 947, lines 25–36).

The only use of the Chase lasting machine on women's work testified to by petitioner's witness Springer was also use in lasting women's *McKay-sewed* shoes. The shoes made in that factory were mostly men's McKays, and the making of women's

McKays was an experiment and was confined to a year. They only made a few thousand pairs and used the same machines they had (R. Vol. 1, p. 948, lines 42–44; p. 949, lines 5–6, 18–24, 32-33).

The only testimony Springer gave with regard to use of the Chase lasting machine on *women's welts* was a bare statement of opinion:—

> "*Q.* Do you know of any reason why it cannot be used on women's welt shoes the same as on men's?
> "*A.* No, sir" (R. Vol. 1, p. 948, lines 17–19).

This statement of opinion, like that given by Lemay, obviously has absolutely no probative value. Indeed on cross-examination Springer testified:—

> "I am not undertaking to give any very well-studied opinion as to the various uses that the Chase machines may be commercially put to successfully" (R. Vol. 1, p. 949, lines 24–26).

Thus, not only did petitioner's witnesses fail to establish any use of the Chase lasting machine in the field of the Ideal either in 1899 or since 1899, but the testimony of those witnesses supplements defendants' evidence establishing that the Chase machine was neither used nor adapted for use in lasting women's welt shoes.

Mr. Winslow testified on cross-examination that the Chase lasting machine was *not used* on women's welt shoes:—

> "*A.* No; it wasn't used on women's welts.
> "*Q.* Was it used at all on women's welts?
> "*A.* I don't know of a single factory or a single machine that was being used to last women's welt shoes" (R. Vol. 1, p. 525, lines 15–18).

Mr. Howard testified:—

> "So far as I can learn the Chase lasting machine was never used, either before or after 1899, in lasting women's welt shoes. There was not one Chase lasting machine in Lynn, the great women's shoe center, in January, 1899. So far as I know, there has never been one there" (R. Vol. 1, p. 971, lines 10–14).

Not only did petitioner fail entirely to prove any *use* of the Chase lasting machine for lasting women's welt shoes, but the evidence is that the Chase lasting machine was *structurally not adapted* for that work. Mr. Winslow testified:—

> "The Chase machine was not adapted for lasting women's welt shoes. The reason why it was not is that it is a practical impossibility up to the present time to last the leather that is used in the manufacture of women's shoes over the toe by any bed machine that does not previously wipe it up over the toe before coming in over the last. . . . The Chase machine . . . did not have that function" (R. Vol. 1, p. 398, lines 41–44; p. 399, lines 1–3).

Another structural difficulty in the use of the Chase lasting machine for women's welt shoes arose from the use in that machine of a retarder which, as explained by Mr. Howard,—

> "worked satisfactorily on the heavier leathers of men's shoes, but on the lighter leathers of women's shoes it would pull the stock along the centre of the shoe and would result in bowing or bending the tip seam forwardly, which of course was bad shoemaking and spoiled the shoe" (R. Vol. 1, p. 968, lines 36–40).

Petitioner's counsel also read into the record an advertisement of the Chase Lasting Machine Company advertising the Chase machine for use on women's shoes (R. Vol. 1, p. 960). But this advertisement does not even purport to claim that the Chase machine could be used on women's *welt* shoes, that is, in the field of the Ideal. There was evidence that the Chase machine was used to a very slight extent on women's McKay shoes, and presumably the advertisement had reference to such use, that is, to use in the field of the Hand Method McKay machine.

Furthermore, even if this advertisement had been intended to state that the Chase machine could be used on women's welt shoes it merely shows an attempt to introduce the machine in this field, and the fact that it was never used in this field in spite of the attempt merely confirms the defendants' testimony that it was structurally unfitted for such use.

There is, therefore, no evidence that the Chase machine was ever used on women's welt shoes and there is evidence that it was not so used and that for structural reasons it could not be so used commer-

cially. The record, therefore, establishes clearly that the Chase machine did not compete with the Ideal machine in the lasting of women's welt shoes.

(c) The Evidence also Refutes Petitioner's Claim that the Ideal Machine was Competing with the Chase Machine in the Field of the Chase, that is, in Lasting Men's Welt Shoes.

Petitioner contends that the Ideal machine could be used and actually was used on men's welt shoes, and, therefore, that it did compete with the Chase machine. That it was possible so to use it, and that it was so used to a slight extent, is not disputed by the defendants. Their contention is that it was not adapted for such use and could not be so used successfully in a commercial sense and that such overlapping of use as existed was negligible and did not constitute competition in any true sense.

Mr. Winslow testified that the Ideal machine was not adapted for lasting men's welt shoes successfully, except possibly some shoes made of very light leather (R. Vol. 1, p. 398, lines 32–40).

Mr. Howe testified that the Ideal machine might as a feat be used on men's welts, particularly if they were made of thin leather, but the machine was designed and almost wholly used for lasting women's welts (R. Vol. 1, p. 627, lines 1–3).

> "As a feat you could use the Ideal laster, which was designed for women's welts, on men's shoes, but that no one would think of doing so unless they were forced to" (R. Vol. 1, p. 679, lines 34–37.)

Robert P. Hazzard, a witness for the defendants, who manufactured men's Goodyear welts exclusively, 5,000 pairs a day (R. Vol. p. 641, line 10), testified on cross-examination:—

> "Before the United Company was formed we lasted welt work on the Chase machine and by hand. I never used an Ideal machine. I don't know what kind of work the Ideal did. I always assumed it was used more for women's work. That is, it was always considered that the Ideal machine was for women's work. I never tried, and never saw an effort made, to use it on men's work" (R. Vol. 1, p. 649, lines 40–43; p. 650, lines 1–3).

There were Fundamental Structural Characteristics of the Ideal Lasting Machine which Rendered it Unadapted for Use with Commercial Success on Men's Welt Shoes.

Mr. Howard explained the characteristic organization of the Ideal machine by reference to a patent showing its construction, and testified that on account of its peculiar organization the machine was *not strong enough* to last men's shoes and *frequently broke* when it was used on men's shoes. Mr. Howard further testified:—

> "It was this characteristic of the organization of the machine which constituted its weakness in its use on men's shoes. Owing to the fact that the wipers were supported so far from their acting edges, and that there was lack of support for the toe-lasting head directly under the wipers, the wipers sprung so that they would not seat the upper materials properly against the lip of the insole, and owing to the strain there was frequent breakage.
>
> "That weakness in the organization of the machine which I have described didn't affect its successful operation in operating on women's shoes. The strain is so much less than that which the machine encounters in lasting men's shoes that the machine was strong enough for its operation upon women's shoes. But when it came to deal with the heavier leather of men's shoes, then the difficulty disclosed itself" (R. Vol. 1, p. 968, lines 13–27).

On cross-examination Mr. Howard further explained that the Ideal lasting machine could not be used successfully on men's shoes—

> "because the dimensions of a man's shoe and a woman's shoe are substantially different. The power required for lasting a man's shoe is much greater than that required for lasting a woman's shoe" (R. Vol. 1, p. 972, lines 43–44; p. 973, lines 1–2).

Mr. Howard also testified that another important difference between men's shoes and women's shoes, which added to the difficulties encountered in attempting to use the Ideal machine on men's shoes, was that in a man's shoe the box toe must be heavier and stiffer, because it has so much more to do. Practically all men's shoes have box toes; if they didn't they would fall in at the toe (R. Vol. 1, p. 973, lines 16–31).

Petitioner's witness Snow testified:—

> "The Ideal machine could not be used successfully in lasting men's heavy shoes, because in wiping over the toe, the shoe lifted from the toe piece" (R. Vol. 1, p. 896, lines 12–14).
>
> "When we wiped up over the toe of the shoe the toe would lift off the toe-rest" (R. Vol. 1, p. 896, lines 36–37).
>
> "*Q.* That was the defect with the Ideal when it worked on anything except very light leather?
>
> "*A.* Yes" (R. Vol. 1, p. 897, lines 4–6).

In 1901 or 1902 Mr. Snow made two important improvements in the Ideal machine (R. Vol. 1, pp. 896–898, 900) about which he testified:—

> "I think it was these two improvements that changed the machine from an unsuccessful machine into a successful one" (R. Vol. 1, p. 900, lines 11–12).

Petitioner's witness Fletcher testified that he knew about Snow's putting one of his improvements, the hold-down, on Ideal machines, and that—

> "without the hold down the Ideal machine continually allowed the toe to rise, which caused the tip to pull ahead and to bow" (R. Vol. 1, p. 939, lines 1–6).

But it should be noted that these improvements merely improved the *mode of operation* of the Ideal Machine on men's shoes, as we shall show (*infra*, pp. 133–136); they did not in any way remedy the *structural weaknesses* which were explained by Mr. Howard (*supra*, p. 128).

Much of the Evidence introduced by Petitioner to show Use of the Ideal on Men's Shoes is not directed to the Ideal at all, but relates to the Copeland Rapid Laster, a radically Different Machine which was practically Obsolete in 1899.

Petitioner has very much confused this issue by introducing considerable testimony which does not relate at all to the Ideal lasting machine, but deals only with the Copeland Rapid lasting machine, which was an old machine formerly put out by the Goodyear Company, but which was obsolete in 1899. The Copeland machine became out of date with the revolution in styles and shapes of lasts about 1895, at which time the new

high-speed Chase lasting machine and the Ideal lasting machine were produced. The Ideal was the only lasting machine which the Goodyear Company was putting out immediately before the United Company was organized (R. Vol. 1, p. 972, lines 19–38; R. Vol. 2, pp. 2366–7, 2387).

Petitioner's witness Florsheim gave no testimony whatsoever in relation to use of the Ideal lasting machine, but testified only that, "in 1899 we were using three *Copeland rapid lasters*" (italics ours) (R. Vol. 1, p. 158, line 22).

A large part of the testimony of petitioner's witnesses Worsencroft, Jordan and Murphy relates to the Copeland machine (R. Vol. 1, p. 913, lines 40–44; p. 914, lines 9–11, 27–34; p. 932, lines 35–36, 40–41; p. 931, lines 1–2; p. 933, lines 37–42).

It is true that some of petitioner's witnesses testified that there was not much difference between the Copeland machine and the Ideal machine; but their testimony is discredited by their own admissions.

Petitioner's witness Worsencroft admitted on cross-examination that he had had only a limited experience with lasting machines incidental to his principal business of operating welt-sewing machines (R. Vol. 1, p. 914, lines 40–44; p. 915, lines 10–13, 21–23, 33–37).

Petitioner's witness Heffernan admitted a substantial structural difference between the Copeland Rapid laster and the Ideal (R. Vol. 1, p. 918, lines 3–4).

Petitioner's witness Jones, after testifying that the Copeland Rapid laster and the Ideal were two modifications of the same machine, or "adaptions of the same machine for slightly different classes of work," brought out strikingly the radically different uses of the two machines by explaining that by "slightly different classes of work" he meant—

> "that the Copeland Rapid was used for men's and the Ideal for women's."

And by then testifying:—

> "*Q.* Well, could either machine do the work of the other; that is, could one machine be used for both men's and women's shoes?
>
> "*A.* I wouldn't answer that at this moment from my knowledge. My recollection isn't clear enough" (R. Vol. 1, p. 107, lines 39–43; p. 108, lines 23–33).

The irrelevance of testimony relating to the Copeland Rapid laster and the absurdity of the claim of identity between the Copeland Rapid laster and the Ideal are further proved by Mr. Howard's testimony:—

> "*Q.* Was there any difference between the Copeland Rapid and the Ideal?
> "*A.* There was a great deal of difference.
> "*Q.* What was it?
> "*A. Practically the only similarity was the fact that both machines were organized for the upward wipe at the toe, and the constructions by which that effect was obtained were substantially different, radically different in the two machines. In all other respects the machines were substantially different; in most respects radically different*" (italics ours) (R. Vol. 1, p. 972, lines 22–31).

Moreover, Mr. Howard testified that the Copeland Rapid laster "was practically obsolete in 1899" and that—

> "The Copeland had practically been killed by the new high speed Chase lasting machine, which was introduced in 1895" (R. Vol. 1, p. 972, lines 20–21, 36–38).

Since the Copeland Rapid lasting machine was out of date and obsolete and had been discarded by the Goodyear Company, which in 1899 and for some time previously had been putting out the Ideal machine exclusively, it is clear that any testimony as to use of some Copeland machines which were still out at that time is not in any way pertinent to the issue and is immaterial.

Nearly all of the Evidence introduced by Petitioner to show Use of the Ideal on Men's Shoes relates to alleged Use of the Ideal after February, 1899.

It should be noted that there is much confusion in petitioner's case between conditions *before 1899* and conditions *after 1899*, whereas it is obviously important that they be kept separate. *Overlapping of the fields of the lasting machines of the Goodyear Company and the Consolidated & McKay Company after 1899 clearly has no bearing upon this issue in the absence of evidence that there was good reason "early in 1899" to anticipate that there might later be such overlapping.*

Of the witnesses put on by petitioner in its attempt to show

use of the Ideal in the field of the Chase, Snow (R. Vol. 1, p. 895 *et seq.*) and O'Keefe (R. Vol. 1, p. 934 *et seq.*) did not testify *at all* as to use of the Ideal on men's work *prior to February, 1899.* Testimony of petitioner's witnesses Heffernan (R. Vol. 1, p. 917 *et seq.*), Fletcher (R. Vol. 1, p. 937 *et seq.*), Jordan (R. Vol. 1, p. 932 *et seq.*) and Worsencroft (R. Vol. 1, p. 913 *et seq.*), dealt largely or almost entirely with conditions *after 1899.* The testimony of both Whitman (R. Vol. 1, p. 915 *et seq.*) and Heffernan relates to one factory only, the Whitman & Keith factory, as does also much of the testimony of Worsencroft, Jordan and Murphy (R. Vol. 1, p. 933 *et seq.*). It does not appear whether Murphy's testimony as to the Ideal machine relates to conditions before or after 1899.

After the formation of the United Company there was a slightly greater use of Ideal machines on men's welt shoes, but that use was due, first, to a change in styles of shoes and, secondly, to the invention of improvements which remedied the defects in the organization of the Ideal machine that had rendered it unadapted for men's shoes. It cannot be assumed that defendants had any reason in February, 1899, to anticipate this change in the styles of shoes and much less can it be assumed that they had any reason to believe that inventions would be made which would better adapt the Ideal machine for men's work.

The slightly increased Use of the Ideal Lasting Machine after 1899 was due to the introduction of the High Toed Last and to Inventions which better Adapted the Ideal Machine for Men's Work.

The slightly increased use of Ideal machines on men's shoes after 1899 was due to a radical change in the styles of shoes—the introduction of the so-called bull-dog toe which was made on a high-toed last. This is explained in the testimony of George E. Keith, a shoe manufacturer at Brockton:—

> "I did not have an Ideal lasting machine in my factory before the organization of the United Company in February, 1899. I put in the first Ideal machine in my factory in November 1899.
>
> "The occasion for my taking any Ideal machines at that time was that that was about the time of a radical change in the style of shoes; it was the era of what they call the bull-dog toe. The bull-dog toe originated in Brockton,

and so far as I know there was no manufacturer in Brockton ahead of me in the introduction of the high-toed last.

"The idea of getting the Ideal machine to try on the high-toed last was because it wiped up on the side of the last better than the Chase and then with the adjustable head helped us to overcome the height and width of the toe. That was the reason that led me to take and try the Ideal" (R. Vol. 1, p. 964, lines 31–44).

But Even for this Special Work on Men's Shoes the Ideal Lasting Machine was not Successful until Patented Improvements were Embodied in the Machine long after February, 1899.

Mr. Keith further testified:—

"When we first used the Ideal laster on men's shoes we couldn't get the result that we expected or wanted. The difficulty was that the machine being so light the last would lift as you came up on the sides of the toe. . . . It would rise, so that it was impossible to do the work. . . . As it came up over the sides of the last the last would spring up. As a result, we could not complete the job. This required the operator to keep repeating the operation a number of times and that slowed him down, and it creased fine leather or patent leather so that the shoe would be almost ruined" (R. Vol. 1, p. 965, lines 1–29).

Petitioner's witness Snow testified emphatically to the same effect:—

"*Q.* By going over it two or three times, it was done all right?

"*A.* No; it wasn't done all right then. The more you wipe up a toe the worse it is" (R. Vol. 1, p. 899, lines 38–40).

Petitioner's witness Snow further testified that in 1901 or 1902 he invented a hold-down which was put on the Ideal machines in the Keith and Douglas factories in Brockton and which prevented the shoe from being lifted off the toe rest (R. Vol. 1, p. 896, lines 27–44; p. 897, lines 1–13).

Mr. Keith testified as to this hold-down:—

"A device was developed in my factory to be attached to the Ideal machine to help it in lasting men's shoes.

This was an attachment that could be swung around to hold the last down in its place so that the work could be performed better and so that the last could not rise. . . .

"Until that was done, in my opinion, the Ideal machine would not be commercially a success, under the conditions that were on the market at that time. Before we put on the hold down the trouble was with bringing the upper smoothly on a last that had a wide edge—to bring that up smooth before it was wiped over" (R. Vol. 1, p. 965, lines 8–24).

Petitioner's witness Whitman testified:—

"*Q.* And it is a problem with the old-fashioned Ideal laster to last those high-toed shoes without the lasts slipping up?

"*A.* Yes, sir.

"*Q.* Unless you have this hold-down?

"*A.* Yes, sir.

"*Q.* And without the hold-down you can't last those high-toed shoes as a good shoemaker wants to have it?

"*A.* *Not satisfactorily; no, sir*" (italics ours) (R. Vol. 1, p. 917, lines 7–14).

With regard to the difficulties encountered in the Whitman & Keith factory in the use of the Ideal lasting machine on men's shoes *before* the invention of the hold-down, petitioner's witness Heffernan testified that the hold-down was applied "because of the bowing of the tips and flattening of the heels."

Heffernan also testified:—

"*Q.* What does 'bowing of the tips' mean?

"*A.* Pulling up the tip of the shoe, pulling that cap line out of true. . . .

"*Q.* What happens to the heel?

"*A.* It flattens the back of the heel—flattens it in."

"I had to keep after the operators all the time, regulate the machines myself, put pressure on the heel pads to see that I could hold them down there and make them press on the shoe while they were trying to last the toe" (R. Vol. 1, p. 918, lines 35–43; p. 919, lines 1–5, 43–44; p. 920, lines 1–2).

Heffernan further testified that since this hold-down was applied to the machines in the Whitman & Keith factory—

"I don't have one tip bowed in a month now, whereas before I would get a dozen shoes in a case" (R. Vol. 1, p. 920, lines 8–9).

A case of men's shoes is *24* pairs (R. Vol. 1, p. 193, line 14).

Petitioner's witness Snow also testified:—

"*Q.* Did you also invent something else that held or that brought the wipers in around the counter?
"*A.* Yes, sir" (R. Vol. 1, p. 897, lines 14–16).

Snow also made another improvement on the Ideal machine, the patent on which is Defendants' Exhibit 338. He testified that before this improvement was added to the Ideal machine—

"the heel band would not bring the corners of the counters in.
"*Q.* The heel band of the Ideal machine?
"*A.* Yes; would not bring the end of the counters in. I made a something that would bring them in" (R. Vol. 1, p. 897, lines 30–34).
"*Q.* Now, it was with these two devices and improvements attached that Mr. Douglas used the Ideal laster on men's shoes?
"*A.* Successfully; yes.
"*Q.* And without those the Ideal would not last men's shoes successfully, would it?
"*A.* No, sir" (R. Vol. 1, p. 898, lines 35–40).

Heffernan testified that they had had the heel band improvement on the machines in the Whitman & Keith factory "for over twelve years" (R. Vol. 1, p. 918, lines 19–23).

We submit that this limited use of the Ideal machine *after 1899* which was occasioned by a radically new style of shoes that was not made in February, 1899, and which was made possible only by embodying in the machine inventions made long after that date, has no bearing upon this case. No one can reasonably anticipate today that a given patentable invention will be made to-morrow; that invention may not be made for ten years; it may never be made. If the record had shown, as it does not, that officials of the Consolidated & McKay and Goodyear companies had had reason to anticipate the introduction of high toes for men's shoes, by no possibility could it have been shown that they

had any reason to believe that inventions would be made several years later which would adapt the Ideal lasting machine for that development in the industry.

In February, 1899, there was only the most Trivial and Incidental Overlapping of the Ideal and Chase Machines through Use of the Ideal in the Field of the Chase, and that Overlapping Use was Absolutely Insignificant and Utterly Negligible.

Prior to the organization of the United Company the Goodyear Company had put out only 248 Ideal machines. Of these nearly two hundred were in factories where only women's shoes were made, and only about forty were in factories where men's shoes only were made (R. Vol. 1, p. 966). Of the 40 machines in factories where men's shoes only were made, Douglas had 17; Whitman & Keith, 7; Cushman, 6; Banister, 6, and the Duquesne factory at Pittsburgh had several (R. Vol. 1, p. 914, lines 5–8; p. 915, lines 7–8; p. 972, lines 9–13). There is evidence that the machines in the Whitman & Keith, Cushman, and Duquesne factories, 18 at the most, were being used before 1899. For all that the record shows the others may have been entirely idle. (O'Keefe did not work at Banister's before 1902 (R. Vol. 1, p. 934, lines 24–29).) This is certainly a meager showing of competition by a machine which had been on the market for nearly four years (R. Vol. 2, p. 2387).

The total number of lasting machines of all kinds out on January 1, 1899, was between 4,200 and 4,300. The Ideal machines, therefore, constituted about 5 or 6% of all lasting machines outstanding (R. Vol. 1, p. 975, lines 42–45). The total number of shoes operated on in 1899 by both the Ideal and the Copeland Rapid was .77 of 1% of all shoes lasted by machines (R. Vol. 1, p. 975, lines 35–41). Not more than one-half of the total number of shoes made in 1899 were lasted by machines (R. Vol. 1, p. 402, lines 14–18), so that less than .40 of 1% of all shoes made in 1899 were lasted on both the Copeland Rapid and the Ideal. As it appears that at the most not more than one-sixth of the Ideal machines were used on men's welt shoes, the total number of men's welt shoes on which the Ideal machine operated was less than .07 of 1% of all the shoes made in 1899.

With regard to the extent of this field which was occupied by the Ideal lasting machine it will not be forgotten that the bulk of women's shoes were lasted by hand in 1899, comparatively few being lasted by machine (R. Vol. 1, p. 525, lines 42–45).

(d) In the Normal and Natural Development of the Industry both the Chase Lasting Machine and the Ideal Lasting Machine have been superseded and have become obsolete. Accordingly any Question of their Possible Competition has become a Moot Point.

As a result of the development of the modern shapes of shoes, made on "crooked lasts," which is reviewed and explained by Mr. Howard, a few years after 1899 the Ideal and Chase machines both proved entirely inadequate for satisfactory work in lasting shoes made upon modern lasts (R. Vol. 2, pp. 2372–7, 2389–90). This situation was recognized by the United Company, and it met the demand for a machine which would successfully last shoes made upon these modern lasts by the development of a greatly improved lasting machine of radically different organization from either the Ideal or the Chase machine. The work of that new machine, the "No. 5," was so far superior and its capacity so much greater that it immediately superseded both the Chase and the Ideal machines, and there was no longer any demand for those machines. Mr. Howard testified:—

> "The Ideal machine, like the Chase machine, was not adapted for satisfactory work in lasting shoes made upon modern lasts such as have been used in the past eight or ten years" (R. Vol. 2, p. 2389).
>
> "After the No. 5 lasting machine was developed the demand from shoe manufacturers for Ideal machines ceased altogether and most of them have been returned in exchange for No. 5 machines. It was just the same in the case of the Chase machine" (R. Vol. 1, p. 971, lines 5–8).

Mr. Howard further testified:—

> "After manufacturers became acquainted with this No. 5 lasting machine the company was overwhelmed with orders. In February, 1911, the company was over 400 machines behind in its orders for No. 5 lasting machines, although it was building and shipping machines as fast as

> the facilities of its manufacturing plant would admit. For example, in April, 1911, the company shipped 208 machines. At no time since the machine was introduced has the company been able to catch up with its orders, and even as late as August, 1913, which is the date of the last report I have, the company was 82 machines behind in filling its orders. On that date 4,204 of these No. 5 lasting machines had been shipped. On December 1, 1911, over 3,000 of these machines were in use in shoe factories.
>
> "From the beginning, the No. 5 lasting machine has been adapted for lasting either men's or women's welt shoes. It has superseded the Ideal lasting machine as well as the Chase lasting machine and is now the standard commercial bed lasting machine supplied to manufacturers by the United Shoe Machinery Company" (R. Vol. 2, pp. 2380-1).

The ridiculous contention of petitioner's witnesses Heffernan, Whitman and Murphy that the Ideal machine had as great capacity as the No. 5 lasting machine was completely answered by Mr. Howard's testimony as to actual conditions in the Whitman & Keith factory, to which the testimony of those witnesses relates. He testified that several of the Ideal machines in that factory had been entirely idle, while they had been using the No. 5 machines all the time, and that the royalty returns giving the actual output of both types of machines showed that the average output of the No. 5 machine in that factory was much greater than that of the Ideal machine (R. Vol. 1, p. 967, lines 1-31). Mr. Howard concluded:—

> "For several years, and since some time prior to the beginning of this suit, it has been an accepted fact in the industry that the No. 5 machine did better work and more of it than the Ideal" (R. Vol. 1, p. 970, lines 5-8).

The absurd contention that the Ideal machine was as good as the No. 5 machine was further answered by petitioner's own witnesses. Cunningham said of the No. 5 machine: "It is a better machine." Fletcher said: "The No. 5 is superior to the Ideal" (R. Vol. 1, p. 289, lines 42-43; p. 938, line 21).

It thus appears that both the Ideal and Chase machines have become obsolete, and any question of their possible competition has become a moot point. No decree of this court could restore such competition if it ever existed.

(e) The Finding of the District Court as to Competition between the Chase and the Ideal Machines.

The District Court found in its opinion as follows:—

> "There is no proof of any actual use of the 'Chase' laster otherwise than for its intended purpose of lasting men's welt shoes. It could not work well for use with the lighter leather whereof women's shoes are made. The 'Ideal' laster, used almost exclusively for its intended purpose of lasting women's welt shoes, could not be relied on to work well with the heavier leather whereof men's shoes are made. The proof relied on to show that it competed with the 'Chase' went no further than to show that a number of 'Ideal' machines, small in proportion to the total number then in use, were being used in a few factories on men's shoes, notwithstanding their want of adaptation to such use. That there was any attempt to put either machine into the market as against the other does not appear. No competition between the two in the usual sense of the term is shown. After the consolidation, by the addition of a patented 'hold down attachment' added by the United Company to the 'Ideal' in 1901 or 1902, some of the defects referred to were removed, but not until then can it be said to have been commercially successful for work on men's shoes. Before this improvement, it possessed at most a limited possibility of such use. I am unable to consider it established that competition in any practical sense was destroyed when the United Company became owner of both machines" (Dodge, J., R. Vol. 1, p. 1130).

(3) THE EVIDENCE AFFORDS NO FOUNDATION WHATEVER FOR PETITIONER'S CLAIM THAT THERE WAS COMPETITION IN 1899 BETWEEN THE IDEAL LASTING MACHINE OF THE GOODYEAR COMPANY AND THE HAND METHOD WELT LASTING MACHINE OF THE CONSOLIDATED & McKAY COMPANY.

(a) Introductory Statement.

The Chase and Ideal lasting machines and the hand method lasting machine were of radically different types. The Chase and Ideal were of the "bed" type, in which the last and shoe are supported by a heel support and a toe rest, and the upper materials are worked over into lasted position at the heel and toe

by "wipers." This type also includes a "heel band" for forcing the upper materials, including the stiff "counter," around the heel end of the last. In this type of machine the tacks which secure the upper in lasted position are driven by a "hand tacker" except around the toes of welt shoes where the upper is secured by wire (R. Vol. 2, pp. 2362–3).

In the "hand method" type the upper is worked over the last and automatically tacked in a step-by-step operation, and the operator holds the shoe in his hands while the machine is operating upon it (R. Vol. 2, p. 2363).

When the United Company was formed the Consolidated & McKay Company was putting out the hand method McKay lasting machine. That machine could not be used for the lasting of welt shoes owing to the radical differences between McKay shoes and welt shoes, as explained by Mr. Howard:—

> "The lasting of welt shoes is a very different operation from the lasting of McKay shoes. . . . The insole of a McKay sewed shoe is flat, and in the lasting of such a shoe it is only necessary that the upper stock be worked properly over the edge of the last, laid down upon the flat insole, and tacked. The insole of a welt shoe, on the other hand, is formed with a channel lip or rib extending all the way around the shank, forepart and toe. The narrow strip between this lip or rib and the edge of the sole is known as the 'feather edge.' . . . In order that the shoe may be in proper condition for the welt-sewing operation, the upper must, in the lasting operation, be forced into the angle formed by the feather edge and the upturned lip, and must be secured in that position. The hand method lasting machine supplied for the lasting of McKay sewed shoes had no provision whatever for getting the upper into this angle between the feather edge and the lip, and for securing it in that position snugly against the lip. Not only was the hand method lasting machine for McKay work unsuited for the lasting of welt shoes satisfactorily, but in fact it could not possibly be used commercially for that work" (R. Vol. 2, pp. 2399–2400).

For some time prior to 1899 the Consolidated Company had been endeavoring to construct a hand method machine which would last welt shoes and it—

> "had developed that machine to a point where it could last the heel, shank and ball, but could not last the toes satisfactorily" (Winslow, R. Vol. 1, p. 400, lines 27–32).

Mr. Howard testified that prior to the organization of the United Company there were under lease only thirty-four hand method welt lasting machines. The manufacturers wouldn't take them. "The machines were being knocked about from pillar to post. They didn't stick. They would be sent out on trial and they wouldn't stay" (R. Vol. 1, p. 969, lines 4–6).

Mr. Winslow testified:—

> "And while it is true that we had machines out it is true that they were not being accepted by the manufacturers and they were being sent out and coming back. We were trying all the time to keep them going. . . . We were trying to hold them in the field, but we knew that they were not commercially successful" (R. Vol. 1, p. 978, lines 2–5, 11–13).

The petitioner read into the record certain advertisements of the Consolidated Company in a trade paper dated December 3, 17, and 31, 1898, advertising the hand method lasting machine for lasting welt shoes (R. Vol. 1, p. 960, lines 25–28).

These advertisements do not state that the machine is intended for women's welt shoes, the field of the Ideal machine. But apart from this, they merely show an attempt by the Consolidated Company to introduce the machine. They in no wise refute the testimony referred to above, showing that this attempt of the Consolidated Company had failed, and that the machine was not commercially successful.

The hand method welt machine was not a commercial success in 1899 principally because, as stated by Mr. Winslow, "it would not last the toes of the welt shoes properly" (R. Vol. 1, p. 524, lines 10–11).

Mr. Winslow explained why the machine could not be successfully used on a welt shoe:—

> "The inner sole is channeled, as shown in Defendants' Exhibit 145, and in lasting the upper has to be forced against the shoulder of the channel. In order to do this some form of wiper must be used and in the hand-method machine there was no wiper which would push the upper in up to the shoulder of the inner sole. The years of experimentation which we carried on were for the purpose of producing a wiper which would do that" (R. Vol. 1, p. 399, lines 34–41).

Mr. Winslow further testified that early in 1898 in the lasting of welt shoes by the bed machines the taping of the toes was adopted, thereby doing away entirely with the use of tacks to hold the toe, which is a great advantage to the welt sewing operation. The result of this was that the hand method welt machine became even less desirable by comparison with the bed machines (R. Vol. 1, p. 977, lines 40–45; p. 978, line 1).

Mr. Howard testified:—

> "In order to last a toe properly it was frequently desirable to give several pulls upon the same portion of the stock at the toe by the pinchers, and that could not be done, because since the machine drove a tack at every operation of the pinchers, the tacks would be driven one upon another. If they attempted to take hold of a portion of the stock near that or closely adjacent to that just acted upon, the tacks would be driven so close together that they would cut the stock and spoil the leather. Then, of course, the presence of some of those lasting tacks or of stay tacks, if they were driven to take their places, interfered seriously with the operation of the welting machine. The needles would break.
>
> "And more than that, until this wiring attachment was placed upon the machine the machine would not force the upper properly against the rib of the inner sole, and it was necessary to perform a subsequent hand operation upon the shoe by means of what was known as a 'banging iron,' one of which is Defendants' Exhibit 340. . . . That was a subsequent additional hand operation for which operators were paid two and one-half cents per dozen" (R. Vol. 1, p. 969, lines 13–30, 36–38).

(b) The Hand Method Welt Lasting Machine did not become Commercially Successful until a New Wiring Device was Invented and Incorporated in it after the Formation of the United Company.

Mr. Howard testified:—

> "The attachment for placing wire instead of tacks around the toe was first adopted and applied to the hand method welt lasting machine in January, 1900, in its original form. The wire attachment was improved a year later, but the machine really reached a point of commercial success with the adoption of the first wire attachment" (R. Vol. 1, p. 969, lines 41–44; p. 970, lines 1–2).

This wiring device performed the same function which the taping device performed on the bed machine (R. Vol. 1, p. 978, lines 6–8). It obviated the difficulties which had made the hand method machine previously unsatisfactory.

(c) There is no Evidence Whatever that the Thirty-four Experimental Hand Method Welt Lasting Machines which were out were ever used in the Field of the Ideal Machine, that is, on Women's Welt Shoes.

The record is absolutely silent as to the kinds of shoes on which the thirty-four experimental hand method welt lasting machines, which were out in February, 1899, were used, so far as they were being used. The petitioner did not attempt to show that there was any actual use of the machines on women's welt shoes.

With respect, therefore, to the claim of petitioner as to competition involving the hand method welt lasting machine, the record shows that the following state of facts existed at the time of the formation of the United Company:—

Only thirty-four hand method welt machines had been put out up to February, 1899, a trifling number compared with between 4,200 and 4,300 lasting machines of all kinds then in use; these thirty-four lasting machines were really only experimental and their use amounted to nothing more than affording thorough shoe-factory trials of the machine. In spite of continuous and aggressive attempts for several years on the part of the Consolidated & McKay Company to make the hand method welt machine successful, in February, 1899, that machine was a flat failure because it could not satisfactorily last the toes of welt shoes; at that time not only was the hand method welt machine in a state of experimental development only and a commercial failure, but there was absolutely nothing in sight upon which even to hazard a reasonable guess that the hand method welt machine *ever would become a success*. The toe-wiring mechanism to which the hand method welt machine owed its entire commercial success, first applied to the machine in 1900, was a radically new departure not even dreamed of in February, 1899. No one could then reasonably anticipate that mechanism would be invented which could be incorporated in that highly organized

automatic machine and would successfully apply wire around the toe during the step-by-step operation of the machine. If those inventions—and there were two of them before a successful organization was produced (R. Vol. 2, p. 2403)—had not been made, the hand method lasting machine for welt work would never have been heard of in this suit.

It is absolutely clear, therefore, if anything is clear from the record, that in February, 1899, the hand method welt machine did not offer either existing or potential competition worthy of the slightest notice.

(d) Even after the Hand Method Welt Lasting Machine became Commercially successful in 1900 It had a Field of its own distinct from the Field of the Bed Lasting Machines, such as the Ideal.

Furthermore, owing to the very radical differences between the hand method type of lasting machine and the bed type of lasting machine such as the Ideal, the hand method welt machine, after it became commercially successful, naturally found a field of its own distinct from the bed lasting machine field, manufacturers who preferred speed to quality employing the hand method welt machine and manufacturers who preferred quality to speed employing a bed machine. As explained by Mr. Howard:—

> "There is a difference of opinion among shoe manufacturers as to the desirability of using the hand method machine or the bed type of lasting machine for welt shoes. Those manufacturers who believe that they can secure better lasting upon the bed type of lasting machine prefer, and are supplied with, Lasting Machine No. 5, USMC, the United Company's standard commercial bed lasting machine, which was introduced in 1908. Other manufacturers who are satisfied with the quality of the work done on the hand method lasting machine for welt work prefer that machine because they can get twice the amount of work from it as from the bed type of lasting machine. Either type is supplied to the manufacturer by the United Company, according to his preference" (R. Vol. 2, pp. 2406, 2407).

As stated by Mr. Winslow:—

> "Wherever they can last a welt shoe satisfactorily by the hand method machine they use that in preference, because it is a speedier machine for lasting than any of the other machines, but the quality of work which can be done by that machine, especially around the toe, is not considered by the manufacturers so high grade as when you can use the bed machine" (R. Vol. 1, p. 526, lines 16–22).
>
> "Manufacturers prefer to use the hand method welt lasting machine on women's welt shoes or any welt shoes where quality is not the first consideration, because it is a faster and more economical machine" (R. Vol. 1, p. 527, lines 21–24).

The testimony of petitioner's witnesses also showed that the hand method machine and the bed machines had different fields. For example, petitioner's witness Selz testified:—

> "We use the Consolidated machine . . . for McKay work in men's shoes and both McKay and welt work in women's shoes. . . .
>
> "*Q.* And while it is true that you could possibly physically last almost any kind of a shoe on the hand-method machine, there are some kinds of shoes which it does very much more economical work upon than others?
>
> "*A.* Yes, that is true" (R. Vol. 1, p. 149, lines 4–7, 27–31).
>
> "The Chase machine is better on welt work than the Consolidated" (R. Vol. 1, p. 157, lines 21–22).

Petitioner's witness Fletcher testified that Douglas used the hand method machine on the cheapest grade of men's welt shoes (R. Vol. 1, p. 938, lines 12–16).

Petitioner's witness McElroy testified that the No. 5 lasting machine "is better adapted for men's welts" (R. Vol. 1, p. 192, line 37).

The high degree of specialization in lasting machines which is required by the industry is further illustrated by the fact that the United Company manufactures and puts out five different types of hand method lasting machines, each of which is designed for a particular use upon a particular kind of shoe, and none of which is adapted to be used successfully, if at all, upon the kind of work for which any of the other types is designed and adapted, as is fully explained in the record (R. Vol. 2, pp. 2390–2416).

(e) Finding of the District Court as to Competition between the Ideal and Hand Method Welt Machines.

The District Court held with respect to this alleged competition (Dodge, J.) (R. Vol. 1, p. 1130):—

> "With still another laster with which the Consolidated Company was experimenting in 1899 for use on welt shoes, we are not here concerned, because, though this laster was afterward further improved, developed, and finally furnished to users by the United Company, it had not been made an article of commerce in any practical sense when that company was formed."

(f) Such Insignificant and Incidental Lasting Machine Competition, if Any, as Existed in February, 1899, Involved Infringement by Each Company of the Other's Patents and Accordingly was at Least Prima Facie Unlawful.

Serious patent litigation between the Consolidated Company and the Goodyear Company was pending at the time of the formation of the United Company. This patent litigation involved important features common to the machines of both companies. Numerous infringement suits had been brought, in some of which one and some of which the other company was the defendant. Suits were also pending against users of the different machines who were largely the customers of both companies (R. Vol. 1, p. 632, lines 14–41).

(4) GENERAL STATEMENT OF THE SITUATION IN RESPECT TO THE ALLEGED LASTING MACHINE COMPETITION.

The true situation as to the lasting machine conditions in February, 1899, with respect to the Ideal lasting machine and the lasting machines of the Consolidated & McKay Company was thus stated by Mr. Howe:—

> "Whatever competition there was was due to their respective fields lapping over" (R. Vol. 1, p. 629, lines 14–15).
>
> "They really occupied separate fields. It was competi-

tion which might be described as incidental or as negligible" (R. Vol. 1, p. 629, lines 17–18).

"Each had its separate field for which it was designed, but in the cases of all machines of a genus the specific varieties will overlap" (R. Vol. 1, p. 627, lines 17–19).

As stated by Mr. Winslow:—

"Very soon after a given machine had been introduced they settled into their natural positions" (R. Vol. 1, p. 404, lines 37–38).

"These machines have the fields which I have described and they naturally belong to them. No manufacturer to-day would think of using them outside of those fields" (R. Vol. 1, p. 405, lines 3–6).

(5) SUMMARY OF THE EVIDENCE AS TO THE ALLEGED LASTING MACHINE COMPETITION.

1. Neither the McKay & Copeland machine nor the hand method McKay machine (both put out by the Consolidated Company) could be used on welt shoes, so that neither competed or could compete with the Ideal machine of the Goodyear Company. This has not been denied.

2. The Chase machine put out by the Consolidated Company was adapted for use and was used almost exclusively for lasting men's welt shoes.

Such slight use as was made of that machine in lasting women's shoes was on women's *McKay* shoes. The evidence shows that the Chase machine was structurally not adapted for use on women's welt shoes, and there is not a bit of evidence that it was ever used in lasting women's *welt* shoes. It, therefore, did not compete with the Ideal machine of the Goodyear Company in lasting women's welt shoes, which was the field of the Ideal machine.

3. The Ideal machine of the Goodyear Company was adapted to and developed for the purpose of lasting women's welt shoes. It was possible to use it on men's welt shoes, but it was not commercially practicable for such use.

The insignificant use of the Ideal machine on men's welt shoes did not show that there was competition between the Ideal machine and the Chase machine, but only showed an incidental

overlapping of the fields of the two machines which were primarily intended, adapted, and used in different and distinct fields.

In 1899 the Ideal machines constituted only 5 or 6% of all the lasting machines in use. The machines lasted only .77 of 1% of all shoes lasted by machines in 1899. At the most only about one-sixth of the shoes lasted on the Ideal machines were men's welt shoes. The alleged competition by the Ideal machine, therefore, was in lasting approximately .13 of 1% of the shoes lasted by machines in 1899. As only about one-half the shoes made in 1899 were lasted by machines, the actual use of the Ideal machine in alleged competition with the Chase machine is reduced to the use of the machine on less than .07 of 1% of all the shoes made in 1899.

It is obvious that the alleged competition was entirely insignificant.

4. The slightly increased use of the Ideal machine on men's welt shoes after 1899 was made possible by new inventions made long after the formation of the United Company which overcame some of the practical difficulties in using the machine on men's welt shoes, and the occasion for that use was the introduction of a radically new style of shoe which was made upon a new type of last.

5. The hand method welt machine of the Consolidated Company was only in an experimental stage in 1899. Only thirty-four machines were under lease, or about .08 of 1% of the total number of lasting machines in use, and these few machines were being constantly returned. Even as to these machines there is no evidence that they were used on women's welt shoes, the field of the Ideal machine. The machine did not become a commercial success until 1900, when a new mechanism was adopted which had not been invented and could not have been foreseen in 1899.

The machine, therefore, did not offer any actual competition to the Ideal machine in 1899 or any prospective competition which could have been foreseen.

6. Even after the hand method welt machine became commercially successful in 1900, it had a field of its own. Manufacturers preferring speed to quality used the hand method machine, and those preferring quality to speed used the Ideal

machine or the Chase machine, according to the character of their work.

7. The patent litigation between the Goodyear Company and the Consolidated Company shows that if a trivial and insignificant competition may be said to have existed, it involved infringement by each company of the patents owned by the other and accordingly it was at least *prima facie* unlawful.

8. In the natural and normal development of the industry both the Ideal machine and the Chase machine have become obsolete. If any competition ever existed it could not be recreated.

(6) THE ACQUIRING OF BOTH THE IDEAL MACHINE OF THE GOODYEAR COMPANY AND THE LASTING MACHINES OF THE CONSOLIDATED COMPANY DID NOT MAKE THE ORGANIZATION OF THE UNITED COMPANY UNLAWFUL NOR DID IT SHOW ANY WRONGFUL INTENT.

The acquisition by the United Company of the Ideal machine of the Goodyear Company and the Chase machine and the experimental hand method welt machine of the Consolidated Company could not make the formation of the United Company unlawful, unless by its necessary effect or by reason of the intent with which it was done it prejudiced the public interest by unduly restraining trade or creating a monopoly.

As we have shown, there is no evidence of anything which could be dignified by the name of competition between the machines of the two companies. So far as the Ideal and Chase machines are concerned there was only a slight overlapping of the fields of use of two machines adapted for different purposes. The slight experimental use of the hand method welt machine was negligible.

It cannot be seriously contended that this slight overlapping of the fields of the Ideal and Chase machines and the insignificant use of the experimental hand method lasting machine necessarily created an unlawful restraint of trade and made the formation of the United Company inherently unlawful.

Nor does this acquisition show any intent by the parties to eliminate competition. The manufacture of the Ideal machine

was a negligible part of the business of the Goodyear Company. It is self-evident that its acquisition by the United Company was purely incidental to its acquisition of the machines for making welt and turn shoes, the manufacture of which constituted the principal business of that company. There is absolutely no justification for contending that the elimination of this trivial competition, if indeed any actual competition did exist, was an actuating motive in the formation of the United Company.

The real purpose of the parties was to create a more efficient organization and to combine the Goodyear welt machines with the machines of the other companies. An incidental elimination of an almost insignificant competition between two different types of patented machines would not be sufficient to make unlawful the consummation of this lawful purpose.

Moreover, even if the Ideal machine had been the only machine owned by the Goodyear Company, so that its acquisition had been, not an incidental result of acquiring the Goodyear Company's welt machines, but the direct purpose of the acquisition, it would have been lawful.

The United Company naturally and properly desired to furnish the best and most efficient types of lasting machines. It obtained, through the Consolidated Company, the patents on, and therefore the right to supply the Chase machine, the McKay & Copeland and the Hand Method machines. No one of these, however, lasted women's welt shoes successfully. It naturally desired to furnish a machine for lasting women's welt shoes, and the Ideal machine was the only machine of the kind on the market. The Ideal was patented, and the United Company, therefore, could not furnish the Ideal unless it acquired the patents which the machine embodied. Until it acquired these patents it was absolutely restrained from furnishing this type of machine, and as the Ideal machine was the only machine then invented which could last women's welt shoes, the United Company was absolutely restrained from furnishing any machine for this purpose. It was, therefore, normal and strictly in furtherance of its legitimate business for the United Company to acquire these patents. To hold otherwise would be to hold that the United Company could not furnish a machine for lasting women's welt shoes, merely because such machine could also be used, or was used to a slight extent, for lasting men's welt shoes.

Furthermore, the settlement of the infringement suits between the parties justified the combination of the patents covering them. If, for example, the Goodyear Company had lost these suits, it might have been compelled to abandon the Ideal machine entirely. It was entitled by combination with the Consolidated Company to avoid infringement suits brought against users of this machine. An acquisition of both sets of patents for this purpose would have been a legitimate normal transaction not forbidden by the Sherman Act.

B. ALLEGED COMPETITION BETWEEN THE GOODYEAR COMPANY AND THE EPPLER COMPANY.

(1) INTRODUCTORY STATEMENT.

The welt shoe differs from other kinds of shoes in the method by which the sole is attached to the upper. In pegged and metallic fastened shoes the sole is attached to the upper by wooden pegs or nails. In McKay shoes the sole is attached by a seam which runs through the outersole and innersole so that it appears on the inside surface of the shoe. In the case of pegged, nailed, and McKay shoes, as the fastening material or seam appears on the inside of the innersole it comes in contact with the sole of the foot and may cause annoyance and discomfort.

In the welt shoe, a welt or narrow strip of leather is attached to the outside of the upper and to the insole, and the outsole is sewed to this welt.

In the manufacture of the Goodyear Welt shoe the Goodyear Welter first sews together the upper, the welt, and the inner sole. This seam, instead of being sewed through the inner sole, is sewed sideways by a curved needle in a prepared channel in the exterior of the innersole. A light single thread lies in this channel, and the double thread or chain is laid on the welt outside the surface on which the foot rests. The outsole is then sewed to the welt by the Goodyear Stitcher. As a result, neither the chain of the stitch which attaches the welt to the upper nor the seam which attaches the outsole to the welt appears on the inside of the shoe or under the portion of the innersole on which the foot rests.

In the manufacture of the Eppler Welt shoe the bulky double thread of the chain-stitch was laid in the prepared channel in the bottom of the innersole underneath the surface on which the foot rests and not on the welt, as in the Goodyear method.

This difference in the construction of the shoe, as we show below, made it impossible to use the Eppler machine on women's shoes or turn shoes, and made it much inferior to the Goodyear machines on men's shoes.

The Goodyear System was the first system ever used for making welt shoes by machinery (R. Vol. 1, p. 626, lines 3–8). The Goodyear method ran back to 1870 or 1868 (R. Vol. 1, p.

625, line 20). The Goodyear Company, however, revolutionized its machines about 1890 by the use of new inventions (R. Vol. 1, p. 678, lines 6–9). In 1899 its machines were recognized as superior to any others in use; it had under lease approximately 2,500 welters and stitchers (R. Vol. 5, p. 424, Defs.' Ex. 226).

The Eppler Company, which first put out its machines in the early nineties (R. Vol. 1, p. 679, line 7), used a method which had been tried and abandoned years before by the Goodyear Company (R. Vol. 1, p. 625, lines 21–28). The Eppler Company had been unsuccessful in putting out its machines, having only between thirty and forty welters outstanding in 1899, of which about one-third were in the factory of the president of the company (R. Vol. 1, p. 389, lines 6–9).

(2) PURPOSE OF THE ACQUISITION OF THE EPPLER COMPANY.

Mr. Winslow testified that the reason for acquiring the Eppler Company was to get rid of the litigation between the Goodyear and Eppler companies in the starting out of the new company, and that it was acquired for no other purpose (R. Vol. 1, p. 416, lines 25–29; p. 531, lines 34–35).

Mr. Howe testified that the Eppler Company was acquired principally to get rid of this litigation (R. Vol. 1, p. 633, lines 15–17). Another subsidiary reason in Mr. Howe's mind was that the Eppler Company made a different kind of machine for making a different kind of shoe (R. Vol. 1, p. 633, lines 13–14). He felt it would be desirable to be able to furnish this machine if any customers desired it.

The machines of the Eppler Company infringed the Goodyear Company's patents, and, as we shall show later, a considerable number of patent suits brought by the Goodyear Company were pending. In conducting this litigation suits were brought against shoe manufacturers using the Eppler machines. The defendants in such suits were also lessees of lasting, heeling, and metallic machines taken over by the United Company, which was thus placed in the disagreeable position of being obliged to sue its own customers if the litigation against the Eppler Company were continued (R. Vol. 1, p. 417, lines 1–8; p. 633, lines 18–26). As Mr. Howe testified, "this made very unpleasant relations" (R. Vol. 1, p. 633, lines 25–26).

(3) THE PURCHASE OF THE EPPLER COMPANY WAS NOT CONSIDERED UNTIL AFTER THE FORMATION OF THE UNITED COMPANY WAS AGREED UPON.

The Eppler Company was acquired out of the proceeds of the funds supplied by the syndicate which took stock in the United Company (R. Vol. 1, p. 32, lines 6–7). It was actually acquired in March, 1899 (R. Vol. 1, p. 17, lines 12–13), a month after the United Company was organized.

Both Mr. Winslow and Mr. Howe testified that there was no discussion of the Eppler Company until after the arrangements between the Goodyear Company and the Consolidated Company to unite had all been settled (R. Vol. 1, p. 529, lines 12–15; p. 530, lines 22–25; p. 633, lines 5–7; p. 675, lines 34–35).

The United States apparently contends that elimination of competition between the Eppler Company and the Goodyear Company was one of the motives for the formation of the United Company. As this acquisition was not discussed or thought of until after the formation of the United Company was agreed to, it follows that the acquisition of the Eppler Company and the elimination of this alleged competition could not have been a motive for the formation of the United Company as charged by the United States.

(4) PATENT LITIGATION BETWEEN GOODYEAR AND EPPLER COMPANIES ON ACCOUNT OF WHICH THE EPPLER COMPANY WAS ACQUIRED.

George E. Keith, who had been the president of the Eppler Company, testified that there was patent litigation affecting all the machines of the Eppler Company from the time it first started business (R. Vol. 1, p. 392, lines 13–24).

Mr. Howe testified:—

> "There was extensive litigation between the Goodyear Company and the Eppler Company prior to 1899. . . . Broadly speaking the outsole stitcher and such auxiliary machines as the Eppler Company made and tried to lease infringed patents owned by the Goodyear Company" (R. Vol. 1, p. 470, lines 11–15).

> "As to the prospects of the ultimate result, on my side I thought we should succeed in all our cases" (R. Vol. 1, p. 470, lines 21–22).

In 1899 there were pending eight patent suits brought by the Goodyear Company against the Eppler Company or users of its machines for infringement of Goodyear patents (R. Vol. 1, pp. 471, 673, 674).

In one suit the Goodyear Company charged the Eppler Company's welt machine with infringing the Briggs patent for forming chain-stitches, which was owned by the Goodyear Company (R. Vol. 1, p. 673, lines 34–37). In another suit the Goodyear Company charged that the Eppler outsole stitcher infringed the French and Meyer patent owned by the Goodyear Company (R. Vol. 1, p. 674, lines 9–14). Two other suits against users of the stitching machine were also brought (R. Vol. 1, p. 674, lines 15–21). In another suit the Goodyear Company charged infringement of a patent belonging to it by the Eppler rounding and channeling machine, and in two others the Goodyear Company charged infringement upon its Hadaway patent by a stitch separating and indenting machine leased by the Eppler Company (R. Vol. 1, p. 674, lines 23–32). In still another, infringement was charged by the Goodyear Company by the Eppler welt beating machine (R. Vol. 1, p. 673, lines 17–33). There were a half dozen suits in nearly all of which testimony was being taken (R. Vol. 1, pp. 673–4). Mr. Howe examined the Eppler machines (R. Vol. 1, p. 677, lines 7–8).

The United States has endeavored to belittle the infringement of the Briggs patent by the Eppler welter and has attempted to distort the testimony of Mr. Howe that in his opinion—

> "the infringing devices were very material in the construction of the Eppler Company's machines, except the welt sewing machine" (R. Vol. 1, p. 623, lines 31–33).

In this effort the United States lost sight of the fact that Mr. Howe was testifying specifically about "infringing *devices*" and that this testimony has no bearing at all upon the infringement by the Eppler welter of the Briggs *method* patent. His testimony as to that was as follows:—

> "The Eppler welter infringed the Briggs method patent on an invention which accomplished the sewing of a tight

seam. That method patent and a machine patent revolutionized the Goodyear Company's business about 1890, and rendered the old Goodyear machines out of date. Everybody wanted the new machine embodying the invention of the Briggs patent" (R. Vol. 1, p. 678, lines 5–10).

The United States offered no testimony whatever controverting defendants' evidence as to any of the infringements above set forth.

This patent litigation was a serious embarrassment to the United Company, as, if it was continued against the Eppler Company, the United Company would be obliged, as explained above, to sue its own customers, such as Mr. Keith. To avoid this litigation was a normal and natural reason for the acquisition of the Eppler Company. Its acquisition can give rise to no inference of an unlawful intent to eliminate competition.

(5) IF ANY COMPETITION EXISTED BETWEEN THE EPPLER COMPANY AND THE GOODYEAR COMPANY, SUCH COMPETITION WAS TRIVIAL AND NEGLIGIBLE.

Field of Competition.

The Goodyear machines made Goodyear Welt shoes, the Eppler machines made Eppler Welt shoes (R. Vol. 1, p. 417, lines 5–21). The upper and innersole were differently attached in the two shoes, and, therefore, the machines did a different class of work. The Eppler machines were restricted by the leases of that company to use in the manufacture of the "Eppler Welt Shoes" (R. Vol. 3, P.'s Ex. 59, p. 512).

So the Eppler machines could not make Goodyear shoes and the Goodyear machines could not make Eppler shoes (R. Vol. 1, p. 417, lines 20–21).

The United States apparently contends that both machines made welt shoes; that the Goodyear Company did most of the welt machine business in the United States; and that by the acquisition of the Eppler Company, even though it did a very small business, some possible competition was eliminated.

The welt method was only one method of attaching the soles to the uppers of shoes. Until the Goodyear method was devised no welt shoes were made except by hand. Among other methods

of attaching the soles were pegging, nailing, and McKay sewing. Also there were other kinds of welt shoes than the Goodyear and Eppler, such as the mock welt shoe and the McKay welt shoe (R. Vol. 1, p. 199, line 26; p. 214, line 11; p. 698, line 8; p. 824, lines 28–31). In making a McKay welt shoe the welt was sewed to the upper and innersole on the McKay sewing machine (R. Vol. 1, p. 206, lines 22–24; p. 225, lines 14–18; p. 249, lines 7–17), but in this case the seam appeared on the inside of the innersole next to the foot and, as above explained, it was the distinguishing characteristic of the Goodyear welt shoe that there was no seam next to the foot. In 1899 only about 12% of the shoes made had their soles attached by the welt method, while nearly half were sewed on McKay machines (R. Vol. 1, p. 414, lines 42–45; p. 415, lines 1–6). So far, then, as any competition can be said to exist between machines making different kinds of shoes the real competition of the Goodyear machines was with the McKay machines. In acquiring both the Goodyear Company and the Eppler Company, therefore, the United Company acquired patents on machines which by two distinct methods attached the soles of only a small proportion of the total shoes made in the country.

The Eppler Machines were Distinctly Inferior to the Goodyear Machines, Offered No Real Competition, and were Certain to Succumb to the Goodyear in the Survival of the Fittest.

In the late eighties Andrew Eppler, who had at one time worked for the Goodyear Company, took up a method of making a double chain-stitch which had been abandoned by the Goodyear Company and applied it to a machine for welting men's shoes (R. Vol. 1, p. 625, lines 20–28).

At first the Eppler Company had no outsole stitching machine, but outsoles for its shoes were attached by a harness machine or by hand stitching (R. Vol. 1, p. 625, lines 29–34).

The Eppler Company developed a few auxiliary machines inferior in design and quality of work to the Goodyear auxiliaries (R. Vol. 1, p. 631, lines 9–15).

The Eppler Company at the date of the formation of the United Company had been putting out its machines for seven

years or more and had only succeeded in disposing of between thirty and forty welt machines, of which about one-third were in the factory of the president of the company, Mr. George E. Keith (R. Vol. 1, p. 389, lines 6–12). The Eppler machines were not commercially successful as profit-makers (R. Vol. 1, p. 392, lines 9–12). The Goodyear Company, on the contrary, had outstanding 2,531 welters and stitchers on March 1, 1900, the nearest date in evidence (R. Vol. 5, Defs.' Ex. 226, p. 424). The reason is clearly established by the Record: the Eppler machines were decidedly inferior.

As explained above, the Eppler machine laid a double chain-stitch in the channel of the insole under the portion thereof on which the foot rested, while the Goodyear machine laid a light single thread in the channel so that the double thread of the chain-stitch seam was not under the portion of the insole on which the foot rested (R. Vol. 1, p. 415, lines 26–36). The importance of this distinction in the construction of the Goodyear and Eppler shoes runs through the successful progress of the Goodyear System and the failure and final elimination of the Eppler System.

Mr. Keith, the president of the Eppler Company, testified that this double stitch on the inside of the sole "had a tendency to raise a ridge or lump around the inside of the sole against the foot, which had the effect both of lessening the durability of the shoe and of making it uncomfortable" (R. Vol. 1, p. 391, lines 10–17).

Charles S. Smith, a witness for the United States, testified that the chain-stitch of the Eppler machine, "being larger and more bulky than the single stitch, occupied more room and was likely to leave a ridge around the inside of the shoe, which would come against the foot" (R. Vol. 1, p. 353, lines 6–9).

The Eppler machine could not be used on turn shoes, in which the sole must be thin in order that the shoe may be turned after sewing (R. Vol. 1, p. 415, line 44; p. 416, line 5; p. 469, line 42; p. 470, line 4). The Goodyear Welt machine, on the other hand, was used to make both welt and turn shoes (R. Vol. 1, p. 470, lines 5–7). For the same reason, the Eppler machine could not be used successfully on women's welts, which usually have a thin sole. Mr. Winslow testified that he did not know of any women's welt shoes made by Eppler machines (R. Vol. 1, p. 531,

lines 4–5). Mr. McElroy testified that he believed the Eppler machine could be used on women's welts, but he never used an Eppler machine and merely examined it once (R. Vol. 1, p. 187, lines 30–38). There was no evidence that it ever had been so used. The Goodyear Welter was used on both men's and women's welts with equal success.

The fact that the Eppler machine could not be used for turn shoes and was not adapted and never used for women's welt shoes was a serious disadvantage, especially in those factories constituting more than one-half the factories in the country whose production required only a single machine of this character.

Furthermore, the necessity of using an unnecessarily thick and expensive innersole on an Eppler shoe merely to prevent the seam from hurting the foot added greatly to the expense of making Eppler Welt shoes, and this thick innersole did not add to the value or wear of the shoe. Light substitutes for insoles, or canvas reinforced insoles, could not be used on Eppler shoes (R. Vol. 1, p. 415, lines 36–43).

The Eppler machines were also inferior in construction to the Goodyear machines (R. Vol. 1, p. 677, lines 17–21).

Furthermore, the Eppler Company did not have a complete or satisfactory set of auxiliary machines. George E. Keith, the president of the Eppler Company, testified that the company did not manufacture a full set of machines for making welt shoes. The rough rounder was not a satisfactory machine (R. Vol. 1, p. 389, lines 19–20). The company did not have a satisfactory stitch separator (R. Vol. 1, p. 391, lines 39–41). This operation is necessary to make the shoe "complete in appearance" (R. Vol. 1, p. 391, lines 34–38).

Auxiliary machines are essential to the successful manufacture of welt shoes. As an illustration of their importance, the stitch separator, the rough rounder and channeler, and the automatic leveling machine were included in the limited number of machines which the Patent Counsel for the United States selected for discussion before the Patent Examiner on the issue of "basic" patents (R. Vol. 2, pp. 2201–08). The invention of the rough rounder of the Goodyear Company has revolutionized the manufacture of welt shoes (R. Vol. 1, p. 793, lines 23–33). The Eppler Company had no leveling machine of its own (R. Vol. 1, p. 416, line 38). The Eppler Company, therefore, lacked very

important auxiliary machines supplied by the Goodyear Company and essential to the commercial success of the welt process.

For the various reasons outlined above the Eppler machines were not satisfactory.

George E. Keith, the president of the Eppler Company, testified that he had a Goodyear machine in his factory at the same time he was using the Eppler machine, and that the Goodyear machine did decidedly the better work (R. Vol. 1, p. 392, lines 2–8).

James H. Cunningham, a witness for the United States, testified that "everything about the Goodyear was better" (R. Vol. 1, p. 289, line 19). He substituted the Goodyear System for the Eppler System "because it was more complete and did the work better" (R. Vol. 1, p. 289, lines 22–23).

Edward W. Burt, a shoe manufacturer, had an Eppler Welter and an Eppler Stitcher when he started business. He tried them out for about a year and found them inefficient for making high-grade shoes: "They were not anywhere near as satisfactory as the United Company machines." The soles of the shoes made on the Eppler machines "ripped off continuously." He changed to Goodyear machines because he "could not afford to have the shoes wear out on account of imperfect construction." The change was his "own idea" because he "wanted the best machines" he could get (R. Vol. 1, p. 739, lines 17–33).

Ira E. Fletcher, a witness for the United States, and a factory superintendent at the Douglas factory, testified that Douglas had a number of Eppler machines in 1902 (R. Vol. 1, p. 937, lines 38–43). These machines were changed for Goodyear machines "because with the Eppler machine there was trouble with the loose seam."

"It would make a bad shoe. That was the particular reason for changing over from the Eppler to the Goodyear. That change was the result of the business judgment of the men who were responsible, because we thought the Goodyears were the better machines" (R. Vol. 1, p. 939, lines 15–22).

George Strong, a shoe manufacturer and a witness for the United States, testified that he used Eppler Welters and Stitchers from about 1895 to about 1900. "I think the Goodyear machines do better work than the Eppler machines" (R. Vol. 1, p. 932, lines 21–22).

William P. Whitman, a shoe manufacturer and witness for the United States, testified that he used an Eppler machine for several years along with the Goodyear and then exchanged it for a Goodyear. "I consider the Goodyear Welt System the best system: it did better work on the shoe" (R. Vol. 1, p. 916, lines 11–18).

Mr. Winslow testified that personally he had no doubt that the Goodyear System was better and would survive (R. Vol. 1, p. 417, lines 9–11).

The evidence relied on by the United States to show the amount of use of the Eppler machines and to show that they were satisfactory is briefly as follows:—

Emanuel F. Selz testified that there was no material difference in the rapidity of the machines or quality of the work, though there was a difference in the character of the shoe made (R. Vol. 1, p. 143, lines 18–32). He admitted, on cross-examination, that he tried the Eppler for less than a year prior to 1896 and abandoned it. "We gave up the Epplers because we were sewing razor toes at that time and the Eppler would not sew the razor toes as well as the Goodyear. We never reinstated the Eppler" (R. Vol. 1, p. 152, lines 38–44).

Milton S. Florsheim, a shoe manufacturer, testified that he used the Eppler only to a "very slight extent." He was merely trying them out and had only one set (R. Vol. 1, p. 159, lines 8–12). The Eppler made as good shoes as were made (R. Vol. 1, p. 935, lines 41–42). He traded in his Eppler machines, after the formation of the United Company, and while he testified he tried to obtain the Epplers for a lower royalty, he evidently preferred the Goodyear machines at the same royalty (R. Vol. 1, p. 159; lines 16–30).

Warren F. McElroy, a shoe manufacturer, examined an Eppler machine at Keith's factory. It seemed to him to be doing as good work as the Goodyear machines, but he never used the Eppler or attempted to get one (R. Vol. 1, p. 187, lines 32–40).

Richard H. Long used Epplers and testified that he gave them up after the formation of the United Company because he could not get new parts (R. Vol. 1, p. 226, lines 3–12). This evidence as to his reason for giving up the use of his Eppler machines was untrue (*infra*, p. 164).

Selz and Florsheim were both members of the Manufact-

urers' Alliance, opposed to the United Company, and Long is a rival shoe machinery manufacturer whose testimony was shown to be thoroughly unreliable.

The only person who used Eppler machines for any length of time and found them satisfactory was Fred F. Field. He obtained his machines from the United Company in 1902, three years after its formation (R. Vol. 1, p. 930, line 28). He, however, used only Eppler Welters and in connection with the welters used Goodyear Stitchers and Goodyear Auxiliaries (R. Vol. 1, p. 931, lines 17–27, lines 39–40). In other words, Mr. Field used only one of the Eppler machines and made no comparison between the Eppler set and the Goodyear set, which was a proper basis of comparison if competition between the companies is to be considered.

Mr. Field changed to Goodyear machines a few years ago, because he felt the Goodyear machines were superior to the Epplers (R. Vol. 1, p. 931, lines 27–31).

It thus appears that out of over one thousand shoe manufacturers only one used the Eppler machines for any considerable length of time and found them as satisfactory as the Goodyear machines, and this single manufacturer started to use them three years after the United Company was formed, and used only the welter in connection with which he used a Goodyear Stitcher and Goodyear Auxiliaries, and even he finally gave up the use of the Eppler.

Thus it appears that the Eppler machines were decidedly inferior to the Goodyear machines and the Eppler shoe was inferior to the Goodyear shoe, and that in consequence the Eppler machines were used to an insignificant extent and presented no real competition, present or prospective, to the Goodyear Company.

(6) IF ANY COMPETITION EXISTED BETWEEN THE EPPLER COMPANY AND THE GOODYEAR COMPANY, IT WAS ILLEGAL ON THE PART OF THE EPPLER COMPANY AND COULD PROPERLY BE ELIMINATED BY THE UNITED COMPANY.

We have shown above that the Goodyear Company had brought suits for infringement against the Eppler Company on its welter and its stitcher and its three principal auxiliary machines (*supra*, pp. 154–156). Mr. Howe expected the Goodyear Company would succeed in all these cases (R. Vol. 1, p. 470, lines 21–22).

The Eppler Welter infringed the Briggs Method patent on an invention which accomplished the sewing of a tight seam (R. Vol. 1, p. 678, lines 5–6). The Stitcher, the Welt-beater, the Stitch-separator, and the Rounder and Channeler, which also infringed Goodyear Patents (R. Vol. 1, p. 677, lines 17–21), were essential to the success of the Eppler Company.

It thus appears that such slight use as was made of Eppler machines was made possible only by the fact that they infringed Goodyear patents. If, therefore, the Eppler machines presented any competition, it was an illegal competition in violation of the Goodyear Company's rights and could be lawfully stopped by the Goodyear Company or by the United Company.

(7) THE UNITED COMPANY CONTINUED TO PUT OUT THE EPPLER MACHINES SO FAR AS SHOE MANUFACTURERS DESIRED THEM.

Whenever a call was made for an Eppler machine of any kind the United Company supplied it, and it also supplied all calls and demands for machines, parts, and service as soon as possible (King, R. Vol. 1, p. 696, lines 38–41; Winslow, R. Vol. 1, p. 417, lines 22–28).

The United Company, during the five or six years after it was formed, put out more than forty Eppler Welters and more than twenty Eppler Stitchers (R. Vol. 1, p. 702, lines 9–10).

Mr. Field obtained his Eppler machines from the United Company in 1902 and continued to use them up to a few years

ago (R. Vol. 1, p. 930, lines 27–29; p. 931, lines 6–7). He testified that the United Company furnished him whichever machines he chose and treated him just as well in respect to the Epplers as when he had the Goodyears (R. Vol. 1, p. 931, lines 7–11).

The United States sought to prove by Richard H. Long that the United Company suppressed the use of the Eppler machines by failing to provide parts for them. Mr. Long is a rival manufacturer, making a full set of machinery. His evidence is not merely inaccurate; it is untrue and distorted by exaggeration and bias.

He testified that Mr. King of the United Company told him the company had decided not to put out any more Eppler machines, and that he gave up his Eppler machines because he could not get parts for them (R. Vol. 1, pp. 226, 227, lines 30–31). Mr. King denied having so informed Mr. Long and testified that Long "was promptly supplied with parts and with service whenever he called for it" (R. Vol. 1, p. 699, lines 19–21). Mr. Long used Eppler machines for a year and a half after the United Company was formed (R. Vol. 1, p. 699, lines 17–19), although he testified his conversation with Mr. King took place shortly after the formation of the United Company (R. Vol. 1, p. 226, lines 24–31). Mr. King further testified that Mr. Long gave up his Epplers entirely of his own accord (R. Vol. 1, p. 699, lines 34–38). Eppler machines were supplied to others long after Mr. Long gave his up (R. Vol. 1, p. 699, lines 39–41).)

On cross-examination Long admitted he remembered no specific instance of failure to get parts (R. Vol. 1, p. 252, lines 42–45). His testimony as to failure to get parts is disproved by his own admissions with respect to requests for parts (R. Vol. 1, pp. 253–259), and the testimony of Mrs. Hewitt, who kept the record of service rendered on Eppler machines and testified specifically as to the service rendered Long in reply to his requests, giving the dates on which such service was requested and rendered (R. Vol. 1, pp. 693–4); and by Walter S. Batchelder, who previously kept a record of parts supplied for Eppler machines, and who testified from the records specifically as to the dates on which requests for parts were made by Mr. Long and the dates on which the parts were sent (R. Vol. 1, pp. 694–696).

The reliance to be placed on Long's testimony is illustrated further by his testimony relative to Chase machines. He

stated that shortly after the United Company was formed it refused to let him have any more Chase lasting machines (R. Vol. 1, p. 228, lines 1–26), yet on cross-examination he admitted obtaining about eleven Chase machines after this date (R. Vol. 1, pp. 263–267; Defs.' Ex. 70 C, R. Vol. 5, pp. 105, 106).

(8) THE EPPLER MACHINES WERE PATENTED MACHINES OF A DIFFERENT KIND FROM THE GOODYEAR MACHINES AND MADE A DIFFERENT KIND OF SHOE. THE UNITED COMPANY WAS ENTITLED TO ACQUIRE THE PATENTS ON THE EPPLER MACHINES.

The petition itself (R. Vol. 1, pp. 993, 996) and the Record (R. Vol. 1, p. 634, lines 36–43) show that the Eppler machines were patented. While they infringed the Goodyear patents, they also differed in structure from the Goodyear machines. As we have shown, they also made a shoe of a different structure from the Goodyear Welt shoe made by the Goodyear machines. "The Goodyear machines could not make an Eppler welt and the Eppler machines could not make a Goodyear welt" (R. Vol. 1, p. 417, lines 20–21).

A secondary reason in Mr. Howe's mind for acquiring the Eppler Company was to enable the United Company to furnish Eppler machines for making Eppler welts to those shoe manufacturers, if any, who wanted to make Eppler welt shoes (R. Vol. 1, p. 630, lines 32–34). The United Company could not do this, unless it acquired the Eppler patents, without infringing those patents. A manufacturer has the right to acquire patents covering another machine, even if such machine can be used for a purpose similar to that for which he already has a machine. To hold otherwise would be to hold that a manufacturer could not furnish all types of machines and thus engage in the business without restraint. In the present case it would mean that the United Company could not furnish machines for making other styles of welt shoes even though its customers desired to make such shoes.

It is not without importance to note that, while the Eppler machines proved themselves of little value and have become obsolete, some of the Eppler patents proved to be of great value

when combined with other patents owned by the United Company. Thus Patent 613,228 issued to the Eppler Company in 1898 (Defs.' Physical Ex. 198) covered an important invention which proved the basis not only of one of the United Company's own machines later developed (R. Vol. 2, p. 2645), but also of the Plant Heel Seat Dinker (Defs.' Ex. 273, R. Vol. 5, p. 740). Another of the patents some years after its acquisition by the United Company was embodied in a new welter (R. Vol. 2, pp. 2252, 2766).

(9) OTHER EVIDENCE SUBMITTED BY THE UNITED STATES IN RESPECT TO THE EPPLER PURCHASE.

The Price.

The United States sought to prove that an exorbitant price had been paid for the Eppler Company, apparently for the purpose of showing the importance attached to the purchase. There was, however, no direct evidence as to the price paid.

The stock of the Eppler Company was acquired by the United Company, as shown above, through cash supplied by a syndicate, together with other property, but the officers of the United Company were unable to divide up the lump sum paid among the several items (R. Vol. 1, p. 33, lines 2–4).

William B. Arnold testified that about the time of the organization of the United Company his impression was that he sold one hundred shares of Eppler stock at $6 a share either to Mr. Brown or Mr. Hurd, vice-presidents of the United Company, but he would not be positive. He could not fix the date, however, within a year (R. Vol. 1, p. 952, lines 21–31). Both Mr. Brown and Mr. Hurd denied making the purchase (R. Vol. 1, p. 961, lines 9–16, 21–29).

Willard G. Brackett testified that February 15, 1899, he sold six hundred shares for $6.50 a share. He did not remember to whom. The par value was $10 a share (R. Vol. 1, p. 949, lines 38–42).

Mr. Keith testified he got $20,000 for his stock, but did not remember how much he had (R. Vol. 1, p. 385, line 32–p. 386, line 10).

Mr. Winslow had no recollection how much the Eppler stock-

holders were paid. He had no doubt it was as much as $100,000, but could not state whether it was as much as $200,000 (R. Vol. 1, p. 531, lines 37–41).

There is, then, no direct evidence as to the amount paid, and it does not appear in any event that the amount was exorbitant for the purpose of settling extensive litigation which would have been troublesome to the United Company's customers, for the acquisition of machines for doing a different kind of work if the United Company's customers should desire them and for patents which proved of very considerable value for other purposes.

The Papers offered by the United States Exhibits B, C and D, for Identification (see R. Vol. 4, pp. 1200 to 1212) were properly excluded by the District Court and should not be considered as Evidence.

The United States claimed that these "Certificates of Condition," which purported to show the assets and liabilities of the Eppler Company, were copies of papers on file in the office of the Massachusetts Commissioner of Corporations. But they were not properly authenticated.

> See Revised Laws of Mass., Ch. 175, Sect. 74.
> And *Commonwealth* v. *Corkery*, 175 Mass. 460.

The papers were not certified as true copies by the Commissioner of Corporations and the genuineness of the signature of the Commissioner was not attested by the Secretary of State.

The customary form for such attestation is well known in Massachusetts,

> See *Commonwealth* v. *Corkery*, supra,

and these papers were not attested according to that or any lawful form.

But even if admitted in evidence, these certificates do not specify the number of machines outstanding or in any way contradict the testimony referred to above, showing that only a few machines were outstanding and that the machines were unsuccessful.

Royalties Rebated by Eppler Company.

The United States also showed that, while the regular royalty charged for Eppler machines was the same as for Goodyear machines, the Eppler Company in certain instances granted a rebate of 25% (R. Vol. 1, p. 227, line 3; p. 250, lines 24–29, 36–38; Vol. 5, Defs.' Ex. 44, p. 57). These instances were sporadic (R. Vol. 1, p. 417, lines 29–35). The leases as printed expressly called for the same royalty as the Goodyear (P.'s Ex. 59, R. Vol. 3, pp. 509–510). The fact that the Eppler Company felt required to grant a rebate from its regular price in certain instances in an attempt to place its machines shows the inferiority of these machines and not their strength. The granting of these rebates had not enabled the Eppler Company to place its machines successfully or to prosper financially.

Nor does the fact that the United Company, after it had acquired the Eppler Company, maintained the regular Eppler royalty rate, granting no discounts to favored individuals, show any intent to suppress the Eppler machines. The policy of the United Company has always been to maintain the same rates for all customers, and its maintenance of the regular Eppler rate on all Eppler machines was merely "to make the rate uniform among all users and gives no special advantages to anybody" (R. Vol. 1, p. 417, lines 44–45).

10. FINDING OF THE DISTRICT COURT AS TO THE EPPLER ACQUISITION.

The District Court said with reference to the acquisition of the Eppler Company (R. Vol. 1, p. 1131):—

> "The Eppler machines were adapted to produce men's thick-soled welt shoes only. They could not produce women's welt shoes (except perhaps those having the thickest soles), nor turn shoes of any kind, nor Goodyear welt shoes, either men's or women's, because of the difference between the respective machines in the character and position of the seam left in the inner sole of the shoe. The Goodyear machines could produce shoes of all the above kinds. The differences referred to resulted from differences in the character and operation of the machinery belonging to the different systems. These differences in

character and in possible field of use had resulted when the United Company was formed in 1899 in the fact that over 2,500 Goodyear welting machines were in use, as against thirty or forty Eppler machines, one-third of these being used in the factory of the president of the Eppler Company. The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition as rendered it unlawful. The Eppler machines were not suppressed by the United Company. It continued to supply them until the progress of improvement in such machinery superseded them. The patents covering them have long since expired, and it is open to anyone to make and use such machines if he desires. There is no present monopoly in them, and no action taken by the court could restore them to the field of competition, or encourage or create competition by them."

(11) CONCLUSION AS TO ACQUISITION OF THE EPPLER COMPANY.

We submit that the record establishes:—

1. The machines made by the Eppler Company were decidedly inferior to the Goodyear machines, and the Eppler Company had no complete or satisfactory system of auxiliary machines; that the Eppler shoe was inferior to the Goodyear shoe; that the Eppler Company after seven years was commercially unsuccessful and had placed an insignificant number of machines, both when compared to the number of Goodyear machines outstanding and to the total number of machines used to attach the soles to the uppers of shoes, including the McKay machines; and that if any competition existed between the Goodyear and Eppler companies it was insignificant in amount and did not make the acquisition of the Eppler Company inherently unlawful.

2. That the Goodyear Company had brought patent suits against the Eppler Company and its lessees for infringement of Goodyear patents by the principal machines of the Eppler Company, and believed it would succeed in this litigation; that the primary reason for acquiring the Eppler Company was to get rid

of this litigation, which would have proved troublesome to the United Company's customers and therefore would most certainly have created friction between them and the United Company.

3. That the Eppler machines were patented and made a shoe of a different character from that made by the Goodyear machines; that a secondary purpose in acquiring the Eppler Company was to enable the United Company to furnish machines for making this different class of shoe, and that the United Company was entitled to acquire the Eppler Company for this purpose.

4. That the United Company did not suppress the Eppler machines, but continued to furnish them to all shoe manufacturers desiring them until they became obsolete due to the superiority of the Goodyear machines.

5. That the acquisition of the Eppler Company was first proposed after the formation of the United Company was agreed upon, and its acquisition was not a motive for the formation of the United Company.

6. That Eppler Company's machines infringed the Goodyear patents, and if the Eppler machines competed with the Goodyear machines, such competition was unlawful.

7. That the Eppler machines have become obsolete and no manufacturer to-day would use them, so that the question of their possible competition has become a moot point.

We, therefore, submit that the purchase of the Eppler Company was not inherently unlawful; that it was acquired for normal and legitimate reasons; and that the transaction is barren of any incident which can give rise to an inference of unlawful purpose or intent to monopolize or exclude others unlawfully.

5. THE PURPOSES FOR WHICH THE UNITED COMPANY WAS FORMED, AND THE MANNER IN WHICH SUCH PURPOSES HAVE BEEN ACCOMPLISHED.

A. REASONS FOR FORMATION OF UNITED COMPANY AS TESTIFIED TO BY MR. WINSLOW AND MR. HOWE.

The fundamental reasons for the formation of the United Company by the proposed union of the Goodyear and Consolidated Companies were stated as follows by Mr. Winslow:—

> "The first was to increase the productive efficiency of the machines that were in the hands of shoe manufacturers. Second, to economize in the manufacture of the machinery itself by bringing that manufacture into one modern factory and standardizing the manufacture. Third, to encourage and increase the manufacture of Goodyear Welt shoes by the development of new machines to assist in that manufacture and new methods to lower the cost, to aid and assist those manufacturers who were making those shoes, and induce other manufacturers who were not making welt shoes to enter into their manufacture. It was contemplated in this connection to lower the cost of installation of the Goodyear machines and instruct manufacturers in the manufacture of welt shoes. And fourth, to develop a better service for the instruction of operatives in the use of machines and service for maintenance of the machines in condition to operate regularly, and at the same time decrease the proportionate expense of that service by avoiding the duplication of the depots and men who were employed in that work" (R. Vol. 1, p. 407, lines 18–36).

Mr. Howe testified as follows as to the purposes for which the United Company was formed:—

> "Well, we had many conferences, . . . and . . . they related entirely to the economies which we could get if the two complementary machines were handled by the same company—the economies, first, in the administration of the two companies; the economies due to manufacturing the machines themselves and the parts and the auxiliary machines in one factory where we could get a modern up-

> to-date factory; the economies that could be attained by consolidating our service. . . . I thought, particularly . . . that if we could in some way bring about a harmonious arrangement between the Lasting Machine Company and the Goodyear Company we could make a great saving and give the service with greater efficiency in all the branch offices and also, as I have said, in the manufacture of machines and the running of a factory. Proportionately to the amount of business done there would be less overhead charges" (R. Vol. 1, p. 628, line 21–p. 629, line 1).

Another reason for the formation of the United Company was that Mr. Howe, who was the real manager of the Goodyear Company, and Mr. Brooks, who managed the McKay Company, could not devote much of their time to the business and wished to withdraw. By combining these businesses with the Consolidated Company the services of the men active in that company were obtained.

Mr. Howe testified that the management of the Goodyear Company's business fell largely on him, but he was practising law (R. Vol. 1, p. 466, lines 34–40) and wished to get out (R. Vol. 1, p. 629, line 2). He further knew that Mr. Winslow and Mr. Brown of the Consolidated Company, who could give their whole time to the business, would secure a far better and more efficient management than the Goodyear Company then had (R. Vol. 1, p. 629, lines 3–7). Mr. Winslow and Mr. Brown were well known as efficient managers for the Consolidated Company (R. Vol. 1, p. 629, lines 8–11).

Mr. Brooks, who was the head of the McKay Company, was seventy years old and was anxious to retire from business and spend all his time at his country home. He only devoted one or two days a week to the business (R. Vol. 1, p. 467, lines 8–13).

B. REASONS FOR FORMATION OF THE UNITED COMPANY AS STATED IN CIRCULARS TO STOCKHOLDERS.

The directors of the three principal constituent companies sent out circulars to their stockholders announcing the formation of the United Company and recommending the exchange of stock. All the circulars stated that Winslow would be president and Brown treasurer of the United Company, and the board of directors included Gordon McKay, Louis D. Brandeis

and other well-known names. The McKay circular was signed by James W. Brooks, Louis D. Brandeis and other directors (R. Vol. 4, P.'s Ex. 151, pp. 1094–6). The Consolidated Company's circular, signed by Winslow, Brown, and other directors, contained the following statement:—

> "The undersigned Directors of the Consolidated & McKay Lasting Machine Company believe that the United Shoe Machinery Company will show much larger net earnings than the aggregate net earnings of the several companies whose stock is to be acquired, by reason of increase in business, economies in administration and decrease in expenses, and cessation of patent litigation between the Companies, which has been expensive to them and annoying to shoe manufacturers; and believe that these results can be attained without increase of cost to the users of machinery made by the Company, and that better attention to the care of machines and greater assistance to the users can be afforded" (R. Vol. 4, P.'s Ex. 175, pp. 1198–1200).

The Goodyear Company's circular, signed by Howe, Barbour and other directors, contained the same statement (R. Vol. 4, P.'s Ex. 152, pp. 1097–1100).

The Goodyear circular also contained the following statement:—

> "The great advantages to be secured by the control in one corporation, both in the United States and in foreign countries, of the most efficient types of shoe machinery, have been for several years recognized by the officers of the principal shoe machinery companies" (p. 1097).
>
> "The United Company will also from time to time acquire other shoe machinery properties, either by direct ownership or by purchase of shares of their stock" (p. 1098).

This statement the United States contends shows an unlawful attempt to monopolize. But it was in truth and fact, as was said in *United States* v. *Winslow*, supra, only "an effort after greater efficiency" and so the District Court found (R. Vol. 1, p. 1132). It must be remembered that there was a large field of shoe machinery, partly developed and partly undeveloped, which was not occupied by the constituent companies which were taken over by the United Company, and the Goodyear Company's circular merely shows an intention, if opportunity offered, to put out other machines not manufactured by the constituent companies.

Mr. Howe, who drew the Goodyear circular, testified that he had in mind in drawing this clause that if the United Company was a success it would naturally take on new machines and go into other fields which would supplement the business of the constituent companies. This was proper and lawful just as it was proper and lawful to acquire lasting, metallic, heeling, and welting machines in one company. Indeed, as held in *United States* v. *Winslow*, supra, no intent could make such acquisition unlawful. The probability which Mr. Howe had in mind, therefore, can give rise to no inference of unlawful intent as contended by the United States.*

C. SPECIFIC DENIALS OF INTENT TO MONOPOLIZE SHOE MACHINERY AS CHARGED IN THE PETITION.

Mr. Winslow testified that there had never been any intent on his part to acquire complete control of the shoe machinery business as charged in the bill, and that no such project was "ever discussed or considered by any persons interested" (R. Vol. 1, p. 407, lines 3–12). He further testified that he had no intent to exclude all others from the shoe machinery business, and that there was no discussion among any of the persons interested in the organization of the company directed towards such a purpose (R. Vol. 1, pp. 407–8). He denied any intent as charged in the bill to enhance the value of shoe machinery at

* The United States also contends that a certain recital in the contract between Peabody & Co. of Australia and the United Company, dated September 11, 1899, shows an intent to monopolize existing shortly after the formation of the United Company (R. Vol. 4, P.'s Ex. 189, p. 1250). This contract appointed Peabody & Co. the United Company's brokers or commission agents in Australia for the sale of the United Company's machines and findings. The preamble clause recited that the United Company had acquired certain specified companies and then recited that the United Company "contemplates acquiring the control of other lines of . . . boot and shoe findings." Mr. Winslow was abroad when the contract was made. Mr. Howe testified that Peabody & Co. wanted an assurance that the United Company would give them enough business to warrant them entering into a contract; that the United Company then had in mind purchasing some other lines of shoe machinery and findings, especially blackings, cement, and stains which Peabody & Co. had difficulty in supplying themselves with, and so this recital was inserted (R. Vol. 1, p. 672, line 35–p. 673, line 3).

The attempt of the United States to distort this recital into a statement of wrongful intent to eliminate competing concerns and monopolize shoe machinery shows the utter lack of evidence to support its claims with which the United States was confronted.

the expense of shoe manufacturers and the public, to use the same as a means for unlawfully controlling interstate commerce, or to acquire a complete monopoly of shoe machinery and destroy existing competition (R. Vol. 1, p. 414, lines 1–18).

Mr. Howe denied any intent to acquire complete control of the shoe machinery business and to exclude others. There was no discussion of obtaining control of the entire field of shoe machinery (R. Vol. 1, p. 631, lines 29–42; R. Vol. 1, p. 634, lines 18–31).

D. METHODS BY WHICH AND EXTENT TO WHICH UNITED COMPANY CARRIED OUT AND REALIZED THE PURPOSES FOR WHICH IT WAS ORGANIZED.

It is important at the outset to show the methods by which and the extent to which the United Company carried out and realized the purposes for which it was organized.

The peculiar character of the shoe machinery business permitted the United Company to effect not only great economies but also a vast improvement in the character of the service and the machines furnished customers which would probably not have been possible in any other business in the country.

The opportunities for improvement in machines, service, and economies made possible by the formation of the United Company and the success of the United Company in improving these opportunities show conclusively that the United Company was organized for the purpose of "greater efficiency," as this court, in *United States* v. *Winslow*, supra, held appeared on its face, and as the defendants Mr. Winslow and Mr. Howe testified.

Furthermore, it shows that the excellence of the United Company's patented machines and the efficient service it has rendered its customers fully account for its success and exclude any inference that such success was attained by wrongful means. In 1899, when the United Company was formed, the constituent companies furnished the greater part of the machines used in the particular fields for which their machines were adapted, because such machines were the best machines made and because they were patented so that others could not furnish them. The shoe machinery business was a comparatively new business, and the business done by the constituent companies had been

created by them through the excellence of their patented machines.

The evidence shows that the vast improvement in the character of the service rendered users of its machines, the improvement of its machines, and the invention of new machines fully account for the continuance of its success, and exclude the inference that the continuance of this success has been due to unlawful means.

As said by Judge Dodge (R. Vol. 1, p. 1137):—

> "That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question. It is not disputed that, when the petition was filed, its machines represented, in number and amount, the highest development ever reached in the art to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason.
>
> "So little room for doubt does the evidence leave that the success and preponderance referred to are the natural and legitimate result of the intrinsic merit of the patented machinery and service furnished as to require clear and convincing proof of any assertion that they are due to causes other than these."

(1) CONCENTRATION IN ONE FACTORY AND STANDARDIZATION.

WINSLOW testified:—

> "Another reason which I stated for the formation of the United Company was to economize in the manufacture of machinery by bringing that manufacture into one modern factory and standardizing the methods of manufacture.
>
> "Prior to 1899 the Goodyear Company was manufacturing in a factory on Albany Street, in Boston; the Lasting Machine Company at Beverly, Mass., and the McKay Company at Winchester, Mass. The Goodyear Company was employing less than 200 men; about 300 were employed at Beverly, and about 500 at Winchester; in all about 1000 men in 1899.

"In the manufacture of the machines of these three companies there were many parts in common, but they could not be interchanged. Screws, for example, might be used on ten different machines where the same strength was required, but the screw made for one machine would not fit any of the others. This is only an illustration of what was true of a great many parts which could be standardized and made interchangeable, and have been. This resulted in a very large saving in the number of parts to be carried in different places. The bringing together of these factories also enabled us to establish our own foundry. Since the United Company was formed, for the first time in the history of shoe machinery iron patterns for casting have been developed and are almost universally used now, reducing the cost of manufacture.

"It was intended and expected that the consolidation would effect a very large saving in the management expenses and it so resulted. There were three superintendents at that time in the factories. The time of two of those superintendents is available today for the development of the art of making machinery. They are not used as superintendents of manufacturing. While, broadly speaking, we made no saving by discharging men, their time became available in other directions, so that their productivity was availed of to economize and develop the business" (R. Vol. 1, p. 412, line 41–p. 413, line 30).

Again WINSLOW testified:—

"In carrying out our purpose of consolidating the manufacturing of the machines in one modern factory and standardizing the methods of manufacturing, about January, 1900, a committee of our manufacturing men was appointed to visit the various manufacturing plants throughout the United States and gather data as to the best methods of manufacture, the most efficient machines, the most efficient arrangement for carrying on the manufacture from one department to another, and the best character of factory for the operatives. After that committee had worked about a year we began to build a large factory at Beverly, Massachusetts.

"To avoid any possibility of the tools for duplicating parts of machines being subject to destruction by fire we built the factory of concrete, and I think at the time that was the largest concrete building in the world. A great deal of care and thought was put into the arrangement of the floors and rooms to eliminate waste in carrying machines from one part of the factory to another for different opera-

tions. In factories that had been built up to that time for the manufacture of shoe machinery nothing of that sort had been gone into; while the buildings were modern in construction, they were not modern in their arrangements of the parts of the factory with reference to the economy of production. The Beverly factory has been added to from time to time.

"The facilities for manufacturing the different kinds of machines were transferred to that plant successively from the old factory at Beverly, from the Winchester factory, and from the Goodyear factory. None of the three factories of the constituent companies prior to 1899 was adequate for the occupation of all of them, and there was no land connected with any of them, except possibly Winchester. The Beverly factory was not owned by the Lasting Machine Company, there wasn't room to develop the Goodyear plant, and Winchester was a poor place to manufacture on account of the lack of labor. It was not a manufacturing community. Labor had to be developed there. Beverly has about 75,000 people within a five-cent fare.

"At the new plant in Beverly we continued to manufacture all of the machines which we had been marketing before and we employed more labor from time to time. About 1,000 men were employed in 1899, and at the beginning of this suit there were over 4,000 men employed at the Beverly factory. There has been a gradual increase right along" (R. Vol. 1, p. 423, lines 5–46).

WINSLOW further testified:—

"There are wings connecting the three buildings which go to the full height of the building and contain the lavatories, wash rooms and tool rooms. The fourth building, which is separate from these buildings, is the foundry, and that was less than half its present size in 1903.

"When we built these buildings we prepared for a capacity about twenty-five per cent. more than the capacity of the three factories of the old constituent companies. We supposed that that would take care of our wants for a great many years, but we have made additions from time to time until we now have a factory twice as large as we contemplated in 1903. This is all concrete construction from the roof to the bottom floor."

"Defendants' Exhibit 255 is a photograph of the Beverly plant as it is to-day. . . . Defendants' Exhibit 256 is a photograph showing the same building with the employees included. Practically all of the 4,000 employees are there. Defendants' Exhibit 257 . . . contains some views of the in-

terior of the factory . . . including the hospital, operating room, an industrial training school for the operators' children, club house, play grounds and a boat club" (R. Vol. 1, p. 519, lines 23–35, lines 18–19, lines 36–46).

(2) INAUGURATION AND MAINTENANCE OF AN EFFICIENT REPAIR SERVICE WITH ITS MACHINES.

(a) NECESSITY FOR THE SERVICE.

The service rendered by the United Company in connection with its machines is of the utmost importance, not only to the shoe manufacturer, but also to the operative and the United Company. In no other industry are so many different machines of so delicate a character used in the manufacture of a single product, and, therefore, in no other industry is service of this nature of such vital consequence. Its importance must be emphasized and explained at some length because its necessity underlies the methods of marketing machines which have prevailed and proved themselves most satisfactory in the shoe machinery industry, and because the need of perfecting this service was one of the principal motives for the formation of the United Company, and because the excellence of the service rendered by the United Company accounts in considerable part for its success. This service can be rendered only by a company like the United, which furnishes a large number of different machines. It was impossible for the constituent companies prior to the formation of the United Company to furnish a satisfactory service.

The service rendered by the United Company consists in maintaining experienced mechanics at convenient places to repair machines and replace worn parts immediately upon request of the shoe manufacturer and to adjust the machines frequently to keep them in the highest state of efficiency; in maintaining depots of extra parts at convenient places so that they may be immediately available, and in instructing operatives in the use of machines. The United Company, as part of this service also, acts as engineers for the shoe manufacturer, advising and assisting him in the laying out of his plant.

The importance of this service is due to causes peculiar to the

shoe machinery industry. The principal machines furnished by the United Company are extremely delicate. They need constant adjustment by a skilled mechanic to maintain them in proper working order. The wearing parts also require frequent replacement. This necessitates not only having a stock of extra parts near at hand, but also the services of a skilled mechanic to insert and adjust the new parts. The ordinary shoe manufacturer could not afford to maintain skilled mechanics for this purpose, nor the large stock of parts which would be required to guard against his needs. If such service and new parts are not immediately available in case of need, the machines do imperfect work or cannot be used at all.

The importance of maintaining the machines in efficient condition is multiplied many fold by the fact that a great many different machines are used on each shoe manufactured. The work in the shoe factory is planned to travel from one room to another in fixed quantities. A certain number of pairs of shoes are started each day and an equal number are finished each day. In other words, there is a regular flow of shoes through the factory from one machine to another machine. No large number of shoes are kept prepared ready for the operation of each machine. The cost of doing so would be prohibitive, as it would necessitate having a large amount of capital invested in material and in lasts and would require too much space to store the partially prepared shoes. Furthermore, shoes in process of manufacture must be in "temper," that is, the soles and heel must be artificially moistened for the operations involved in lasting and in preparing and attaching them to the upper. Once in "temper" the shoe ought to be completed as rapidly as possible. Therefore, shoe factories, so far as possible, are run on the basis of having shoes in the process of manufacture travel from machine to machine without any substantial interruption. Only so can economical work be done.

When one machine breaks down, it, therefore, not only stops the work on that particular machine, but it also stops the work on all machines coming after it; and since, as explained above, it does not pay to prepare a large number of shoes which cannot be finished, it also stops the work on machines which come before it. Thus the effect of a single machine getting out of order is not confined to stopping work on that particular machine but

the effect is to stop the work on the entire line of machines of which that particular machine forms a part. Where there is only one machine of the kind in the factory, the entire production of the factory ceases.

Not only does the shoe manufacturer suffer when the machine breaks down, but his operatives and the United Company, which leases the machines, suffer also. The operatives are paid by piece work; when, therefore, they cannot work their compensation ceases. The United Company derives its income from royalties received for the use of its machines; this income ceases when the machines are not operated.

The daily capacity of many of the important machines furnished by the United Company is very large. As most of the shoe factories in the country have a comparatively small production, many, if not most of them, require only one machine of certain kinds. Thus nearly one-fourth of the 1150 shoe factories in the country in 1911 made 100 pairs or less per day; 637 or more than one-half made 500 or less pairs per day, and only 169 made more than 1,500 pairs per day (R. Vol. 1, p. 455, lines 1–19). In a factory making only 450 pairs per day, only 1 Pulling-over Machine, 1 Heeling Machine, 1 Slugging Machine, and 1 Loose Nailing Machine are required (R. Vol. 5, Defs.' Ex. 230, p. 442). If one of these machines should break down in a factory of this size, the entire production of the factory would stop. Only 1 Slugging Machine, 1 Loose Nailing Machine, and 1 Heel Pricking Machine, are required in a factory having a total production of 1,200 pairs of turn shoes per day (R. Vol. 5, Defs.' Ex. 249, p. 693).

The constant need of service is illustrated by its use. In 1911 shoe manufacturers called upon the United Company for repair service 192,524 times and 1,110,593 hours of its road men's time were occupied in this work (R.Vol. 5, Defs.' Ex. 214, p. 311). Its importance is further emphasized by the fact that such service, costing, in 1911, $1,196,494.86 (R. Vol. 1, p. 974, line 22), was rendered free of charge by the United Company (R. Vol. 1, p. 421, lines 18–23) because of its importance in increasing the reputation and productive efficiency of its machines and the consequent return to the United Company in the way of royalties.

Referring to the necessity for this service, Mr. WINSLOW testified (R. Vol. 1, pp. 410–11, lines 41–14):—

"This factor of service is at the very base of the successful operation of a shoe factory. The work is planned to travel from one room to another in fixed quantities. So many pair go in in the morning—so many pair come out at night. The operatives are dependent upon that work traveling along regularly to them. The breaking down of some of these machines will in many of the factories block the entire flow of the work. Of course, in any factory it will throw out of regularity the production of the factory and throw out of work many times the operator that follows the particular operator on the machine that has broken down or got out of adjustment. Of course, the operators in shoe factories are paid by the piece almost entirely. From the standpoint of the shoe machinery manufacturer and the shoe manufacturer and the operative, the ability of the factory as a whole to turn out its work right along regularly as if it were going through one machine is vital. Factory space is economized; the earning capacity of the investment in the machinery is vitally affected; the operatives' pay has as its foundation, of course, the regularity of the work."

FREDERICK W. CURTIS, president of the Curtis & Jones Company shoe manufacturers at Reading Pennsylvania, testified, as a witness for the United States (R. Vol. 1, p. 377, lines 27–28; p. 379, line 12; p. 382, lines 26–45):—

"The question of repairing and furnishing parts is an important consideration to the shoe manufacturer. We want to keep the volume of product moving steadily through our factory without any interruption. If an important machine, like a stitcher or welt-sewing machine, breaks down it stops the flow of the product, keeps the machines behind it idle, dams up the product right there at that point, to the general disarrangement of our factory, as well as throwing men who are on machines behind the disabled one out of work.

"The margin of profit in making shoes is such that it is very essential that our machinery should work smoothly, regularly, and with continuity, and economies in the manufacture of shoes often make the difference between a successful manufacturer and one who is not successful. One of the most important economies is to have our machinery working with continuity and with the highest efficiency and turning out our product with the utmost regularity day after day, just as we want to get it, so that there won't be any hitch anywhere in the flow of product through our factory."

The instruction of operators is also of great importance to shoe manufacturers. Just as the breaking down of one machine may stop all work in the factory, or work on an entire line of machines, so the lack of a single operator,—say a laster or a welter—may stop all work on an entire line of machines. Again, the character of the work done on the machines depends on the skill of the operator. Again, the already skilled operators must be instructed in the use of new or improved machines as they are put out. In consequence the Service Department of the United Company, by instructing operators for shoe manufacturers, and by furnishing one or more of its own men in an emergency to operate a machine, is of the greatest value to shoe manufacturers and greatly increases the productive efficiency of the machines. The value of this service is shown by the fact that a total of 8,889 operators were taught by the United Company in the year 1911 alone (R. Vol. 5, Defs.' Ex. 214, p. 312).

(b) INADEQUATE SERVICE RENDERED BY CONSTITUENT COMPANIES PRIOR TO THE FORMATION OF THE UNITED COMPANY.

The absolute necessity of service for shoe machinery of the character produced by the constituent companies, if such machinery was to prove satisfactory, had led the constituent companies, prior to the formation of the United Company, to institute such service as was possible under the circumstances.

The Consolidated Company was furnishing men to instruct operatives how to use its machines and men to keep the machines in adjustment so far as it could within its financial resources. It had no offices, however, except in Boston and Brockton. In Philadelphia, Cincinnati, Chicago, Haverhill, and Lynn there were concerns who carried parts for the Consolidated Company's machines and received notice of calls for service. The Consolidated Company's men called at these places to receive such notices (R. Vol. 1, p. 408).

The McKay Company furnished about the same amount of service as the Consolidated Company. In Chicago, Cincinnati, Haverhill and Lynn parts were carried for its machines by the same concerns which acted as agents for the Consolidated Company. In New York and Brockton it had some arrangements with agents (R. Vol. 1, pp. 408–409).

The Goodyear Company furnished the best service of the three companies. It had its own offices in Auburn, Maine, Lynn, Haverhill, Brockton, Worcester, New York, Philadelphia, Burlington, N.J., Cincinnati, Chicago, St. Louis, New Orleans and Rochester, N.Y. It carried its own parts and had its own men located in each of these offices and also had a system of traveling men to instruct operatives and keep the machines in adjustment (R. Vol. 1, p. 408). However, neither one of the companies gave a good service (R. Vol. 1, p. 409, line 37). Moreover, since the effective use of the machines of any one of the companies was dependent upon the efficiency of the machines of the other companies (since, as explained above, the machines of one company could not be used unless the machines of the other companies were in use) the efficiency of the service rendered by the three companies was regulated by the company which rendered the worst service. As Mr. WINSLOW testified:

> "In other words, the entire continuity of operation, the regularity of operation of the factory, was dependent upon that service that was rendered by that one of three companies that gave the least efficient service" (R. Vol. 1, p. 409, lines 38–41).

Furthermore, there was an unnecessary duplication of expense involved in the maintenance of this service.

> "Each of these three companies was employing its own traveling mechanics and instructors, who in many instances were traveling to the same places, visiting the same factories, and carrying parts to the same places, but each set working on their own particular machines" (Winslow, R. Vol. 1, p. 409, lines 14–18).

The unsatisfactory condition of this service and the increased efficiency in productiveness which would result from more efficient service, was, as stated, one of the main purposes for the formation of the United Company. Thus Mr. WINSLOW testified:

> "Both Mr. Howe and myself recognized that condition, and it seemed that by bringing our two companies together we could get a uniform service that would produce a great deal higher percentage of efficiency of the machines than

if a given factory was dependent upon an independent call to us and an independent call to their office. If the service was brought into one office, if the entire service was unified, a call coming in there would be attended to at once, no matter upon what machine it was needed. The regularity and continuous operation of the machines is dependent upon what may be termed instantaneous service" (R. Vol. 1, pp. 409–410, lines 41–8).

"Another reason which I gave for the consolidation was our purpose to increase the productive efficiency of the machines in shoe factories. In speaking of the productive efficiency of the machines I had in mind the amount of shoes upon which the machine would operate in a given day or week or year; in other words, the productiveness of the machine in the work that could be done upon it. A machine might have a capacity to do a thousand pairs a day, but for some reason other than the ability of the machine to do the work it would not produce its work. The operative himself might not be efficient. The way in which the work came to that particular machine might not be right. The machine itself might be broken down. The manufacturer might have only one machine, and that operative might be out, in which case we frequently found him a man. The many ways in which this service has been used had led to the conclusion on the part of some of the men who were familiar with the practical side of the business that a service could be furnished which would very materially increase the productivity of the machines daily, so that less machines would be needed, less floor space, a given investment in the machines would earn more money, the operatives themselves could earn better wages, and the result of that is productive efficiency; in other words, we did produce an ability on the part of the machines to increase the number of shoes that would go through them" (R. Vol. 1, p. 412, lines 17–40).

FREDERICK ALLEN, president of the Allen, Foster, Willett Company of Lynn, testified:—

"I can remember ten years ago, twelve years ago, when we did have some machines from the independent companies—some of the Bresnahan machinery, I believe—it would sometimes take us three or four days, if a machine broke down, before we could get it fixed up and repaired. At the present time there is a corps of experts in Lynn there who are efficient on each and every machine that we have, and if it is necessary within half an hour I can have

a man over there and the machine fixed up right away, and with one machine being dependent upon the running of another—that is, one machine breaking down will throw out the entire line—that is a very big advantage" (R. Vol. 1, p. 722, lines 23–33).

JONATHAN BROWN, Jr., a manufacturer of Salem, Mass., making 7,500 pairs of shoes a day, testified:—

"We have had experience with that situation, and it is a matter of record that everyone knows who has been connected with manufacturing shoes for a number of years that before the United Shoe Machinery Company was formed, where we would have machines from these different individual companies, a machine, the capacity of which may have been five, six, or seven hundred pair a day, would break down and we would send for some one to have the machine repaired, and it might be three days, four days, a week or ten days before we would get anyone to put that machine in order. The consequence was that all the operations beyond that machine which were waiting for that 500, 600, or 700 pair of shoes were simply lying idle" (R. Vol. 1, p. 731, lines 13–24).

(c) IMPROVEMENTS OF SERVICE BY UNITED COMPANY.

Almost immediately after the formation of the United Company the plans with reference to the improvements of the service commenced to be put into effect. Each territory was studied and the best man put in charge of that district (R. Vol. 1, p. 418, lines 22–31). Where previously the service had been rendered from different offices, these were amalgamated into a single office.

In 1911 the United Company had 18 offices situated in the following places: Auburn, Maine; Haverhill, Mass.; Lynn, Mass.; Manchester, New Hampshire; Marlboro, Mass.; Brockton, Mass.; New York City, New York; Rochester, New York; Lestershire, New York; Philadelphia, Pennsylvania; Harrisburg, Pennsylvania; Cincinnati, Ohio; Chicago, Illinois; Milwaukee, Wisconsin; St. Paul, Minnesota; St. Louis, Missouri; New Orleans, Louisiana; San Francisco, California.

It had also sub-stations at—Augusta, Maine; Gardiner, Maine; Rochester, New Hampshire; Nashua, New Hampshire;

Derry, New Hampshire; Newburyport, Mass.; Auburn, New York; Baltimore, Maryland, and Lancaster, Ohio.

This makes a total of 27 stations in 13 different states. At each of these places men were stationed to repair machines and instruct operators (R. Vol. 1, p. 974, lines 4–20). These men answer calls for service from shoe manufacturers situated in their district, immediately traveling to the shoe manufacturer's factory. In some instances they have to go several hundred miles (R. Vol. 1, pp. 420–1).

There is a stock of parts in each of these depots for practically every machine which the United Company produces, so that the men are in a position to repair any machine immediately (R. Vol. 1, p. 421, lines 35–39). The investment in parts carried by the United Company in 1911 was $1,415,474.49 (R. Vol. 1, p. 974, line 23).

The number of roadmen employed in this service increased from 237, employed by the United Company in 1899, to 689 employed in 1913, and the number of branch office managers and assistants increased from 12 to 31 (R. Vol. 5, Defs.' Ex. 211, p. 293). The total calls answered in the year 1911 were 192,524, and including calls for instruction to operatives 201,413. The time of the roadmen occupied in this work consumed 1,365,384 hours (R. Vol. 5, Defs.' Ex. 214, pp. 311–2).

The number of operatives taught during 1911 was as follows:

Goodyear operators taught	2,209
Metallic operators taught	956
Heeling operators taught	1,006
Lasting operators taught	1,359
Pulling-over operators taught	956
Eyelet and general operators taught	2,403
Total operators taught	8,889

Defendants' Exhibit 214 (R. Vol. 5, p. 311) shows in detail the number of calls made by each office, the number of operatives taught through each office, and the number of hours consumed in this service.*

*Defs.' Ex. 212 (R. Vol. 5, p. 294) shows in detail the calls for service made by E. W. Burt & Co. Shoe Manufacturers for 1911, and Defs'. Ex. 213 (R. Vol. 5, p. 298) shows the calls made for service by L. A. Crossett Co. for the period July 1, 1911, to January 1, 1912. E. W. Burt & Co., a small manufacturer averaging 123 pairs per day received in 1911 the services of the United Company 102 times. L. A. Crossett, Inc., for the year 1911 received the service of the United Company, 1,150 times.

The foregoing service is rendered absolutely without charge to shoe manufacturers. The shoe manufacturer is not even charged with the traveling expenses of the roadmen. All he pays is the cost of new parts (R. Vol. 1, p. 421, lines 18–23). This service cost for the year 1911, $1,196,494.86 (R. Vol. 1, p. 974, line 22).

The United Company is practically the only shoe machinery company which furnishes service (R. Vol. 1, p. 423, lines 1–4).

As to the character of the service and its improvements since 1899, Mr. WINSLOW testified as follows:—

> "As to the development of the service for shoe manufacturers since 1899, the service is now so far ahead of what existed in 1899 that there is really no comparison. At each depot is a general manager and a body of men who are experts in the adjustment and repair of all the machines. These men are at the call of the manufacturers by telephone at any moment of the day and are at their service nights, if necessary, to rearrange their factories or readjust their machines. There are men to teach new operatives how to run the machines and how to take care of them. That service is complete in each shoe manufacturing district in the country.
>
> "In addition we have men who are treated by the manufacturers as their engineers and who act in an advisory capacity as to the re-arrangement of factories and the improved processes of manufacture. We send these men around to the factories to call the attention of manufacturers to opportunities to improve their methods of manufacture. This service always includes the instruction of operatives. There is also a service in continually supervising and watching the operation of the machines by our experts, and in order for the manufacturer to keep a given set of machines in constant operation these men have to be acquainted with the manufacture of the particular kind of shoes made in each factory because the requirements as to the work of the same machines may be very different in one factory from the requirements in another factory.
>
> "These men have to know how to run the machines themselves, how to adjust them, repair them, take them apart and put in parts" (R. Vol. 1, p. 420, line 35–p. 421, line 17).

(d) TESTIMONY OF SHOE MANUFACTURERS AS TO IMPORTANCE OF THE SERVICE RENDERED BY THE UNITED COMPANY.

ALANSON C. BROWN, president of the Hamilton-Brown Shoe Company, of St. Louis, manufacturer of 25,000 pairs of shoes a day, testified:—

> "The service furnished by the United Company has helped us to educate our workmen and teach them how to run the machines. If a machine breaks down they send a man at any time to repair it or fix it up and keep us running, and they have furnished parts so that we didn't have to keep any supply of parts.
>
> "The United Company has instructed a good many operators for us. They instruct operators for us right along without any charge to us. As to the importance of that to us, the operatives struck in five of our factories a little over a year ago and we had to get practically all new operatives in all of those factories. Those operatives were instructed by the United Company's men without charge. The company also keeps our machines running. If one of the machines should be out of order it would clog up and congest that department until we got the machine running again. As fast as the United Company gets up a new machine which we think is an improvement over the old machine, we try to get them to install it in our factory and take out the old one. They have done this in every case without charge to us, except the freight" (R. Vol. 1, pp. 617–8, lines 32–8).
>
> "The United Company is helping us instruct operators almost daily. We have green help in our factories right along and they send an instructor who helps instruct these operators. During our labor trouble we tried the system of having some teachers ourselves. We didn't have enough instructors from the United Company and had one or two of our foremen try it. As to whether they could instruct all right, it would be a big expense to us if we had to do that. We never adopted a system of keeping our own instructors on hand and instructing new operators as they came in. This United Company system of instructing operators is a good thing all the time. We employ it practically all the time" (R. Vol. 1, p. 619, lines 19–30).

ROBERT P. HAZZARD, a shoe manufacturer of Gardiner, Maine, making about 5,000 pairs of welt shoes a day, testified:—

"The United Company's service is one of the greatest necessities for the economical running of a modern shoe factory. That service consists of men who specialize on certain classes of machines and who are located conveniently to the manufacturing centres. We are served to a certain extent from the Auburn, Maine, office, but there are several resident United Company men in Gardiner who are under the jurisdiction of the Auburn office, but who are located in Gardiner so as to be more available when we need them. If those men are busy at one of the other factories, or if there is anything that they cannot handle, we telephone Auburn and inside of an hour and a half we have a man from Auburn. Those men do anything that seems desirable in putting the machines in shape to do the maximum amount of work of good quality.

". . . The failure of a company to give efficient service is detrimental both to one's nervous system and to the smooth running of the factory.

"As to the importance of efficient service, the shoe business is peculiar because it is dependent on succeeding operations . . . and because an even production in all operations all the time is absolutely necessary for efficiency. That efficiency wants intelligent action and it wants it quick and may be compared to the fire department in case of fire.

"When manufacturers get that service it not only means bigger wages for the employees, but it means better results for the manufacturer and cheaper shoes for the consumer. In my judgment, with the United Company's service the consumer is buying shoes cheaper than he could if the royalty were done away with and efficient service were not furnished" (R. Vol. 1, p. 643, line 16–p. 644, line 3).

Mr. Hazzard has between $50,000 and $60,000 invested in lasts. A last is in a shoe about 5 days. It is of the utmost importance to get the shoes through the factory quickly so that too much money will not be tied up in lasts (R. Vol. 1, p. 644, lines 4–10). He further testified that operators were not allowed to have a large accumulation of shoes on any operation, because it would tie up too much money in lasts and stock and there would not be room to make the shoes, so that "every man is working right from rack to rack to the man ahead of him. These shoes are moved in racks of 24 pairs, and when one machine shuts down it is like breaking a link in a chain" (R. Vol. 1, p. 644, lines 17–23).

FREDERICK ALLEN of Lynn, who has been manufacturing shoes for about 17 years (R. Vol. 1, p. 721, lines 36–7) and whose

factory has a capacity of about 6,000 pairs a day (R. Vol. 1, p. 724, line 1), testified that 10 or 12 years ago when he had some machines from other companies, "it would sometimes take us three or four days, if a machine broke down, before we could get it fixed up and repaired" (R. Vol. 1, p. 722, lines 23–27).

> "At the present time there is a corps of experts in Lynn there who are efficient on each and every machine that we have, and if it is necessary within half an hour I can have a man over there and the machine fixed up right away, and with one machine being dependent upon the running of another—that is, one machine breaking down will throw out the entire line—that is a very big advantage" (R. Vol. 1, p. 722, lines 27–33).

JONATHAN BROWN, Jr., a manufacturer of Salem, Massachusetts, making about 7,500 pairs a day, testified:—

> ". . . If we had our choice in the matter, we wish that every machine we had in our establishment was under the control of the United Shoe Machinery Company. That is because we get such excellent service; we get it promptly; we get it cheap, and it allows us to go ahead with our production and figure down to a minimum cost for our shoes and go ahead and manufacture them without having the delays that we are subjected to whenever we have other machines.
>
> "We have had experience with that situation, and it is a matter of record that everyone knows who has been connected with manufacturing shoes for a number of years that before the United Shoe Machinery Company was formed where we would have machines from these different individual companies, a machine, the capacity of which may have been five, six, or seven hundred pair a day, would break down and we would send for someone to have the machine repaired, and it might be three days, four days, a week, or ten days before we would get any one to put that machine in order. The consequence was that all the operations beyond that machine which were waiting for that five hundred, six hundred, or seven hundred pair of shoes were simply lying idle. Today, if any of our machines break down, that is, any of the United Shoe Machinery Company's machines—we telephone over there, and inside of three minutes we have someone to put it in order. The consequence is we can figure on our production at the lowest minimum cost" (R. Vol. 1, p. 731, lines 4–29).

"To my knowledge no other company which supplies machinery to shoe manufacturers furnishes any service in any way comparable to that of the United Company. Assuming that machines were of equal merit, this factor of service would be an important element in deciding which company to trade with. There would be no question. You would simply go to the United Company because of the service. It certainly is as vital as that" (R. Vol. 1, p. 732, line 40–p. 733, line 3).

EDWARD W. BURT, a shoe manufacturer of Lynn, testified as follows:—

"As to how large a factor the service which they give is in the successful manufacture of shoes, personally I believe that one of the chief things that a manufacturer should consider in the making of shoes is the service given in keeping the machines in continuous operation" (R. Vol. 1, p. 739, lines 11–15).

"The United Company has furnished prompt and excellent service. That is absolutely important to the successful manufacture of shoes. We must have it. If our machine breaks down, every hour means so many shoes piled up behind that machine" (R. Vol. 1, p. 740, lines 42–45).

JOHN STROOTMAN, a shoe manufacturer of Buffalo, New York, making from 800 to 1,200 pairs per day (R. Vol. 1, p. 742, lines 41–3), testified:—

"The service which the United Company gives us is excellent, and it is an all-important factor in the manufacture of shoes. We could not run a factory without the Company's skilled men to keep the machines in order and keep them running. So far as I know, no other company furnishing shoe machines gives service of that kind" (R. Vol. 1, p. 744, lines 12–17).

CHARLES A. EATON of Brockton, making 2,400 pairs a day (R. Vol. 1, p. 751, lines 18–20), testified:—

"The service which we have received from the United Company has been very satisfactory indeed. All manufacturers depend very largely upon it, and in our own case we have considered it of vital importance" (R. Vol. 1, p. 753, lines 23–26).

He further testified that there were continually little annoying problems which the United Company solved for him by putting

him in touch with some method used in another factory (R. Vol. 1, p. 753, lines 27–34).

FRANK C. RAND, of St. Louis, vice-president of the International Shoe Company and a director of the Boylston Shoe Machinery Company, testified, as a witness for the United States (R. Vol. 1, p. 178, lines 19–20; p. 183, lines 18–19; p. 186, lines 31–34):—

> "They teach our operatives without charge, and furnish them in times of strikes without charge, at our request. It was a mutual proposition—if we didn't run the machines we didn't get any shoes and they didn't get any royalty."

C. WILLIS BENNETT, a shoe manufacturer of Fitchburg, Mass., making from 800 to 1,400 pairs a day, testified:—

> "As to my experience with them with reference to service, why, their service has been, I might say, indispensable. I don't know what I should do without their service. Whenever I have a machine break down, I immediately telephone to their branch office at Marlboro, and they have a man come up there from Marlboro, who is an expert on that particular machine, to put the machine in order, and they do all this without any expense to me, aside, of course, from the cost of the broken part of the machine, if there are any parts broken" (R. Vol. 1, p. 758, lines 36–44).

He further testified that when he started business in Fitchburg there was only one shoe factory there and there were no operatives outside of that factory, and consequently, he had to teach a good many operatives. The United Company furnished agents and expert instructors to instruct these operatives, making no charge for their services (R. Vol. 1, p. 759, lines 1–5). He also testified that the United Company's agents assisted him as to improved methods of manufacture by telling him of such methods seen in other factories (R. Vol. 1, p. 759, lines 5–8).

As to the services of the United Company in acting as engineers in laying out his plant, he testified as follows:—

> ". . . I went to the United Shoe Machinery Company to see if they would give me a line of machines, and they stated they would, and I had a few samples made down in Lynn and went on the road and sold some shoes. During my absence the United Shoe Machinery Company had their

expert mechanics there laying out my factory and setting up the machines, and when I returned . . . with orders for shoes, they had my factory all equipped ready for me to start; and all those who visit my factory say that I have one of the best equipped and up-to-date factories in the state, and I want to say also that they did this without any expense to me.

"As to how detailed the work of their experts was in laying out my factory, in the first place, they had an expert come there who thoroughly understood laying out a factory, and told me what sized shafting I would require, what sized pulleys I would require for running different machines. They chalked out on the floor the location of the different machines that would make my work go along in the best manner from one operation to another, and, as I say, when the whole factory was completed I had a thoroughly equipped factory.

"I was free to exercise my own judgment in the selection of machines, as to taking their machines or the machines of others, and I did so. Whatever machines I took I found had been arranged for and set up by the United Company, and they had my factory ready to run" (R. Vol. 1, p. 758, lines 10–35).

CHARLES H. JONES, a prominent witness for the United States, under cross-examination, admitted that he had said of the service of the United Company:—

"It has certainly given more faithful care and attention to the running of the machines and keeping them in order; and in our country factories, where we employ a large proportion of inexperienced help, they have given us more constant and faithful attention in instructing new operators, and in the supervision of the machinery under trying conditions, than we ever obtained from any of the constituent companies" (R. Vol. 1, p. 131, lines 14–21; Vol. 4, p. 1075).

(3) INVENTIONS AND IMPROVEMENTS IN MACHINES MADE BY THE UNITED COMPANY.

Mr. WINSLOW testified:—

"Soon after the formation of the [United] Company the development of inventions and improvements of machines was placed in the hands of a committee comprising three or four of the inventors experienced in shoe machinery invent-

ing. Every new idea or suggestion was submitted to that committee, who made an investigation and reported their findings to the heads of the respective departments; and a decision was made according to which a man was put at work to develop the idea, or it was filed as not being practicable" (R. Vol. 1, p. 424, line 40–p. 425, line 3).

In this experimental work the United Company has expended very large sums of money. For example, from 1907 to 1911, a total of $2,267,954.70 was spent, an average of $453,590.94 per year (R. Vol. 1, p. 426, lines 25–39).

Defendants' Exhibit 217 (R. Vol. 5, pp. 323–51) is a typical report showing the experimental work done during the month of October, 1911. It shows that experimental work was done on 61 different machines or parts of machines. The report sets out in detail each of the machines on which work was done and the expenditure on each.

In addition to conducting its own Experimental Department the company has purchased from others any inventions which it was thought would improve its machines.

The result of this effort and expenditure of money has been a remarkable development in the art of shoe machinery.

The United Company has, since 1899, brought out at least an average of 7 or 8 new machines a year (R. Vol. 1, p. 427, lines 12–13).

Mr. Winslow testified that since 1899 the United Company has invented and put out to its customers 150 new machines. These are shown in a list—Defendants' Exhibit 246. The list comprises five machines in the Eyeletting Department; 41 in the Goodyear Department; 11 in the Heeling Department; 4 in the Lasting Department; 7 in the Metallic Department; 15 in the Pulling-over Department; 64 in the General Department and 3 in the Fitting Room Department. These machines have all been offered to the public by the United Company by sale or lease (R. Vol. 1, p. 503, lines 7–23). 39 of these machines do work previously done by hand. (Defs.' Ex. 247).

Again Mr. WINSLOW testified:—

"That work has been carried on consistently and continuously, until now there is a very large organization that gives its entire time and attention to the development of

ideas of our own men, or ideas that are suggested to us, or to consideration of inventions which are submitted to us.

"From almost the beginning of the company to the present time we have done everything we know how to do to advance the art of making shoes by machinery.

"As soon as we had developed a new machine which performed an operation then being done by machines in the shoe factories, that machine was built in a wholesale way and was placed in the hands of the manufacturers without any charge whatever for the improvements or for the new machines, and the old machines were taken back and scrapped. No charge was made for substituting the new machine and taking out the old one. If the improvement was an attachment, that was added to the manufacturer's machines without any charge to him" (R. Vol. 1, p. 425, lines 4–20).

Among the striking illustrations of new machines which the company has invented and given to the trade is the Rex Pulling-over Machine and the auxiliary machines used with it. The Pulling-over Machine does the work formerly done by the hand operator in preparing the shoe for the lasting machine. It draws the upper over the last at the center and at each side of the toe and attaches it temporarily to the innersole, all at one operation, so that the operator can bring the seam of the tip in a right line across the toe and locate the heel seam directly in the center of the heel. Unless these two lines are made correct the shoes will not be salable (R. Vol. 1, p. 425, lines 21–34). The auxiliaries of the pulling-over system assemble the upper, innersole, counter and last (R. Vol. 1, p. 425, lines 35–40).

The clicking machine, developed by the United Company, enables the manufacturer to cut his uppers accurately with the least loss of stock. It saves every bit of the waste that was caused by the hand knife cutting and increases the product of the workman by at least twofold. The quality of the work is infinitely better. At the same time it cuts the parts of the uppers it makes marks to facilitate the assembling of the parts. Before this machine was invented manufacturers used a pattern of zinc or leatherboard which the cutter placed upon the stock and then cut around it with a hand knife. The knife always cut by the corners of the pattern and where the leather had been cut by the knife passing the corners the stock could not be used and was wasted (R. Vol. 1, p. 426, lines 2–10). It saves

more money to the manufacturer than any other machine which has been produced (R. Vol. 1, p. 426, lines 1–2).

Another illustration is the stapling machine, which saves the manufacturer the cost of a great many needles and a lot of cost for damage caused to machines when needles break (R. Vol. 1, p. 427, lines 20–23).

In the Goodyear Department nearly all the machines have been replaced by new and improved machines (R. Vol. 1, p. 430, lines 32–5). In addition a large number of new auxiliary machines have been developed. Thus in 1899 the United Company supplied 13 Auxiliary Machines for use in making welt shoes, while in 1911 it supplied 35 such Auxiliary Machines. In 1899 it supplied 3 Goodyear Auxiliary Machines for use in making turn shoes, while in 1911 it supplied 9 such Auxiliary Machines (R. Vol. 5, Defs.' Exs. 242–5, pp. 681–3).

The United Company has also developed a large line of so-called General Department Machines which it leased or sold at the option of the shoe manufacturer until 1911, after which time it has sold them only. A list of 172 such machines is set out in Defendant's Exhibit 227 (R. Vol. 5, p. 425).

(4) INCREASED EFFICIENCY OF MACHINES RESULTING FROM INVENTIONS AND SERVICE FURNISHED BY UNITED COMPANY.

The improvement in the defendants' machines, the addition of new machines to assist in the work of the principal machines and the service which the United Company has been able to render in connection with its machines have resulted in a remarkable increase in their efficiency. The result has been that each machine has been able to turn out a greatly increased number of shoes.

For example, each Goodyear Welt Sewing Machine in 1910 sewed 66.7 per cent. more shoes than in 1899; each Goodyear Outsole Stitching Machine sewed 69.5 per cent. more shoes in 1910 than in 1899; each Goodyear Welt Sewing Machine used for turn sewing sewed 54.3 per cent. more shoes in 1910 than in 1899; each Heel-Attaching Machine attached 62.3 per cent. more shoes in 1910 than in 1899; each Lasting Machine lasted 24 per cent. more shoes in 1910 than in 1899 (R. Vol. 1, pp. 428–29).

The difficulty of lasting high-toed shoes now in use has reduced the increased efficiency of the Lasting Machines. Prior to the introduction of this new style of shoe these machines showed a higher percentage of efficiency compared with the machines of 1899 than that stated above (R. Vol. 1, p. 429, lines 7–20).

(5) SAVINGS OF SHOE MANUFACTURERS FROM INCREASED EFFICIENCY OF MACHINES AND FROM DECREASE OF ROYALTIES AND INSTALLATION CHARGES.

Shoe manufacturers have benefited from the increased efficiency of the United Company's machines and from the development of new machines, both directly and indirectly. They have benefited directly because of the saving in material and cost of manufacture which has resulted, and also because of the reduction in royalties and other charges which the United Company has made. They have benefited indirectly because, owing to the constant service rendered by the United Company, the machines have been maintained in an efficient condition capable of working without interruption and because the increased efficiency of the machines has, as shown above, materially reduced the number of machines required to do a specified amount of work. The value of these indirect benefits, as testified to by shoe manufacturers, has been referred to above. The saving it has effected in reducing the amount of capital required to conduct the business by reducing the amount of space required for manufacturing purposes, and thus the rental paid by the shoe manufacturer, and by avoiding interruption to the operation of the factories, cannot, of course, be estimated exactly, but it is unquestionably very large.

The direct savings are also large. Mr. Winslow testified that the machines produced by the Experimental Department of the United Company alone had reduced the cost of manufacturing the welt shoe more than the total royalty the United Company receives from its machines used in manufacturing such shoes (R. Vol. 1, p. 427, lines 26–29).

Mr. WINSLOW testified:—

> "The savings effected, as between 1899 and 1911, in the cost of manufacture of the Goodyear welt shoe by increased

efficiency of the machines and by decrease in royalties . . . amounted to eight and one-quarter cents per pair. Of this saving the decrease in royalties amounted to three-quarters of a cent, comprising a quarter of a cent that had been paid to the company making the sole-laying machine and one-half a cent which had been paid to the Gem insole company for the use of its machines; that was before we acquired those companies. After we acquired those machines we credited the royalty to the manufacturers, so that there was a direct reduction of three-quarters of a cent per pair on the welt shoes made by the use of those machines" (R. Vol. 1, p. 430, lines 4–17).

"On turn shoes there has also been a direct reduction of three-quarters of a cent on women's shoes and one-half a cent on children's shoes, amounting to 50 per cent. of the royalty. That reduction was in 1900" (R. Vol. 1, p. 430, lines 18–21).

"On Goodyear welt shoes the saving in cost of manufacture, resulting from the introduction of new machines and improvements in other machines that existed in 1899 and which we improved after the formation of the company, amounts to about seven and a half cents" (R. Vol. 1, p. 430, lines 27–31).

"The improved machines have resulted in savings in the cost of operation, or in the material used, or in the cost of maintenance and the reduction of equipment required, or in the improved quality of the work" (R. Vol. 1, p. 430, lines 36–39).

"Of the saving, a cent and three-quarters per pair in the cost of manufacture is effected by the group of machines comprising the new welter, new stitcher, new rough rounder, new power grooving and beveling machine, the new Universal channeling machine, tack puller and resetter, new welt beating and slashing machine, the welt indenting and burnishing machine, the impression stitch burnishing machine No. 2, and the Goodyear jointing machine. The savings by these machines result from the increased speed of operation of the new welter, the new stitcher, and the new rough rounder, and from the pulling of tacks and resetting of tacks on the tack pulling and resetting machine, always before done by hand. These savings include the savings accomplished by the Plant improvements on the welter. Without the Plant improvements the savings would be somewhere between three-eighths of a cent and a half a cent less than that.

"It is entirely untrue that the modern welter and stitcher do not operate any faster than the old machines. They

are at least 50 per cent. faster in average speed than the old machines; that is, they will sew 50 per cent. more stitches in a minute than the old ones would.

"The next group of machines which effected a saving in the manufacture of welt shoes are the Ideal clicking machine, the Duplex eyeletting machine, the Ensign lacing machine, the lining cementing machine, and the improved skiving machine. I have credited three cents per pair saving as effected by those machines, but that is less than the manufacturers of welt shoes have said their saving was in leather by the use of the Ideal clicking machine alone. Three cents is well within the actual saving effected by those machines.

"A saving of two cents is effected by the group of machines comprising the insole heel seat rounder, the insole tacking machine, the Rex pulling-over machine, the Rex assembling machine, the Rex pounding machine, the upper trimming machine, and the No. 5 lasting machine" (R. Vol. 1, p. 430, line 40–p. 431, line 30).

"It is almost impossible to calculate the amount of savings effected by these machines on high-toed shoes. On those shoes probably the saving in lasting alone by the No. 5 lasting machine was two cents a pair, without reckoning the savings for the other machines" (R. Vol. 1, p. 431, lines 31–35).

"A quarter of a cent saving has been effected by the hand method lasting machine which we have furnished for lasting the sides of shoes the toes and heels of which are lasted on the No. 5 Lasting Machine" (R. Vol. 1, p. 431, line 42–p. 432, line 1).

"I have allotted a quarter of a cent saving to the Crest heel blacking machine, the channel cementing machine, and the tip scouring machine.

"All of the machines in these groups are new machines which the company has invented and brought out and the savings effected by them amount to a total of seven and one-half cents. Adding our reduction in royalties, the sum is eight and one-quarter cents" (R. Vol. 1, p. 432, lines 7–14).

Mr. WINSLOW also testified:—

"The amounts paid per pair of shoes for the use of all the principal royalty machines furnished by the United Company, when accounts are paid within thirty days, are for Goodyear welts, men's work, 5.694 cents; for Goodyear welts, women's work, 4.694 cents; for Goodyear Turn shoes, women's and misses', 1.972 cents; for children's Goodyear Turn shoes, half a cent; for men's and women's McKay

shoes, 1.746 cents; for children's McKay sewed shoes, 1.391 cents (R. Vol. 1, p. 503, lines 29–36).

"The average royalty paid by a shoe manufacturer for the use of all machines furnished by the United Company for the manufacture of all types and grades of shoes is less than two and two-thirds cents per pair" (R. Vol. 1, p. 866, lines 29–32).

"The United Company has suppressed absolutely no machines, no inventions and no improvements.

"In no instance when an initial premium is charged has that been increased over what was charged prior to 1899 and in no instance has the royalty charged on any machine been increased over that charged in 1899" (R. Vol. 1, p. 433, lines 27–32).

"Throughout our business dealings our prices, service, and forms of lease have been the same to everyone; we have made no price for any royalty or for any material or in any way that was not open to every lessee the day it was made" (R. Vol. 1, p. 439, lines 39–42).

"Our royalties have been the same to all, whether they used a thousand machines or one; they are charged by the pair and the service is exactly the same. No lease or modification of lease is adopted at any time that is not open to all lessees at the date of its adoption" (R. Vol. 1, p. 440, lines 2–6).

"As an illustration of the reductions made in prices of articles furnished by the United Company, I have had compiled the reductions made in the prices of the forepart and edge cutters acquired from the Boston Shoe Tool Company and the Globe Shoe Tool Company (defendants' Exhibit 239, Record, p. [678]). The prices charged by those companies compared with prices subsequently charged by us are as follows:

"The price of the heel cutter with blades in January, 1899, was $3.25; we reduced the price on March 1, 1900, to $2.25. In January, 1899, the price of the blades alone was $2; on March 1, 1900, we reduced the price for the blades alone to $1. The price of forepart and shank cutters in January, 1899, was thirty-five cents each, in small quantities, and twenty-five cents each in quantities of 100; on March 1, 1900, we reduced the price to twenty-five cents each in any quantity. The price of edge irons in January 1899, was fifty cents; on March 1, 1900, we reduced the price to twenty-five cents" (R. Vol. 1, p. 479, lines 3–19).

The United Company has put out many of its new and improved machines without charging any additional royalty.

Thus, for example, the shoe manufacturer of to-day gets the use of the Welter and Stitcher of the Goodyear Department and the 36 Auxiliary Machines without initial payment and for exactly the same royalty as was charged in 1899 for the use of a far less efficient Welter and Stitcher, and only 13 Welt Auxiliary Machines. For turn shoes he gets the Stitcher and 9 auxiliaries without initial payment and for one-half the royalty charged in 1899 for a much less efficient Welter and 3 Auxiliaries. Certain machines acquired from others for which the shoe manufacturer previously paid a substantial charge have been added to the Goodyear Auxiliary set without increasing the royalty. Thus the Company owning the Sole-laying Machine, previous to its acquisition by the United Company, charged a royalty of one-quarter cent per pair.

The United Company acquired this machine and included it in its Auxiliary Goodyear Set without any additional royalty. So in the case of the Gem Insole Machine on which the charge had been one-half cent per pair (R. Vol. 1, p. 430, lines 10–13).

The United Company has reduced or eliminated the initial charges made in 1899, thus reducing materially the cost to the shoe manufacturer of his machinery. The initial charge for an equipment of machines to manufacture 300 pairs of Goodyear Welt shoes per day was in 1899, $6,930.50. In 1911 the improved machines of the same character and 18 additional Auxiliary or General Department machines were furnished by the United Company for $1,430, a saving to the manufacturer of $5,500.50. The initial charge for an equipment to make 1,000 pairs of shoes per day was, in 1899, $11,300.50. Prior to 1911 the United Company had reduced the charge to $2,467.50, a saving to the manufacturer of $8,833 (R. Vol. 1, pp. 432–3). More than 50 per cent. of the manufacturers make 300 pairs or less per day (R. Vol. 1, pp. 454–5).

(6) BENEFITS TO SHOE OPERATIVES, RESULTING FROM INVENTIONS AND SERVICE OF UNITED COMPANY.

Shoe operatives are generally paid by the piece, that is, a certain amount for each pair of shoes operated on by them. Any increase in the efficiency of the machines tending to a larger production per machine thus increases the number of shoes

worked on by each operative. The increased efficiency of the United Company's machines has resulted in an increase in the compensation paid operatives, although shoe manufacturers have in many instances actually reduced the piece price.

Thus the testimony shows that the average output of Model K Welter is 40 dozen pairs a day instead of about 25 dozen pairs on the old machine and that an operative as a result can earn 20 per cent. to 36 per cent. more on the new welter, although the piece price on the old welter was one-third more than on the new (R. Vol. 1, pp. 646–8, .658–60, 710, 723, 753). On the Model M Stitcher the operatives can earn 24 to 45 per cent. more than on the old stitcher, although the piece price is 40 per cent. less than on the old stitcher (R. Vol. 1, pp. 647, 753).

(7) THE DEVELOPMENT BY UNITED COMPANY OF GOODYEAR METHOD OF MAKING SHOES.

One of the purposes in forming the United Company, as testified to by Mr. Winslow, was to encourage and increase the manufacture of Goodyear Welt shoes. This was to be done by the development of new machines to assist in that manufacture, by lowering the cost of installation of the Goodyear machines and by instructing operators in their use (R. Vol. 1, p. 407, lines 22–30). The United Company has constantly carried out this purpose and may be said to have specialized in machinery for making the Goodyear Welt shoes.

It has, in the first place, enormously increased the efficiency of its Welter and Stitcher, the two principal machines used in this process. As we have shown above, it has greatly increased the number of Auxiliary Machines furnished with its Welter and Stitcher (*supra*, p. 197). It has eliminated the initial charges made in 1899 on its principal machines, resulting in a large saving to the shoe manufacturer (*supra*, p. 202).

There has resulted a great increase in the production of Goodyear Welt shoes. In 1899, 22,700,000 pairs of welt shoes were made out of a total of 172,786,000. In 1910, 86,231,000 pairs of welt shoes were made out of a total of 278,916,000 (R. Vol. 1, p. 424, lines 24–35).

II.

THE EVIDENCE REGARDING DEFENDANTS' PATENTS.

I. INTRODUCTORY STATEMENT.

The petition alleges (R. Vol. 1, pp. 992–4) that early in 1899 the principal companies engaged in the manufacture of shoe machinery were manufacturing their machines under patents; that many of the "basic" patents on the principal machines were about to expire and the manufacture and use of such machines would have become open to the public in the near future; and that the owners and officers of those companies, designing and intending unlawfully to extend and perpetuate the monopolies which previously they had lawfully enjoyed under said patents, determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery.

In effect the allegation of the petition is that in 1899 the important patents on the principal machines were about to expire and that the defendants, knowing this, contrived a plan by which they could in effect create a new and unlawful monopoly to take the place of the lawful monopoly which they had previously enjoyed by virtue of the patents and which they were about to lose through expiration of the patents; and this is what petitioner expected and undertook to prove. Consistent assertions were made by its counsel several times during the trial. For example:—

> "BROWN, J. Well, you allege in substance that here was a clear unpatented field in which people would be dealing as free agents.
>
> "Mr. FOWLER. As to the basic patents on the essential machines" (R. Vol. 1, p. 982, lines 13–17).

In the following pages we shall show how entirely unsuccessful were petitioner's efforts to establish this allegation and how absolutely it was at variance with the facts. It will appear that petitioner's own evidence completely failed to support the allegation, in any respect or to any extent; while defendants' testimony completely answered and disproved it. The record shows that:—

(1) Petitioner completely failed to prove the allegation of the petition that early in 1899 "many of the basic patents on the principal machines" were "about to expire" (R. Vol. 1, p. 993). On the contrary,—

(2) *Petitioner's* testimony proved, as to machines of its own selection, that early in 1899 "basic" patents were *not* about to expire, and that there were patents on those machines which did not expire for more than ten years after the United Company was formed.

(3) Defendants proved that of the important patents "early in 1899" on the "principal machines" selected by petitioner's patent expert the latest patent on each of those machines had *more than fourteen years to run;* and that, in general, the machines of the companies which combined in February, 1899, to form the United Company were protected by strong patents having considerably over half their terms to run.

(4) While in nearly every instance the machines of those patents were not the first machines in the industry for performing the respective operations and while the patents on those first machines had expired before 1899, the patents which covered the 1899 machines were important and valuable because those machines were so much better than the machines of the expired patents that "early in 1899" they were used and demanded by manufacturers; but—

(5) The patents on the 1899 machines represented only the 1899 stage in the continuous and continuously patented development of the industry; and—

(6) In the rapid development of the industry since 1899 the machines of that day have in turn given place to superior, modern machines which do better work and have greater capacity, and these modern machines are protected by strong and valuable patents of recent date; so that—

(7) When this suit was begun and now, as at every stage in the development of shoe machinery, the best machines available, the machines which manufacturers demand and use, were and are effectively protected by patents.

(8) Moreover, the period since February, 1899, has been a period of more important and more rapid development than any corresponding period in the history of shoe machinery. A great number of new patented machines have been developed

and supplied to manufacturers, and the patents on thirty-nine of these machines which perform operations performed by hand or not at all in 1899 may fairly be termed pioneer patents.

(9) Accordingly, the machines which the United Company was putting out when this suit was begun, the machines which shoe manufacturers demand and use, are protected by strong and valuable patents of recent date.

2. PETITIONER'S EVIDENCE IN SUPPORT OF THE ALLEGATION OF THE PETITION THAT EARLY IN 1899 MANY OF THE BASIC PATENTS ON THE PRINCIPAL MACHINES WERE ABOUT TO EXPIRE.

The petition sets forth that the companies which came together to form the United Company were early in 1899 manufacturing their machines under patents. Then follows the allegation that

> "*many of the basic patents on the principal machines* owned and controlled by them *were about to expire*, and, in the ordinary course of events, the general public would have acquired *in the near future* the right to the free manufacture and use of such machines, the lawful monopoly of such machines theretofore enjoyed by virtue of the patents would have come to an end, . . . " (italics ours) (R. Vol. 1, p. 993).

Testimony with respect to these allegations of the petition was taken before a special examiner under the order of June 27, 1913 (R. Vol. 1, p. 1090), and is contained in Volume 2 of the Record.

That order provided for the taking of testimony—

> "with respect to the allegations of the petition set forth in the paragraph beginning at the bottom of page 15 [R. Vol. 1, p. 993] *and ending at the beginning of Section IV*. on page 16 [994], of the printed petition in the above-entitled cause" (italics ours) (R. Vol. 1, p. 1090).

The allegations of the petition referred to in this order, in addition to that above quoted, comprise the following:—

> "and the system of demanding large royalties for their use would have been replaced by their general manufacture and outright sale under competitive conditions. Furthermore, under the conditions then existing, new patents were being constantly taken out by others, and new and

improved machines for performing the principal operations in the manufacture of boots and shoes by the aid and use of machinery were being placed upon the market, either upon a smaller royalty than had theretofore been charged for machines doing similar work or for sale outright to boot and shoe manufacturers" (R. Vol. 1, pp. 993–4).

There is in the testimony no attempt whatever to support these latter allegations, so that they require no discussion.

A. Petitioner's Claim that Early in 1899 Many of the "Basic" Patents were About to Expire is Disproved by its Own Patent Expert.

In its *prima facie* case in support of this allegation the petitioner's patent expert, Mr. Chapman, mentioned patents on four machines only. The machines and the patents which he testified claimed improvements incorporated in the machines are as follows:—

Shoe Machine: Goodyear Welt and Turn ("Welter") (R. Vol. 2, pp. 2141–44):—

No. 412,704, Oct. 8, 1889 (expiring Oct. 8, 1906*).
No. 461,793, Oct. 20, 1891 (Method) (expiring Oct. 20, 1908*).
No. 488,505, Dec. 20, 1892 (expiring Dec. 20, 1909).
No. 518,911, Apr. 24, 1894 (*expiring Apr. 24, 1911*).

Lockstitch Machine: Goodyear Outsole Rapid ("Stitcher") (R. Vol. 2, pp. 2145–6):—

No. 473,874, Apr. 26, 1892 (expiring Apr. 26, 1909).
No. 474,774, May 10, 1892 (*expiring May 10, 1909*).

Lasting Machine: Chase (R. Vol. 2, pp. 2199–2201):—

No. 340,860, Apr. 27, 1886 (expiring Apr. 27, 1903).
No. 364,088, May 31, 1887 (expiring May 31, 1904).
No. 376,368, Jan. 10, 1888 (expiring Jan. 10, 1905).
No. 483,375, Sept. 27, 1892 (*expiring Sept. 27, 1909*).

Rounding and Channeling Machine: Goodyear Universal (R. Vol. 2, pp. 2201–4):—

No. 463,982, Nov. 24, 1891 (expiring Nov. 24, 1908).
No. 599,602, Feb. 22, 1898 (expiring Feb. 22, 1915†).
No. 600,883, Mar. 22, 1898 (*expiring Mar. 22, 1915*†).

*As to Mr. Chapman's contention that these patents expired prematurely because of the expiration of a British patent, see *infra*, pp. 218-220

†As to Mr. Chapman's contention that these patents expired in 1910 with a British patent, see *infra*, pp. 220-221.

At the conclusion of his testimony regarding the welter and the stitcher Mr. Chapman expressed his views as to the character of the patents on those machines which he had discussed and which are enumerated above, as follows:—

> "*Int.* 13. Should you say, from your knowledge, study and experience, that the patents to which you have referred in your deposition might properly be termed 'basic patents' early in 1899, in reference to the machines in question, welters and stitchers? . . .
>
> "*Ans.* Yes, with the exception of a few detailed claims contained in some of the patents examined by me" . . . (R. Vol. 2, pp. 2146–7).

As to the Chase lasting machine and the rounding and channeling machine Mr. Chapman in his *prima facie* testimony drew no distinctions as to the "basic" character of the patents on those machines. On rebuttal he testified that *none* of the patents on those machines early in 1899 was "basic."

In addition to the four machines listed above, Mr. Chapman discussed six other machines, but in those discussions he *mentioned no patents*, so that obviously his testimony regarding those six other machines cannot possibly be helpful on this issue and may be entirely disregarded.

Thus petitioner's *prima facie* case in support of the allegation of the petition that early in 1899 basic patents were about to expire established (1) that of the patents, alleged to be "basic," on two machines, the welter and the stitcher, the latest patent expired on April 24, 1911, and May 10, 1909, respectively; and (2) that patents, *not* "basic," on the Chase lasting machine and the rounding and channeling machine expired more than ten years after February, 1899.

The welter and stitcher were both put out "early in 1899" by the Goodyear Company, the Chase lasting machine was one of the three lasting machines being put out early in 1899 by the Consolidated & McKay Lasting Machine Company, and the rounding and channeling machine was an auxiliary machine being put out by the Goodyear Company (R. Vol. 1, p. 2, lines 12–18; p. 3, lines 15–39; p. 625, lines 38–39); no machine put out by the McKay Shoe Machinery Company was even mentioned by petitioner's patent expert.

The proposition that patents which in February, 1899, had

over ten years to run,—much more than half their terms,—were "about to expire" is too ridiculous for discussion. But this extraordinary position was not taken by petitioner without due warning of its unreasonableness. On the first day of the taking of testimony before the examiner on this issue, a week before Mr. Chapman began to testify, a discussion was precipitated by the following interrogatory propounded by petitioner's patent counsel to defendants' patent expert Howard, then a witness for petitioner:—

> "*Int.* 4. Kindly read to the magistrate the number, title, date and name of inventor of each patent on the Chase lasting machine, which patents *expired prior to the filing of the petition in this case*" (italics ours) (R. Vol. 2, p. 2102).

Defendants' counsel objected to this question "as not within the scope of this order," adding:—

> "But your order does not entitle you to make any such inquiry. It is limited to proof of Letters Patent under which the defendants were manufacturing their machines in 1899, and proof that many of those patents were about to expire. . . . The bill suggests a certain situation: that in 1899 the patents which had existed were about to expire, and that that was the occasion for doing something, which something was a conspiracy and combination which the bill charges. It does not seem to us that that opens to you the opportunity for an inquiry as to what patents expired *all the way from 1899 up to 1911*" (italics ours) (R. Vol. 2, pp. 2102–3).

B. Petitioner's Final Position as to Expiration of Basic Patents.

In its rebuttal evidence,—

Petitioner definitely limited its claim that early in 1899 many of the basic patents on the principal machines were about to expire to two machines, both put out by one company only, the Goodyear Shoe Machinery Company, and then only as employed on welt shoes, constituting less than 10 per cent. of the shoes made in 1898.

Petitioner's expert Chapman was asked what machines were "essential or necessary for the bottoming of *welt shoes* in the

commercial manufacture of shoes by machinery under the Goodyear process" (italics ours). Mr. Chapman's answer was:—

> "There are but two absolutely essential or indispensable machines necessary to the production of a Goodyear welt and turn shoe made in accordance with the so-called Goodyear process. Those machines are the machine which is familiarly known as welt and turn machine and out-sole rapid stitcher" (R. Vol. 2, p. 2794, Int. 2).

This statement was later referred to by petitioner's patent counsel as:—

> "your statement that welters and stitchers are the only indispensable machines required for the commercial bottoming of shoes by machinery" (R. Vol. 2, p. 2808, Int. 10).

The position thus taken by the petitioner was emphasized as follows (R. Vol. 2, p. 2809):—

> (Mr. WEBSTER): "*Int.* 11. In the commercial manufacture of shoes by machinery, what machines are of secondary importance in the bottoming of shoes?"
>
> (Mr. CHAPMAN): "*Ans.* *The machines of secondary importance* are a machine for insole channeling, *a machine for lasting*, a machine for sole laying, a machine for rough rounding and channeling, *a machine for heel-seat nailing* and *such machines as are ordinarily employed in the heeling operation* generically considered, a machine for edge trimming."
>
> (Mr. WEBSTER): "*Int.* 12. I notice you omit from the list machines for leveling or beating soles. Are they properly included in the list of secondary machines?"
>
> (Mr. CHAPMAN): "*Ans.* They may be considered of secondary importance" (italics ours).

Machines for lasting were all that the Consolidated & McKay Company was putting out early in 1899; and "a machine for heel seat nailing" (the loose nailing machine), and "such machines as are ordinarily employed in the heeling operation" were principal machines which the McKay Shoe Machinery Company was putting out (R. Vol. 1, p. 4, lines 19–21, 23–27).

Machines of "secondary importance" cannot of course be included with the "principal machines" referred to in the allegation of the petition now under discussion. Accordingly,—

Petitioner limited its claim that early in 1899 many of the basic patents on the principal machines were about to expire to TWO MACHINES, *both put out by one company only, the* GOODYEAR COMPANY, *and expressly excludes from its case* (1) *all machines* put out by the CONSOLIDATED & MCKAY COMPANY, (2) *all machines* put out by the MCKAY SHOE MACHINERY COMPANY, (3) *all machines*, other than the welter and stitcher, put out by the GOODYEAR COMPANY, and (4) *all machines of all kinds used in the manufacture of over ninety per cent. of all shoes made, i.e.*, all kinds of shoes other than Goodyear welt shoes. Less than 10 per cent. of the shoes made in the United States in 1898 were Goodyear Welt shoes (R. Vol. 1, p. 414, lines 36–40).

The petitioner having proved defendants' case they might well be content to submit this issue on petitioner's showing; but their case is even stronger than that which petitioner has established, as petitioner's patent counsel, Mr. Webster, doubtless anticipated when he said,—

> "I would like to show by Mr. Howard, unless we can agree upon it, what patents were owned by the United Company and its associate companies, which patents expired prior to the filing of the petition in this case. . . . I simply care for those which have expired. *I don't care for those which were alive at the time of the filing of the bill*" (italics ours) (R. Vol. 2, pp. 2093–97).

Consistently with this frank statement Mr. Webster, in examining defendants' patent expert Howard, called as a witness for the petitioner, requested him to produce lists of patents owned by the United Company on specified machines, "*which patents expired prior to the filing of the petition in this case*" (italics ours) (R. Vol. 2, pp. 2101–9).

3. DEFENDANTS' EVIDENCE AS TO THE PATENTS EARLY IN 1899 ON THE MACHINES DISCUSSED BY PETITIONER'S EXPERT.

Defendants' testimony showed that "early in 1899" there were important patents on the four machines discussed by petitioner's expert *which had more than fourteen years to run* and did not expire *until after this suit was begun in December, 1911*. Mr. Howard, defendants' patent expert, who has been

head of the United Company's patent Department since the company was organized (R. Vol. 2, pp. 2239–41), testified that there were patents on those machines when the United Company was formed, *in addition to those enumerated by Mr. Chapman* (*supra*, p. 207), as follows:—

Shoe Machine: Goodyear Welt and Turn ("Welter") (R. Vol. 2, p. 2249, Int. 10; p. 2722, Int. 240; p. 2723, Ints. 241, 242; p. 2726, Ints. 256, 258):

No. 495,452, Apr. 11, 1893 (expiring Apr. 11, 1910).
No. 561,386, June 2, 1896 (*expiring June 2, 1913*).

Lockstitch Machine: Goodyear Outsole Rapid ("Stitcher") (R. Vol. 2, p. 2279; p. 2284, Int. 25):—

Re. No. 11,578, reissued Dec. 8, 1896 (original patent No. 549,124, Nov. 5, 1895, expiring Nov. 5, 1912).
No. 563,471, July 7, 1896 (expiring July 7, 1913).
No. 563,472, July 7, 1896 (expiring July 7, 1913).
No. 582,510, May 11, 1897 (*expiring May 11, 1914*).
(*Also* No. 675,783, June 4, 1901, application pending in February, 1899 (*will expire June 4, 1918*);
No. 704,457, July 8, 1902, application pending in February, 1899 (*will expire July 8, 1919*).)

Lasting Machine: Chase (R. Vol. 2, pp. 2365–72):—

No. 545,052, Aug. 27, 1895 (expiring Aug. 27, 1912).
No. 566,831, Sept. 1, 1896 (expiring Sept. 1, 1913).
No. 569,182, Oct. 13, 1896 (expiring Oct. 13, 1913).
No. 569,231, Oct. 13, 1896 (expiring Oct. 13, 1913).
No. 571,339, Nov. 17, 1896 (expiring Nov. 17, 1913).
No. 571,404, Nov. 17, 1896 (expiring Nov. 17, 1913).
No. 571,429, Nov. 17, 1896 (*expiring Nov. 17, 1913*).

Rounding and Channeling Machine: Goodyear Universal (R. Vol. 2, pp. 2304–6):—

No. 595,764, Dec. 21, 1897 (expiring Dec. 21, 1914).
No. 625,633, May 23, 1899 (expiring May 23, 1916).
No. 630,339, Aug. 8, 1899 (*expiring Aug. 8, 1916*).

As we have stated (*supra*, p. 208), Mr. Chapman in petitioner's *prima facie* case discussed six other machines but did not refer to any patents on those machines, so that his testimony regarding those machines is of course not pertinent to this issue. It

may interest the Court, however, to know what the patents on those machines were "early in 1899." They were:—

Channeling Machine: Goodyear (insole and turn) (R. Vol. 2, pp. 2318–22):—

No. 550,402, Nov. 26, 1895 (*expiring Nov. 26, 1912*).

Leveling Machine: Goodyear Automatic Sole (R. Vol. 2, pp. 2332–5):—

No. 540,222, May 28, 1895 (expiring May 28, 1912).
No. 540,223, May 28, 1895 (expiring May 28, 1912).
No. 541,988, July 2, 1895 (expiring July 2, 1912).
No. 546,211, Sept. 10, 1895 (expiring Sept. 10, 1912).
No. 555,548, Mar. 3, 1896 (expiring Mar. 3, 1913).
No. 580,746, Apr. 13, 1897 (expiring Apr. 13, 1914).
No. 610,314, Sept. 6, 1898 (*expiring Sept. 6, 1915*).

Pegging Machine: Davey (R. Vol. 2, pp. 2351–2):—

No. 581,066, Apr. 20, 1897 (*expiring Apr. 20, 1914*).

Separating Machine: Hadaway Stitch (R. Vol. 2, pp. 2339–42):—

Re. No. 11,538, reissued May 12, 1896 (original patent 521,978, June 26, 1894) (expiring June 26, 1911).
No. 537,823, Apr. 23, 1895 (expiring Apr. 23, 1912).
No. 543,012, July 23, 1895 (*expiring July 23, 1912*).

Skiving Machine: Amazeen (R. Vol. 2, pp. 2356–9):—

No. 518,774, Apr. 24, 1894 (expiring Apr. 24, 1911).
No. 609,868, Aug. 30, 1898 (expiring Aug. 30, 1915).
No. 632,984, Sept. 12, 1899 (expiring Sept. 12, 1916).
No. 636,942, Nov. 14, 1899 (*expiring Nov. 14, 1916*).
(The applications for the last two patents were filed before February, 1899 (Defs.' Ex. 130).)

Channeling Machine: Goodyear Outsole, is omitted from the above list because that machine became obsolete when the rounding and channeling machine went into use, several years before 1899 (R. Vol. 2, p. 2330, Int. 40; p. 2764, Int. 375).

4. PETITIONER'S ATTEMPT TO BELITTLE THE IMPORTANCE OF THE LATER PATENTS ON THE WELTER AND STITCHER "EARLY IN 1899."

Before referring to Mr. Chapman's efforts in his rebuttal testimony to show that the later patents, which Mr. Howard testified claimed important improvements embodied in the welter and stitcher "early in 1899," were of comparatively little importance, attention should be called to Mr. Chapman's admissions as to the character of his work in preparation for giving his testimony.

At the outset of his discussion of the stitcher Mr. Chapman said:—

> "Since the testimony of Mr. Howard closed it has been a physical and mental impossibility for me or for counsel to go into the various patents with a view to determining their bearing on the questions at issue. . . ." (R. Vol. 2, p. 2798).

Also, when asked whether the structures of any of the claims of outsole stitcher patents which he had just been discussing were "necessary to the successful operation" of the stitcher of 1899, he said:—

> "I cannot answer that question with reference to all the claims of all the patents referred to, for the reason that I have been unable to go through the patents in detail sufficiently to give a comprehensive answer. . . ." (R. Vol. 2, p. 2802, Int. 7).

And again:—

> "As heretofore stated, I have had very little opportunity to study or go into the prior state of the art having reference to or bearing upon those patents to which Mr. Howard has made reference. . . ." (R. Vol. 2, p. 2810).

These statements were made by Mr. Chapman on the first day of his rebuttal deposition, November 12, 1913 (R. Vol. 2, p. 2793), nearly four months after Mr. Howard, as witness for petitioner, read into the record on July 23, 1913, lists of the patents on the welter and stitcher (R. Vol. 2, pp. 2116–9), and five weeks after Mr. Howard, as witness for defendants,

testified in detail regarding those patents on October 6 and 7, 1913 (R. Vol. 2, pp. 2247–2302).

If any doubt remains as to the superficial character of Mr. Chapman's work on this case, attention is called to the discussion of his misstatements of fact in his testimony regarding the Plant purchase (*infra*, pp. 536–538).

(a) *The Later Patents on the Welter "Early in 1899."*

As we have seen, Mr. Chapman testified in petitioner's *prima facie* case that "early in 1899" there were four "basic" patents on the welter (*supra*, pp. 207–208). In his rebuttal testimony, without a word to explain his inconsistency, he testified that only two of those patents were basic, viz., No. 412,704, October 8, 1889, and No. 461,793, October 20, 1891 (R. Vol. 2, pp. 2794–5, Ints. 3, 4), and he stated that later patents on the welter, including two which he had previously characterized as "basic," No. 488,505 and No. 518,911, and also including No. 561,386, June 2, 1896, which Mr. Howard had testified about, "relate to and cover by claim mere details of construction" (R. Vol. 2, p. 2795).

But the record does not support this contention.

Mr. Howard testified:—

> "I have never seen a welt and turn machine of 1899 which did not embody in its organization the mechanisms set forth in the LaChapelle patent No. 488,505, Briggs patent No. 518,911 and French patent No. 561,386. I know that the mechanisms set forth in those later patents are very useful in the machine and I am certain that no customer of the United Company would have accepted at any time since February, 1899, the welt and turn machine of 1899 which did not embody in its organization the improvements of those patents" (R. Vol. 2, p. 2725, Int. 249).

He also testified that the machine was never commercially used until it incorporated the mechanisms claimed in those patents (R. Vol. 2, p. 2723, Int. 245).

Further, as to patent No. 488,505 Mr. Howard testified that he considered,—

> "That the mechanism of the LaChapelle patent No. 488,505 is important to the commercial success of the welt and turn machine of 1899" (R. Vol. 2, p. 2725, Int. 252).

In regard to patent No. 518,911, petitioner's witness Bannican testified on cross-examination that the "auxiliary take-up" of that patent keeps the thread from dropping off the needle and prevents the machine from skipping stitches, which would make imperfect work (R. Vol. 2, pp. 2830–1, Ints. 57–63).

Mr. Howard explained in detail the advantages of the improvement of patent No. 561,386, June 2, 1896 (R. Vol. 2, p. 2249, Int. 10), and stated that in a machine not provided with the mechanism of that patent there would be frequent breakage of the thread, and on cross-examination he said,—

> "The improvement of patent No. 561,386, June 2, 1896, French, contributed substantially to the successful commercial operation of the welt and turn machine of 1899 and overcame serious difficulties which had been experienced in the commercial use of welt-sewing machines before this improvement was made" (R. Vol. 2, p. 2727, Int. 260).

(*b*) *The Later Patents on the Stitcher "Early in 1899."*

In his rebuttal deposition Mr. Chapman adhered to his original position that two "basic" patents on the stitcher expired in April and May, 1909. Then, after making the statement above quoted to the effect that it had been an "impossibility" for him to examine the patents "with a view to determining their bearing upon the questions at issue" (R. Vol. 2, p. 2798), Mr. Chapman attempted to decry the importance of the four patents on the extension edge organization of the 1899 stitcher, No. 563,471, No. 563,472, No. 582,510 and No. 675,783, expiring respectively in 1913, 1914 and 1918 (*supra*, p. 212) (R. Vol. 2, p. 2799).

But the record establishes beyond any doubt that the inventions of those patents were extremely important.

In his discussion of the improvements of those patents Mr. Howard explained that nearly all welt shoes have extension edges, that prior to 1895 extension edge shoes had been made by hand because up to that time there were no machines which were organized to sew the outsoles of shoes provided with extension edges, and that the four patents in question claimed improvements which for the first time adapted an outsole stitcher for attaching the soles of extension edge shoes. Mr. Howard also explained the practical advantages of the extension edge sole and the character of the organization which adapted the

1899 stitcher for making extension edge shoes, and he concluded his extended discussion (R. Vol. 2, pp. 2279–83) with the following statement:—

> "Finally, as to the importance and value of an organization in an outsole stitching machine which will enable it to attach the soles of extension edge shoes, I should state that in my opinion it is quite as important that the machine should be able to handle the shoe properly in such manner as to locate the line of stitching where good shoemaking requires that it should be located, as it is that the machine should properly form the stitch; and I regard the extension edge organization as important and as essential a part of an outsole stitching machine under modern conditions as are the needle and awl."

Mr. Warren testified to the same effect (R. Vol. 1, p. 794, lines 41–44; p. 795, lines 1–11).

It is submitted that the broadest of these patents, which will not expire until 1918 (R. Vol. 2, p. 2282), may fairly be characterized as a pioneer patent.

In regard to the improvement claimed in reissued patent No. 11,578 and in patent No. 704,457 (application filed June 3, 1898; Defs.' Ex. 113), expiring respectively November 5, 1912, and July 8, 1919, which improvement was made in the outsole stitcher "just prior to 1899" (R. Vol. 2, p. 2284, Int. 25), Mr. Chapman testified that that organization "while probably convenient, is not essential to the fundamental organization" of the 1899 stitcher (R. Vol. 2, p. 2799).

Mr. Howard testified that the embodiment in the outsole stitcher of this improvement adapted the machine to,—

> "Perform the welt beveling and the stitching operation simultaneously, thus obviating the necessity on such work of performing the welt beveling operation subsequently, either by hand or by another machine operation" (R. Vol. 2, p. 2284, Int. 25).

5. PETITIONER'S CONTENTION THAT CERTAIN PATENTS ON THE WELTER AND THE ROUNDING AND CHANNELING MACHINE EXPIRED PREMATURELY OR WERE ANTICIPATED.

Defendants are confident that it will be accepted without question that the patents which the United Company acquired from its component companies were, for the purposes of this suit, valid and in force for their full seventeen year terms. It does not appear that any of them had been held to be invalid or that any of them had been held to have expired before the end of its full term. Accordingly those patents were *prima facie* valid for their full terms, and defendants had a right to assume that they were valid and would be in force to the ends of their terms. That any of those patents was, years after the United Company was formed, held to be invalid or to have expired prematurely, or that a patent expert expressed an opinion, fourteen years after, that any of those patents was anticipated or had expired prematurely, is not of the slightest consequence. We anticipate, therefore, that petitioner's efforts to show such a situation in regard to two machines will be dismissed as of no importance whatever.

So far, however, as petitioner raised the issue of the validity of defendants' patents it may interest the court to know what defendants' position is.

Petitioner contended that patents No. 412,704 and No. 461,793 on the welter expired on September 17, 1902, with British patent No. 13,366, September 17, 1888 (R. Vol. 2, pp. 2144, 2145, 2197, 2198).

Defendants' position as to this contention is as follows:—

A. Petitioner's statement that patent No. 412,704, October 8, 1889, was held, in an opinion of the Circuit Court of Appeals for the First Circuit rendered *August 2, 1907*, in a suit *begun December 21, 1903* (P.'s Ex. 219, R. Vol. 4, p. 1277), to have expired on September 17, 1902, with British patent No. 13,366 of September 17, 1888, French & Meyer, defendants do not deny. BUT, *in the absence of the slightest indication on the record that prior to the organization of the United Company on February 7, 1899, any of the officials of the predecessor companies had any knowledge, or even any suspicion, that the term of this patent, No.*

412,704, was limited by that British patent, petitioner has absolutely failed to show that the fact that this patent expired on September 17, 1902, is of any consequence whatever in this suit. It is clear that for the purposes of this case this patent did not expire until October 8, 1906.

B. Defendants most vigorously deny petitioner's claim that patent No. 461,793, October 20, 1891, expired with British patent No. 13,366, September 17, 1888.

(1) Patent No. 461,793 was granted October 20, 1891, to the Goodyear Shoe Machinery Company as assignee of Henry Briggs, and British patent No. 13,366, dated September 17, 1888, was granted to Zachary Taylor French and William Cristian Meyer. Thus it appears from the patents themselves that *they were issued to different inventors*, and the record contains no suggestion that the British patent was "obtained by the American patentee or with his consent" (*Hobbs* v. *Beach*, 180 U. S. 383, 397). Accordingly, petitioner's contention is answered by the patents themselves.

(2) Mr. Chapman's assertion that the subject-matter of claims four and five of the French & Meyer British patent is "substantially that of the United States Briggs patent" (R. Vol. 2, p. 2198, Int. 50) was completely answered by Mr. Howard (R. Vol. 2, pp. 2273–4, Int. 17), who first pointed out that the Briggs method, as stated in its title, is a "method of forming chain stitches," while the method set forth in claims four and five of the British patent is a particular method to be practised in the manufacture of boots and shoes, and *includes only one step of the method defined in the claim of the Briggs patent.* Mr. Howard further testified:—

> "A machine could be built and used which would infringe the claim of the Briggs patent without infringing the claims 4 and 5 of the British patent No. 13,366 of 1888; while, on the other hand, a machine could be built and used which would infringe the method defined in claims 4 and 5 of the British patent, but would not infringe the claims of the Briggs patent. . . .
>
> "More than this the single claim of the Briggs patent includes as an important and essential step in its method a step which is not set forth in claims 4 and 5 of the British patent, and the claims in the Briggs patent would have been patentable if a machine practising the methods defined in

> claims 4 and 5 of the British patent had been a part of the prior art at the time the Briggs invention was made" (R. Vol. 2, p. 2274).

But here also, as in the case of the French and Meyer patent No. 412,704 above discussed, even if petitioner had proved its contention that Briggs patent No. 461,793 expired with the British patent in 1902, *it would be of no importance in this suit, because the record fails to afford the slightest suggestion that, prior to the organization of the United Company in February, 1899, any official of the predecessor companies believed, or had the least suspicion, that the Briggs patent expired before the end of its natural life on October 20, 1908.*

In another attack on Briggs patent No. 461,793 Mr. Chapman took a most extraordinary position. He asserted in 1913 that this patent, which had expired October 20, 1908, more than five years before he testified, was anticipated (R. Vol. 2, p. 2144, Int. 9). Since this contention was not mentioned in petitioner's briefs or arguments in the District Court, it may be assumed that it was abandoned and should not receive even passing notice. It was completely answered by Mr. Howard (R. Vol. 2, pp. 2270–3), who concluded his discussion of the alleged anticipation as follows:—

> "I never heard of the Stickel patent until it was mentioned by Mr. Chapman in his testimony, *and it has never in any way been mentioned in connection with any litigation involving the Briggs patent No. 461,793*" (italics ours).

Even assuming that Mr. Chapman was correct, it is submitted that testimony that this Briggs patent which expired in 1908 was anticipated by a patent which was never cited in any of the eleven suits on the Briggs patent and of which the owners of the Briggs patent had no knowledge until 1913, is not of the slightest consequence in this suit; the discovery of an anticipation *now* could have absolutely no bearing upon defendants' state of mind or intent in February, 1899.

Again, Mr. Chapman contended (R. Vol. 2, pp. 2203–4) that two of the patents which protected the rounding and channeling machine in 1899, No. 599,602, Feb. 22, 1898, and No. 600,883, Mar. 22, 1898, expired in 1910 with British patent No. 3497, of 1896, but petitioner nowhere charges defendants with knowledge

thereof in 1899. The facts regarding these two patents are as follows:

(1) Patent No. 599,602, February 22, 1898, French & Meyer, did *not* expire with British patent No. 3497 of 1896, because it shows and claims an *improvement* upon the machine shown in that British patent. The British patent which *does* correspond to patent No. 599,602 is No. 4426 of 1898, the application for which was filed February 22, 1898, the date upon which the United States patent issued. These facts are obvious upon comparing the patents.

(2) Patent No. 600,883, March 22, 1898, French & Meyer, is dominated by another patent on the rounding and channeling machine, No. 595,764, December 21, 1897, Cole, which was assigned to the Goodyear Company after it was granted (R. Vol. 2, p. 2305, Int. 30).

6. PETITIONER'S EVIDENCE THAT PATENTS ON MACHINES "EARLY IN 1899," OTHER THAN THE WELTER AND STITCHER, WERE NOT "BASIC" PATENTS, BUT THAT EARLIER PATENTS, MOST OF WHICH HAD EXPIRED, WERE THE BASIC PATENTS.

In his rebuttal testimony, after concluding his discussion of the welter and stitcher, Mr. Chapman completely abandoned the allegation of the petition that "early in 1899" many of the basic patents on the principal machines were about to expire. He then devoted his efforts to showing that the patents in 1899 on a number of machines, including the Chase lasting machine and the rounding and channeling machine, which he discussed in his first deposition, were not "basic" patents at all, but that earlier patents which had expired before 1899 were the basic patents (R. Vol. 2, pp. 2809–18).

For example, in discussing the Chase lasting machine, Mr. Chapman enumerated five lasting machine patents dated from October 4, 1859, to June 1, 1869, the latest of which expired in 1886, and said that the inventions of those patents "are clearly of pioneer character," and that in view of them the patents he had previously referred to (*supra*, p. 207) and those which Mr. Howard had discussed were "necessarily limited" (R. Vol. 2, pp. 2811–12). He also testified that all the patents in 1899 on

the rounding and channeling machine, another of the four machines selected by petitioner for its *prima facie* case, were "anticipated" by a patent granted in 1880 and,—

> "must necessarily, in their claims, run to details of construction and limited features of invention" (R. Vol. 2, p. 2816).

In elaborating this theory petitioner, by its own expert or on cross-examination of defendants' expert, proved that all the machines discussed by its own expert (*including the welter and stitcher* and excepting only the stitch separating machine, produced in 1895 for performing an operation always before performed by hand), and many others discussed by Mr. Howard, were improved machines for performing operations which had been performed many years before by machines the patents on which had expired prior to 1899 (R. Vol. 2, pp. 2719–20, 2733, 2734, 2743, 2746, 2758, 2760–1, 2763, 2764, 2809–18).

How petitioner could conceive that that evidence would be helpful in proving the allegation of the petition that early in 1899 many of the basic patents were about to expire is beyond understanding; the allegation is disproved by that evidence alone.

Moreover that evidence supplements and strongly corroborates defendants' evidence establishing that,—

7. THE PATENTS ON THE MACHINES "EARLY IN 1899" REPRESENTED MERELY THE 1899 STAGE IN THE CONTINUOUS AND CONTINUOUSLY PATENTED DEVELOPMENT OF SHOE MACHINERY.

The record shows that in nearly all instances the 1899 machines were not the first machines for performing their respective operations; that in fact there had been several machines in succession for performing each operation, each successive machine being better than its predecessor, before the 1899 machines had their turn as the best machines available at that time; but that under the constant pressure of continuous improvement and development, those 1899 machines have in their turn been superseded by machines which do more work and better work and which are much easier for the workmen to operate and enable them

to earn higher wages. The record also shows that from the beginning and all the way through this continuous development down to the present day the best machines have been patented; and that now, as at every stage in the development of the industry, manufacturers insist upon having the greatly superior patented machines and will not use the obsolete machines upon which the patents have expired.

The patents on the machines in 1899 represented the 1899 stage in the continuous patented development of the industry,—nothing more. The machines of the earlier expired patents had been superseded before 1899 by the improved patented machines of that day, and before December, 1911, when this suit was begun, the 1899 machines in their turn were in almost every case dead and buried and a new generation of much better patented machines had taken their places.

This steady and continuously patented development of shoe machinery may be illustrated by summarizing briefly the evidence showing the history of the welt and turn machine (the "welter") and the outsole stitcher, the two machines which petitioner regarded as "the only indispensable machines required for the commercial bottoming of shoes by machinery" (R. Vol. 2, pp. 2793–4; p. 2808, Int. 10).

A. Welt Sewing Machines.

The first machine for sewing the welt and upper to the insole was constructed under patent No. 34,413, February 18, 1862, Destouy, reissued as No. 3635, September 7, 1869. The fourth claim of the reissue is as follows:—

> "4. A sewing-mechanism, adapted to unite, by machinery, the upper, welt and sole, substantially as described, so as to produce a machine-made welted boot or shoe."

The Destouy machine, a lockstitch machine, was transformed into a chain-stitch machine by the improvements of patent No. 93,731, August 17, 1869, Mills. That machine was succeeded by the improved chain-stitch machine of patent No. 170,547, November 30, 1875, Goodyear and Hadley, which laid the chain on the welt instead of in the channel (R. Vol. 2, p. 2248, Int. 9). The machine of the Goodyear and Hadley patent, after being

extensively used for some years, was in turn succeeded by the machine of patent No. 190,709, May 15, 1877, Dancel. The machine of the Dancel patent was used until it was superseded by the welt and turn machine of 1899 (R. Vol. 2, p. 2248, Int. 9; p. 2720, Ints. 222–225).

Development Since 1899.

All the time since 1899 the United Company has been continuously engaged in aggressive and effective experimental work in developing improved welt sewing machines. In the course of this work a number of new machines have in succession been constructed and supplied to shoe manufacturers. Each of these machines was an advance in the art and an important step in the continuous development which, after a long period of inventing, experimenting, trying out and further improving, finally resulted in the wonderful Model K welter, which was the commercial machine when this suit was begun.

The first new welter put out by the United Company was a lockstitch welter known as "Sewing Machine: Goodyear Universal Inseam," which was first put out in June, 1899. This machine was protected by ten patents, of which six were granted after 1901 (R. Vol. 2, pp. 2250–1).

The United Company then concentrated its efforts on the production of an improved chain-stitch welter, and in July, 1902, put out an entirely new machine known as "Shoe Machine —Model E: Goodyear Welt and Turn." A large number of these machines were put out, all of which embodied improvements claimed in nine patents, six of which were granted after 1900 (R. Vol. 2, pp. 2252–3).

After years of continuous experimental work in the endeavor to produce a still better and faster welting machine, resulting in the construction in succession of several machines which were tried out, one after another, and in turn abandoned, the United Company finally produced in 1906 two experimental machines from which was eventually developed Shoe Machine—Model G: Goodyear Welt and Turn, an entirely new machine which was first put into commercial use in October, 1908 (R. Vol. 2, pp. 2253-4). Although many of the improvements embodied in this machine had not yet been patented when the testimony was

taken, there were seventeen patents claiming the organization of the machine, of which thirteen had been granted since January 1, 1910 (R. Vol. 2, pp. 2258, 2836(70)).

The Model G machine was run regularly at a speed of 500 stitches per minute as compared with the speed of 375 stitches per minute of the 1899 welter. Some of the many problems which had to be solved in producing a machine which would be capable of successful commercial use at so high a speed and the inventions which solved those problems were explained by Mr. Howard (R. Vol. 2, pp. 2254–7). Mr. Winslow testified that the Model G machine was:—

> "the highest development of sewing mechanism for attaching the welt, inner sole, and upper together that had been developed in the world up to that time" (R. Vol. 1, p. 560, lines 34–36).

Over 1,400 Model G machines were put out. The demand for it was so great that the company always had ahead unfilled orders for a large number of machines—more than 200 for a long period. It was the standard commercial machine until "it was superseded in June, 1911, by still another improved machine" (R. Vol. 2, pp. 2258–9).

After the acquisition of the Plant patents in September, 1910, the Model G machine was reorganized to incorporate the extremely valuable Plant inventions, together with important improvements made on those inventions by United Company inventors. The new machine,—Shoe Machine—Model K: Goodyear Welt and Turn,—was first put out for commercial use in June, 1911, and is now the standard commercial welter (Howard, R. Vol. 2, pp. 2259–66). On January 1, 1914, there were 1,024 Model K welters in use (R. Vol. 1, p. 863, lines 3–4).

This new Model K machine embodies improvements claimed in twenty-five patents, of which eighteen have been granted since January 1, 1910 (R. Vol. 2, pp. 2266–7, 2836(69)), and there are many pending applications (R. Vol. 1, p. 812, line 42; R. Vol. 2, p. 2117). The value and importance of these improvements were fully explained by Mr. Howard (R. Vol. 2, pp. 2259–68). This evidence is strongly supported by testimony of manufacturers and operators.

Testimony of shoe manufacturers and of welter operators

which will be reviewed in our discussion of the Plant purchase (*infra*, pp. 508–509) shows that the average output of the Model K welter is forty dozen pairs of shoes per day, while the average output of the old welter was only twenty-five dozen pairs; that the new welter sews a tighter seam; that there is a saving in welting on the new machine which amounts to five or six hundred dollars a year on each machine; that the new machine saves the operator's time and strength and that he can earn from 20 per cent. to 36 per cent. more on the new welter than he could on the old one, although the piece price on the old welter was one-third more than that on the new welter (R. Vol. 1, pp. 646–8, 658–60, 710, 723, 753).

The demand for the Model K welter has been so great that the United Company has always been unable to keep up with the orders for the machine; on March 1, 1913, it was 197 machines behind in filling its orders (R. Vol. 2, pp. 2268–9).

B. Outsole Stitching Machines.

The first patent for a machine for sewing the outsole to the welt was No. 127,423, June 4, 1872, Mills (R. Vol. 2, p. 2277). This machine was succeeded by a chain-stitch machine and by the lockstitch machine of patent No. 253,156, January 31, 1882, Campbell (R. Vol. 2, pp. 2278, 2734). Both those machines were superseded by the machine of patent No. 366,935, July 19, 1887, Dancel, while the machine of the Dancel patent was in turn superseded by Lockstitch Machine: Goodyear Outsole Rapid, which was the commercial machine, "early in 1899."

Development Since 1899.

Until the 1899 stitcher was in turn superseded by a better machine it was being continuously improved. One of the important improvements was organizing the machine to adapt it for stitching the outsole to the welt by the "fudge stitch," a practice which was introduced by shoe manufacturers about 1905 and was soon generally adopted. By 1908 and ever since over 75 per cent. of men's black shoes and nearly all women's black shoes have been fudge stitched. The advantages of

making shoes in that way and the importance of the improvements which enabled the machine to do that work were explained by Mr. Howard (R. Vol. 2, pp. 2285–7). Those improvements are broadly claimed in five patents granted from 1908 to 1912, the broadest in 1910 (R. Vol. 2, p. 2286).

Other very useful patented improvements were incorporated in the machine in 1905, 1907, 1908, 1909 and 1910 (R. Vol. 2, pp. 2284, 2287–9).

During all this period after 1899 the United Company had a number of inventors engaged in experimental work in an effort to develop an entirely new outsole stitching machine which would do more and better work. Their endeavors finally resulted in a radically new machine, known as Lockstitch Machine—Model K: Goodyear Outsole Rapid, which was first put out for commercial use in May, 1910, and immediately superseded the 1899 machine (R. Vol. 2, pp. 2284, 2289, 2290). The Model K machine was regularly operated at 540 to 560 stitches per minute as compared with 375 stitches per minute of the 1899 machine. In addition to this greatly increased capacity it did better work and was more convenient for the operator. Its numerous improvements were explained in detail by Mr. Howard (R. Vol. 2, pp. 2290–4). Besides many improvements for which patents had not yet been granted when the testimony was taken, the organization of this machine is set forth in the claims of twenty patents, of which seventeen have been granted since December 1, 1908 (R. Vol. 2, pp. 2294, 2836(73)). 543 Model K stitchers were put out in a single year, and the demand for the machine was so urgent that the company was always behind in filling the orders; for example, it was 145 machines behind in May, 1911 (R. Vol. 2, p. 2295).

Immediately after the acquisition of the Plant patents and inventions in September, 1910, including his valuable stitcher inventions (R. Vol. 1, p. 787, lines 16–30), the United Company put to work five different inventors upon the problem of embodying those Plant inventions in satisfactory mechanical form and adapting them for the Model K stitcher (R. Vol. 2, p. 2297). When that machine had been reorganized by incorporating in it the Plant inventions, much improved by the United Company's inventors, the new machine was called the Model M and was first put out for commercial use in June, 1911 (R. Vol. 1, p. 798,

lines 20–23; R. Vol. 2, pp. 2297, 2836(42)). The improvements incorporated in the machine give it a capacity of eight per cent. more than the Model K machine and 22 per cent. more than the 1899 stitcher. The commercial importance of those improvements were explained in detail by Mr. Howard (R. Vol. 2, pp. 2295–2301).

Both shoe manufacturers and stitcher operators testified to the practical advantages of the Model M machine. Ryan, a stitcher operator who had worked on the successive models of the United Company's stitcher, explained in detail the difficulties in operating the 1899 stitcher and the advantages of the Model M machine from the operator's standpoint (R. Vol. 1, p. 705, lines 1–38). He testified that he averaged fifty pairs a day more on the Model M stitcher than on the old machine, and that,—

> "The work on the Model M stitcher is a great deal easier. I earn more money. I will average fifty to seventy-five cents a day more on the Model M stitcher than on the old stitcher; and that is in less hours than I worked on the old stitcher, nine hours at the most. Lots of times I don't work nine hours" (R. Vol. 1, p. 706, lines 2–9).

Comparing the Model M and Model K machines Ryan testified:—

> "The Model M machine does more rapid work than the Model K. . . . I can make from 30 to 50 pairs more a day on the Model M machine than on the Model K. The Model M machine has devices which enable the operator to work with more convenience and which save his time" (R. Vol. 1, p. 707, lines 21, 25–28).

Shoe manufacturers testified that the increased capacity of the Model M machine was from 15 to 20 per cent. and that the operators of the Model M machine were earning from 24 to 45 per cent. more than they earned on the old stitcher, although the piece price was 40 per cent. less on the Model M than on the old stitcher (R. Vol. 1, p. 753, lines 16–18; p. 647, lines 10–14, 21–23).

On January 1, 1914, 1,158 Model M stitchers were in use (R. Vol. 1, p. 863, lines 5–7). Mr. Howard testified:—

> "The facilities of the Company's factory for building this machine have been overtaxed all the time since it was in-

troduced, and on the first of January, 1913, the Company was 256 machines behind in filling its orders for Model M machines" (R. Vol. 2, p. 2301).

The Model M machine is protected by twenty-two patents, of which sixteen have been granted since January 1, 1909, and a number of applications are still pending (R. Vol. 2, pp. 2299, 2836(67), 2836(73), 2119).

C. Other 1899 Machines.

The record shows that these two machines, the welter and the stitcher, are typical of nearly all the machines being put out "early in 1899." Other examples of those machines are:—Rounding and Channeling Machine: Goodyear Universal (R. Vol. 2, pp. 2303–2317, 2738, 2816); Channeling Machine: Goodyear (insole and turn) (R. Vol. 2, pp. 2321–2330, 2810); Leveling Machine: Goodyear Automatic Sole (R. Vol. 2, pp. 2332–2339, 2743); Separating Machine: Hadaway Stitch (R. Vol. 2, pp. 2340–2345); Pegging Machine: Davey (R. Vol. 2, pp. 2346–2355); Skiving Machine: Amazeen (R. Vol. 2, pp. 2355–2362, 2818); Lasting Machine: Chase (R. Vol. 2, pp. 2362–2382, 2811); Lasting Machine: McKay & Copeland (R. Vol. 2, p. 2364, Int. 72; pp. 2382–2387, 2760–2761); Lasting Machine: Ideal (R. Vol. 2, p. 2364, Int. 72; pp. 2387–2390; R. Vol. 1, p. 972, lines 19–34); Lasting Machine: Consolidated Hand Method (R. Vol. 2, pp. 2390–2421); Compressing and Loading Machine: Automatic Heel (R. Vol. 2, pp. 2423–2434, Int. 80; p. 2764, Int. 377); Compressing Machine: Fisher (R. Vol. 2, pp. 2423–2434; p. 2764, Int. 377); Nailing Machine: Loose (R. Vol. 2, pp. 2434–2443); Loading and Attaching Machine: McKay Automatic Heel ("Improved Rapid Nailer") (R. Vol. 2, pp. 2444–2451, 2459–2463; 2764, Int. 376); Nailing Machine: American Lightning (R. Vol. 2, pp. 2452–2459; 2764, Int. 376); Slugging Machine: Universal (R. Vol. 2, pp. 2464–2472; 2767, Int. 393); Turning Machine: Gem Lip (R. Vol. 2, pp. 2483–2486); Flexible Insole Machine: Gem (R. Vol. 2, pp. 2486–2494); Beating Machine: Goodyear Universal Welt (R. Vol. 2, pp. 2495–2502, 2817); Trimming Machine: Goodyear Universal Inseam (R.

Vol. 2, pp. 2502–2507); Skiving Machine: Goodyear Universal Shank (R. Vol. 2, pp. 2511–2516).

As to all these machines there was a strong patent situation in 1899 and there has been continuous and important patented development ever since, the details of which will be found in the testimony above referred to in connection with each machine.

It is perfectly clear on this record that the patents on the 1899 machines, far from being "basic patents" in any significant sense, represented merely the 1899 stage in the development of an old art; that the 1899 machines had in turn been superseded before December, 1911; that just as the 1899 machines were superior to the machines which preceded them, so were the machines of December, 1911, much better machines than those which they had superseded; and that at every stage in the development of shoe machinery the machines which shoe manufacturers wished to use and demanded were protected by strong patents. Again, just as in 1899, manufacturers could not afford to use the older machines which had been superseded, now the demand for the machines of 1899 has ceased and manufacturers demand the greatly superior modern machines.

The record further shows that during the period since February, 1899, there has been more important and more rapid development in shoe machinery than during any corresponding period in its history, and that this has been due to the remarkably aggressive and effective experimental work which has been continuously and consistently carried on by the United Company at enormous expense (R. Vol. 1, p. 424, lines 40–45; p. 425, lines 1–11; p. 426, lines 29–39; p. 427, lines 26–37).

D. New Machines Produced Since 1899.

As a result one hundred and fifty entirely new machines have been produced by the United Company (R. Vol. 1, p. 503, lines 7–9, 17; Defs.' Ex. 246, R. Vol. 5, p. 683), and it has developed thirty-nine machines which perform operations which in 1899 were performed by hand or not at all.

Among those thirty-nine machines are important machines such as pulling-over machine, assembling machine, welt-beating and slashing machine, clicking machine, lacing machine, pounding and trimming machine, tack-pulling and resetting machine,

shank reducing machine, shank welt-skiving machine, upper stapling machine, upper trimming machine, forepart turning machine, heel turning machine (R. Vol. 2, pp. 2671–2675). All these thirty-nine machines are patented, and the patents on them are "basic patents," if ever there were such.

The breadth and importance of the patents on the new machines which have been produced by the United Company were explained by Mr. Howard, in the case of the more important machines with great detail. For example: Rounding and Channeling Machine—Model E: Goodyear Universal (R. Vol. 2, pp. 2309–2316); Channeling Machine: Goodyear Universal (Welt Work) (R. Vol. 2, pp. 2323–2326); Channeling Machine: Goodyear Universal (Turn Work) (R. Vol. 2, pp. 2327–2330); Lasting Machine: No. 5 USMC (R. Vol. 2, pp. 2375–2382); Compressing Machine—Model No. 4: Automatic Heel (R. Vol. 2, pp. 2425–2434); Nailing Machine: No. 2 Loose (R. Vol. 2, pp. 2438–2443); Loading and Attaching Machine—Model B: McKay Automatic Heel (R. Vol. 2, pp. 2459–2464); Nailing Machine: Alpha Wood Heel (R. Vol. 2, pp. 2464, 2836(71)); Slugging Machine: No. 5 (Ziz) (R. Vol. 2, pp. 2468–2472); Heel Breasting Machine—Model B: Imperial (R. Vol. 2, pp. 2473–2476); Turning and Slashing Machine: Goodyear Lip (R. Vol. 2, pp. 2485–2486); Reinforcing Machine: Economy Insole (R. Vol. 2, pp. 2491–2492); Stitching Machine: Economy Insole (R. Vol. 2, pp. 2492–2493); Channeling Machine: Economy Insole (R. Vol. 2, pp. 2493–2495); Beating and Slashing Machine: Goodyear Welt (R. Vol. 2, pp. 2497–2501); Skiving Machine: Goodyear Shank Welt (R. Vol. 2, pp. 2512–2514); Reducing Machine: Goodyear Outsole Channel Shank (R. Vol. 2, pp. 2514–2516, 2836(75)); Indenting and Burnishing Machine: Goodyear Welt (R. Vol. 2, pp. 2517–2519); Trimming Machine—Model H: Rex Upper (R. Vol. 2, pp. 2523–2525); Pulling and Resetting Machine: Goodyear Tack (R. Vol. 2, pp. 2525–2528, 2836(75)); Stapling Machine: Goodyear Upper (R. Vol. 2, pp. 2528–2530); Pulling Machine: Goodyear Insole Tack (R. Vol. 2, pp. 2533–2537); Pulling-over Machine (3 models) (R. Vol. 2, pp. 2540–2553, 2836(75)); Assembling Machine: Rex (R. Vol. 2, pp. 2554–2558, 2836(71)); Pounding Machine—Model E: Rex (R. Vol. 2, pp. 2560–2562); Trimming Machine: Rex Toe (R. Vol. 2, pp. 2562–2564); Pounding and Trimming Machine—Model B:

Rex Rotary (R. Vol. 2, pp. 2564–2568); Pounding Machine—Model C: Rex Rotary (R. Vol. 2, pp. 2568–2570); Pounding and Beating Up Machine—Model A: Rex Rotary (R. Vol. 2, pp. 2570–2571, 2836(74)); Leveling Machine: Goodyear Welt and Turn (Turn Work) (R. Vol. 2, pp. 2576–2579); Leveling Machine: Hercules (2 models) (R. Vol. 2, pp. 2580–2584); Leveling Machine: Atlas (R. Vol. 2, pp. 2584–2587); Clicking Machine—Model C: Ideal (R. Vol. 2, pp. 2588–2597); Lacing Machine: Ensign (2 models) (R. Vol. 2, pp. 2599–2605); Trimming Machine: Goodyear Insole Heel Seat (R. Vol. 2, pp. 2607–2610); Jointing Machine: Goodyear (R. Vol. 2, pp. 2611–2616); Eyeletting Machine: Duplex (R. Vol. 2, pp. 2617–2621); Blacking Machine: Crest Heel (2 models) (R. Vol. 2, pp. 2622–2626); Repairing Machine—Model A: Patent Leather (R. Vol. 2, pp. 2628–2631); Beveling Machine—Model B: Champion Strip (R. Vol. 2, p. 2632); Building Machine: Pyramid Heel (3 models) (R. Vol. 2, p. 2632); Cementing Machine: Hub Lining (2 models) (R. Vol. 2, pp. 2633, 2836(72)); Cementing Machine: Star Channel (3 models) (R. Vol. 2, pp. 2633–2634); Clinch Machine: Universal Double (R. Vol. 2, p. 2634); Embossing Machine—Model B (R. Vol. 2, p. 2635); Eyeletting Machine: Universal (R. Vol. 2, p. 2636); Fastening Machine—Model D: Staple (R. Vol. 2, p. 2636); Grooving and Beveling Machine: Goodyear Power Welt (R. Vol. 2, p. 2638); Laying Machine—Model A: Apex Welt (R. Vol. 2, p. 2638); Laying Machine: Goodyear Improved Sole (3 models) (R. Vol. 2, p. 2639); Marking Machine—Model C: Paragon Vamp (R. Vol. 2, p. 2641); Molding Machine: American Twin Sole (2 models) (R. Vol. 2, pp. 2641, 2836(74)); Molding Machine—Model B: Goodyear Power (R. Vol. 2, p. 2642); Molding Machine: Stitch-Down Upper (R. Vol. 2, p. 2642); Nurling Machine—Model A (R. Vol. 2, p. 2642); Opening Machine—Model C: Apex Channel (R. Vol. 2, p. 2643); Rounding Machine: Goodyear Heel Seat (R. Vol. 2, p. 2645); Rounding Machine: Planet Sole (2 models) (R. Vol. 2, p. 2645); Sanding Machine—Model A: Tap and Sole (R. Vol. 2, p. 2646); Scalloping Machine—Model D: Top Piece (R. Vol. 2, p. 2647); Skiving Machine—Model D: Top Piece (R. Vol. 2, p. 2647); Skiving Machine—Model A: Champion Heel Lift (R. Vol. 2, p. 2648); Skiving Machine—Model A: Champion Shank (R. Vol. 2, p. 2648); Skiving Machine:

Eros Rand (R. Vol. 2, p. 2649); Skiving Machine: Pluma (2 models) (R. Vol. 2, pp. 2649, 2836(76)); Skiving and Finishing Machine: Monarch Counter and Box Toe (R. Vol. 2, p. 2649); Skiving or Rand Splitting Machine: Apex Tap (2 models) (R. Vol. 2, p. 2650); Snipping Machine: Goodyear Insole Toe (R. Vol. 2, pp. 2650, 2836(77)); Splitting Machine: Empire (2 models) (R. Vol. 2, p. 2651); Splitting Machine: Summit (R. Vol. 2, p. 2652); Stamping Machine—Model C: Eagle Sole (R. Vol. 2, p. 2652); Stamping Machine: Regent (2 models) (R. Vol. 2, p. 2653); Sticking Machine: Shank Piece (2 models) (R. Vol. 2, p. 2653); Trimming Machine: Ultima Heel (R. Vol. 2, p. 2655); Turning Machine: Goodyear Forepart (R. Vol. 2, p. 2655); Turning Machine: Goodyear Heel (R. Vol. 2, p. 2656); Turning Machine: Goodyear Welt Edge (R. Vol. 2, p. 2656).

Mr. WINSLOW testified:—

> "On Goodyear welt shoes the saving in cost of manufacture, resulting from the introduction of new machines and improvements in other machines that existed in 1899 and which we improved after the formation of the company, amounts to about seven and a half cents" (R. Vol. 1, p. 430, lines 27–31).

This saving is nearly two cents more than the aggregate royalties on men's Goodyear welt shoes and nearly three cents more than the aggregate royalties on women's welt shoes. In figuring the savings Mr. Winslow averaged men's, women's and children's shoes (R. Vol. 1, p. 430, lines 22–23). He also testified:—

> "On other kinds of shoes the manufacturers had the benefit of these savings so far as the machines were applicable to the reduction of the cost of those shoes" (R. Vol. 1, p. 430, lines 23–26).

In view of this situation it is of course to be expected, and the record shows, that—

8. IN DECEMBER, 1911, THE UNITED COMPANY'S MACHINES WERE FULLY PROTECTED BY STRONG AND VALUABLE PATENTS.

It is clear on the record that when this suit was begun the defendants' machines were more completely covered by patents

of real commercial value than ever before. The importance of those patents is explained in Mr. Howard's detailed discussion of over 150 of the more important machines, and the breadth of their claims is indicated by quoting typical claims (R. Vol. 2, pp. 2239–2664). Moreover, the patents on these modern machines are of recent date; indeed, 144 of the patents on the 1911 machines discussed in Mr. Howard's testimony in October and November, 1913, were granted after this suit was begun, and when he testified again in February, 1914, there had been granted twenty-eight more patents claiming improvements embodied in the machines (R. Vol. 2, pp. 2836(67–80)).

9. SUMMARY OF THE PATENT TESTIMONY.

Petitioner proved as to machines of its own selection that early in 1899 "basic patents" were *not* about to expire.

Defendants proved that of the important patents early in 1899 on the "principal machines" selected by petitioner's expert the latest had over fourteen years to run.

If the expression "basic patent" means anything, it means a patent on the first commercially successful machine for performing a given operation. There was no such patent "early in 1899" on any of the "principal machines" discussed by petitioner's expert,—the basic patents had all expired.

The record shows that throughout the history of this industry every machine which has been useful has been patented. Beginning with the crude machines of fifty years ago and following through the steady evolution of shoe machinery, we find continuously patented development, continuous step-by-step patented improvement, often by way of improving machines already existing, frequently involving the substitution of a radically new machine and sometimes,—often since 1899,—consisting in the introduction of the first machine for performing an operation always before performed by hand or for performing a new operation required by the improvements in shoes and in the methods of making them, so that to-day hand operations have been eliminated and machines have been provided for performing all the operations in the manufacture of shoes, by the use of which machines shoes are now made entirely by machinery for a frac-

tion of the cost of hand-made shoes and are made much better than hand-made shoes ever were made.

And the record further shows that practically all this patented development of shoe machinery has been accomplished by the United Shoe Machinery Company and its predecessors, that the period since February, 1899, has been a period of more important and more rapid development than any corresponding period in the history of the industry, and that this has been accomplished by the United Company through extraordinarily aggressive, effective and expensive experimental work; so that now the modern machines which the United Company is supplying to its customers, the machines which its customers demand and use and which they believe they must have to make the shoes which the public demands and to make those shoes economically and efficiently with a reasonable profit, are protected by broad and strong patents of recent date claiming the important and valuable improvements which are embodied in those machines and which make those machines so much better and so much more efficient and economical, through their greatly increased capacity and the improved quality of their work, that manufacturers of shoes do not desire and cannot afford to use the obsolete machines of the expired patents.

In a word, the machines which its customers demand and use, the machines which the United Company is supplying to its customers, are patented; they embody important improvements of so great commercial value that manufacturers must have these modern machines in order to make shoes which the public will buy and make them economically and efficiently; and those improvements are all protected by strong patents of recent date by which the United States has secured to the United Company a legalized monopoly of the machines which the United Company's customers demand and use.

10. FINDINGS OF THE DISTRICT COURT AS TO THE PATENT SITUATION.

A. The District Court Found that the Basic Patents Held by the Constituent Companies were not About to Expire.

The District Court found as follows:—

(R. Vol. 1, p. 1133.) "But it is important at this point first to determine how far certain allegations of the petition, which characterize the defendants' alleged project and their motives for forming it, have been sustained by the evidence. These are found on pages 15 to 17 of the record, and they are, in substance, that the component companies were in 1899 manufacturing their respective machines and parts thereof under patents; that 'many of the basic patents on the principal machines were about to expire'; that their manufacture and use was thus about to become open to the public 'in the near future,' and that the defendants, not being satisfied with the rights they had enjoyed under the patents and intending to expand and perpetuate them to the public detriment, devised the alleged project of acquiring a monopoly which the petition thereafter describes.

"This trial began on May 20, 1913. On June 27, 1913, the petitioner, having introduced substantially all its other direct evidence, stated that it desired to offer proof in support of the allegations just referred to, but was not then prepared to go into the matter.

"By consent, an order of reference to a Special Examiner was thereupon entered (pp. 262 T, 1996) for the purpose of taking such evidence as either party should offer regarding those allegations, out of court. Such evidence was required to be completed by October 11, 1913, but successive extensions of the time were afterward found necessary and allowed by consent. Before the Examiner the petitioner did not complete its direct evidence until October 6, 1913, and the evidence on both sides was not completed until November 19, 1913.

"At the final arguments, however, on June 2, 1914, the statement was made by petitioner's counsel that so many machines and patents were involved that examination of more than a very few had been impossible. It seems obvious, therefore, that the allegations in question could not have been founded, when they were made, upon any adequate or complete investigation of the facts.

"Nor can it be said that they have been sustained by the evidence before the Examiner. It seems unnecessary to spend time in considering what patents could and what could not properly be regarded as 'basic,' in view of the fact that, of the patents principally relied on as such by the petitioner, those protecting the welter and stitcher of the Goodyear Company, there were two, one upon its welter, the other upon its stitcher, which ran until 1908 and 1909, respectively. The petitioner's final position, indeed, as to what was proved by the evidence before the Examiner, was by no means that taken in the allegations referred to, but was only that the two machines above mentioned, and others protected in 1899 by patents not insisted on as 'basic' patents, became free to anyone to make or use—without any of the patented improvements added to them by the United Company since 1899, but nevertheless capable of successful commercial use—before the filing of this petition in 1911. In view of all the above, I must regard the allegations here in question as not sufficiently supported by proof; and hold that no such motive is shown to have prompted either the organization of the United Company, or any of its subsequent doings. The effect of the evidence and of the petitioner's argument is to show that Goodyear machines of the old type are capable of commercial use and could have been made by anyone who chose to make them. That after the expiration of the two so-called basic patents machines constructed according to them were not used is sufficiently accounted for by the superiority of the newer machines which the defendants had introduced. For that reason the older machines did not enter into competition with them, and the defendants cannot be charged with suppressing such competition."

B. The District Court Found that the United Company's Machines Have Always Been and are Now Protected by Patents.

The District Court found as follows:—

(R. Vol. 1, p. 1115.) "At any rate, it must be accepted that from the beginning the machinery offered by the respondent corporation was, in all its essential elements, protected by patents, and that there has been no proof to the contrary."

III.

THE DEFENDANTS' LEASES OF SHOE MACHINERY.

1. INTRODUCTORY STATEMENT.

Since about 1860, when the first shoe machinery was introduced, it has been the almost invariable practice as to all the important shoe bottoming machines, and a common practice as to all kinds of shoe machines, to lease them to shoe manufacturers on a royalty basis charging a fixed amount for each pair of shoes operated on by the machine. From the very beginning of the industry practically all shoe machinery was patented, and the agreements under which the machines were leased were not only leases but also licenses under patents granting specific and limited rights to use the leased machinery in certain ways and on the terms and conditions set out in the lease and license agreements. In 1899, therefore, when the United Company was formed, its constituent companies sold no machines manufactured by them but leased all machines under lease and license agreements. The United Company continued the lease system which had been employed by the constituent companies, and it has made no fundamental change in the system. It did not disturb outstanding leases and for over a year it made no changes at all. From time to time thereafter it has made changes in the leases of specific machines just as such changes had been made from time to time by the constituent companies in order to meet new conditions, to make its system of leases consistent or to enable it to offer more satisfactory terms to lessees. It has, of course, adopted certain leases for new machines which were invented or acquired by it and not previously manufactured by the constituent companies. As it has developed General Department Machines, which now total over 170 different machines, it has either leased or sold them at the option of the shoe manufacturer, thus relaxing the policy of the constituent companies which leased machines only.

The United Company's system of leases, therefore, was not formulated at any one time, but is the result of an historical development and growth extending over many years and represents the results of years of constant effort to provide a method of furnishing this great variety of intricate and expensive machinery to shoe manufacturers on terms mutually satisfactory and fair to the shoe manufacturer and to the machinery manufacturer.

Indeed it was admitted by the United States that the modifications made by the United Company in the leases were not planned in advance and that they did not base their charge of illegality upon the intent with which they were adopted. The District Court said:—

> "At the argument the admission was made on behalf of the United States that there was no proof that at the time they formed the United Company the defendants 'had in mind the adoption of the system of leasing which they later developed.' And the position then taken by the petitioner in argument was that the leasing system referred to has resulted in illegal restraint or monopoly and that the intent which prompted its development is therefore 'absolutely immaterial'" (R. Vol. 1, pp. 1154–5).

With this admission on the part of the United States that the intent with which the lease clauses were adopted is immaterial their entire contention in respect to the leases falls. We submit that an inspection of these clauses shows conclusively that they are not inherently unlawful, and therefore, if not adopted with an unlawful intent, they are clearly proper.

Owing to the gradual growth of the shoe machinery industry and the consequent gradual development of the leases, to the fact that different forms of leases have been adopted for different machines, to the variety of conditions which arose at different times and which led to the adoption of provisions to meet them, to the great number and variety of machines, and to the great number of different kinds of shoes made requiring the use of different machines or sets of machines, the leases are necessarily complicated and require careful study to understand them.

An examination of the record will show that the provisions in the leases which were in effect when the United Company was formed were adopted for the purpose of granting the shoe manu-

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facturer satisfactory terms and at the same time securing the machinery manufacturer reasonable protection. In other words, that these provisions were adopted for the purpose of providing for the most efficient, productive, and satisfactory use of the different machines; that such modifications as have been made by the United Company have had the same purpose and object; that the provisions in the leases were not adopted for the purpose of arbitrarily excluding others or creating a monopoly, and that these provisions, or provisions of substantially the same character and having the same effect, are essential to a commercially successful leasing system.

As we have stated above, one of the principal purposes the United Company had in mind was to reduce the cost of making Goodyear Welt shoes, and to encourage shoe manufacturers to manufacture them (R. Vol. 1, p. 441, lines 38-42; Vol. 1, p. 407, lines 22-30). Various modifications of the lease system had this object in view.

2. ALLEGATIONS OF THE PETITION AS TO THE LEASES.

The basic charge of the petition, as we have shown above, is that the defendants determined to acquire a monopoly of shoe machinery, by (R. Vol. 1, p. 994):

1. Acquiring all concerns engaged in the shoe machinery business, and then

2. Refusing to sell or lease any essential machines, viz., lasting, welt sewing, and outsole stitching, heeling and metallic fastening machines, unless the shoe manufacturer took "practically all other machinery" from them.

The leases, it is alleged, were a step in carrying out the foregoing plan (R. Vol. 1, p. 994).

In order to sustain the charge of the petition, therefore, it is necessary to find that the leases require a lessee who takes lasting, welt-sewing or outsole stitching, heeling, or metallic machines to take from the United Company practically all other machinery.

In support of its allegation that the leases were steps in carrying out the foregoing plan, the petition recites that prior to the formation of the United Company a shoe manufacturer could

get machines of one of the constituent companies without being required "to use exclusively machines . . . manufactured by either of the other companies" (R. Vol. 1, p. 996). After the formation of the United Company it is alleged that the defendants,

> " . . . *discontinued* the sale to boot and shoe manufacturers of each and all of the machines included in said groups of machines . . ." (italics ours) (R. Vol. 1, p. 997),

and unlawfully devised and adopted arbitrary, oppressive and unreasonable lease and license agreements, which shoe manufacturers "are required to agree and conform to in order to obtain from said defendants any of the machines included in said groups" (R. Vol. 1, p. 997).

It is alleged that these agreements

> "*contain provisions, not found in their former lease and license agreements*, which compel boot and shoe manufacturers leasing any of such machines from defendants to agree to use exclusively one or more of the classes of machines included in said groups of machines . . . upon penalty of having all the machines included in said groups so leased to them by defendants immediately reclaimed and taken away and the lease and license agreements cancelled" (italics ours) (R. Vol. 1, p. 997).

The petition then recites that the leases adopted by the defendants contain provisions as follows (R. Vol. 1, p. 997):—

(1) An agreement to take the machines for a period of not less than seventeen years, regardless of the terms of the patents relating thereto.

(2) That lessees thereunder are compelled to obtain all duplicate parts for the machines from defendants at exorbitant prices.

(3) Many of the leases provide that the lessee shall at the expiration of seventeen years return the machines to the defendants and pay a return charge which in some cases amounts approximately to the original cost of building the machines.

(4) A provision reserving to the lessor the right to cancel all leases with shoe manufacturers if they fail to use exclusively and to their full capacity machines leased from the defendants.

The foregoing provisions, however, purport to be only a statement of the character of the provisions which the leases contain. The provisions which the petition contends are unlawful, as

carrying out the unlawful plan charged, are specified in Section XII. of the petition as follows (R. Vol. 1, p. 1028):—

(1) A covenant that the lessee shall use exclusively machines of the lessor to perform the same kind of work as that performed by the leased machine.

(2) A covenant that the lessee shall use in accomplishing work other than that for which the machine was designed only machines controlled or leased by the lessor.

(3) A condition that, should the lessee violate either of the covenants mentioned, the lessee would thereby forfeit the use not only of the machine leased, but of other machines, both those designed to accomplish the same work as the leased machine and those designed to accomplish work entirely different.

(4) A covenant that the lessee should use the leased machine for seventeen years.

A. SUMMARY OF CHARGES OF THE PETITION WITH RESPECT TO THE LEASES.

To summarize, the petition alleges that, in pursuance of the defendants' plan,—

(1) to acquire all shoe machinery concerns, and

(2) to refuse to sell or lease lasting, welt-sewing, outsole stitching, heeling, or metallic machines, unless the shoe manufacturer took practically all other machinery of them,—

the United Company—

(*a*) discontinued selling machines, and

adopted arbitrary and oppressive leases which, it is alleged in paragraph XII. of the petition (R. Vol. 1, p. 1028) were illegal in that they

(*b*) required the lessee to covenant to use the United Company's machines of the kind leased and of all other kinds exclusively,

(*c*) permitted the United Company to cancel its leases of all machines if these covenants were broken,

(*d*) required the lessee to use the leased machinery for seventeen years.

The petition also alleges that the leases required the lessee,—

(*e*) to obtain duplicate parts of the United Company for which it charged an exorbitant price;

(*f*) on the cancellation of the lease to pay exorbitant return charges.

These last provisions do not require a use of the United Company's machines and are therefore not referred to as evidence of the alleged plan to refuse to lease any machines unless practically all other machines are taken. They are apparently referred to merely as showing a general intent on the part of the United Company to oppress its lessees.

3. PROVISIONS IN THE UNITED COMPANY'S LEASES ON WHICH THE UNITED STATES RELIED IN SUPPORT OF ITS CHARGES.

The defendants' leases do not contain any provisions such as those alleged in the petition whereby the lessee covenants to use exclusively the United Company's machines of all kinds.

This being so, the United States, at the argument in the District Court, did not restrict itself to an attempt to support the allegations of the petition, but took exception to various provisions in the leases which we submit do not conform to the allegations in the petition, and contended that these provisions were illegal and tended to a monopoly of shoe machinery, even though they did not conform to the case stated by the petition. The provisions in the leases to which exception was taken by the United States are briefly as follows:—

Full Capacity Clause.

A clause requiring the lessee to use the particular machine leased to its full capacity on the work for which it is adapted so far as the lessee has work for it to do. This is referred to below as the **"Full Capacity Clause."**

This is the only clause contained in the United Company's leases (except the "Additional Machinery Clause" which was used only to a slight extent and was discarded entirely in 1907) **which obligates the lessee to use the United Company's Machines at all.**

This clause was used in various leases of the Consolidated Company prior to the formation of the United Company. It is employed by the United Company only in respect to

those principal machines for which a royalty is charged based on the amount of use. Without this clause the lessee would be at liberty not to use the machine at all, and the United Company, whose return is dependent on a royalty based on the amount of use made of the machine, would have no assurance of a return on its investment in the machine.

This clause does not require an exclusive use of the particular kind of machine leased, nor does it require any use of other machines. It merely requires that the particular machine which is installed in the lessee's factory under the lease shall be used by the lessee.

Additional Machinery Clause.

A clause found in certain leases made by the constituent companies prior to 1899 and in a few leases made by the United Company prior to 1907, but eliminated by the United Company in all leases after that date, requiring the lessee to take additional machines of the particular kind leased if he needed such machines for additional work. This is referred to below as the **"Additional Machinery Clause."**

This clause was adopted prior to the formation of the United Company to secure an adequate return on the leased machines and the inventions embodied therein after the lessor had gone to the expense of installing the machines and instructing operators in their use. It required a use by the lessee of other machines of the particular kind or class leased, but of no other kinds.

As the use of this clause was continued by the United Company after its formation only to a limited extent and was entirely discarded after 1907, more than four years before the present petition was filed, it is important in the present case only in that it shows that the United Company actually discarded from its leases the only clause which required an agreement on the part of the lessee to use any of its machines exclusively.

Exclusive Use Cancellation Clause.

A clause giving the lessor an option under a lease of a particular kind of machines, such as heeling machines, to cancel its leases of that particular kind of machines if machines of that kind obtained from it are not used by the lessee exclusively.

This clause is referred to below as the **"Exclusive Use Cancellation Clause."**

Under this clause the lessee does not covenant to use the lessor's machines of the particular kind leased exclusively, nor does the lessee agree to use the machines at all. The clause merely reserves to the lessor an option to cancel its leases of machines of a particular kind, such as heeling machines, when machines of that particular kind are not used exclusively. As we show below, this provision is necessary for the lessor's protection in order to enable it to withdraw its machines of a particular kind when, owing to the use by the shoe manufacturer of other machines of the same kind, the lessor finds that its machines are used only occasionally, or only on slow or difficult work, or that proper reports of the amount of work done on its machines are not made by the lessee so that the lessor does not receive a fair return on its investment.

This clause, or the "Additional Machinery Clause" under which the lessee covenanted to take additional machines if needed (in other words, to use the lessor's machines exclusively for operations of the particular kind or class for which the particular machinery leased under the particular lease in question was adapted) was used in most of the leases of the constituent companies, they having found by experience that such a clause was necessary to their protection under the leasing system. The continuation of this clause by the United Company, therefore, effected no change in the leasing system. Furthermore, as it does not require the lessee to use the United Company's machines at all, but merely gives the United Company an option under certain circumstances to withdraw its machines of a particular kind or class when other machines of the same kind or class are used by the lessee, it affords no support to the allegation of the petition that the leases required the lessee to covenant to use the United Company's machines exclusively.

Restricted Use Clause.

A clause restricting the use of a certain kind or group of principal machines to use on shoes operated on by certain other groups of machines. This clause is referred to below as the **"Restricted Use Clause."**

This clause is used where machines of certain departments are leased at reduced rates to be used with machines of other departments as a team or series, in which case the machines of the United Company being concededly the best in the market, and being mechanically constructed and adapted to use together, and being the only machines with which efficient service by skilled mechanics is provided, are manifestly more efficient, productive, and economical in operation when so used together as a team, and thus each machine produces a greater return for the United Company. This clause does not require the lessee to use the United Company's machines at all. On the contrary, it merely forbids the lessee to use the United Company's machines except as a team. It is simply the granting of a patent license to use a patented machine in a particular and defined field in connection with machines of other departments which are mechanically developed and adapted for use together.

Leases containing this Restricted Use Clause are alternative forms of leases. In practically every case the lessee is also offered a lease which does not contain any such restriction, but permits the lessee to use the machines without regard to his use of any of the lessor's machines of other departments. These unrestricted leases are offered lessees on terms as favorable or more favorable than those on which the machines could be obtained from the constituent companies prior to the formation of the United Company. The use of the restricted leases by the United Company, therefore, did not have the effect of preventing shoe manufacturers from obtaining machines on unrestricted leases on the same or better terms than were offered prior to the formation of the United Company. Their effect was merely to offer a wholesale rate to shoe manufacturers using a set or team of machines which were adapted for use together.

Auxiliary Restricted Use Clause.

A similar clause is employed to restrict the use of certain auxiliary machines of a department to use with the principal machines of that department. The principal machines are the recording machines on which a royalty is charged. The auxiliary machines are machines developed to aid in the work of the principal machines. They are treated as part of the principal ma-

chines and no separate royalty is charged for their use, but the return comes indirectly from the royalties on the principal machine to use with which they are restricted. Such a clause is referred to below as the **"Auxiliary Restricted Use Clause."**

This "Auxiliary Restricted Use Clause" was employed by the constituent companies, and its continuance by the United Company effected no change in the leasing system.

Cancellation for Breach Clause.

A clause permitting the lessor to cancel all leases between it and the lessee for violation of any condition contained in any of the leases which is expressed in the lease to be obligatory upon the lessee. This is referred to below as the **"Cancellation for Breach Clause."**

This clause merely permits the United Company to sever relations with a lessee who violates his agreements. If the agreements on the part of the lessee are legal, it is obviously proper that the United Company should have the right to cancel its leases if any one of them is violated. The leases of the constituent companies all provided that they might be cancelled for breach of conditions contained in those leases.

Seventeen-year Term.

A clause providing that the lease shall run for seventeen years.

This clause grants the lessee the right for an extended term to retain the leased machines for the royalty agreed upon and assures the United Company that they will be held for a sufficient term to provide an adequate return on its investment.

The leases of the constituent companies ran in some cases for seventeen years and in others for the term of the patents then or thereafter embodied in the machines or for the entire life of the machines. The seventeen-year term was adopted by the United Company in all its leases to make them consistent, and shortened rather than increased the term of the leases.

Agreement to Buy Repair Parts.

A clause requiring the lessee to purchase of the lessor duplicate parts needed to repair the leased machines, the com-

plaint being that the United Company charged exorbitant prices for such duplicate parts.

The constituent companies' leases all contained this clause, which is essential to preserving the physical integrity of the leased machine. The record shows that there was absolutely no foundation for the allegation that exorbitant prices for repair parts were charged.

Return Charges.

A clause requiring the lessee on the expiration of the lease to pay a return charge which it was alleged amounted in some cases approximately to the cost of building the machines.

This allegation also was without foundation, the record showing that the charges made upon a return of machines were considerably less than the cost of repairing them.

4. THE PROVISIONS IN THE UNITED COMPANY'S LEASES TO WHICH THE UNITED STATES TOOK EXCEPTION DO NOT SUPPORT THE ALLEGATIONS OF THE PETITION.

The foregoing brief statement of the clauses in the United Company's leases to which the United States took exception shows how utterly the United States failed to support the allegations in the petition in respect to the leases.

Those allegations, as we have shown, are that the United Company, in pursuance of the plan to acquire all shoe machinery concerns and to refuse to sell or lease lasting, welting, outsole stitching, heeling, or metallic machines, unless the shoe manufacturer took practically all other machinery of it,—

(A) discontinued selling machines and adopted arbitrary and oppressive leases, which

(B) required the lessee to use the United Company's machines of the kind leased and of all other kinds exclusively; and

(C) permitted the United Company to cancel its leases of all machines if these covenants were broken; and

(D) required the lessee to use the leased machinery for seventeen years.

A. The record shows that the constituent companies only leased and never sold machines. The allegation that the United Company discontinued the sale of machines was without foundation.

B. As shown above, there is no provision in the United Company's leases requiring the lessee to use either the machines of the particular kind leased or other machines exclusively. **The "Additional Machinery Clause" and the "Full Capacity Clause" are the only clauses which require any use of the United Company's machines whatsoever.** The Additional Machinery Clause referred only to machines of the particular kind leased, and as it was discarded by the United Company in 1907 it is immaterial in the present case. It is the only clause ever contained in the leases which required the lessee to take any machines except the particular machines he leased, and it was strictly limited to machines of the same kind required for additional work. The "Full Capacity Clause" requires the use only of the particular machine leased and therefore does not even require an exclusive use of that kind of machine.

The United States, therefore, utterly failed to support the charge on which the petition is founded that the defendants refused to lease essential machines, which it defined as lasting, welt sewing, outsole stitching, heeling, or metallic machines, unless the shoe manufacturer took practically all other machinery of it.

The only clause on which the United States relied in support of this allegation was the Restricted Use Clause, which, as pointed out above, does not require the lessee to use the machines at all, but, on the other hand, prohibits their use except under certain conditions. The contention of the United States was that this clause, while it does not require a covenant from the lessee to use the United Company's machines, does, by reason of its restrictions, induce the lessee to use not only the particular machine leased, but other principal machines to use with which it is restricted. Even this modified charge, however, was completely refuted by the fact that the United Company continued to offer unrestricted leases of its machines on terms as favorable or more favorable than those offered by the constituent companies prior to the formation of the United Company.

The District Court, therefore, held that this modified charge of

a refusal by the United Company to lease machines separately, which, previous to the formation of the United Company, were offered separately, as a means of compelling the taking of other machines, was completely unfounded, saying:—

> "It appears that after the consolidation there was no refusal or imposition of conditions as alleged, but that the defendants continued to give manufacturers terms which were substantially the same as before and in some instances better than those offered by the constituent companies before the consolidation. This is shown not only by the exhibits of 'independent' leases but by the testimony of officers of the Company" (R. Vol. 1, p. 1162).
>
> "The charge of this supposed scheme to deprive former customers of the right to use some machines unless they would also use others seems to have originated either in the erroneous assumption that a prohibitive lease was the only kind procurable, and that the former customer had no choice, or in disregard of the fact that it was merely an alternative form of lease. As the leases proved no such plan, whether of the extent alleged or of less extent, and as the evidence proves the exact contrary of what is charged, we think that the United Shoe Machinery Company is, upon the merits, entitled to a full clearance from this charge" (R. Vol. 1, pp. 1163–1164).

C. The allegation that the United Company was permitted to cancel its leases of all machines if the covenants requiring the lessee to use its machines exclusively were broken, was shown to be unfounded, since, as stated above, there were no covenants in the leases requiring the lessee to use the machines exclusively.

D. The term of the leases is for seventeen years. This is the only allegation in the petition which is substantiated by the leases themselves. An agreement that the lease of a particular machine shall run for seventeen years obviously does not require an exclusive use either of machines of the kind leased or any other machines. This clause, therefore, has no bearing on the fundamental charge made in the petition that the United Company refused to lease its essential machines unless the shoe manufacturer took practically all other machinery from it.

We submit, therefore, that the United States has wholly failed to substantiate by the leases the charge made by the petition that the defendants, acting through the United Company, planned to obtain a monopoly by refusing to lease essential ma-

chines except on condition that the shoe manufacturer should take practically all other machinery required by him.

We shall below consider the reasons for the leasing system, the leases used by the constituent companies, the modifications in the leasing system made by the United Company, and the business reasons underlying and requiring the use of the various provisions to which the United States objects and their legality.

5. THE UNITED COMPANY DID NOT DISCONTINUE THE SALE OF MACHINES—FOR THE CONSTITUENT COMPANIES ONLY LEASED AND DID NOT SELL MACHINES.

As above stated, the petition alleges that the defendants "discontinued the sale . . . of the machines . . . and . . . adopted . . . arbitrary . . . lease and license agreements" (R. Vol. 1, p. 997).

This charge that the United Company discontinued the sale of machines is absolutely without foundation. None of the constituent companies sold its machines; they were furnished to shoe manufacturers only on lease (Donham, R. Vol. 1, p. 2, lines 30–31; p. 4, lines 21–22, 28–29; Winslow, R. Vol. 1, p. 400, lines 37–39; Howe, R. Vol. 1, p. 468, lines 3–4).

The United States sought to show by Milton S. Florsheim that he had bought three Copeland Rapid Lasting Machines from the Goodyear Company (R. Vol. 1, p. 158, lines 22–25). On cross-examination Mr. Florsheim admitted he had obtained these on a lease which was introduced in evidence (R. Vol. 1, p. 165, line 40–p. 167, line 30). (See also Defendants' Exhibit 33; R. Vol. 5, p. 11.) This was the only evidence which the United States attempted to introduce in support of this important charge in its petition.

The District Court (Dodge, J.) said with reference to this charge:—

> "An attempt to support this charge by evidence wholly failed. Nothing of the kind was done, nor is it easy to see what grounds for making the charge could ever have been supposed to exist" (R. Vol. 1, p. 1153).

The United Company not only did not refuse to sell machines previously sold by the constituent companies, but on the con-

trary it did sell over 170 different kinds of General Department machines, which it developed, in contrast to the policy of the constituent companies (R. Vol. 1, p. 452, lines 39–44; p. 453, lines 1–6).

6. REASONS FOR MARKETING SHOE MACHINERY BY LEASES.

It is important to consider the reasons which had led shoe machinery manufacturers generally from the beginning of the industry to market their machinery by the lease system.

The adoption by a manufacturer of the best method of marketing his product and thereby best meeting the conditions peculiar to his goods or under which his customers do business is one of the most important elements of commercial success.

The ingenuity of modern business men has been largely directed to this problem and a great variety of methods has resulted. One manufacturer sells only at wholesale, one at retail, one through agents, another through jobbers, another through a chain of his own stores and another only upon mail orders; one leases, another sells outright; one sells for cash only, another on the instalment plan; one sells through traveling salesmen, another depends upon advertising in magazines or by letter; one offers premiums with each purchase, another sells on long-time contracts providing for all the customers' business; one makes discounts for large purchases, another declines to distinguish between large and small customers; one sells only for a money consideration, another takes stock or some share of the profits of the purchaser.

The foregoing are a few of the methods employed by modern salesmanship devised to attract customers and to provide an outlet for goods. They are all proper, normal methods because they are designed to advance the dealer's business by making his goods or terms attractive to his customers. The dealer is free to adopt any one of these methods he pleases. If he deems it the best policy to sell for cash only, no customer can demand credit; if he sells only through agents, no customer can demand that he sell directly to him; if he sells by mail only, no customer can demand that he sell at his office. Similarly, if he leases on terms which he believes best adapted to the conditions of the

industry, no customer can demand that he lease on other or different terms or that he sell as well as lease. This freedom of choice as to the method of marketing his goods is the life of competition and the very kind of activity which the Sherman Act sought to promote.

The system of leasing instead of selling shoe machinery, and charging not a fixed rental but a royalty based on the amount of use, has been a fixed and established principle in the shoe machinery industry from the date of the introduction of the first shoe machinery about 1860, and the entire business of manufacturing shoes by machinery originated and has been developed under the lease system because it was especially adapted to the conditions of that industry and was most satisfactory to the shoe manufacturer. The following are a few of the reasons:—

A. Under the lease system shoe manufacturers do not have to buy outright machines at the large prices which the manufacturer would be obliged to charge in case of a sale, as compensation not alone for the cost of the machines themselves but also for the use of the patented inventions embodied in the machines, and the great expense involved in experimenting with and developing them. Shoe manufacturers are thus saved a large initial investment in machinery and this money is left available for use in the business.

The shoe manufacturers testified almost unanimously to the advantages of this condition. Machinery depreciates rapidly and banks are unwilling to loan money on it. Furthermore, the shoe manufacturer turns his capital over rapidly and is thus able to do a large and profitable business on a small capital if he is not obliged to make a heavy investment in machines. Many shoe manufacturers are men with small capital and would be wholly unable to engage in the business if required to make a large initial investment.

Jonathan Brown, Jr., testified that depreciation in shoe machinery is so rapid from wear and on account of new machines being invented that 50 per cent. depreciation should be charged off as soon as a machine is purchased. He does not dare to carry machines as an asset at all, but if he buys a machine he charges it off as expense (R. Vol. 1, p. 732, lines 6–31).

Edward W. Burt testified that he figured about 25 per cent. depreciation on machines which he had to take care of himself.

His gross sales are six times his capital. He prefers not to tie up capital in machinery. In securing credit bankers never consider machinery worth a dollar (R. Vol. 1, p. 740, lines 29–41).

Frederick Allen testified that he turns his capital over about eight times a year. He prefers to lease rather than to purchase, because under the lease system he does not have to tie up his money in machinery "which as an asset is worthless as soon as it is installed" (R. Vol. 1, p. 722, lines 11–19).

ALANSON C. BROWN testified:—

> "The opportunity to lease our machines instead of investing our own capital in them by way of purchase has given us more money to put into other departments of our business. The capital which we invest in the materials which go into shoes we turn over about three times in the course of a year and in the usual course of business we make a profit every time. Our capital is four million and our gross business is around thirteen million a year" (R. Vol. 1, p. 618, lines 15–22).

R. P. HAZZARD testified:—

> "The capital of the Snow-Hazzard Company was $50,000. We now turn over our capital about eight times. Our investment as shown by our last audit is a little over $300,000 and during the past year we have done a business of approximately two millions and a half. We have gone on the plan of making as small a permanent investment in machinery as was possible and putting all our money into the active running of the business.
>
> "I might add right there that when the Snow-Hazzard Company was started as a $50,000 corporation, had we been obliged to have bought by outright purchase the machinery necessary to have equipped that plant, that it would have taken such a large part of our capital that our credit would not have been such as to enable us to have purchased our merchandise and conduct our business and allow us to grow as it has" (R. Vol. 1, p. 642, lines 3–16).
>
> "The thing which pleases me especially in this system is that I stand on an exact footing, so far as machinery and repairs are concerned, and everything of that kind, with every other shoe manufacturer that leases from the United Company, because I am conceited enough to think that if given an even start I can hold my own" (R. Vol. 1, p. 654, lines 3–8).

B. Under the lease system the shoe manufacturer only pays for the machines when and as he uses them. If business is poor, his royalties proportionately decrease. The amount of payment, therefore, is automatically adjusted to the amount of business which the shoe manufacturer does, and he is not burdened with heavy annual charges when business is poor.

C. The principal shoe machines are so delicate and need such constant adjustment that unless properly cared for they prove unsatisfactory. No small shoe manufacturer and few of the large shoe manufacturers can afford to maintain an efficient repair service. Nor do shoe manufacturers understand as thoroughly as the machinery manufacturers the importance of this service. In consequence, experience has shown that when machines were purchased outright they quickly got out of repair or adjustment, because of lack of proper attention, and thereby became discredited. Shoe machinery manufacturers, therefore, found that it gave better satisfaction to their customers if the machines were leased and were kept in repair by the lessor. The shoe manufacturer under this system got better machinery for his money and the machinery manufacturer a larger return.

D. From the beginning of the shoe machinery industry every machine has been to a large extent experimental until its usefulness is proved and demonstrated in actual commercial use over an extended period. Each machine as it has been developed has performed an operation which up to that time was done by hand. Shoe manufacturers hesitated to buy a machine at a large price which might not do as good work as was being done by hand, or which might otherwise prove a commercial failure, or might be supplanted within a short time by a better machine. Under the lease and license system shoe manufacturers do not have to take this risk; it is the machinery manufacturer who takes the risk.

See Strootman (R. Vol. 1, p. 744, lines 1–11).

E. By furnishing machines for a comparatively small initial cash payment or without any initial cash payment shoe machinery manufacturers were enabled to get active, energetic men to enter the shoe business and thus extend the use of their machines. To enter the shoe business no expensive factory is required, any loft being sufficient; the goods require no long time in process but are turned into cash quickly and the business can easily be started

on a small scale. The shoe machinery manufacturer is thus able to place his machines and develop his business in a way which would not be possible if a cash sale price were demanded.

As Mr. WINSLOW testified:—

"Under our system a small manufacturer has practically the same advantages as a large one as far as machine equipment is concerned. A man who goes into the business with a capital of $1,000 pays exactly the same royalty and receives exactly the same service as a man who goes into the business with a capital of $250,000" (R. Vol. 1, p. 555, lines 38–43).

FREDERICK ALLEN testified:—

"If I had had to buy my machinery I don't think I should have been able to start in business, because it would have taken all my capital to buy machinery. Under the arrangement by which I can obtain the machinery by lease, I can put all my capital into the business" (R. Vol. 1, p. 722, lines 34–38).

EDWARD W. BURT testified:—

"I am a small manufacturer. As to the effect upon my ability successfully to do business which a compulsory change in the method of leasing machines, making it necessary for the United Company to charge an initial premium when it put out its machines, would have, I am very glad you asked me that question, because I think it is a very important one. If manufacturers must buy their machines, they have got to get money from their capital, or borrow money, or get it somewhere, to buy machinery, and that takes away your working capital. Now, you must have machinery at the least expense possible in the manufacturing of shoes. And if we were obliged to buy our machines I should be very sorry. In fact, if the privilege of buying or leasing were given me, I should say lease every single time. I never would want to buy a machine.

"As to the effect which it would have had with reference to my ability to go into business at all, I never could have started. I started without any money in shoe manufacturing. I was able to do that because I could obtain my machines by this method.

"That is one of the greatest reasons why I could start in

the shoe business—because I could get machinery with practically no expense.

"I know that there are other men who from small beginnings have been enabled to start and grow. I have had experience along that line. I have had two superintendents leave me, both starting in the shoe business. They had practically no money" (R. Vol. 1, p. 741, lines 5–31).

C. Willis Bennett also testified that he could not have entered business had he been required to buy his machines (R. Vol. 1, p. 759, lines 1–20).

7. NECESSITY FOR PROVISIONS IN THE LEASES PROTECTING THE LESSOR.

A. Introductory Statement.

The United Company, under the lease system, installs in the shoe manufacturer's factory an equipment of machines, instructs the shoe manufacturer's operators in their use, and keeps the machines in proper operating condition. It depends for a fair return on its investment upon a royalty based upon the use of the machines.

The United Company, under this system, has installed millions of dollars' worth of machinery in the factories of lessees scattered all over the country. It is obvious that the leases of these machines must contain provisions carefully providing for the use and care of the machines and assuring the lessor a fair return on its investment.

The following conditions must be borne in mind in considering the provisions required in the leases:—

B. Compensation for Machines being Based on Amount of Use, Lessee must Agree to Use.

The United Company cannot manufacture and invest its money in expensive machines and install them in the shoe manufacturer's factory, instruct operatives and keep the machines in repair, depending for its return upon a royalty based on the use of the machines, unless assured that they will be used if the shoe manufacturer has work for them to perform. If the lessee were

under no obligation to them the United Company might receive no return on its investment. Mr. WINSLOW testified:—

> "The leases as existing in 1899, and as issued practically up to the present time, gave the possession of the machinery and the right to use the patents embodied in that machinery to the lessee, either for the life of all the patents that were then embodied in the machines, or for seventeen years upon his keeping certain conditions. The payment to the owner of the patents in these leases was dependent entirely upon the use that was made of the machines. Experience of the companies who were leasing machines prior to 1899 had shown them that frequently their machines would be in the hands of the manufacturers and would not be used for one reason or another. The machinery companies had gone to the expense of teaching operatives, educating the manufacturer in the use of the machines, and were by the custom of the trade called upon to teach the operator at any time in the use of those machines My own experience with the Lasting Machine Company had shown me that we might start and educate operatives on the machines two or three times, and then the machine would be stopped. Some method had to be adopted to properly protect the interests of the machinery company if it were to continue to lease machines" (R. Vol. 1, p. 443, lines 24–44).

C. Seasonal Character of Shoe Business Requires that Lessee Use Machines When He has Work.

The shoe manufacturer's business is seasonal; during three months of the year he will do twice to four times as much work as at other seasons. To enable him to do his work in his busy season the United Company must furnish him with an equipment having a capacity far in excess of his requirements during the greater part of the year. Mr. WINSLOW testified:—

> "The manufacturing of shoes is one that is divided into substantially two seasons. The manufacturer with an average production of a thousand pairs per day, in other words, who makes 300,000 pairs of shoes in the year, will ordinarily have to have a capacity to produce 600,000 pairs. His production in certain months will run at the rate of 2000 pairs per day, and in other months as low as 500 pairs per day, so that if he has the machines of our company—our entire income is dependent upon their use—we have to furnish him the equipment to make the 2000

pairs per day, although his total product only averages a thousand pairs per day. We furnish him that equipment for his maximum output, which is only used, the maximum, I am quite safe I think in saying, not over three months out of the twelve, and from that it runs down, varying according to the man's own particular business, to from twenty-five per cent. to fifty per cent." (R. Vol. 1, p. 444, lines 27–42).

It is obvious that if the shoe manufacturer, in order to provide for his maximum requirements during his comparatively short busy season, takes from the United Company a machinery equipment having a capacity in excess of his average or normal requirements, the United Company must be assured that such excess capacity taken by the shoe manufacturer be used when required. Otherwise, the United Company will furnish and the lessee will hold a machinery capacity which will not be used and for which the United Company will get no return.

D. Wholesale Price is Fair Both to United Company and to Shoe Manufacturers When its Machines are Used as a Team.

When a series of the United Company's principal machines, which are admittedly the best machines made and which have been developed and are adapted for use together, are used as a team or series and are repaired and cared for by the United Company and are thus maintained in an efficient operating condition so that no one of the team breaks down and stops the work on other machines, and when the operators are instructed in the proper use of the machines and operators are furnished the shoe manufacturer in case of necessity, each machine of the series can produce more shoes than it would produce if used with machines not so adapted for use together as a team and not so maintained and cared for. Furthermore, a series of machines can be cared for at less cost per machine than a single machine. As a result, when a shoe manufacturer desires to take the United Company's principal machines to be used together as a team or series the United Company can afford to charge a reduced or wholesale price, because it receives a larger return in royalties on each machine when so used and the cost of caring for each machine is less.

Mr. WINSLOW testified as follows in respect to the reasons for the increased productivity and efficiency of machines when used as a team:—

> "By limiting the use of one principal machine of the company to work which has been operated upon by other principal machines of the company, its use is confined to work done by machines with which we know that prompt and efficient service is furnished to keep that machine in proper condition to operate, and with operators who have been properly instructed in the operation of the machine at the expense of our company, and also with machines where new operators will be taught whenever they are needed. Now, of course, under those conditions we have a definite assurance as to the maintenance of the productivity of the machines and the quality of work that will be produced by those principal machines with which another principal machine is used" (R. Vol. 1, p. 857, lines 5–17).

E. United Company must have Right to Take Back its Machines if Lessees do not Act in Good Faith.

The United Company is dependent to a large extent upon its lessees for a correct statement of the number of shoes on which its machines operate and for a proper use of its machines.

The constituent companies which were combined into the United Company had 1,060 different lessees operating 1,079 factories (R. Vol. 1, p. 454, lines 21–23). The United Company in 1911 had 1,033 lessees operating 1,150 factories (R. Vol. 1, p. 454, line 45). An average of over 62 new concerns have started in the shoe manufacturing business in each year from 1900 to 1911, and in addition an average of over 22 new concerns have during that period succeeded old firms. 746 entirely new concerns engaged in business between March, 1900, and December 31, 1911 (Defs.' Ex. 223, R. Vol. 5, p. 390).

It is obvious that the United Company can have no assurance of the moral responsibility of many of its lessees. It is inevitable that some should act unfairly or dishonestly.

Furthermore, the United Company can have no assurance of the financial responsibility of many of its lessees. It is one of the virtues of the leasing system that it enables men having little capital and, therefore, necessarily slight financial responsibility, to engage in the business.

Under these circumstances the United Company must have fairly broad rights to withdraw its machines if it finds or has reason to believe that its machines are not properly cared for, or that the amount due in royalties is incorrectly reported, or that the lessee is otherwise violating his agreements, or if it finds that owing to the use by the lessee of other machines of the same kind as those leased, the lessee is using the United Company's machines only occasionally or only during his busy season, or only on slow or difficult work, or on shoes which although made on the United Company's machines the lessee reports as made on the other machines, and that for any of these reasons the United Company is not receiving a fair return on its investment in the machines.

F. Extended Term Necessary for Both Lessee and United Company.

The lessee embarking in business desires an assurance that he may hold his machines for an extended term and the United Company requires an assurance that the lessee will use the machines for a sufficient length of time to afford a fair return on the investment.

G. The Provisions in the Leases Objected to by the United States Attempt to Provide for and Meet the Foregoing Conditions.

The District Court said (R. Vol. 1, p. 1187):—

> "The clauses objected to are all subordinate and auxiliary to maintaining rights which unquestionably belong to the defendant; to charge their own prices and to choose as customers those who will pay those prices.
>
> "The attack of the United States is not upon these rights, but upon the particular mode in which they have sought to exercise them. Other modes, such as the requirement of arbitrary payment for the full period of the patents, would escape all such attacks. *The attack arises from the attempt to adjust the payments to the amount of use which particular manufacturers may have for the patented inventions*" (italics ours).

In considering the leases it must also be borne in mind that their purpose and effect cannot be tested solely by an examina-

tion of the wording of the clauses. In a lease of a complicated set of shoe machinery, even more than in the lease of a house or business premises, it is impossible to specify exactly and definitely every event or circumstance which should give the lessor a right to interfere for his protection. It is essential that the lessor reserve certain general rights, which, if violated, justify him in cancelling the lease if he feels such action necessary for his protection. As we show below (*infra*, pp. 415-420), the actual practice of the United Company has been to treat its lessees with the utmost liberality. The record shows that the United Company has enforced its right to cancel its leases in only five instances (apart from cases of insolvency) in each of which the lessee acted in flagrant disregard of the lessor's rights, and either used the United Company's machines without payment of any royalty at all, or abandoned their use entirely.

8. LEASE SYSTEM EMPLOYED BY THE CONSTITUENT COMPANIES PRIOR TO THE FORMATION OF THE UNITED COMPANY.

In order to understand the gradual growth of the lease system, the reasons necessitating the various provisions in the leases, and the reasons why the United Company upon its formation continued the system, and in order further to appreciate how slight were the changes made by the United Company in the system, it is necessary to consider carefully the lease system in use at the time the United Company was organized.

A. LEASES OF GOODYEAR COMPANY PRIOR TO 1899.

The Goodyear Shoe Machinery Company manufactured welt and turn sewing machines and outsole stitchers and sixteen auxiliary machines used in connection therewith. It also manufactured Ideal Lasting Machines developed and used for lasting women's welt shoes (R. Vol. 1, p. 468, lines 4–14; p. 624, line 31–p. 625, line 13; p. 626, line 36; p. 627, line 3).

(1) Lease of Goodyear Welt Set Prior to 1899 (P.'s Ex. 4, R. Vol. 3, p. 29).

The Goodyear Company leased its welt set, consisting of the Goodyear Welt and Turn Machine and the Goodyear Outsole

Stitcher and thirteen auxiliary machines as a single set and for a single royalty.

It charged an initial payment of $300 for the Welt and Turn Shoe Machines and $300 for the Outsole Stitcher and also an initial payment for each auxiliary (R. Vol. 1, p. 469, lines 16–18). It also charged a net royalty of four cents a pair for each pair of men's shoes on which the machines or any of them were used, three cents for women's shoes and boys' shoes, and less amounts for youths', misses', and children's shoes (P.'s Ex. 4, pars. Third and Fifth, R. Vol. 3, pp. 32–33).

The lessee agreed that the machine should be used only in the manufacture of "Goodyear Welts," *i.e.*, welt shoes welted and outsole-stitched on Goodyear Welters and Stitchers and that he would "*not use or permit the use of said machines, or either or any of them, upon boots or shoes in the manufacture of which any sole or welt-sewing machine not leased to him by the lessor is employed*" (italics ours) (par. Sixth, P.'s Ex. 4, R. Vol. 3, pp. 33–34).

The lease ran until the expiration of every patent referred to in the schedule of patents, or any extensions or renewals of the same (P.'s Ex. 4, par. Ninth, (*c*), R. Vol. 3, p. 35). The lessor had the right to add improvements, and if any patented improvements were added, it was provided that the lease should be construed as though such patents were contained in the original schedule (P.'s Ex. 4, par. Second, R. Vol. 3, p. 32). In other words, if the lessor added patented improvements, which he had the right to do, the lease would be continued indefinitely.

The lease could be terminated upon breach of any conditions on the part of the lessee (P.'s Ex. 4, par. Ninth, (*b*), Vol. 3, pp. 34–35). The lessee agreed to keep the machines in working order at his own expense and to procure all parts for repairing the machines from the lessor (P.'s Ex. 4, par. First, R. Vol. 3, pp. 31–32).

(2) Lease of Goodyear Turn Set Prior to 1899 (P.'s Ex. 3, R. Vol. 3, p. 22).

The Goodyear Company leased its turn set consisting of the Goodyear Welt and Turn Shoe Machine and three auxiliary machines as a single set and for a single royalty. It charged $300 as an initial payment for the turn machine, and likewise

initial payments for the auxiliary machines (R. Vol. 1, p. 21, lines 16–18; p. 469, lines 16–18). It charged a net royalty of 1½ cents per pair for men's, boys', youths', and women's shoes, and 1 cent for children's and misses' shoes (P.'s Ex. 3, pars. Third and Fifth, R. Vol. 3, pp. 24–25).

The lessee agreed that the machine should be used only in the manufacture of Goodyear turns.

The lessee agreed not to use in his factory any machines for uniting the soles of turn shoes to their uppers which were not leased to him by the lessor (P.'s Ex. 3, par Sixth, R. Vol. 3, pp. 25–26). *This clause, therefore, required an exclusive use of the Goodyear Company's turn machines.*

The lease ran for the same period as the lease of the welt set.

The lease could be terminated upon breach of any conditions (P.'s Ex. 3, par. Ninth, (*b*), R. Vol. 3, pp. 26–27).

The lessee agreed to keep the machines in working order at his own expense and to procure from the lessor all parts for repairing the machines (P.'s Ex. 3, par. First, R. Vol. 3, p. 23).

(3) Lease of Ideal Lasting Machines prior to 1899 (P.'s Ex. 5, R. Vol. 3, p. 37).

The Goodyear Company leased its Ideal Lasting Machine, together with the Rapid loose tackers used in connection therewith, for an initial payment of $300 (P.'s Ex. 5, Vol. 3, p. 44) and a royalty of one-half a cent for each pair of shoes lasted (P.'s Ex. 5, par. Fifth, pp. 40–41).

The lessee agreed not to use the machines on shoes "partially or wholly completed by the aid of any sole- or welt-sewing machine not leased to him by the Lessor" and not to use any of the rapid tackers on shoes "which have been partially or wholly lasted by the aid of any lasting machine not leased to him by the Lessor" (italics ours) (P.'s Ex. 5, par. Fourth, R. Vol. 3, p. 40). It is to be noted that this provision constituted a "Restricted Use Clause," limiting not only the use of the rapid tackers to the lasting machine or machines, but also limiting the use of the lasting machines to shoes on which the lessor's welter and stitcher were used.

The lessee agreed to buy of the lessor all tacks used in the loose tackers and hoppers (P.'s Ex. 5, par. First, R. Vol. 3, p. 39).

The lease, as in the case of the other leases of the Goodyear

machines, was to continue until the expiration of any patents embodied therein, or any patents or improvements which might thereafter be embodied in the machine by the lessor at its option (P.'s Ex. 5, par. Seventh, (*c*), and par. Second, R. Vol. 3, pp. 42, 39).

The lease could be terminated upon breach of any conditions (P.'s Ex. 5, par. Seventh, (*b*), R. Vol. 3, pp. 41–42). The lessee agreed to keep the machines in working order at his own expense, and to procure from the lessor all parts for repairing the machines (P.'s Ex. 5, par. First, R. Vol. 3, p. 39).

B. · LEASES OF CONSOLIDATED COMPANY PRIOR TO 1899.

(1) Lease of McKay and Copeland Lasting Machine Prior to 1899 (P.'s Ex. 6, R. Vol. 3, p. 45).

This machine was used for lasting heavy-weight brogans and metallic fastened and pegged shoes (R. Vol. 1, p. 3, lines 20–22).

An initial payment of $695 was required and a royalty (P.'s Ex. 6, Art. 3, R. Vol. 3, pp. 48–50; R. Vol. 1, p. 454, lines 3–8).

The lease declared it the intention of the lessee to use the machines leased for lasting all the shoes made by him applicable to said machines and not to have the machines in his possession as a means of reducing the price of hand lasting, or to influence any trade in connection with any other lasting machines not made by the lessor. The lessee further agreed to "use said machines and accessories hereby licensed and leased for rental, lasting all of his shoes and boots to their full capacity, limited only to the demands of his business; and should the demands of his business require, he shall take the license and lease of such additional machines and accessories as may be required to last all of his work, and in default of such use, the Licensor may at its option remove said machines and accessories . . . and may cancel this license and lease" (P.'s Ex. 6, Art. 12, R. Vol. 3, pp. 54–55). *This clause required the use of the machines to their full capacity and also required the exclusive use of the lessor's machines of this character.*

The lease ran "until canceled by the Licensor for breach of condition or otherwise"; in other words, it ran so long as the machine was in existence unless the lessor saw fit to cancel (P.'s Ex. 6, Art. 9, R. Vol. 3, p. 53).

The lessee agreed to buy of the lessor all spare parts for repairing the machines and also all string-nail, tack-strips, or other fastenings driven by any appliance for lasting all shoes lasted on the machines (P.'s Ex. 6, Art. 13, R. Vol. 3, p. 55). The right was reserved to cancel for breach of conditions (P.'s Ex. 6, Art. 9, R. Vol. 3, p. 53).

(2) Lease of Chase Lasting Machines Prior to 1899 (P.'s Ex. 7, R. Vol. 3, p. 57).

This machine, and the hand tackers used therewith, was used for lasting men's welts and was leased without initial payment for a royalty of one cent per pair for Goodyear shoes, with certain provisions for abatement (P.'s Ex. 7, par. Third, R. Vol. 3, pp. 60–62). If the lessor so requested, the lessee was required to pay not less than $10 per month, except when his factory was not running. If the machines were unused for four months the lessor could cancel the lease (P.'s Ex. 7, pars. Third and Eighth, R. Vol. 3, pp. 60–61, 63).

The lease declared it the intention of the lessee to use the machines leased for lasting all the shoes made by him applicable to said machines and not to have them in his possession as a means of reducing the price of hand lasting or of controlling hand lasters or of influencing a trade with the owners of any other lasting machines or reducing the price thereof. The lessee agreed to "use such machines hereby loaned for lasting all of his shoes and boots, to their full capacity, limited only by the demands of his business; and should the demands of his business require, he shall take and pay for the loan of such additional machines as may be required to do all his work" (P.'s Ex. 7, par. Twelfth, R. Vol. 3, p. 65). *This clause required the use of the machines to their full capacity and also required the exclusive use of the lessor's machines of this character.*

The lease ran until the expiration of the Letters Patent which the lessee was licensed to use, or which were or thereafter might be embodied in the machines (P.'s Ex. 7, par. Tenth, R. Vol. 3, p. 64). The lessor had the right to improve the machines (P.'s Ex. 7, par. Second, R. Vol. 3, p. 60). Thus the leases might run indefinitely.

The lessee agreed to buy all spare parts and all string-nail,

tack-strips or other fastenings of the lessor (P.'s Ex. 7, par. Thirteenth, R. Vol. 3, p. 65–66).

The lease might be cancelled for breach of conditions (P.'s Ex. 7, par. Ninth, R. Vol. 3, pp. 63–64).

(3) Lease of Consolidated Hand Method Lasting Machines (McKay) Prior to 1899 (P.'s Ex. 8, R. Vol. 3, p. 68; P.'s Ex. 9, R. Vol. 3, p. 74).

This machine was used for lasting McKay shoes. There were two alternative forms of lease, one requiring an initial payment, the other no initial payment.

Initial payment form (P.'s Ex. 8). This form required an initial payment of $300 for each machine and a royalty of one-half a cent a pair (P.'s Ex. 8, R. Vol. 3, pp. 69–70).

The lease ran until the expiration of all patents embodied in the machines or in any improvements thereafter attached thereto, which improvements the lessor had the right to make (P.'s Ex. 8, pars. Eighth and Sixth, R. Vol. 3, pp. 73, 71–72).

The lessee agreed to obtain all duplicate parts from the lessor. (P.'s Ex. 8, par. Sixth, R. Vol. 3, p. 72). The right was reserved to terminate for breach of conditions (P.'s Ex. 8, par. Seventh, R. Vol. 3, p. 72).

Non-initial payment form (P.'s Ex. 9). This form required a royalty of five-eighths of a cent per pair, with a minimum of $180 a year (P.'s Ex. 9, par. Third, R. Vol. 3, p. 77). If the machines were unused for four months the lease might be cancelled (P.'s Ex. 9, par. Eighth, R. Vol. 3, p. 79).

It was declared the intention of the lessee to use the machine for lasting all shoes made by him applicable to the machine, and the lessee agreed to use the machine "for lasting all of his boots and shoes to its full capacity, limited only by the demands of his business; and should the demands of his business require he shall take the license and lease of such additional machines as may be needed to do all his work" (P.'s Ex. 9, par. Twelfth, R. Vol. 3, pp. 80–81). *It therefore required a use of the leased machines to their full capacity and also required an exclusive use of machines of this kind.*

The lease ran until cancelled by the lessor for breach of condition or otherwise; that is, *it ran at the lessor's option so long*

as the machine was in existence (P.'s Ex. 9, par. Ninth, R. Vol. 3, pp. 79–80).

The lessee agreed to obtain all duplicate parts from the lessor, and wire used in lasting in the machines (P.'s Ex. 9, par. Thirteenth, R. Vol. 3, p. 81). The right was reserved to terminate for breach of conditions (P.'s Ex. 9, R. Vol. 3, p. 76).

(4) Lease of Consolidated Hand Method Lasting Machine (Welt) Prior to 1899 (P.'s Ex. 10, R. Vol. 3, p. 82).

This is a machine which the Company was just developing in 1899. A lease had been prepared prior to the formation of the United Company.

This lease required no initial payment and charged a royalty of one cent per pair (R. Vol. 1, p. 4, lines 9–13; P.'s Ex. 10, par. Third, R. Vol. 3, p. 85).

The lease ran until cancelled by the lessor for breach of condition or otherwise (P.'s Ex. 10, par. Ninth, R. Vol. 3, p. 87). It was declared the intention of the lessee to use the machine for lasting all the shoes made by him applicable to such machine, and the lessee agreed to use the machine "for lasting all of his boots and shoes to its full capacity, limited only by the demands of his business; and should the demands of his business require he shall take the license and lease of such additional machines as may be needed to do all his work" (P.'s Ex. 10, par. Twelfth, R. Vol. 3, pp. 88–89). *It therefore required a use of the leased machines to their full capacity, and also required an exclusive use of machines of this kind.*

The lessee was required to obtain all spare parts of the lessor and the lease could be cancelled for breach of condition (P.'s Ex. 10, par. Thirteenth, R. Vol. 3, p. 89; par. Ninth, R. Vol. 3, p. 87).

C. LEASES OF McKAY COMPANY PRIOR TO 1899.

(1) Lease of Heeling Machines Prior to 1899 (P.'s Ex. 11, R. Vol. 3, p. 90).

A royalty of one-fourth of a cent was charged and this charge extended to all heels made by or for the lessee, whether or not made by the lessor's machines (P.'s Ex. 11, par. Third, R. Vol. 3, pp. 97–98). The lessor reserved the right to cancel

if the lessee "*provides himself with any other machine to do any part of the work which any of said Lessors' machines are capable of doing*" (italics ours) (P.'s Ex. 11, par. Eighth, R. Vol. 3, p. 100). The lease ran for seventeen years "and for such further time as may be covered by the term of any Letters Patent now or hereafter owned by the Lessors, and any inventions of which are contained in any of the 'machinery' hereby leased or which shall be added to or embodied in said 'machinery' or used in connection therewith" (P.'s Ex. 11, par. Eighth, R. Vol. 3, p. 100). The lessor had the right to add improvements. The lessee agreed to buy all spare parts from the lessor (P.'s Ex. 11, pars. Second and First, R. Vol. 3, p. 97).

The lease could be terminated for breach of conditions (P.'s Ex. 11, R. Vol. 3, p. 96).

(2) Lease of Metallic Machines Prior to 1899 (P.'s Ex. 12, R. Vol. 3, p. 103).

This lease is upon an initial payment form which required the lessee to pay 10 cents a pair for all shoes operated on unless he should purchase of the lessor all the material used in the machines for fastening the shoes, which the lease stated was to be sold "at prices much in excess of the cost to the Lessors, with the intent that such excess shall be the rent and license fee hereunder" (P.'s Ex. 12, par. Third, R. Vol. 3, p. 107). This was in lieu of other royalty. The lease, however, carries a rider eliminating the initial payment and providing that the lessor has the right to terminate the lease whenever the lessee "*shall provide himself with any other machine to do any part of the work which said lessors' machines are, in the lessors' opinion, capable of doing*" (italics ours) (P.'s Ex. 12, Rider, R. Vol. 3, p. 112).

The lease ran until the expiration of all Letters Patent, embodied or thereafter embodied in the machines, by the lessor (P.'s Ex. 12, par. Ninth, R. Vol. 3, p. 110).

The lease carried a rider which provided the lessor might cancel if the lessee did not purchase all spare parts of the lessor (P.'s Ex. 12, Rider, R. Vol. 3, pp. 112–113, and par. Eighth, R. Vol. 3, p. 110).

(3) Lease of Davey Pegging Machine Prior to 1899 (P.'s Ex. 13, R. Vol. 3, p. 113).

A royalty of three-fourths of a cent was charged.

The lessee agreed that "he will do all the pegging of boots and shoes manufactured by him upon the said machines of the Lessor which are leased hereby, and that in case he has too much work for the machines hereby leased, he will take from the Lessor, under this lease or a similar lease containing the same terms and provisions, sufficient additional machines to perform the work" (P.'s Ex. 13, par. Fifth, R. Vol. 3, p. 118). *It therefore required an exclusive use of the machines.*

The lease continued until the expiration of Letters Patent embodied in the machine or on any inventions thereafter added to the machine, which improvements the lessor had the right to make (P.'s Ex. 13, pars. Tenth and Second, R. Vol. 3, pp. 120, 116). All spare parts were to be purchased from the lessor and the lease might be terminated for breach of conditions (P.'s Ex. 13, pars. First and Ninth, R. Vol. 3, pp. 115–16, 119).

9. SUMMARY OF LEASE SITUATION JUST PRIOR TO THE DATE OF THE FORMATION OF THE UNITED COMPANY.

A. General Summary of Provisions in Leases.

From the foregoing it will be seen that the system of leases of the Constituent Companies in effect at the date of the formation of the United Company incorporated the following provisions:

1. Machines could not be bought but were only leased.

2. When two or more machines were put out by the same company which were used on the same shoe, the machines were generally leased as a group. Thus the Goodyear Welter, Stitcher and Auxiliaries were leased for a single royalty. The Welter and Stitcher were restricted to use together and the auxiliaries were restricted to use on shoes operated on by the Welter and Stitcher (P.'s Ex. 4, par. Sixth). The Tackers were leased with the Ideal Machine for a single royalty and restricted to use on shoes operated on by the Ideal Machine (P.'s Ex. 5, par. Fourth). The various heeling machines of the McKay Company were leased as a whole for a single royalty (P.'s Ex. 11). In other

words, these leases contained the "Auxiliary Restricted Use Clause." The Ideal Laster was restricted to use on shoes operated on by the Welter and Stitcher, an instance of restricting a principal machine of one department to use with a principal machine of another department, *i.e.*, the "Restricted Use Clause."

3. Many of the leases required the lessee to use the lessor's machines of the kind leased exclusively, that is, they contained a direct agreement to this effect, or contained the "Additional Machinery Clause," which required the lessee to take additional machinery for all work which he had of the kind for which the machines were adapted (Goodyear Turn Set, P.'s Ex. 3, par. Sixth; McKay and Copeland Machine, P.'s Ex. 6, par. Twelfth; Chase Machine, P.'s Ex. 7, par. Twelfth; Consolidated Hand-method McKay Machine, P.'s Ex. 9, par. Twelfth; Consolidated McKay Hand-method Welt Machine, P.'s Ex. 10, par. Twelfth; Pegging Machine, P.'s Ex. 13, par. Fifth).

4. The leases of the McKay Company contained the "Exclusive Use Cancellation Clause" which permitted the lessor to cancel the lease if machines of the same kind as those leased were not used exclusively by the lessee (Metallic Machines, P.'s Ex. 12, Rider; Heeling Machine, P.'s Ex. 11, par. Eighth).

5. All of the leases ran for long and in most cases indefinite periods. In the case of the McKay and Copeland Machine, the non-initial lease of the Consolidated Hand-method McKay Machine and the Consolidated Hand-method Welt Machine, the lease ran until cancelled for breach of conditions; in other words, it ran for the life of the machine (P.'s Ex. 6, par. Ninth; P.'s Ex. 9, par. Ninth; P.'s Ex. 10, par. Ninth).

In the case of the heeling machines the leases ran for seventeen years and for such further time as any patents embodied then or thereafter in the machines were in force (P.'s Ex. 11, par. Eighth). In all other cases the leases ran for the life of the patents then embodied, or which might thereafter be embodied in the machines.

6. Most of the leases of the Consolidated Company contained the "Full Capacity Clause" (P.'s Ex. 6, par. Twelfth; P.'s Ex. 7, par. Twelfth; P.'s Ex. 9, par. Twelfth; P.'s Ex. 10, par. Twelfth).

7. All the leases permitted the lessor to cancel for breach of conditions.

8. All the leases required the lessee to obtain extra or duplicate parts required on the machines from the lessor.

9. The Goodyear Company required an initial payment upon the installation of its machines to cover the cost of installation and instruction of operatives. The Consolidated Company required an initial payment for its McKay & Copeland Machine and on one form of lease for its Consolidated Hand-method McKay Machine, and no initial payment on its other leases. The McKay Company had required an initial payment, but in 1899 was considering a change, and was temporarily loaning machines without initial payment.

B. Provisions by which the Constituent Companies Protected Themselves when Leasing Machines without Initial Payment.

Where the shoe machinery manufacturer as lessor installs his machinery in the factory of a lessee and instructs such lessee's operatives in the use of the machinery, the lessor to be paid by a royalty based on the amount the machinery is used, it is, of course, essential that the lessor be protected as to the amount of use in order to assure him an adequate return. He cannot afford to permit the lessee to keep the machinery idle or use it only on his difficult and slow work, or use it only at especially busy times, doing his work on other machines at other times; nor can he afford to permit the lessee to use the machine under such factory conditions that it cannot be determined how much the machine is actually used. Such protection is especially essential when no initial payment is required from the lessee. This protection was afforded in the leases of the constituent companies in various ways, some used in one lease and some in another. The following provisions are illustrations:—

(*a*) The lessee was required to use the machines to capacity, limited only by the demands of his business (P.'s Ex. 6, par. Twelfth; P.'s Ex. 7, par. Twelfth; P.'s Ex. 9, par Twelfth; P.'s Ex. 10, par. Twelfth).

(*b*) It was agreed that the lessor might cancel the lease if the machines were unused for a certain length of time (P.'s Ex. 7, par. Eighth; P.'s Ex. 9, par. Eighth).

(*c*) The lessor was permitted to cancel the leases of a type of machines if machines of that type were not used exclusively (P.'s Ex. 12, Rider; P.'s Ex. 11, par. Eighth).

(*d*) It was provided that the lessee should take additional

machines if he had more work than the leased machines could do (P.'s Ex. 6, par. Twelfth; P.'s Ex. 7, par. Twelfth; P.'s Ex. 9, par. Twelfth; P.'s Ex. 10, par. Twelfth).

(*e*) It was provided that the lessee should pay at the royalty rate in respect to all shoes whether or not made on the lessor's machines (P.'s Ex. 11, par. Third).

(*f*) The lessee guaranteed a minimum royalty (P.'s Ex. 7, par. Third; P.'s Ex. 9, par. Third).

(*g*) The lessor was given the right to cancel the lease if the machine was not used to the extent of earning a certain royalty within a given time (P.'s Ex. 6, par. Eighth).

(*h*) It was provided that the lessee should not hold the machines in his possession as a means of reducing the price of hand work or to influence a trade for other machines (P.'s Ex. 7, par. Twelfth; P.'s Ex. 9, par. Twelfth; P.'s Ex. 10, par. Twelfth).

Mr. Donham testified as follows with reference to the reasons for the introduction of certain of these clauses by the constituent companies upon the removal of the initial payments:—

> "Prior to the introduction of the non-initial payment leases, each time a lessee took a machine he had to pay down a certain amount of money, and he was not likely to do that unless he wanted the machine, but when machines were put out without initial payments the situation changed. The lessee then had no money in the machines and it was entirely the money of the lessor that was in them, and unless the lessor protected itself in some other way there was nothing to prevent a manufacturer from taking machines with no intention of using them—for example, simply to have them stand in his factory as a threat to his hand labor, to use as a means of trading for some other machine, or to use in case of an emergency.
>
> "So, when the constituent companies took off the initial payments before 1899, they simultaneously sought to protect themselves in several different ways against non-use or mis-use of the machines. Usually two or three different methods were adopted in the same lease. Provisions were inserted that the lessor might cancel the lease if the machines remained unused for a certain length of time; that he might cancel if they were not used to the extent of earning a certain amount of royalty within a certain time; that the lessee should pay a minimum guaranty in case the machines were not used enough to earn the amount of the guaranty; that the machines should be used for doing all

of a certain kind of work which a lessee might have; that the machines should be used for a certain kind of work only. The full capacity clause was inserted; and provisions were inserted that, in case the lessee had more work than could be done by the machines under lease, he should take additional machines; and that if he did not do so, the lessor could cancel his lease and take out his machines. There were also agreements in some cases that the lessee would not introduce any machinery not obtained from the lessor for doing the same work as done by the lessor's machines, and there were various limitations as to the manner and method of using the machines; for instance, a provision that the lessee should not retain the machines for the purpose of controlling his hand operatives or negotiating trades with other companies.

"In my study of the lease situation prior to 1899, I find that in all cases when the companies began to offer machines without initial payments they sought in some or all of these ways to protect themselves against the non-use or mis-use of the machines" (R. Vol. 1, p. 24, line 22; p. 25, line 17).

10. THE UNITED COMPANY NECESSARILY CONTINUED THE LEASING SYSTEM.

Such was the system of leasing machines in effect when the United Company was organized. It had gradually developed since the very beginning of the shoe machinery industry. Its general acceptance proved it to be the method best adapted to the needs of both the shoe machinery manufacturer and the shoe manufacturer.

The United Company could not have changed the essentials of this system even had it so desired without throwing the entire shoe business of the country into confusion. It could not have recalled and cancelled the outstanding leases without the consent of the lessees which it could not have obtained. As to all machines then outstanding it was obviously necessary to continue the system. The great majority of shoe manufacturers did business on a small scale and had comparatively little capital. They had been induced to enter the business by the offer of machines upon the lease system. Had the United Company refused to furnish additional machines on this basis, it would have seriously crippled many of these lessees and worked a great injustice. On the other hand, if it did continue to furnish ma-

chines on lease, it was essential that it continue the clauses which experience showed was necessary for the protection of the lessor.

Apart, then, from the fact that the United Company believed its lease system best adapted to the needs and conditions of the business, it found itself practically pledged to its continuance.

II. MODIFICATIONS BY UNITED COMPANY OF LEASES OF CONSTITUENT COMPANIES.

A. Introductory Statement.

The United Company made no modifications in the leases for more than a year after its formation, but continued to use the forms of leases employed by the constituent companies. Thereafter from time to time it made modifications in its leases, either to make them consistent, or gradually from time to time as special conditions relating to the machines of a particular kind demanded.

In making modifications in its leases, outstanding leases were not disturbed; Mr. Donham testified:—

> "After the formation of the United Company that company did nothing whatever with reference to the outstanding leases under which machinery had been obtained by manufacturers from the constituent companies. The manufacturers continued to hold their machines under the old leases so long as those leases continued to run. When the United Company adopted a new form of lease, it was offered to any lessees to take, if they desired. Old lessees had the privilege of changing to the new form if they wished to do so. But if the old lessees did not want the new leases they could remain undisturbed and enjoy their machines under the old forms of leases. A good many old leases issued by the constituent companies before the organization of the United Company are still outstanding" (R. Vol. 1, p. 19, line 40; p. 20, line 8).

The leases of the different constituent companies, as we have shown above, differed somewhat in their terms. Most of the modifications in the leases made by the United Company have relaxed restrictions rather than imposed additional restrictions.

An examination of the modifications of the leases of machines which had been put out by the constituent companies will show

that the two principal changes made in these leases by the United Company were the adoption in 1900 of an alternative form of lease for Metallic Machines containing a restricted use clause restricting the use of the machines to use with the United Company's Goodyear Welter and Stitcher and Lasting Machines, and the adoption in 1904 of an alternative form of lease for Heeling Machines containing a restricted use clause restricting their use to use with the United Company's Goodyear Welter and Stitcher, Lasting, Pegging and Metallic Machines. These restricted use forms of lease were optional and lessees could obtain the use of these machines as before without these restrictions.

The adoption of these alternative restricted use leases occurred long after the formation of the United Company, and an examination of the conditions which called for their adoption shows conclusively that they were adopted for the sole purpose of giving lessees better terms.

B. ADOPTION OF RESTRICTED USE CLAUSE IN METALLIC MACHINE LEASES.

With respect to the adoption of the restricted use clause in the leases of metallic machines, Mr. WINSLOW testified as follows (R. Vol. 1, p. 438, line 5; p. 439, lines 21, 31–38):

> "The first change made by the United Company in the method of marketing any of the machines which had been put out by the constituent companies prior to the organization of the United Company was the adoption of the new metallic lease of the United Company, about the middle of the year 1900.
>
> "For a year or two before 1899 the McKay Company had been putting out its machines without any lease, and that practice was continued by the United Company up to the middle of the year 1900.
>
> "At that time Mr. Charles H. Willson, who had been assistant to Mr. Brooks in the management of the metallic end of the McKay business, reported to me that the price of copper had been constantly advancing so that there was not a proper margin of profit in the sale of wire material used in the metallic machines, that he had called Mr. Brooks' attention to that fact just before our coming together, and that before 1899 he had prepared a list of advanced prices at which the material should be sold. He

suggested to me that something should be done and that I should take the matter up.

"Great amounts of brass wire and nails are used in the metallic fastening machines, and the price of copper is the important factor in the cost of that material. We use spelter [brass], composed of two parts copper and one of zinc.

"In January, 1898, copper was eleven cents a pound; in January, 1899, 12.8 cents per pound; in January, 1900, and in January, 1901, 17 cents per pound. During 1900 the lowest price was 16 cents in four months, 17 cents in three months, and from 16½ to 16¾ in four months. It averaged about 16½ cents a month.

"The old leases provided that the minimum amount of material for each metallic machine should be 400 pounds a year and a very substantial amount of that would be copper.

"This very considerable increase in the price of copper was a very serious factor, because the prices of the material used in the metallic machines constituted the entire royalty received for the use and care of those machines, and the margin between the cost of the material to the company and the price at which it was sold to represent that royalty had been fixed years prior to 1899, when copper was very much below these prices. The increase from 11 cents to 16 cents, of course, all came out of the royalty, so that it was a very serious question. All the royalty we got was the profit on the material, and when the material increased in cost the royalty disappeared.

"In view of this situation we adopted a policy of limiting the use of those metallic machines to work that had been done on machines of some other department that paid us a royalty. We restricted the use of the machines to footwear which had been lasted and welted and stitched upon machines leased of the United Company. That policy was adopted about August, 1900.

"That is, we got our royalty indirectly. We did not increase the price of material furnished for the metallic machines nor did we increase the royalty on the machines to use with which we restricted the metallic machines.

"We also adopted, in February, 1901, an alternative independent form of lease by which the use of the metallic machines was not limited to use with the machines of any other department and under which the manufacturer paid ten per cent. more for his material than he did under the limited license form. This form of lease was the result of negotiation and agreement with the manufacturers.

"Both forms of leases were offered to every lessee of the United Company simultaneously and he made his choice.

. . . . . .

"Since that time manufacturers have had a chance to take the metallic machines upon either of these forms, or more lately on a lease with an initial payment which is not limited to use with machines of any other department. Accordingly manufacturers have more recently had three alternatives, although it has been the intention of the company to withdraw the ten per cent. form and substitute the initial payment lease in order that the price of material might be uniform to all lessees."

C. ADOPTION OF RESTRICTED USE CLAUSE IN HEELING MACHINE LEASES.

With respect to the adoption of the restricted use clause in the heeling machine leases Mr. WINSLOW testified as follows (R. Vol. 1, p. 440, line 16; p. 441, line 42):—

"There was no change in the method of marketing the heeling machines until the year 1904. As to the occasion for the change which was made in that year, in the early Spring of 1904, as a result of long consideration of the subject, we had started to get out a lease for the Goodyear machines and their auxiliaries, without requiring the payment of an initial price, as had always been the case up to that time. As there were a great many machines in that department, and the amount involved was very large, that matter received a great deal of consideration, and it was not until late in that year that such a lease was finally prepared, not in fact until months after we expected to have it ready. Having that in contemplation, we had decided that if we were to remove that source of income, give up that source of income for the company, that we should be entitled to receive from that factory a surety of a further income, so the heeling machines were limited by that lease to use with the Goodyear department machines and some other departments.

"That was in effect simultaneous with the taking off of the initial payment on the Goodyear machines, because during the year 1904, while we had under contemplation this lease and were working on it, we furnished to a large number of manufacturers the loan of Goodyear department machines, and my remembrance is that in the case of every machine that was placed out after July 1st in that year, 1904, the manufacturer was allowed to exercise his choice of taking them upon the non-initial form of lease when it was gotten out, or the initial payment.

"With reference to preserving an alternative form of heeling department lease, it has always been the policy of the

company to maintain the right of the lessee to take a machine upon the preceding form of lease, if he cared to have it that way. There never has been a time when a lessee could not obtain the machines of any department upon an independent form of lease.

"The business reasons which led us to the adoption of the form of Goodyear lease without the payment of initial premium but accompanied by restrictive leases in the heeling department and the lasting department were as follows:

"The manufacture of Goodyear welt shoes required up to that time the investment of a very much larger amount of money for machinery and equipment than was required for any of the other types of shoes. This had resulted in the manufacture of welt shoes being limited to quite a large degree to those manufacturers who had a substantial amount of capital, but some of those manufacturers had seen their businesses grow so fast that they were embarrassed to find the money to add to their equipment. That was especially true as regards the auxiliary machines. Our company had spent a great many thousands of dollars to develop the auxiliary machines and believed that the use of all the auxiliary machines would produce a better shoe and that every manufacturer ought to have the benefit of them. They would facilitate the manufacture of a shoe, but it was a grave question with many of the manufacturers whether the improvements in quality or the little savings that could be made by the use of the auxiliary machines would warrant their investing their money in those machines in a fixed form rather than using it in their business, where they turned it over two or three times a year.

"Furthermore, the removal of initial payments would allow those who were entering into shoemaking, and all the other small manufacturers who were making other kinds of shoes, to equip their factories with a complete system for making Goodyear welt shoes so that they would be as well equipped as the largest and richest manufacturer in the country. The United Company believed that if those opportunities were offered its revenue and the manufacture of the Goodyear welt shoe would be very much increased. This of course required an investment by the United Company of a very large sum of money without any immediate return.

"I believed in the Goodyear shoe. I think there is no question in the minds of manufacturers, or of wearers who know the differences between shoes, that it is the best kind of footwear for any person to wear, and our endeavor was to bring that shoe within the reach of everyone."

D. SUMMARY OF MODIFICATIONS MADE BY THE UNITED COMPANY IN THE CONSTITUENT COMPANIES' LEASES.

(1) GENERAL SUMMARY OF MODIFICATIONS.

As we have stated, the modifications made by the United Company in the constituent companies' leases were for the purpose of making the leases consistent or to meet new or special conditions requiring a change. It should be very clearly understood that these modifications did not apply merely to machines of the exact type acquired from the constituent companies, but to entirely new machines or machines remodeled, improved, made vastly more efficient by the inventions of the experts of the United Company, to which had been added many new auxiliaries similarly invented and developed mostly for the purpose of facilitating the manufacture of the Goodyear shoe. The following is a summary of the modifications:—

1. The period of all the leases has been limited to seventeen years.

This was done to make the leases consistent and to make them run for a definite term. The employment of this definite term of seventeen years did not increase the term of the leases. Some of the leases of the constituent companies ran for the life of the machine; some ran for seventeen years and for such longer time as the patents embodied in the machines were in existence, and some ran for the life of the patents and for such further time as any patents then or thereafter embodied in the machines were in existence.

2. The "Additional Machinery Clause," employed in a number of the leases of the constituent companies, requiring the lessee to take additional machines from the lessor for additional work, thus requiring the lessee to use machines of the kind leased exclusively, was eliminated from all leases in or before 1907. The "Exclusive Use Cancellation Clause," that is, a clause permitting the lessor to cancel leases of its machines of the particular kind covered by the lease, if machines of that particular kind were not used exclusively, which clause had been used by the McKay Company prior to the organization of the United Company, was substituted for the "Additional Machinery Clause" and inserted

in most of the leases of royalty paying machines. By this clause the lessee was under no obligation to use the machines of the kind used exclusively. An option was reserved to the lessor to cancel if they were not so used.

If the "Additional Machinery Clause" which had been used by the constituent companies closed the door to competitors, the "Exclusive Use Cancellation Clause" which the United Company substituted for it clearly opened the door to competition.

3. The "Full Capacity Clause" requiring the use of the machines leased to their full capacity, so far as the lessee had work which they could perform, which was employed in certain of the leases of the constituent companies, was continued by the United Company and made to apply to such of its machines as are used to measure the amount of work done and royalty to be paid.

4. The "Restricted Use Clause" was employed in alternative forms of leases for certain groups of machines limiting their use to use on shoes operated on also by one or more other groups of machines leased from the United Company.

This is the provision most strenuously attacked by the United States. It was employed prior to the formation of the United Company by the Goodyear Company, which restricted the use of its lasting machines on welted shoes to use on shoes operated on by the welter and stitcher.

This clause, as we have explained, offers a wholesale rate to those lessees who desire to use two or more groups of the lessor's machines together.

In every instance where a lease of this kind restricting the use of the machines to use with certain other groups is offered, an alternative form of lease is also offered in which the same or a smaller initial payment than that formerly required by the constituent companies is charged and such restriction is omitted. These initial payment forms of lease without the Restricted Use Clause are as favorable or more favorable than the leases offered by the constituent companies prior to the formation of the United Company.

5. The United Company has adopted the "Cancellation for Breach Clause" in its new leases, permitting it to cancel all leases with the lessee for violation of any condition expressed by the lease to be obligatory upon the lessee. This merely permits

the United Company to sever relations with a lessee who violates his agreements. Prior to the organization of the United Company the constituent companies leased their machines on a single lease, adding to the old lease the numbers of the machines leased after the first one, so a single cancellation clause gave them the right in case of necessity to sever relations with a lessee. The United Company practically makes a separate lease for each machine so that the effect of its "Cancellation for Breach Clause" is practically the same as the effect of the cancellation clause in the leases of the constituent companies.

(2) MODIFICATIONS OF LEASES OF GOODYEAR MACHINES.

The United Company made no changes in the Goodyear Machinery leases until December, 1900, a year and nine months after its organization (R. Vol. 1, p. 7, lines 19–23).

The lease then adopted (P.'s Ex. 23, R. Vol. 3, p. 204) contained in the fourth clause the same restrictions upon the use of the machines as was contained in the former Goodyear Company lease (P.'s Ex. 23, par. Four, R. Vol. 3, p. 207; for description of this lease see also *supra*, pp. 262–264). This new form of lease was made applicable both to the welt set and the turn set of machines; the Goodyear Company had used different leases for the two sets of machines (R. Vol. 1, p. 7, lines 23–26).

In the new lease the United Company omitted the clause previously contained in the turn set lease (P.'s Ex. 3) by which the lessee agreed in Clause Sixth not to use in its factory any sewing machines not leased from the lessor and substituted the "Exclusive Use Cancellation Clause" giving the lessor an option to cancel if its machines were not used exclusively (P.'s Ex. 23, par. Seven, R. Vol. 3, p. 209). The royalty in turn shoes was reduced 50 per cent. from a net price of 1½ cents for women's shoes to ¾ of a cent (P.'s Ex. 23, R. Vol. 3, p. 207).

The principal changes then were the reduction of the royalty on the turn machines and the elimination of the agreement in the turn lease that the machines be used exclusively.

No further change was made until January 1, 1905. In the fall of 1904 the United Company determined to offer an optional form of lease for its Goodyear set without the initial payments.

The initial payment theretofore charged was $300 for the welter and turn machine and $300 for the stitcher (R. Vol. 1, p. 21, lines 10–12). The initial payments on the auxiliary machines ran as high as $500 for the more important machines (Defs.' Ex. 230A, R. Vol. 5, p. 443). It had been one of the purposes in forming the United Company to reduce if possible the cost of installing Goodyear machines and thus to extend their use (R. Vol. 1, p. 407, lines 22–30). January 1, 1905, a new form of lease without initial payment was put out (R. Vol. 1, p. 7, lines 36–41). Two forms of lease were provided, one for the sewing machines, including the welter and stitcher, and one for the auxiliary machines (P.'s Ex. 24, R. Vol. 3, p. 214; P.'s Ex. 25, R. Vol. 3, p. 226).

In these new forms no change was made in the restrictions imposed on the use of the machines. As in the case of the old Goodyear leases the welter and stitcher were to be used together and the auxiliary machines were limited to use with the welter and stitcher. To compensate for the removal of the initial payment the "Full Capacity Clause" was inserted, but it was made applicable only to the welter and stitcher, which are the two machines which record the amount of use (P.'s Ex. 24). The lessee agreed to pay royalty on all welted and turn shoes manufactured by him by the aid of machinery (P.'s Ex. 24, par. Six, R. Vol. 3, p. 218). A small minimum payment was guaranteed and a payment upon the return of the machine was provided for amounting to only ½ of the initial payment previously demanded.

In the lease of auxiliary machines a small annual rental for each machine was substituted for the initial payment (P.'s Ex. 25). This annual rental was very small compared with the initial payment previously required (Defs.' Ex. 230A, R. Vol. 5, p. 443). It was required so that a lessee should not, because they cost him nothing, take and hold auxiliary machines on which he paid no royalty, which were not needed by him.

The United Company continued to put out an initial payment form of lease (P.'s Ex. 26, R. Vol. 3, p. 241) which contained a full capacity clause, but otherwise was substantially the same as the form adopted in 1900 which followed the old Goodyear form of lease. The lessee, therefore, who chose to make the initial payments which had been required by the Goodyear Company and the United Company theretofore could just as

before get machines on the same terms previously asked by the Goodyear Company.

As Mr. WINSLOW testified:—

> "Both forms of Goodyear department leases, the old initial premium form and the non-initial premium form, have been continued as alternatives up to the present day at the choice of the manufacturer.
>
> "The difference between these leases, other than the initial premium, is that under the non-initial form the lessee paid royalty on all shoes welted or stitched in his factory, while on the initial form he paid royalty on all shoes welted or stitched on the leased machines" (R. Vol. 1, p. 442, lines 4–12).

In addition to these modifications in the regular form of leases various riders have from time to time been adopted to meet the wishes of lessees having special conditions to meet or special uses to which they wished to put the machine (Defs.' Exs. 278–279–280–281–283–284–285–286–287–288–289–290–291–292–293–294, R. Vol. 5, pp. 777–94). For example, Defendants' Exhibit 278 permits the auxiliary machines of the Goodyear Department to be used upon classes of footwear other than Goodyear Welt shoes. (For an explanation of these riders see R. Vol. 1, pp. 822–5.) When any such rider was executed for one lessee it was immediately made available to any lessee who wished it (R. Vol. 1, p. 823, lines 7–16).

Mr. DONHAM testified:—

> "Before the formation of the United Company the Goodyear Company charged an initial payment of $300 each on the welter and the stitcher. That sum has never been increased by the United Company. Wherever an initial payment has been charged by the United Company on the welter and the stitcher it has remained the same; but in 1905 the United Company offered those machines without that initial payment. The royalty charged by the Goodyear Company, before the United Company was formed, was the same as to-day. It has never been increased, but in the meantime both the welter and the stitcher have been very much improved, the auxiliary machines which the Goodyear Company had have been improved, and the United Company has introduced many additional auxiliary machines, all for the same royalty.

"In Plaintiff's Exhibit 25, the form of lease for Goodyear auxiliary machines, the figures in column 2 of the schedule are the small annual rentals paid for the machines against which they are set, when the machines are taken without initial payment. Otherwise there is no charge whatsoever for the use of those machines, but they are limited to use with the welting and stitching machines, in respect to which there is a royalty charge. That royalty charge for the principal machines is the same whether the lessee has the auxiliary machines or not.

"When the United Company was formed there were 16 or 17 auxiliary machines. The number has been increased, and now there are about 30 auxiliary machines. Those are all furnished to lessees of the welter and stitcher in the same way that the original 16 or 17 machines were furnished, without increase in the royalty and for a similar nominal charge.

"The United Company has reduced the royalty charged by the Goodyear Company for the use of its machines in making turn shoes, so that it is now only fifty per cent. of the royalty which was charged by the Goodyear Company" (R. Vol. 1, p. 21, lines 10–42).

The result of the modifications in the Goodyear leases has been an enormous saving to shoe manufacturers. In the first place, the lessee can get his machines without an initial payment. In the second place, the royalty on turn shoes has been reduced 50 per cent. In the third place, the lessee is given for the same royalty previously charged on welt shoes and one-half the royalty previously charged on turn shoes a vastly improved welter and stitcher and much improved auxiliary machines, and, due to the development and acquisition of new auxiliary machines the lessee is also offered for this same royalty 35 welt auxiliary machines instead of 13 welt auxiliary machines furnished in 1899, and 9 turn auxiliary machines instead of 3 turn auxiliary machines offered in 1899 (Defs.' Exs. 242–243–244–245, R. Vol. 5, pp. 681–3). In view of the charge of the petition that the defendants designed "to enhance the cost of said machines to users thereof" (R. Vol. 1, p. 997) the foregoing illustration of the reduction in cost to users of the machines is illuminating.

The elimination of the initial payments has enabled many shoe manufacturers of small capital to manufacture Goodyear Welt and Goodyear turn shoes.

Furthermore, the history of these Goodyear leases refutes

completely the charge that the defendants planned to "refuse to sell or lease any of the essential machines to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery of whatever kind," which is the charge on which the petition is founded (R. Vol. 1, p. 994).

The Goodyear Welter and Stitcher are as important as any machines produced by the United Company. Chapman, the patent expert for the United States, declared them to be the only essential machines for making a welt shoe (R. Vol. 2, p. 2794). The lessee of the Goodyear welter and stitcher, however, is not obligated to use any other machinery whatsoever. He is not even required by the leases to use Goodyear machinery exclusively. The clause contained in the old Goodyear Turn lease requiring the exclusive use of the lessor's turn machinery was eliminated in 1900, showing conclusively that the United Company did not plan to require an exclusive use of its machines by the adoption of new clauses in its leases as charged in the petition. The Goodyear Auxiliary Machines are limited to use with the welter and stitcher, but this clause was in the old Goodyear leases, and the lessee can use with the welter and stitcher any auxiliary machines obtained from others that he chooses. The "Exclusive Use Cancellation Clause" is applicable only to the use of the welter and stitcher; the United Company has no option to cancel its leases of its Goodyear Machines if auxiliary machines obtained from others are used. No Restricted Use Clause has been inserted in this lease. A lessee may obtain and use Goodyear machines without using any of the 250 or more other machines manufactured by the United Company.

(3) MODIFICATIONS OF LEASES OF LASTING MACHINES.

(a) Lease of Ideal Lasting Machine.

The United Company made no change in the lease of the Ideal Lasting Machine until August, 1901. It then put out a new form which substantially followed the old Goodyear form (R. Vol. 1, p. 6, lines 22–29). (Goodyear Company's form P.'s Ex. 3, R. Vol. 5, p. 37; *supra*, pp. 264-265; new form P.'s Ex. 18, R. Vol. 3, p. 154). As in the old form the use of the machine was restricted to use on shoes operated on by the Goodyear

Welter and Stitcher and the auxiliaries were restricted to use with the principal machine. Under the new form the royalty and initial payment remained the same. The lease contained the "Full Capacity Clause" and the "Exclusive Use Cancellation Clause." The clause in the former lease requiring the lessee to purchase from the lessor all tacks used in the loose tackers was omitted.

No other lease of Ideal machines has been put out (R. Vol. 1, p. 6, lines 28–9). It is to be noted that the United Company inserted no new provision obligating the lessee to use any other machines or requiring the lessee to use its lasting machines exclusively.

These machines were used only to a comparatively small extent and on the introduction of the new No. 5 laster became practically obsolete (R. Vol. 1, p. 971, lines 5–8).

(b) Lease of McKay and Copeland Lasting Machine.

The form of lease used by the Consolidated Company (P.'s Ex. 6, R. Vol. 3, p. 45; see also, for description of this lease, *supra*, pp. 265-266) continued to be the only form used until August, 1903, four and one-half years after the formation of the United Company (R. Vol. 1, p. 6, lines 38–39). The United Company then put out an additional form (P.'s Ex. 20, R. Vol. 3, p. 172). This lease reduced the initial payment previously required from $695 to $500 or less (R. Vol. 1, p. 454, lines 3–8) and contained a "Restricted Use Clause" limiting the use of the machine to use with the United Company's welter, stitcher, pegger, metallic and heeling machines. It continued the "Full Capacity Clause" which was in the old form of lease. It omitted, however, the "Additional Machinery Clause" and instead inserted the "Exclusive Use Cancellation Clause." The elimination of the "Additional Machinery Clause" eliminated the requirement of exclusive use; the insertion of the "Restricted Use Clause" was coincident with the reduction of the initial payment. The new form of lease was an alternative form, and any lessee could still obtain the old form if he desired it (R. Vol. 1, p. 852, lines 5–21).

These machines were used to a comparatively small and continually decreasing extent (R. Vol. 1, p. 454, lines 8–9).

(c) Lease of Chase Lasting Machine.

The form of lease used by the Consolidated Company (P.'s Ex. 7, R. Vol. 3, p. 57; see also, for description of this lease, *supra*, pp. 266-267) continued to be the only form used until June, 1901, when an additional form was adopted by the United Company (R. Vol. 1, p. 6, lines 32–35) (P.'s Ex. 19, R. Vol. 3, p. 163). The new form contained a "Restricted Use Clause" restricting the use to use with welting, stitching, and metallic fastening machines leased from the United Company. The "Additional Machinery Clause" was omitted and the "Exclusive Use Clause" substituted.

This new form was an alternative form, and the former lease without the "Restricted Use Clause" could be had by any lessee who desired it (R. Vol. 1, p. 543, lines 17–18). The use of these machines steadily declined and on the introduction of the New No. 5 Laster they became practically obsolete (R. Vol. 1, p. 971, lines 5–8).

(d) Lease of Consolidated Hand Method McKay Lasting Machine.

The Consolidated Company had two forms of lease for this machine, one requiring an initial payment of $300 and a royalty of ½ cent per pair (P.'s Ex. 8, R. Vol. 3, p. 68), the other requiring no initial payment and a royalty of ⅝ cent and containing the "Full Capacity Clause" and the "Additional Machinery Clause," thus requiring the exclusive use of the machines (P.'s Ex. 9, R. Vol. 3, p. 74; see also, for description of these leases, *supra*, pp. 267-268).

These forms were continued until the end of 1900 (R. Vol. 1, p. 5, lines 28–33). The United Company then adopted two forms of lease. It adopted an initial payment form (P.'s Ex. 14, R. Vol. 3, p. 121) in which $300 initial payment was required and ½ cent royalty (R. Vol. 1, p. 6, lines 2–5). This form contained the "Full Capacity Clause" and the "Exclusive Use Cancellation Clause." It contained no "Restricted Use Clause." The United Company also adopted a non-initial payment form (P.'s Ex. 16, R. Vol. 3, p. 137) requiring no initial payment, a royalty of ⅝ cent, and in addition to the clauses

contained in the initial form a "Restricted Use Clause" limiting the use of the machines to use with metallic fastening and Goodyear sewing machines leased from the United Company.

As to this lease, Mr. Winslow testified that the restriction as to use with Goodyear sewing machines was of no effect, as the machine was adapted for use only on McKay work on which Goodyear machines were not used. It was only inserted in the leases so that if the machines were remodeled to do welt work, they would be restricted like the welt lasting machines under Plaintiff's Exhibit 15 (R. Vol. 1, p. 540, lines 24–34).

(e) Lease of Hand Method Welt Laster.

This machine in 1899 was not perfected commercially. It was offered by the Consolidated Company on a form of lease with the "Full Capacity Clause" and the "Additional Machinery Clause" and a royalty of one cent per pair (P.'s Ex. 10, R. Vol. 3, p. 82; see also, for description of this lease, *supra*, p. 268).

This form was continued by the United Company until December, 1900, when it adopted a non-initial form (R. Vol. 1, p. 6, lines 5–9) which reduced the royalty from one cent to $\frac{5}{8}$ of a cent per pair, which continued the "Full Capacity Clause," but eliminated the "Additional Machinery Clause" and substituted the "Exclusive Use Cancellation Clause," and which contained the "Restricted Use Clause" restricting the use to use with Goodyear sewing machines (P.'s Ex. 15, R. Vol. 3, p. 129). In other words, the agreement to use the machines exclusively was eliminated, the royalty was reduced, and a "Restricted Use Clause" substituted. The United Company later (December, 1906) adopted another alternative form requiring an initial payment of $300, a royalty of $\frac{5}{8}$ of a cent, but which contained no "Restricted Use Clause" (P.'s Ex. 17, R. Vol. 3, p. 145; R. Vol. 1, p. 6, lines 15–21).

(4) MODIFICATIONS OF LEASES OF HEELING MACHINES.

The lease of heeling machines put out by the McKay Company required a royalty of $\frac{1}{4}$ cent and contained an "Exclusive Use Cancellation Clause" (P.'s Ex. 11, R. Vol. 3, p. 90; see also, for description of this lease, *supra*, pp. 268-269).

The United Company made no change in this lease until January, 1900 (R. Vol. 1, p. 9, lines 23–24). At that time the United Company adopted an additional form of lease, continuing the same royalty and containing the "Full Capacity Clause," and the "Additional Machinery Clause" (P.'s Ex. 27, R. Vol. 3, p. 254). In 1904 (R. Vol. 1, p. 9, lines 29–32) it adopted for the first time a form of lease containing a Restricted Use Clause limiting the use of the machines to use with Goodyear sewing machines, lasting, pegging, and metallic machines leased from the lessor (P.'s Ex. 28, R. Vol. 3, p. 261). No initial payment was required. The Additional Machinery Clause was eliminated. After the adoption of this form the United Company furnished its heeling machines, which had been much developed and improved since 1899, with an initial payment, and without the Restricted Use Clause, by attaching a rider to Exhibit 28 inserting the initial payment and striking out the Restricted Use Clause (R. Vol. 1, p. 9, line 38–p. 10, line 23).

The reason for the insertion of the Restricted Use Clause in 1904, was, as we have explained above (*supra*, pp. 282-283), that at that time the United Company determined to adopt the non-initial form of Goodyear lease, thus depriving itself of a large cash initial payment. This it could afford to do only if certain of its principal machines were used in groups so that the Goodyear Welter and Stitcher could be used efficiently and without interruption. The limitation in the use of the heeling machines when taken under the non-initial form of lease was, therefore, inserted in order to make the use of the Goodyear Welter and Stitcher more efficient and productive and compensate in part for the removal of the initial payments previously charged for these machines (R. Vol. 1, p. 440, line 16 *et seq.*).

(5) MODIFICATIONS OF LEASES OF METALLIC MACHINES.

Prior to 1899 this machinery was put out on a lease requiring the lessee to purchase all metallic material used in the machine from the lessor or pay a royalty of ten cents a pair on the shoes operated on. No initial payment was required, but the lease contained the "Exclusive Use Cancellation Clause" (P.'s Ex. 12, R. Vol. 3, p. 103; see also, for description of this lease,

supra, p. 269). A short time prior to 1899 the McKay Company had discontinued the use of this lease and had been temporarily putting out its machines without leases pending the adoption of the new form. This practice was continued by the United Company up to March, 1900 (R. Vol. 1, p. 438, lines 10–13). In March, 1900, the United Company adopted the form of lease requiring no initial payment, containing the Full Capacity Clause and the Additional Machinery Clause, but containing no Restricted Use Clause and no Exclusive Use Cancellation Clause (P.'s Ex. 29, R. Vol. 3, p. 272; R. Vol. 1, p. 10, lines 24–28).

In June, 1900, a lease containing a Restricted Use Clause was adopted restricting the use of the metallic machines to use with welt-stitching and lasting machines obtained from the lessor (P.'s Ex. 30, R. Vol. 3, p. 278). The "Additional Machinery Clause" was eliminated and a clause was substituted permitting the lessor to cancel if the lessee did not take additional machinery. The entire return to the United Company on its metallic machines came from the use of copper wire which the lessee used in the machine and was required to purchase from the lessor. Copper had increased so much in price that at the price charged by the United Company for the wire it did not receive a fair royalty on its machines. Instead of increasing the price of the wire it restricted the machines to use with the Goodyear and Lasting Machines, thus obtaining an indirect royalty through the royalties received on these other machines. The reasons for so doing are fully explained above (*supra*, pp. 276–278).

Shortly afterwards, in March, 1901 (R. Vol. 1, p. 10, line 40–p. 11, line 2), the United Company adopted a form requiring no initial payment and containing no Restricted Use Clause, in which form it reserved the right to charge 10 per cent. more for fastening material than was charged under the lease containing the Restricted Use Clause (P.'s Ex. 31, R. Vol. 3, p. 287). It also adopted a rider, which it attached to the Restricted Use form of lease (P.'s Ex. 30), eliminating the Restricted Use Clause and substituting an initial payment (P.'s Ex. 32, R. Vol. 3, p. 297; see also R. Vol. 1, p. 11, lines 5–17). A lease with this rider incorporated was drawn up in 1911 (P.'s Ex. 33, R. Vol. 3, p. 307; R. Vol. 1, p. 11, lines 18–20). A lessee of metallic machinery has, therefore, been at all times since 1901 able to take a non-

initial form of lease containing the Restricted Use Clause or a lease without the Restricted Use Clause under which he paid not in excess of 10 per cent. more for material or, at his option, paid an initial premium.

The lease adopted in March, 1901, without the Restricted Use Clause was the result of negotiations with the shoe manufacturers (R. Vol. 1, p. 439, lines 13–19), who acted through the New England Manufacturers' Association (R. Vol. 1, p. 635, lines 18–42). Plaintiff's Exhibit 31 was agreed upon as satisfactory in every respect to the shoe manufacturers (R. Vol. 1, p. 635, lines 35–38). It was agreed that a lessee could change his lease from the form containing the Restricted Use Clause (P.'s Ex. 30) to the form without the Restricted Use Clause (P.'s Ex. 31) at any time prior to February 1, 1902 (R. Vol. 1, p. 663). The United Company further stated its intention to offer both leases indefinitely after February 1, 1902 (R. Vol. 1, p. 663, lines 24–26) which intention was carried out (R. Vol. 1, p. 664, lines 1–4). Most shoe manufacturers took the form of lease containing the Restricted Use Clause (R. Vol. 1, p. 664, lines 4–8).

(6) MODIFICATIONS OF LEASE OF DAVEY PEGGING MACHINE.

The lease of the Davey Pegging Machine Company, at the time of the formation of the United Company, required an initial payment of $100, required the lessee to do all his pegging on the leased machines, and contained the Additional Machinery Clause (P.'s Ex. 13, R. Vol. 3, p. 113; see also, for description of this lease, *supra*, p. 270). This lease was used by the United Company until 1901 (R. Vol. 1, p. 14, lines 36–37), when the United Company adopted a form of lease which eliminated the initial payment, and which also eliminated the Additional Machinery Clause and the agreement to use exclusively (P.'s Ex. 45, R. Vol. 3, p. 413). It contained the Full Capacity Clause and the Exclusive Use Cancellation Clause and also a Restricted Use Clause limiting the use of the machine in connection with the United Company's lasting and metallic machines. It also adopted an initial payment form of lease (R. Vol. 1, p. 14, lines 43–45) which contained no Restricted Use Clause (P.'s Ex. 46, R. Vol. 3, p. 422).

Here again the Restricted Use Clause was inserted upon the removal of the initial payment, and the old form of lease without the Restricted Use Clause was continued as an alternative. In this case also the Additional Machinery Clause and the agreement to use exclusively were eliminated.

E. LEASES ADOPTED BY THE UNITED COMPANY FOR NEW MACHINES.

Many new machines, as we have stated, especially in the Goodyear Department, which were auxiliary to principal machines already in use, were added to the line of auxiliary machines already leased without charging any additional royalty and were leased under the existing forms of lease.

In the case of other new machines new leases were necessarily adopted which were substantially similar to the forms of lease in use at the time. In the case of all important machines two alternative forms were adopted. In one form no initial payment was charged and there was a Restricted Use Clause restricting the use to use in connection with machines of one or more of the following groups, namely, Goodyear sewing machines (*i.e.*, the Welter and Stitcher), lasting machines, metallic machines, and in certain cases pegging and heeling machines, and in one instance pulling-over machines. In the other form of lease an initial payment was charged and the Restricted Use Clause was omitted. In the case of most of the General Department machines the alternative was the right to purchase, the machines being sold outright.

(I) Pulling-over Machine Leases.

The pulling-over machines were invented and developed by the United Company and the first lease put out about 1902 (R. Vol. 1, p. 11, lines 37–40). This first form of lease (P.'s Ex. 36, R. Vol. 3, p. 331) contained the Full Capacity Clause, the Additional Machinery Clause, and a Restricted Use Clause limiting the use of the machine in connection with Goodyear sewing machinery, lasting machinery, metallic fastening, pegging, and heeling machinery of the United Company. By 1905 the United Company had developed a series of auxiliary machines, and a new lease was adopted (R. Vol. 1, p. 12, lines 9–13) which

covered the principal machines and the auxiliary machines and limited the use of the auxiliary machines to use in connection with the principal machines and which contained the Exclusive Use Cancellation Clause (P.'s Ex. 37, R. Vol. 3, p. 339). In other respects it was substantially similar to the previous lease.

In 1907 a lease containing substantially the same terms was adopted, except that it eliminated the Additional Machinery Clause (Defs.' Ex. 345, R. Vol. 5, p. 958; see also R. Vol. 1, p. 980, line 43; p. 981, line 20). In 1909 a new form was adopted which permitted the use of the auxiliary machines on shoes not operated on by the principal pulling-over machine and which contained the same Restricted Use Clause. It likewise omitted the Additional Machinery Clause (P.'s Ex. 38, R. Vol. 3, p. 350).

An alternative form of pulling-over lease requiring an initial payment and omitting the Restricted Use Clause was also offered lessees (P.'s Ex. 39; R. Vol. 3, p. 363).

(2) Clicking Machine Lease.

The Clicking Machine was invented and developed by the United Company about 1908 (R. Vol. 1, p. 14, lines 27–33). The lease adopted for this machine has never had a Restricted Use Clause limiting its use in connection with other groups of machines (P.'s Ex. 44, R. Vol. 3, p. 402). The lease provides that the lessee shall pay a certain sum in respect to all dies used on the machines. It further provides for a royalty payment when the machine is used on shoes lasted on machinery not leased from the United Company or welted or stitched on machinery not leased from the United Company. It contains the "Exclusive Use Cancellation Clause."

(3) Eyeletting Machine Leases.

The United Company first developed and put out its eyeletting machines in 1902 (R. Vol. 2, pp. 2617–22, 2636).

The United Company adopted a form of eyeletting machine lease requiring an initial payment of $100 and containing no Restricted Use Clause (P.'s Ex. 42, R. Vol. 3, p. 387; P.'s Ex. 173, R. Vol. 4, p. 1184). It also adopted a non-initial form of lease containing a Restricted Use Clause limiting the use in connec-

tion with Goodyear sewing, lasting, pegging, metallic fastening and heeling machinery of the United Company (P.'s Ex. 43, R. Vol. 3, p. 394; P.'s Ex. 172, R. Vol. 4, p. 1176).

Neither lease contained the Exclusive Use Cancellation Clause. Both leases required as royalty the use of eyelets purchased from the lessor.

The Vulcan Foot-power Eyeletting Machine was put out for an initial payment of $15 and was never restricted to use with other machines and the lease covering it did not contain the Exclusive Use Cancellation Clause (R. Vol. 1, p. 28, lines 20–24; P.'s Ex. 174, R. Vol. 4, p. 1191).

(4) No. 5 Lasting Machine Leases.

The No. 5 Lasting Machine is a new type of lasting machine invented and developed by the United Company and first put out about 1908 (R. Vol. 2, p. 2378).

Two forms of lease were adopted for this machine,—one requiring an initial payment and containing no Restricted Use Clause restricting its use to use with other machines (P.'s Ex. 22, R. Vol. 3, p. 193); the other a restricted use form of lease requiring no initial payment and restricting the machine to use with the United Company's Goodyear Welter and Stitcher, pulling-over machines, and metallic machines (P.'s Ex. 21, R. Vol. 3, p. 182). Both forms of lease have the Exclusive Use Cancellation Clause.

(5) General Department Machine Leases.

The General Department machines, comprising over 170 different machines (Defs.' Ex. 227, R. Vol. 5, p. 425), were all invented or developed by the United Company after its formation.

The General Department machines have at the option of the shoe manufacturer been either sold or leased. Since 1912 they have been only sold (R. Vol. 1, p. 12, line 37–p. 13, line 30). The leases of these machines required a small initial payment or a small annual rental, but called for no royalty. They contained a Restricted Use Clause restricting use to use with other groups of the defendants' machines. Under this form of lease the United Company, outside of the small initial payment or rental provided for by the lease, receives no return, except indirectly

through the royalties received from other groups of machines to use with which the General Department machines are restricted and through the added efficiency of such other groups of machines.

Plaintiff's Exhibit 40 (R. Vol. 3, p. 373), adopted in 1902 (R. Vol. 1, p. 13, lines 9–16), is the General Department lease requiring an initial payment. It has a Restricted Use Clause restricting the use to use in connection with the lessor's Goodyear sewing, lasting, pegging and metallic fastening machinery. It contains no Exclusive Use Cancellation Clause or Full Capacity Clause. The purpose of these two clauses is to insure an adequate return in the way of royalties to the lessor. As the General Department machines carry no royalty, the clauses are omitted.

Plaintiff's Exhibit 41 (R. Vol. 3, p. 379) is the form of General Department lease requiring a small yearly rental. It contains the same Restricted Use Clause and, like the initial payment form, contains no Exclusive Use Cancellation Clause or Additional Machinery Clause.

(6) Insole Machine Leases.

Before the United Company was formed the Gem Flexible Insole Company was engaged in the business of manufacturing and leasing a set of machines for making the patented Gem insole, a light canvas insole for use with welt shoes. After the United Company was formed the patents on the insole and the machines for producing it were acquired (R. Vol. 1, p. 15, lines 16–21). The United Company added the Gem Insole Machine to its Goodyear auxiliary set and abated the ½ cent a pair formerly charged (R. Vol. 1, p. 430, lines 11–13; p. 571, lines 24–29).

The lease of the Gem Insole Machine contains a Restricted Use Clause limiting the use to the manufacture of patented insoles to be used on welt shoes welted and stitched on the United Company's machines. It contains no Exclusive Use Cancellation Clause or Full Capacity Clause (P.'s Ex. 51, R. Vol. 3, p. 443).

As to the company's action respecting the Gem Insole machines Mr. Winslow testified that they did it,

"so as to reduce the cost to the manufacturer of the Goodyear welt shoe, as we have all of these things that you have treated in that way. The reason we took off the initial payment and put it out on rental was because we were hoping to increase the total manufacture of those shoes and thereby benefit the public" (R. Vol. 1, p. 571, lines 37–42).

Some years later (1907) the company acquired the patent for the Economy insole for welt shoes (R. Vol. 1, p. 15, lines 35–39).

The lease of the Economy insole machine (P.'s Ex. 52, R. Vol. 3, p. 450) limits the machines to making a patented insole to be used on Goodyear Welt and Turn shoes. The auxiliaries are limited to use with the principal machine. It contains the Full Capacity and Exclusive Use Cancellation Clauses. This is practically an auxiliary Goodyear machine except that in distinction from the other auxiliary machines a small royalty is charged for its use.

(7) McKay Sewing Machine Lease.

The constituent companies did not manufacture the McKay sewing machine. When the United Company started to manufacture it, it always either sold the machine or leased it at the option of the manufacturer. The machine was sold for $250 to $600 according to the type of the machine. It was leased for an initial payment of $100 and a rental of $5 per month and without any further royalty charge (R. Vol. 1, p. 29, lines 25–35). The lease (P.'s Ex. 170, R. Vol. 4, p. 1161) limited the use of the machine to use on shoes lasted by the United Company's machines. It contained no Full Capacity or Exclusive Use Cancellation Clause, as the machine was not a royalty machine.

The United Company did not begin to put out the machines covered by this lease till 1908 (R. Vol. 1, p. 977, lines 11–12).

F. USE OF RIDERS AND SPECIAL FORMS OF LEASE.

The United Company was always ready to adopt a new form of lease or a rider modifying its existing form of lease to meet new conditions or to accommodate lessees who wanted to use machines of other makers together with machines of the United

Company (R. Vol. 1, p. 442, line 42; p. 443, line 2). The regular forms of lease set forth are only such as are in general use. In addition the United Company had numerous riders which were adopted to meet such special conditions as they arose. (For the application of the various forms of riders see R. Vol. 1, pp. 822–828.) When any such rider was given one lessee other lessees were always free to obtain it (R. Vol. 1, p. 823, lines 7–16). Examples of such riders and agreements are given in Defendants' Exhibits 278–310 (R. Vol. 5, pp. 777–838).

Mr. WINSLOW testified:—

> "When lessees believed they wanted to put in machines other than those held from our company, or when it seemed to them that the necessities of their business required that they do this, the policy of the company has been to reorganize the leases which they then had so as to leave them in a position to use those other machines" (R. Vol. 1, p. 442, line 42; p. 443, line 2).

12. REASONS FOR USE OF THE VARIOUS CLAUSES AND THEIR LEGALITY.

An examination of the business conditions which led to the adoption of the various clauses will show that they were adopted either to enable the lessor to offer its machines on the best possible terms and so far as possible without initial charge to the lessees, so as to enable them to embark in the business or extend their business, or to provide for reasonable and proper protection to the lessor, and that such clauses or similar clauses are essential to a commercially satisfactory leasing system when the return to the lessor on its investment is based on the amount to which the machines are used.

A. CLAUSE REQUIRING LESSEE TO PURCHASE FROM THE LESSOR ALL REPAIR PARTS NEEDED IN THE MACHINE.

The United States in its petition alleges that lessees were required by the defendants to obtain duplicate parts for the leased machines from the United Company at exorbitant prices (R. Vol. 1, p. 997).

The only evidence offered in support of this allegation that exorbitant prices were charged is as follows:—

Frank C. Rand testified that he paid the United Company $25 for a pair of legs for a leveling machine and that he had a set of legs made himself for $6 not counting overhead charges (R. Vol. 1, p. 179, lines 9–13). On cross-examination he admitted that he did not know whether his mechanic made one or four legs and whether they were wrought or cast iron, and that his statement was hearsay at best (R. Vol. 1, p. 184, lines 25–41).

Herbert L. Cann, the local manager for the United Company in the St. Louis district, testified that the part which broke in Rand's leveling machine was not a leg which supports the machine, but a spindle which supports the last and which is referred to as a leg. This spindle is about 16 inches long, the bottom being made of wrought iron and the upper part of steel. The top part of the spindle in Rand's machine broke and his mechanic merely substituted a new top about 4 inches in length (R. Vol. 1, p. 749, lines 1–15). The United Company supplied entire spindles at $20 a pair (R. Vol. 1, p. 750, lines 10–13). After a year or so Rand obtained new spindles from the United Company to replace the repaired spindles (R. Vol. 1, p. 749, lines 16–17). It appears clearly, therefore, that Rand replaced only a portion of the spindle which the United Company furnished and for which it charged.

Carl H. Gleason, a witness for the defendants, testified that he had been employed in the Cost Department of the W. H. McElwain Company, one of the biggest companies in the country, and he had made a study of the cost of repair parts on the machines that the McElwain Company obtained from the United Company. He testified as follows (R. Vol. 1, p. 714, lines 17–40).

> "The cost per pair of shoes for the repair parts on these machines was as follows:—
>
> "Universal channeler, .001 of one cent; insole tacker, .005 of one cent; Rex assembling machine, .009 of one cent, Rex pulling over machine, .07 of one cent; Consolidated hand method lasting machine, .005 of one cent; No. 5 laster, .06 of one cent; tack puller and resetter, .008 of one cent; sole layer, model B, .007 of one cent; loose nailer, No. 2, .01 of one cent; Universal rounder and channeler, .01 of one cent; Rounder and channeler, model E, .01 of one cent;

Goodyear automatic leveler, .002 of one cent; lightning heeler, .004 of one cent; Mayo heeler, .008 of one cent; Universal slugger, .01 of one cent; edge setter, .02 of one cent.

"On the welter and stitcher my computation includes, in addition to mere parts, the cost of awls and needles which the machines are using all the time and which are ordinarily classed as supplies. The cost per pair of shoes for the model G welter, including awls and needles, was .15 of one cent per pair; for the model K stitcher, including awls and needles, .2 of one cent per pair; for the model M stitcher, including awls and needles, .08 of one cent per pair.

"I also computed the cost of repair parts on the model K stitcher, not including the needles and awls, and that is .1 of one cent per pair."

Mr. Winslow testified that the profits of the United Company from repair parts for the year 1911 were $276,000, while the net cost of repairing and putting into condition Goodyear, heeling, lasting, pulling-over, and metallic machines returned by lessees *in excess* of the charges made to customers for such work was $277,763.49, that is, $1,600 more than the entire profits on the parts (R. Vol. 1, p. 853, lines 12–18). He further testified that from the figure of $276,000 as profits for parts there had not been deducted any interest on capital or loss on obsolete parts (R. Vol. 1, p. 853, lines 1–8), although the loss from repair parts that are manufactured and are never used because they become obsolete runs into thousands each year (R. Vol. 1, p. 853, lines 9–11), and although the United Company carried an investment in parts for the year 1911 amounting to $1,415,474.49 (R. Vol. 1, p. 979, lines 3–5), on which, of course, it receives no interest return. It, therefore, appears that the total business of supplying parts and repairing returned machines shows a considerable loss. In the charge for repair parts the United Company does not take into account or include the cost to it of the services and expenses of its repair men, amounting to over $1,100,000 a year (R. Vol. 1, p. 554, lines 11–13; p. 979, lines 12–13).

Mr. Winslow further testified that the prices for repair parts, to the best of his knowledge and belief, are the same prices that would be charged by any other company manufacturing parts for machines; and that the prices charged for parts on General Department machines which were sold so that the owner was

under no obligation to purchase parts from the United Company were on the same basis as parts for leased machines where the lessee was required to purchase the new parts from the United Company (R. Vol. 1, pp. 553–4).

This provision is clearly necessary in the leases for the protection of the lessor. The leased machines are the property of the lessor. The new parts placed in the machine become the property of the lessor. When a part wears out it must be replaced by a part which is equally good and which has been made to fit that particular machine; if replaced by a cheaper part, or one which does not properly fit, the machine will be depreciated in value. The cheap part may also cause the machine to break down and thus prevent its earning royalty, and likewise stop work on other royalty-producing machines.

The lessor could properly provide that all repairs to its own machines should be made by itself and that the lessee should have no right to make repairs at all. In such a case the lessor could, of course, provide its own parts needed in the machine. When the lessee is permitted to make repairs himself, he cannot complain because the owner of the machine controls the character of the parts replaced. Nor can a competing shoe machinery manufacturer demand a right to supply parts for machines owned by the United Company.

This clause was employed in all the leases of the constituent companies prior to the formation of the United Company. Its continuance by the United Company was obviously necessary for its protection and constitutes no evidence of a plan to monopolize shoe machinery.

B. CLAUSE REQUIRING PAYMENT OF A RETURN CHARGE ON TERMINATION OF THE LEASE.

The petition charges that the United Company exacted a return charge at the termination of its leases which in some cases amounted approximately to the original cost of building the machines. It appeared in certain of the leases that a small return charge upon the expiration of the lease was required. Absolutely no evidence was introduced as to the cost of building the machines so leased or the comparative amount of this return charge. There is no evidence that the return charge was in any way exorbitant or oppressive.

On the contrary, it was shown that for the year 1911, a typical year, the cost of putting returned machines into condition for use was approximately $350,000, and the charges to lessees on account thereof only about $70,000, showing a loss to the United Company of $277,763.49 (R. Vol. 1, p. 853, lines 15–23).

This allegation of the petition is, therefore, only another example of the unfounded character of the charges made by the United States.

C. CLAUSE LIMITING THE TERM OF THE LEASE TO SEVENTEEN YEARS.

The leases of the constituent companies ran for long and indefinite periods. Thus the leases of certain lasting machines ran for the life of the machines. The McKay Company's heeling machine leases ran for seventeen years and for such further time as the patents embodied then or thereafter in the leased machine were in effect, and the other leases ran for the life of the patents then or thereafter embodied in the machines. These leases gave the lessor the right to attach improvements to the machines and thus gave it the right by attaching patented improvements to extend the life of the leases indefinitely. As many if not most of the machines when leased embodied inventions for which patents had recently been granted, or for which applications were still pending, and as in most instances improvements in the machines were made from time to time after they were leased, it is obvious that the leases of the constituent companies in most cases ran for more than seventeen years.

The adoption by the United Company of this term for all its new leases did not extend the period and affords no evidence of an intent to obtain a monopoly by new methods as charged in the petition. It was obviously adopted to make the leases consistent.

A long term is essential both from the point of view of the lessor and from the point of view of the lessee. If the United Company is called upon to build and place in the hands of shoe manufacturers millions of dollars' worth of machinery without receiving any initial payment, it obviously cannot do this unless the shoe manufacturers are willing to take this machinery for an

extended period so that the resulting royalties will compensate the United Company. The shoe manufacturer also requires an extended period. He proposes to engage in the business on the strength of obtaining patented machinery without initial cost. He must be assured of the right to retain this machinery for an extended period. If his leases ran only for a few years, he might find that after he had established a good-will and built up the business at considerable expense his leases of machines terminated and he could not extend the leases or obtain the machines elsewhere, or his royalties might be greatly increased or he might be required to buy his machines outright and not have sufficient capital to do so.

A lease of shoe machinery under these conditions is like a lease of a building erected for the use of a particular tenant. The landlord refuses to erect the building unless the prospective lessee agrees to take a lease for a sufficiently long term to compensate him for the capital invested in the building. The lessee on his part is unwilling to locate his business on the premises and establish a good-will in that locality unless he is assured of its permanency by means of a long lease.

The United States will doubtless contend that the long term of the leases makes it more difficult for the rival shoe manufacturers to compete. If this is so, it is merely incidental to a normal and proper contract. That bankers, brokers, and other business concerns have long leases of the premises occupied by them makes it more difficult for the owner of a new building to obtain tenants, but this does not make such leases illegal; that owners of cotton mills are already supplied with cotton machinery makes it more difficult for a manufacturer of new machinery to dispose of his product. If the leases ran for shorter terms,—say for ten or twelve years,—the rival shoe manufacturer would find substantially the same difficulty. Indeed, if the machines had been purchased outright by the shoe manufacturers, it is difficult to see, so far as this seventeen-year term is concerned, how the rival machinery manufacturer would be better off. Shoe manufacturers, if they had purchased machinery, would not discard it until it became obsolete or worn out. Their demands for new machinery would be limited to their requirements for additional machinery.

As said in *Coppage* v. *Kansas*, 236 U. S. 1 (p. 21):—

> "For constitutional freedom of contract does not mean that a party is to be as free after making a contract as before; he is not free to break it without accountability. Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised; and each particular exercise of it involves making an engagement which, if fulfilled, prevents for the time any inconsistent course of conduct."

Nor can the shoe manufacturer complain because he is bound for an extended term. He demands the assurance of an extended period during which he cannot be deprived of his machines, nor his royalties be increased.

In *Chicago, etc., R.R.* v. *Pullman Car Company*, 139 U. S. 79, the court held legal a contract giving an exclusive right to the Pullman Company to furnish drawing-room and parlor cars for a period of fifteen years, not only on the railroad company's then road but on any roads thereafter owned by it. The contract was held legal in spite of its extended term and in spite of the fact that it granted an exclusive right to furnish cars, the court saying (pp. 89–91):—

> "We cannot perceive that such a contract is at all in restraint of trade. . . .
>
> "But we are of opinion that public policy did not forbid the Railroad Company from employing the Pullman Southern Car Company to supply drawing-room and sleeping cars to be used by its passengers and, as a means of inducing the plaintiff to perform this public service and to incur the expense and hazard incident thereto, from giving it an exclusive right to furnish cars for that purpose. . . .
>
> "The stipulation, therefore, that the plaintiff, not being in default, should have the exclusive right for fifteen years to furnish drawing-room and sleeping cars for the defendant's use, and that the defendants should not, during that period, contract for cars of that kind with any other party, rightly construed is not unreasonable, and, properly performed, will promote the convenience of the public in that it enables the defendant to have on its lines, at all times, and as the requirements of travel demand, drawing-room and sleeping cars for use by passengers."

The United States complains that this seventeen-year term may extend the lease beyond the life of the patents embodied in the machines.

But the validity of this term is not dependent on the machines being patented. It is a normal and legitimate agreement desirable for the protection of both parties, and it, therefore, gives rise to no inference of illegal intent whether or not the machines are patented.

The fact that the machines are patented, however, affords an additional reason for holding this term legal. Patents are granted to recompense the inventor by enabling him to make a profit. For this purpose the patentee is granted a monopoly of the right to make, use, and sell the patented invention. The patentee in disposing of these rights, that is, in permitting others to make use of them, may impose any conditions he sees fit not in their very nature illegal.

Bement v. *National Harrow Co.*, 186 U. S. 70.

If the patentee feels that his invention is of great value and the price he is entitled to charge is so high that few might pay it, but that he can get an equivalent amount by leasing the machine for an extended period, charging a royalty for its use, he is entitled to do so. He can demand as long a term as manufacturers will agree to. If the public takes his machines on leases extending over a period of years in preference to other machines for shorter terms, it is because they believe the patentee's invention is of sufficient value to justify the extended agreement. The public, therefore, profits by obtaining the use of the invention more than it can lose by the extended term. The public is free to take or decline the invention on the terms offered. By taking it on these terms it proves that the use of the invention more than offsets the detriment, if there be any detriment involved in the length of the lease. Public policy does not forbid such an extended lease of patented articles; if it did, it might deprive the public of their use at all. As said by the court in *Henry* v. *Dick Co.*, 224 U. S. 1 (pp. 34–35), with reference to illustrations of conditions imposed by patentees which it was contended public policy should forbid:—

> "But these illustrations all fail of their purpose, because the public is always free to take or refuse the patented article on the terms imposed. If they be too onerous or not in keeping with the benefits, the patented article will not find a market. The public, by permitting the invention to go unused, loses nothing which it had before, and when the

patent expires will be free to use the invention without compensation or restriction."

The right to use the machine during the existence of the patent is of greater benefit than the obligation to pay for and use it after the patent expires or the public would reject the proposed terms.

The United States may object that the machines leased may become obsolete before the expiration of seventeen years and the lessee be obliged to continue paying for them after more efficient machines can be obtained elsewhere. No such condition has yet existed; the United Company has kept abreast of the times and given its lessees the benefits of the best improvements, and its lessees appear to have confidence that it will continue to do so. This argument is based upon too remote a contingency as held by the District Court (R. Vol. 1, p. 1177) and as held in *United Shoe Machinery Company* v. *Brunet*, 1909, A. C. 330.

Furthermore, while this clause permits the United Company to compel a lessee to retain the particular machine leased for the period of the lease, the record shows that the United Company in practice constantly varied this right, and furnished lessees with new or improved machines as they were developed without additional charge of any kind, taking back the old leased machines and scrapping them.

The record then shows that the adoption of the seventeen-year term actually reduced the term required by the constituent companies. It is clear that an extended term is a benefit to both parties, and there is not the slightest evidence that the term was adopted or used to oppress shoe manufacturers.

D. FULL CAPACITY CLAUSE.

The "Full Capacity Clause" requires the lessee to use the leased machines to capacity so far as he has work in his factory which they can perform. An example taken from the United Company's lease of its No. 5 Lasting Machine (P.'s Ex. 21, R. Vol. 3, p. 182, at p. 185) is as follows:—

"Subject to the foregoing limitations, the lessee shall use the leased machinery to its full capacity upon all boots, shoes or other footwear or portions thereof made by or for the

lessee in the manufacture or preparation of which such machinery is capable of being used."

The reason for this clause is obvious.

The lessor invests its money in a valuable machine, installs it in the lessee's factory, and instructs his operatives, relying for his return on a royalty paid on each pair of shoes on which the machine is used. The machine must be used or the lessor will get no return. The agreement to use the machine is a necessity if the machine is leased on this basis. Without this clause the lessee might get the lessor to invest in a valuable machine and install it in the lessee's factory and after a few months the lessee might discard it or use it only occasionally, thus depriving the lessor of any return on its investment.

The clause is a normal and natural agreement obviously designed for the purpose of assuring the lessor a return on its investment and not designed for the purpose of arbitrarily requiring the use of the United Company's machines or of excluding competitors. That this is the purpose of the clause is conclusively shown by the fact that this provision is applied only to machines for which a royalty is charged. Thus in the leases of General Department Machines the clause is omitted because the machines are leased for an annual rental or an initial payment and no royalty is charged, and, the lessor's return not being dependent on the use of the machines, it is not necessary that the lessee shall agree to use them. (See General Department Initial Payment form of lease P.'s Ex. 40, R. Vol. 3, p. 373; General Department Annual Rental form of lease P.'s Ex. 41, R. Vol. 3, p. 379; McKay Sewing Machine lease P.'s Ex. 170, R. Vol. 4, p. 1161.) So also in the case of the Goodyear auxiliary machinery. The lease of the Goodyear Welter and Stitcher provides that they shall be used to capacity because they are the recording machines on which royalty is paid (P.'s Ex. 24, R. Vol. 3, p. 214). No royalty being paid on the auxiliary machines, the lessee is not required to use them to capacity (P.'s Ex. 25, R. Vol. 3, p. 226).

There can be nothing unlawful in requiring one who has hired a machine upon a royalty measured by the machine's capacity, to pay for that capacity so far as he has work for it to do.

The lessee has acquired by his lease and license the full capacity of that machine. He has a right to the entire and exclusive use of it up to the limit of what it is physically able to do, but he is only required to pay according to that measure up to the extent of the work which he has for it.

If he has not work to keep it fully occupied, still he has the right to use the full capacity of the machine. Neither the United Company nor any one else can make any use of that surplus capacity which the lessee allows to go to waste. It is therefore obviously proper that he should agree to pay to the extent of the work he has for the machine to do.

If it once be granted that leasing for a royalty measured by use is reasonable, it is a necessary corollary that such use must be required and agreed to as will fairly compensate the one who supplies the use and fills the need.

The shoe manufacturer cannot complain of this clause. If he does not intend to use the machine, he has no right to take it under a lease whereby he is required to pay only if he does use it. If he does intend to use the machine, it is proper he should agree to use it so far as he has work for it to do.

The rival shoe machinery manufacturer also has no ground for complaint. He has no right to demand that shoe manufacturers who choose to take leases of the United Company's machines should remain as free to deal with him as though such leases had not been executed. If the lessee agreed to pay a fixed rental, he would use the machines for which he paid, not those taken from a competitor for which he must make an additional payment. Even if the lessee bought the machines, he would not ordinarily discard them for other machines. The rival shoe machinery manufacturer is in little if any different position from what he would be in if the lease omitted this clause and contained a fixed rental, or if the machines had been purchased outright. If there is any difference which affects him, it is the incidental result of a normal and proper contract.

The shoe manufacturer's business is seasonal, and he requires an equipment of machines having a maximum capacity far in excess of his average requirements. Furthermore, in many cases a lessee's business is so small that a single machine has a capacity exceeding his maximum requirements. The result is that the United Company's machines held by a lessee have a

capacity in excess of the ordinary requirements of the lessee. The United Company would be justified in charging a price based upon the maximum capacity of the machine. This, however, would be burdensome to the lessees who would only make use of such capacity occasionally. But if the United Company does not require payment for the full capacity of the machine, whether or not the lessee needs such capacity, it is only fair and reasonable that it should require payment for use to the full extent that the lessee has a use for it.

Mr. Winslow testified:—

> "We adopted the full-capacity clause in our leases to protect our interests under the conditions that I have described in the manufacture of shoes, where the seasons are changeable, and where our entire return is dependent upon the use made of the machine. The same reason applies to the adoption of the exclusive-use clause, but it is not the only reason for the adoption of either clause. There must be something in the lease requiring use of the machines or there is no security that they will be used. Because there are two seasons and because we have to furnish machines to take care of the peak of the manufacturer's load, there must be something to secure us properly for the use of the machines throughout the season. Otherwise, the manufacturer might use one of our machines just for taking care of the peak of his load and use somebody else's machine all the year round" (R. Vol. 1, p. 552, line 34; p. 553, line 3).

This provision for payment, viz., that the lessee shall use the machine so far as he has use for it, and pay for the amount it is used, is far more satisfactory to lessees and far less burdensome to them than a fixed monthly or annual payment (which is the only feasible alternative) would be. If a fixed payment were required, a shoe manufacturer would be obliged to pay the same amount whether his business was good or bad. Under the present method he pays according to the business he does, and thus his royalties are adjusted to his business: if business is good, his total royalties increase, but he can then afford to pay them; if business is poor, his total royalties are decreased.

Furthermore, if a fixed amount were charged, it would work to the disadvantage of the small manufacturer. Take a welter, for example. One welter will operate on 480 pairs of shoes a

day (R. Vol. 1, p. 647, line 3). In 1911 out of 1,033 lessees of the United Company 274 made less than 100 pairs of shoes a day (R. Vol. 1, p. 454, line 45; p. 455, line 1). If the welter were leased for a fixed rental, the shoe manufacturer who made 480 pairs of shoes a day would pay for his welting machine used on his entire output the same amount as the manufacturer of 100 pairs or less paid for his welting machine. In other words, his cost of welting machinery per pair of shoes would be less than one-fourth of the amount paid by the small manufacturer. The Pulling-over Machine, Goodyear Stitcher, Heeling Machine, Slugging Machine and Loose Nailing Machine each has as great a daily capacity (R. Vol. 1, p. 456, lines 4–9). The Slugger, Loose Nailer, and Heel Pricking Machine have a capacity of over 1,200 pairs per day (Defs.' Ex. 249, R. Vol. 5, p. 693).

The United States contended in the District Court that the Full Capacity Clause was unnecessary to assure the United Company a return on its investment, because it inserts in most of its leases a clause requiring a minimum payment. It is obvious that a minimum payment does not provide for a fair return unless it is large enough in and by itself to compensate for the use of the machine. In such case it becomes a fixed annual payment and is open to the objections stated above. The minimum payments required in the United Company's leases are so small that they do not provide for adequate compensation. This is not their purpose. The Minimum Payment Clause was inserted in the leases so that a lessee should return machines for which he had no use; if he were required to pay nothing on them, he might keep them although they were not needed at all.

Mr. Winslow testified (R. Vol. 1, p. 553, lines 4–28):—

> "The clause requiring payment of a minimum royalty, like many of the other clauses, is not enforced and never has been, excepting in cases of very great necessity to properly protect the company's interests, and then only in the way of asking the manufacturer to give up surplus machines. The original leases contained no means for recovering surplus machines. If a manufacturer's business decreased 50 per cent. he could retain a machine till the lease expired, and keep it idle. Such a condition showed us that we must have such control as would allow us to take back idle machines.

"The practice has been, when a manufacturer had surplus machines arising from these or other conditions, to call his attention to the minimum clause and to tell him that if he wanted to return the surplus machine, the lease of that machine would be cancelled. That clause is not enforced except to require adequate arrangements between our lessees and ourselves.

"The minimum-lease clause originated a great many years ago. It is not entirely a logical development, but, broadly speaking, the minimum clause is based upon half the capacity or 33 per cent. of the capacity of the machine, or something of that sort. The minimum has no bearing upon the amount of a reasonable return on our machines. In the Goodyear system, for example, the minimum is $15 per machine, if I remember correctly, but we are continually adding to the number of machines that we give to the manufacturer."

It is obvious that this clause is essential if machines are leased to be paid for only to the extent they are used. That it was adopted solely for the purpose of assuring an income from machines leased on this basis is conclusively shown by the fact that it is applied only to the royalty producing machines. If the United Company were forbidden to use this clause, it would necessarily be obliged to abandon leasing machines on this basis, a practice of enormous benefit to shoe manufacturers.

E. EXCLUSIVE USE CANCELLATION CLAUSE.

The following is an example of the Exclusive Use Cancellation Clause taken from the United Company's lease of Pulling-over Machines (P.'s Ex. 38, R. Vol. 3, p. 350, at p. 358):—

"*Eight:* If at any time the lessee shall fail or cease to use exclusively machinery held by him under lease from the lessor for performing all work in the manufacture or preparation of all boots, shoes, or other footwear made by or for him which is performed by the aid of machinery and which is of a kind or kinds which any or all of the machines of the lessor mentioned by name in the foregoing Schedule of Machines are designed to perform, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases or licenses of machinery of the Pulling Over System of the lessor then existing be-

tween the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all machinery the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever."

It is to be noted that this clause only permits the lessor to cancel where other machinery of the same kind as that leased is only used by the lessee, and the lessor is then permitted to cancel leases of machines of this particular kind.

This clause was employed in the leases of metallic machinery and heeling machinery put out by the McKay Company (P.'s Ex. 11, P.'s Ex. 12, Rider).

The Consolidated Company in all its non-initial payment leases required an exclusive use of machines of the kind leased (P.'s Ex. 7; P.'s Ex. 9; P.'s Ex. 10). The Goodyear Turn lease also required the lessee to use only the lessor's turn machines (P.'s Ex. 3). The United Company eliminated these clauses employed by the constituent companies requiring an exclusive use of machines of the kind leased, and inserted in its leases of royalty machines this Exclusive Use Cancellation Clause which had been employed by the McKay Company and an example of which is quoted above.

This Exclusive Use Cancellation Clause does not require or obligate the lessee to use the United Company's machines of the kind leased exclusively. On the contrary, it recognizes the right of the lessee to use other machines of the kind leased, contemplates that the lessee may do so, and merely provides that in such case the lessor may take back its own machines. The clause contains no agreement on the part of the lessee at all. It is a mere reservation of a right to terminate the lease under certain conditions.

The machines of each kind or department are leased under a separate form of lease. This clause refers only to machines of the particular kind leased. For example, if the lessee uses heeling machines obtained from others, this clause permits the United Company at its option to withdraw its heeling machines, but does not permit it to withdraw any other kind of machines.

Of the effect of this clause the District Court (Brown, J., R. Vol. 1, p. 1169) said:—

"The 'Exclusive Use' clause relates only to machines of a particular kind or department, thus differing essentially

from the Prohibitive Clause. It was in use before the consolidation, and after the consolidation was not changed in this respect. Though it does not relate to grouping what before was separate, this clause imposes a limitation upon the right to use machines of a particular kind. The legal effect of it is merely a reservation of a right to cancel the lease in case the lessee should fail or cease to use the defendants' machines exclusively for work of a particular kind. It does not have the legal effect of a contract by the lessee not to use the machines of others. It is merely a limitation imposed by a patentee upon the right to use.

"*The reiteration by the United States of the statement that the lessee must use, or is required to use, defendants' machines exclusively is misleading. The distinction between a contract requiring a lessee not to take other machines, and a limitation of a right to use the leased machines is very material*" (italics ours).

This clause protects the lessor by permitting him to withdraw his machines if by reason of the factory conditions under which the machines are used, caused by the use of other machines by the lessee, the lessor is not getting a fair or proper return on the leased machines (R. Vol. 1, p. 447, lines 18–21).

The primary reason for the use of this clause is as follows: The shoe machinery business is seasonal, being divided into substantially two seasons. The manufacturer with an average production of 300,000 pairs of shoes annually must ordinarily have machinery which has a capacity to produce 600,000 pairs of shoes annually. If his average production is 1,000 pairs of shoes a day, he will at times manufacture 2,000 pairs a day and at others 500 pairs a day. In other words, the United Company must furnish him with an equipment sufficient to make 2,000 pairs a day, although he will use it to this extent at most for about three months in the year (R. Vol. 1, p. 444, lines 27–42).

Defendants' Exhibits 212, 213, and 224 show the variations in production in typical factories. For example, Defendants' Exhibit 213 shows that L. A. Crossett made 113,191 shoes in January, 1911, and only 36,516 in April, 1911 (R. Vol. 5, p. 310); Defendants' Exhibit 212 shows that Burt made 4,492 shoes in November, 1911, and only 1,823 in February, 1911 (R. Vol. 5, p. 297); Defendants' Exhibit 224 shows that the John Strootman shoe factory made 5,492 women's stitched shoes in September,

1911; 2,234 in April, 1911, and 749 in May, 1911 (R. Vol. 5, p. 421).

Referring to the variance in production shown in the Strootman factory Mr. Winslow testified:—

> "This is a fair sample of the condition with which we are confronted throughout the trade. It is not a selected case. I would be quite ready to take any factory and prepare the same figures" (R. Vol. 1, p. 445, lines 27–30).

A shoe manufacturer, therefore, requires a machine capacity in his comparatively short busy season which is not needed during the greater part of the year. A lessee who holds the United Company's machines and also machines of others may use the United Company's machines only during his busy season and use the other machines during his slack season, or he may do only his difficult and slow work on the United Company's machines and thereby reduce the royalties payable to the United Company. The United Company cannot afford to install its machines for a royalty measured solely by extent of use if they are to be used only occasionally or for slow and difficult work. It therefore inserts the "Exclusive Use Cancellation Clause" in its leases, permitting it to cancel the leases if on account of the use of other machines such conditions exist and it is deprived of a fair return.

Another reason for the use of this clause is as follows: The United Company leases machines for a royalty to be paid on each pair of shoes made. The United Company cannot keep men in each factory watching each machine in use on which a royalty is payable and counting the number of shoes on which it is used. On certain machines it can place recording mechanisms which will record the use with a certain degree of accuracy. On other machines, such as lasting machines, no such device is practicable. Even where such a device can be used, it records the revolutions of the machine rather than the number of shoes passing through the machine, and it, therefore, is not accurate, and furthermore, it may be tampered with by the lessee or get out of repair. If the lessee uses the United Company's machines of a particular kind—for example, heeling machines—exclusively, the United Company can tell by an examination of the lessee's books or by a knowledge of its total sales substantially the number of shoes on which the machines are used. Where,

therefore, the United Company's machines are used exclusively, it can check the returns made by the lessee and correct errors in such returns due to carelessness or dishonesty. Where, however, the lessee uses the United Company's machines and also machines of others for doing the same class of work, the United Company has no such check. If, therefore, the United Company finds that a lessee who is using its machines and also the machines of others of the same kind pays it a small return on its machines, it may have reason to believe that actually more work is being done on its machines than is paid for, and that through carelessness or dishonesty a correct account of the work is not rendered, but there is no way to check this up, and the lessor is at the mercy of the lessee. Under these conditions it must have the right to withdraw its machines.

This clause, or a clause more stringent in that it required an exclusive use of the lessor's machines, was employed in most of the leases of the constituent companies. Its use in the modified form by the United Company is therefore no evidence of the charge made by the petition of an unlawful plan adopted by the defendants to monopolize by the use of new methods. On the contrary, the elimination by the United Company of the clauses requiring an exclusive use which were previously employed in the constituent companies' leases and the substitution in these leases of the Exclusive Use Cancellation Clause, which merely permits the United Company to withdraw its own machines, is direct evidence that the United Company had no intent to require an exclusive use of its machines.

This clause is one which the experience of the constituent companies had proved to be necessary for the lessor's protection for the reasons stated above. It is a normal, legitimate agreement designed to permit the lease of machines without a substantial initial payment and at the same time protect the lessor so that it may cancel the arrangement if it does not receive an adequate return.

That the purpose of this clause is to protect the lessor when the factory conditions under which its machines are used do not afford it a proper royalty return, and that its purpose is not arbitrarily to prevent other manufacturers from placing machines, is conclusively shown by the fact that this clause is applied only to those machines which carry a royalty. Thus the clause

does not appear in the leases of General Department machines for which no royalty based on the use of the machines is charged, but only a fixed annual payment, or an initial payment. (See leases of General Department machines, P.'s Ex. 40–41; lease of McKay Sewing Machine, P.'s Ex. 170.) And so also in the leases of Goodyear machines this clause is made applicable only when the lessee uses other welting and stitching machines which are the machines on which the royalty is based, and it is not applicable where the lessee uses auxiliary machines obtained from others (P.'s Ex. 26, par. Seven). If the purpose of the clause were to require a use of the United Company's machines exclusively and thus arbitrarily exclude other shoe machinery manufacturers, it would certainly be applied to leases of machines like the McKay Sewing Machine, for which a fixed rental is charged.

As the clause is not applicable to General Department Machines of which the United Company makes over 172 different kinds, or to Goodyear Auxiliaries, of which 43 different kinds are made, or to eyeletting machines, it results that it is not applied to a majority of the kinds and numbers of machines put out by the United Company. Out of 90,276 machines leased by the United Company on March 1, 1911, over 53,000 of the kinds above mentioned were leased under leases which did not permit the United Company to withdraw its machines because machines of the same kind obtained from others were used (Defs.' Ex. 228 R. Vol. 5, p. 430).

Had the United Company intended by this clause to require an exclusive use of its machines of the kind leased, it would have so provided. The right to withdraw the lessor's machines of a certain kind—for example, heeling machines—because other heeling machines are used, obviously cannot compel the lessee to use the lessor's heeling machines. If the lessee is using other heeling machines, he doubtless prefers them. The exercise by the United Company of its option to withdraw its machines would under those circumstances leave the lessee at liberty to use the competitors' heeling machines, which is what the lessee would desire. It could exert no pressure on him to discard other heeling machines which he preferred to use.

Mr. Winslow testified:—

> "The United Company has never adopted the policy of requiring the exclusive use clause as an agreement upon the part of the lessee. That clause has always been in the form of a right reserved to the company in case the lessee does not use exclusively and the conditions are unbearable" (R. Vol. 1, p. 444, lines 21–25).

Mr. Winslow further testified that it was not true that the defendants inserted in each lease provisions reserving to themselves the right to terminate and cancel all existing leases if a shoe manufacturer should fail or cease to use exclusively and to their full capacity machines leased of the defendant and that that never was the purpose of the Company (R. Vol. 1, p. 447)

> "The purpose of the company has been nothing more than to reserve to the company the right to cancel leases of machines of a type which the lessee had ceased to use exclusively if conditions became too onerous to continue" (R. Vol. 1, p. 447, lines 18–21).

It is difficult to see in what way it can be contended that this clause restrains competition. It does not require the shoe manufacturer to use the United Company's machines. So far as this clause is concerned, the shoe manufacturer can freely take and use any other machines he pleases. If, for example, he uses other heeling machines and the United Company withdraws its own heeling machines, this only leaves the lessee free to use other heeling machines which he can get and which he apparently prefers.

The rival shoe machinery manufacturer will be actually benefited by the enforcement of this clause. If the United Company withdraws its machines, the shoe manufacturer is necessarily in the market for new machines, and a market is thereby created for the United Company's competitor. Nothing, therefore, would please competitors of the United Company better than to have it enforce this clause.

It is obviously fair and just that the United Company be entitled to withdraw a machine on which its return consists of a royalty based on the number of shoes on which the machine is used, if, owing to the use of other machines of the same kind by the lessee, the machine is only used occasionally or on slow or

difficult work, or the United Company has reason to believe that work actually done on its machines is not so reported; in other words, when, to use Mr. Winslow's words, "conditions are unbearable."

That the United Company may properly reserve a right to withdraw its machines under the foregoing conditions seems indisputable. It would be impossible to specify exactly and definitely these conditions. The clause is, therefore, necessarily general in its terms; but it only reserves an option to cancel; it does not provide that there shall necessarily be a cancellation of the lease if other machines of the same kind are used.

As, therefore, the right reserved by the clause may clearly be exercised for a proper purpose, even if it could also be so exercised as to result in excluding competitors' machines (which we submit is not the case), nevertheless this possibility would not be sufficient to make the clause unlawful unless it were shown that it was inserted in the leases for this purpose or that it was enforced for this purpose.

Mr. Winslow, as quoted above, testified that it was not inserted or enforced for this purpose. There is absolutely nothing in the record to contradict his testimony. Not a single instance was shown in which the United Company enforced or threatened to enforce the clause in order to exclude competitors' machines. In the only five cases (except cases of bankruptcy) in which machines were withdrawn by the United Company, no such instance appears (R. Vol. 1, pp. 447–8; *infra*, pp. 417–418).

On the contrary, so far from showing that the United Company withdrew its machines because competitors' machines were used, Plaintiff's Exhibit 161 (R. Vol. 4, p. 1118) introduced by Louis H. Harriman of the Haverhill Shoe Machinery Company, a competitor of the United Company, as a witness for the United States, gives a list of 17 concerns which had used or were using the Haverhill Turn Sewing Machine in the same factory with the United Company's Goodyear Turn Sewing Machine the leases of which contained the Exclusive Use Cancellation Clause, thus contradicting absolutely the contention that the United Company withdrew its machines merely because a competitor's machines of the same kind were used.

We submit, then, that even if it can be contended (which we deny) that the right given by this clause could be so exercised

as to exclude a competitor's machines, the record establishes that it was not inserted in the lease for this purpose and that it was not enforced to accomplish this result.

The Use of the Exclusive Use Cancellation Clause is the Mere Exercise of a Patent Right. Its Legality is not Affected by the Sherman Act nor can it be Tested by Considerations of Public Policy not Recognized in the Patent Law.

The leases in the present case are termed "Lease and License Agreements" and constitute not only leases of the physical materials in the machines but also licenses under patents to use the machines in the manner and to the extent defined therein.

A patentee has an absolute right to exclude all others from the use of the patented invention even though he does not use it himself. *Paper Bag Patent Case*, 210 U. S. 405.

The motive of the patentee in refusing to license others to use the patented invention is immaterial. As said in the Paper Bag Patent Case (p. 429),—

> "As to the suggestion that competitors were excluded from the use of the new patent, we answer that such exclusion may be said to have been of the very essence of the right conferred by the patent, as it is the privilege of any owner of property to use or not use it, without question of motive."

If the patentee does consent to grant a license to use his patented invention, he may grant it for such time long or short as he pleases. As the patent law gives him an absolute right to withhold or grant licenses as he pleases, regardless of his reasons or motives, the length of time for which any licenses he may choose to grant shall extend is absolutely within his discretion.

In *Mitchell* v. *Hawley*, 16 Wall. 544, the patentee conveyed the right to make and use four machines during the remainder of the original term of the Letters Patent. The licensee constructed and sold the four machines which he was authorized to make. The patent having been extended for an additional term of seven years it was held that the purchaser of the four machines had no right to use them during the extended term whether or not he had purchased with notice of the limited term of the license to use.

It is clear, then, that a patentee has the right to grant a license to use his patented invention for as long or short a term as he pleases. In pursuance of this right he may grant a license to use for a definite term or for an indefinite term, that is, until such time as he in his absolute discretion chooses to terminate it. After such termination the licensee, of course, has no longer any right to use. This is so even if, as in *Mitchell* v. *Hawley*, supra, the licensee has bought the machine which embodies the invention and still holds title to it.

Just as the patentee can refuse to grant a license at all, regardless of his motives or of the effect of his refusal, so in granting a license he may make it terminable at such time or in such event as he pleases, regardless of the effect of such termination or of his motives in so doing.

Such a grant of a license does not obligate the licensee to use the patented invention. It is a mere grant of a right. The licensee is as free in every respect as he was before the grant was made and in addition has the rights conferred by the grant. Upon the cancellation of the license, whether it be terminable at a definite time or at the patentee's option, and regardless of the patentee's motive in cancelling the lease, the licensee is no worse off than if the patentee had refused to make the grant at all.

Having an absolute right to make or refuse the grant, questions of public policy are not relevant. An argument that a grant for the full term of the patent, or an irrevocable grant, would be more beneficial, or would confer a greater benefit on the licensee, or would be more advantageous to competitors, has no standing. As said by the court in *Henry* v. *Dick Co.*, 224 U. S. 1, 35, in referring to conditions imposed by patentees,—

> "Arguments based upon suggestions of public policy not recognized in the patent laws are not relevant."

It follows, then, that in the present case the United Company could, in the exercise of its indubitable rights granted it under its patents, provide in its lease and license agreements that the licenses to use the leased machines should be operative only until such time as the United Company might at its absolute discretion choose to terminate them. It would have the right in such case to terminate the licenses either because the licensee ceased to use its machines exclusively or for any other reason

whatsoever. Its motives could not be questioned any more than its motives for refusing to grant a license at all could be questioned.

If, then, the United Company can in granting its licenses reserve this broad right to terminate for any cause whatsoever, surely it can reserve the lesser right (which is inevitably embraced within this broader right) of terminating because the lessee does not use its machines exclusively. The termination of the license is a mere exercise of the rights granted by the patents, namely, the rights to exclude others completely or to permit the use of the patented inventions for as long or short a period as the patentee pleases.

The United States may object that the termination of the license because the licensee does not use the patented machines of the kind leased exclusively may result in excluding competitors' machines. We have shown above that no such result will follow and that, even if such a result were possible, the United Company did not insert this clause or enforce it for this purpose or with this result. But assuming that the clause results in an exclusive use of the United Company's machines of the kind leased, it is, as we have shown above, within the rights of the patentee. If he grants licenses to use his machines and they are superior to all others in the market, they may drive such other machines out of use. If he refuses to grant licenses of his machines and they are sufficiently superior, he may by using them himself obtain all trade in the article which the machines produce. Questions of his motives, of public policy, or of the effect of his acts are irrelevant so long as he limits himself to the exercise of his patent rights, that is, to excluding others or permitting them to use for such periods as he pleases.

The fact that the United Company in addition to reserving the right to terminate its licenses to use the machines also reserves a right to withdraw the machines themselves is immaterial. The machines belong to the United Company and are clearly of no value to the lessee when his right to use them has terminated. Their withdrawal in such event can in no way injuriously affect either the lessee or competing shoe machinery manufacturers.

Considered from another aspect the clause is seen to be equally within the rights granted a patentee.

Thus a patentee can not only grant a license to use his pat-

ented invention for as long or as short a period as he pleases, but can also grant a restricted use, that is, a use only in a particular place, by a particular person, or for a particular purpose, regardless of his motives or the effect of the restriction.

Thus in *Rubber Co.* v. *Goodyear*, 9 Wall. 788, the patentee granted a license to use the patented invention only at the licensee's own establishment and for a particular purpose, reserving to the patentee the exclusive right to manufacture goods to be sold to the United States Government. The authority of this case was recognized both by the majority and the minority opinions in the Dick case.

Such a restricted license may be granted irrespective of its effect or the motive of the patentee so long at least as it is confined to a mere grant and does not require action on the part of the lessee. In *Henry* v. *Dick Co.*, supra, the court, after referring to suggestions of the evil consequences to trade which might result from the right on the part of the patentee to grant licenses to use on such terms as the patentee chooses to prescribe, said (p. 35):—

> "This larger right [namely the right to exclude all others] embraces the lesser of permitting others to use upon such terms as the patentee chooses to prescribe. It must not be forgotten that we are dealing with a constitutional and statutory monopoly. An attack upon the rights under a patent because it secures a monopoly to make, to sell, and to use, is an attack upon the whole patent system. We are not at liberty to say that the Constitution has unwisely provided for granting a monopolistic right to inventors, or that Congress has unwisely failed to impose limitations upon the inventor's exclusive right of use. And if it be that the ingenuity of patentees in devising ways in which to reap the benefit of their discoveries requires to be restrained, Congress alone has the power to determine what restraints shall be imposed. As the law now stands it contains none, and the duty which rests upon this and upon every other court is to expound the law as it is written. Arguments based upon suggestions of public policy not recognized in the patent laws are not relevant. The field to which we are invited by such arguments is legislative, not judicial. The decisions of this court, as we have construed them, do not so limit the privilege of the patentee, and we could not so restrict a patent grant without overruling the long line of judicial decisions from Circuit Courts

and Circuit Courts of Appeal, heretofore cited, thus inflicting disastrous results upon individuals who have made large investments in reliance upon them."

If, then, as is well recognized, the patentee can license for use only in a particular place, by a particular person, or under certain conditions defined by him, he can surely license for use only in a factory so long as his machines of the same kind are used exclusively in that factory, or he can license for use by a particular licensee so long as such licensee uses his machines exclusively.

By so doing he is not obliging the licensee to use his machines exclusively. He is merely exercising his unquestioned right to grant a license to use. The licensee is left free to exercise his license or not as he pleases. The patentee having an absolute right to grant licenses, either partial or complete, his motives in so doing are immaterial.

It being clear, then, that the United Company has an absolute right to grant a license to use its machines to be exercised only in factories where its machines of the same kind are used exclusively, it necessarily follows that it can grant a license which is subject to revocation at its option if its machines are not used exclusively. Such a provision is less stringent as it permits the licensee to use, even though other machines of the same kind are used, and merely provides for a revocation of the use in such case if the patentee determines such revocation is desirable.

F. ADDITIONAL MACHINERY CLAUSE.

This clause was used by the United Company in only a few leases, and its use was abandoned entirely in 1907.

By this clause the lessee is required to take from the lessor additional machines of the same kind as those leased if his work requires them.

This clause was employed in non-initial payment leases of the Consolidated Company prior to 1899 (P.'s Ex. 7; P.'s Ex. 9; P.'s Ex. 10), and a similar clause forbidding the lessee to use any other turn machines was employed in the Goodyear Company's turn lease (P.'s Ex. 3). The following example of this clause is taken from Article Twelfth of the Consolidated Com-

pany's lease for the Consolidated Hand Method McKay Lasting Machine, in use before the United Company was formed:—

> "*Twelfth:* It is declared and understood that it is the intention of the Licensee to use said machine herein licensed and leased for lasting all the boots and shoes made by him applicable to the said machine, and not to have it in his possession as a means of reducing the price of hand-lasting or of controlling hand-lasters, or of influencing a trade with any other lasting machine not controlled by the Licensor, or the list price thereon, and the Licensor enters into this contract because of and by reason of such understanding and agreement on the part of the Licensee. It is, therefore, agreed that the Licensee shall use such machine hereby licensed and leased for lasting all of his boots and shoes to its full capacity, limited only by the demands of his business; *and should the demands of his business require he shall take the license and lease of such additional machines as may be needed to do all his work*" (italics ours).

Mr. Winslow testified:—

> "All of those additional machinery clauses were removed from all of the leases of the United Company not later than 1907, and they were not in use and did not represent the policy of the company at the time of the bringing of this suit" (R. Vol. 1, p. 444, lines 17–20).

This clause was one of the various methods adopted by the constituent companies in an effort to assure a proper return upon their investment in machines. It protected the lessor against the abuses possible where its machines were not used exclusively, as we have explained above, in considering the Exclusive Use Cancellation Clause. By requiring an exclusive use of its machines it avoided their being used only occasionally during the busy season or only on slow work, thus reducing the royalty received, and it prevented also the difficulty of determining the actual work done on the machines which would arise where machines of others were used. It was usually introduced when the machines were first put on the market. Often when a shoe manufacturer first took a machine he used it only as a trading proposition. The lessor installed the machine and went to the expense of instructing operatives, and the lessee then used it to reduce the price of hand work or to obtain machines from others

cheaper and the machine being on a royalty basis, the lessor got no return. By this clause the lessee agreed to do his work by machines and to take additional machines for additional work, and this besides preventing the abuses above referred to gave a further assurance of an adequate return. Its purpose, therefore, was not to arbitrarily exclude others, but to provide an adequate return on the capital invested by the lessor.

The United Company did not adopt this clause for any general or extensive use. The United Company eliminated the clause from the lasting machine leases of the Consolidated Company as soon as new leases were drawn up, and substituted the Exclusive Use Cancellation Clause, which it felt sufficiently protected it against the abuses possible where machines of others were used.

It inserted this Additional Machinery Clause in its lease of metallic machines adopted in March, 1900 (P.'s Ex. 29; R. Vol. 1, p. 10, lines 24–25), but in the next printing of this lease, in June, 1900 (P.'s Ex. 30; R. Vol. 1, p. 10, line 31), it eliminated the clause and inserted a provision that the lessee should either take additional machines or the lessor might at its option cancel; in other words, a different form of the exclusive use cancellation clause under which the lessee was not obligated to use its machines exclusively.

The United Company employed this clause also in its Heeling Machine Lease adopted in January, 1900 (P.'s Ex. 27, R. Vol. 3, p. 254), but it eliminated the clause in the next form of lease, adopted in May, 1904 (P.'s Ex. 28, R. Vol. 3, p. 261). It also inserted the clause in its first lease of the pulling-over machine, which was an entirely new machine displacing hand labor, and, therefore, one which might be used as a trading proposition to reduce the price of hand work, but it eliminated the clause in the form of Pulling-over Lease which was adopted as early as 1907 (Defs.' Ex. 345, R. Vol. 5, p. 958; see also R. Vol. 1, p. 981, lines 1–7).

The Additional Machinery Clause was never used generally by the United Company. It was used by the constituent companies and to the limited extent above outlined by the United Company for a definite and legitimate business purpose and, therefore, shows no intention to restrain trade or monopolize.

The clause was primarily useful when new machines displacing hand work were first introduced. such cases, as explained above, it was found that a single machine was sometimes taken, not with the intention of doing the work by machine, but to enable the shoe manufacturer to reduce the prices paid hand workers by a threat of using the machine. The machinery manufacturer had gone to the expense of installing a single machine and instructing untrained operators in its use with the expectation and understanding that if successful, the shoe manufacturer would adopt it for general use. In such cases the additional machinery clause was important to the lessee's protection. When the superiority of the machine over hand labor was definitely established, experience showed that the other abuses guarded against by the additional machinery clause, namely, the abuses which might arise when machines of the same kind obtained from others were employed in the factory, could be sufficiently guarded against by the Exclusive Use Cancellation Clause, which did not require a use of additional machines, but merely gave an option to the lessor to withdraw its machines and this clause was, therefore, substituted.

The elimination of this clause by the United Company from the leases of the constituent companies, its limited use by the United Company, and its final abandonment by the United Company as early as 1907, four years before this petition was filed, show that it was not a method adopted by the defendants to monopolize, and make its further consideration immaterial in the present case.

G. CANCELLATION FOR BREACH CLAUSE.

The following example of this clause is taken from the defendant's Heeling Machine Lease (P.'s Ex. 28, par. Eleven; R. Vol. 3, p. 268):—

> "But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery

then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor."

This clause permits the cancellation of all leases between the lessor and the lessee provided, and only provided, the lessee breaks one of the conditions in one or more of such leases "expressed to be obligatory upon the lessee"; in other words, some condition which the lessee obligates himself to carry out.

The leases contain various conditions which are obligatory upon the lessee. The following, taken from Plaintiff's Exhibit 28, will illustrate their character: (1) The leased machinery shall be used only by the lessee at his factory and shall not be transferred to any other person (par. One). (2) The lessee shall keep the machinery in good working order and not permit any one to remove any plate, dates, numbers or other inscriptions affixed to the same. He shall obtain from the lessor all duplicate parts needed in the machine (par. Two). (3) He shall indemnify the lessor from injury, loss or destruction by fire or otherwise (par. Three). (4) He shall pay all taxes and assessments on the leased machinery (par. Four). (5) He shall use the machinery to full capacity so far as he has work for it, and respect the Restricted Use Clause (par. Five). (6) He shall pay the royalty provided for in the lease (par. Six).

This clause merely provides that if the lessee does not act in good faith and violates his agreements the United Company may sever relations with him. If, for example, the lessee refuses to pay royalties or abuses the machines held by it under one lease, the United Company reserves the right to take back all its machines so that it will not suffer similarly in respect to machines held under other leases.

Mr. Winslow testified:—

"The right to cancel clause, for breach of a condition expressed to be obligatory upon the lessee, was adopted by the company with respect to conditions which would be such as to make the continuance of the business relations between the lessee and ourselves impossible, as where the lessee did not make proper returns of the royalties or did not pay his royalty or refused to pay the taxes—those

conditions which in the ordinary business relations between men would make the continuance of the relations impossible.

"In the twelve to thirteen years prior to the beginning of this suit the United Company availed itself of the right to cancel leases and remove machinery for reasons other than bankruptcy or receivership in only five instances" (R. Vol. 1, p. 447, lines 22–34).

As in the case of the Exclusive Use Clause, this clause merely gives the United Company an option to cancel its leases, if the lessee violates their terms. It is obviously fair that this general right should be reserved to the lessor and it is clear that cases may arise in which its exercise would be essential to the protection of the lessor. If (which we deny) it is possible that it might also be so exercised as to oppress lessees or unlawfully exclude competitors' machines, this probability alone would not make the clause objectionable unless it were shown that it was inserted in the leases for this purpose, or was enforced for this purpose.

The record fully sustains Mr. Winslow's testimony (*supra*) that the clause was inserted only to permit the United Company to sever its relations with a lessee on account of conduct by the lessee which "in the ordinary business relations between men would make the continuance of the relations impossible."

In the five cases in which (apart from bankruptcy) leases were cancelled, the lessee either had abandoned the use of the United Company's machines entirely or was persistently cheating the United Company of the royalty due on its machines (R. Vol. 1, pp. 447–8; *infra*, pp. 417–418).

The leases of the constituent companies all contained provisions giving the lessor the right to cancel if the lessee violated the lease. Practically every lease of property has such a condition.

The United States apparently objects to the present clause because it permits the cancellation not only of the particular lease, the agreement in which is broken, but of all other leases between the parties. The United Company could perfectly well furnish all its machines on a single lease, and if it did so this objection of the United States would not be applicable. For convenience it issues different leases for machines of different departments and also issues a new lease each time a new machine

is taken in any one department. Thus, if a lessee has six Goodyear machines, he may have six different leases. The relationship created between the lessor and the lessee by these various leases, however, is essentially a single relationship which, for convenience, is expressed in a number of different documents. If the lessee violates an agreement in any one of these documents, it is as fair to cancel all as it would be to cancel that particular one.

The practice of the constituent companies was to issue one lease for all the machines originally taken, and then, when additional machines were taken of the same kind, to incorporate these machines in the original lease. The Fifteenth Clause of the Consolidated Company's lease of the Chase Lasting Machine (P.'s Ex. 7, R. Vol. 3, p. 66), for example, provides for this practice. Mr. Howe testified that that was the universal practice of the Goodyear Company (R. Vol. 1, p. 690, lines 12–23). When, therefore, the lease was broken the lessee could cancel the lease and thereby withdraw all its machines taken at different times and held under its terms. The clause as adopted by the United Company, which issued new leases for additional machines, accomplished practically the same result.

It is impossible to see how this clause can restrain trade or tend to create a monopoly. The shoe manufacturer cannot complain if he loses his leases because he violates his agreements. A rival shoe machinery manufacturer cannot complain of the exercise of this clause because he is obviously benefited if a shoe manufacturer is deprived of machines of the United Company and therefore must seek machines elsewhere.

The United States contended in the District Court that this "Cancellation for Breach Clause" taken in connection with the "Exclusive Use Cancellation Clause" permits the United Company to cancel all its leases if machines of any one kind held by the lessee are not used by the lessee exclusively. This is obviously not so. This "Cancellation for Breach Clause" which we are now considering permits cancellation only for violation of a condition "obligatory upon the lessee." The "Exclusive Use Cancellation Clause" does not obligate the lessee to use the United Company's machines exclusively. On the contrary, it contemplates that the lessee may use other machines of the same kind and permits him to do so, and merely reserves an option

to the United Company to cancel its leases of machines of that kind. As the lessee is not obligated to use such machines exclusively the condition is not one "obligatory upon the lessee," and therefore the use of other machines which gives the United Company a right under the "Exclusive Use Cancellation Clause" to cancel leases of machines of that kind does not give the United Company any right to cancel all its leases or any of its leases under this "Cancellation for Breach Clause."

The United States may claim that it is not the actual exercise of this cancellation clause which operates to exclude the use of competitors' machines, but the power to exercise it in case of a violation by the lessee of the Full Capacity Clause, or the Restricted Use Clause. In other words, the contention may be that a lessee will not use a competitor's machine if one of the United Company's machines held by him for doing the same work is not being used to capacity, and will not use one of the United Company's machines taken under a restricted use lease, in a manner not permitted by the license, on shoes operated on by some competitor's machines if as a consequence the United Company would have the right to withdraw all its machines. As a result it may be contended that the use of competitors' machines is interfered with.

This argument depends wholly upon whether the Full Capacity and Restricted Use Clauses are in themselves lawful. If it is lawful to require the lessee to use a leased machine to capacity, and to grant a restricted license to use the machine, then it is obviously fair that the lessee should be bound by these clauses, and that if he chooses to violate them, his leases should be cancelled.

The objection made by the United States, then, is not that the Cancellation for Breach Clause is unlawful, but that the Full Capacity and Restricted Use Clauses are unlawful. The Cancellation Clause, permitting cancellation for violation of a condition obligatory upon the lessee, can under no circumstances be unlawful, if the conditions made obligatory upon the lessee are lawful.

H. RESTRICTED USE CLAUSE.

(1) REASONS FOR ADOPTION OF THE RESTRICTED USE CLAUSE.

The "Restricted Use Clause" restricts the use of the defendants' machines of one group or department to use on shoes operated on by certain machines of another group or department. The following example, taken from the United Company's lease of the Hand Method Lasting Machine (P.'s Ex. 15, R. Vol. 3, p. 129, at p. 131), which restricts the use of the machine to use on shoes operated on by the Goodyear Welter and Stitcher, illustrates the character of the clause:—

> "But the leased machinery shall not, nor shall any part thereof, be used in the manufacture of any boots, shoes, or other footwear which are or shall be welted, or the soles stitched on welt sewing or sole stitching machines not leased to the lessee by the lessor or its assignor, or in the manufacture of any turn boots, shoes, or other footwear, the soles of which are or shall be attached to their uppers by turn sewing machines, not leased to the lessee by the lessor or its assignor."

Considerations to be Noted at Outset of Discussion.

The following considerations must be noted at the outset:—

(*a*) In the first place, the Restricted Use Clause does not obligate the lessee to use either the leased machine or any other machines of the United Company at all. It merely restricts the use of the leased machine to use on shoes on which certain other machines obtained from the lessor are used. For instance, take the Restricted Use Clause quoted above from the lease of the Hand Method Lasting Machine, which restricts it to use with the Goodyear Welter and Stitcher. It does not require the lessee to use either the United Company's Lasting Machine or its Welter and Stitcher. If the lessee desires to use a competitor's lasting machine he may do so. If he desires to use a competitor's welter and stitcher he may do so. The only restriction is that if the lessee does use an outside welter and stitcher he cannot use the leased lasting machine on shoes on which such outside welter and stitcher are used. If he wishes to use the Lasting Machine

in connection with an outside welter and stitcher he may exchange his restricted lease for an unrestricted lease by paying an initial premium of $300.

Nor does the Full Capacity Clause taken in connection with the Restricted Use Clause obligate the lessee to use other machines. The Full Capacity Clause in every case requires the use of the leased machine only if the lessee is making shoes on which the leased machine may be used without violating the restrictions.

(*b*) Restricted Use Leases are only alternative forms of leases which are offered to lessees who desire to use a team of the United Company's principal machines. Unrestricted leases are offered all lessees who wish to use only certain kinds of machines furnished by the United Company in connection with other machines obtained from competitors. The royalty charged under the unrestricted leases is exactly the same as the royalty charged for the restricted leases. The only difference is that under the unrestricted leases an initial payment is charged to cover the loss in royalties and additional expense which result where the United Company's principal machines are not used as a team.

(*c*) The Restricted Use Clauses have a very limited application as we shall show below. They only restrict the use of the United Company's machines to use with a comparatively few of its principal machines, machines which are adapted for use together, which are delicate in operation, which are essential to the integrity of the shoe, and which must be kept in proper repair and adjustment to insure continuous and effective production in the factory. There is, as we show below, absolutely no justification for the charge on which the petition is founded that the United Company declined to lease its essential machines except on condition that all other machines be taken from it.

Auxiliary Restricted Use Clause Distinguished.

The Restricted Use Clause limits the machine leased to use on shoes operated on by the principal machines of another group or department. The Auxiliary Restricted Use Clause limits the use of auxiliary machines of a department to use on shoes operated on by the principal machines of that department. The reasons for the use of this latter clause differ somewhat from the reasons for the use of the Restricted Use Clause, grouping machines of different departments, and are considered below separately.

Reasons for Adoption of Restricted Use Clause.

The purpose of the Restricted Use Clause, when applied to machines of different departments, is to provide a lower rate for machines where they are used in a set or team, and thus not only make a better shoe, but work more efficiently and therefore produce a larger return for the United Company in the way of royalties on each machine. This clause provides a wholesale rate where the machines are used in a wholesale manner, thus enabling the lessee to share in the economies resulting from such use as a team.

The reasons why the use of certain of the United Company's machines as a team or series increases the efficiency of each machine, reduces the cost of service for each machine, and protects the reputation of the machines and thus justifies a better rate to lessees desiring to use the machines in this manner than is charged for machines taken independently to be used in connection with machines obtained from others, have been partially referred to above (*supra*, pp. 259–260). We shall, however, at this point summarize the reasons.

(*a*) A large number of different machines are used in the manufacture of each shoe. In the economical management of a shoe factory the shoes flow from one machine to another in a continuous stream, and when an important machine in the line breaks down it interrupts this flow and therefore not only stops work on that machine, but also stops work on all machines coming after it in the line; and as it would merely accumulate uncompleted work which could not be finished to operate machines preceding it in the line, it likewise stops work on those machines which precede it.

It is therefore of the utmost importance that each machine in the line be well constructed and well cared for so that it will not break down or get out of adjustment, and it is furthermore of the utmost importance that a machine be repaired at once if it does break down or get out of adjustment, so that work will be interrupted for as short a time as possible; otherwise, the machines all along the line will be idle when any one machine breaks down, and the lessor of those which pay a royalty will be deprived of his royalty, the operatives who are paid by the piece will suffer, as

they will be unable to work, and the shoe manufacturer's production will cease.

The advantages of a well-constructed line or series of machines which receive proper repair service are especially pronounced as respects the principal bottoming machines, namely, welters, stitchers, lasting, metallic fastening and heeling machines, to use with which other machines are restricted by the Restricted Use Clauses. These machines perform delicate and difficult operations, handle material like thread, wire and nails, and are themselves necessarily delicate machines, having a large number of moving parts, which are liable to get out of adjustment or repair.

No other company furnishes efficient service, so that when another company's machine is interjected into the series, the efficiency of the whole series of machines is lowered to the level of the efficiency of that machine, just as was the case with the machines of the constituent companies before 1899 (*supra*, pp. 183–186). The United Company's income decreases as the efficiency of the series is so lowered.

It is important, also, to remember that the machines of the different groups or departments furnished by the United Company are not used independently as separate groups, the work of one group being completed before the shoe passes to another group of machines of a different kind. The machines of the different groups are interspersed and in reality constitute a single unit.

This was illustrated by the moving pictures shown to the District Court. This was Defendants' Exhibit 241.

Mr. Winslow testified:—

> "The machines, the operation of which were illustrated by moving pictures, defendants' Exhibit 241, operate in a factory in the manufacture of Goodyear welt shoes in the order shown to the court." (The witness then stated the name of each machine as it operated in its order.) (R. Vol. 1, pp. 503–4.)
>
> "In these successive operations machines of the kinds obtained from the Goodyear Company, the Consolidated & McKay Lasting Machine Company, and the McKay Shoe Machinery Company are interspersed among each other through those consecutive operations, and they are all required in the production of a Goodyear welt shoe and perform these necessary consecutive operations" (R. Vol. 1, p. 504, lines 24–30).

Robert P. Hazzard, a large shoe manufacturer, testified:—

> "The machines from the different departments of the United Company are interspersed in their operations. The first thing in making the shoe is to prepare the bottom stock. In that we have to use auxiliary machines of the Goodyear department and also some of the general department machines. We next use the assembling machine and pulling over machine, from the pulling over department, and the No. 5 lasting machine from the lasting department, etc. At the same point we use the machine for tacking innersoles from the metallic department. We next employ machines for trimming the uppers, pulling the tacks, and welting the shoe from the Goodyear department, and then the auxiliary Goodyear machines for sole laying, etc. The heel seat nailing is done by a metallic department machine, and then we come to the Goodyear stitchers and more Goodyear auxiliary machines. Then the heeling machines of the metallic department are used, and then we swing back to the slugging machines of the metallic department. From there out we go back to the general department machines, edge trimmers, edge setters, etc. The operations of the machines from the different departments are all interwoven and the machines of one department are interspersed among the operations of the machines of the other departments" (R. Vol. 1, p. 642, lines 23–44).

The different machines might conceivably be incorporated into a single machine so far as their operation is concerned. They constitute for practical purposes a single machine. If one of the machines breaks down, the entire series is made idle to practically the same extent that all the parts of a single machine are made idle if one of the important parts breaks. It is as important for the efficiency of the machines as a whole that each machine of the team or series be adapted for use with the other machines and be well constructed and kept in proper repair and adjustment as it would be if they constituted parts of a single machine.

(*b*) It is important also to note that the principal machines of the United Company have been developed for use together. Each machine prepares the shoe for the operation of the next machine, leaving it in condition to be operated on by that machine, and the next machine is adapted to supplement the

operation of the preceding machine, correct any weaknesses or defects in its operation, and so in turn prepare the shoe for the peculiar operation of the succeeding machine in line.

The defendants exhibited to the court by moving pictures the operation of a large number of their machines to illustrate the truth of the foregoing. This was Defendants' Exhibit 241. As the pictures showing the operations of the various machines were exhibited to the court Mr. Winslow testified in explanation (see R. Vol. 1, pp. 495 to 502 inclusive).

Winslow testified:—

> "It is the fact that each of the principal machines of the United Company have been developed and improved with special reference to its operation upon work which has been or is to be done by other principal machines of the Company; and also new and improved machines have been developed to cooperate with them and increase the efficiency of the previously existing principal machines" (R. Vol. 1, p. 857, lines 29–35).

Robert P. Hazzard, a large shoe manufacturer, testified of the machines of the United Company:—

> "Practically every machine takes up the shoe where the preceding machine left it, and there are very few places today in the bottoming room where any labor is necessary between the operations of the United Company machines. Practically speaking, each machine prepares the shoe for the operation of the next; for example, when a shoe leaves the No. 5 lasting machine there are tacks in it to hold the upper in lasted position, and those tacks must be removed before the inseam can be trimmed. Then they come in with their tack-pulling machine which pulls out the tacks, leaving the shoe in condition so that the inseam trimmer can trim the upper, which it could not do if the tacks were there. So you go on indefinitely; it is just a continuous process" (R. Vol. 1, p. 643, lines 3–15).

Mr. Howard testified as follows:—

> "The manufacture of shoes is unique in that a great number of different successive operations are performed by different machines upon the shoe and its several parts. It is essential for the success of the operation of each machine that the shoe come to that machine in the right con-

dition for its operation, and that requires that the operations of machines which have previously been used upon the shoe shall have been performed properly. If such prior operations have not been properly performed, the work of that machine cannot be done right. On the other hand, proper performance of subsequent operations upon the shoe requires that each machine in turn shall efficiently prepare the shoe for the operation of the next machine to which the shoe is to be presented; and improper operation of any machine in the line may impair the efficiency of the operation of one or many of the machines which are to perform subsequent steps in the manufacture of the shoe. Frequently the combined effects of improper operations of a number of machines will accumulate as the shoe goes through the factory and will result in a poorly made shoe. It quite often happens that when the finished shoe is not right it requires some time to find out what machine is responsible, and frequently it will be found that the poor work is the combined effect of impaired efficiency of several machines which operate successively upon the shoe. It is therefore of the utmost importance that every machine shall be designed with a view to the succeeding machines, and so that it will deal accurately and efficiently with the precise shoe organization that comes to it from the preceding machines; and every machine must be kept in its most efficient and satisfactory condition. That requires incessant and careful supervision of the machines all along the line.

"Moreover, it is of great importance that each machine in the line be properly constructed from a mechanical standpoint. If a machine is poorly constructed, for example if some of the operating parts are weak, or if some of the movements given to any of the parts are too abrupt, or if the mechanical organization is not good, so that excessive wear and lost motion with consequent erratic operation results, a machine will frequently be put out of operation by breakage of parts or by necessity for adjustment to make the parts co-operate as they must to perform the machine's work. Every time a machine is put out of operation for any reason, shoes accumulate in front of that machine and there are no shoes for the operation of the machines for performing subsequent steps, so that those succeeding machines and their operators are idle and the whole factory suffers on account of that one disabled machine" (R. Vol. 2, pp. 2664–5).

Mr. Howard then explained at length the effect on the operation and work of other machines of a number of machines not

adapted for use with such other machines (R. Vol. 2, pp. 2265–2671), and added:—

> "The impairment of the efficiency of the operation of one machine by the failure of machines which have previously operated upon the shoe to do their work right extends all the way through the long line of machines which operate successively upon the shoe, and includes even those machines which perform minor operations. The difficulties which I have specifically discussed are merely illustrations of what may occur throughout the factory" (R. Vol. 2, p. 2671).

Therefore a team of the United Company's machines used together is more efficient and has a greater productivity and produces a better product than if the team were not used as a whole and an outside machine not specially adapted for use with other machines of the series were interjected into the series.

(*c*) The United Company, as we have shown, furnishes service with its machines free of charge. It is obvious that the United Company can furnish this service at less cost to itself for each machine if a series of machines is used than it can if a single machine or only a few machines of the series are used.

(*d*) Where a series of machines is used on each shoe, if the completed shoe is defective it is sometimes difficult to tell what particular machine of the series is at fault. Where a team of United Company's machines is used the United Company is responsible for the result, and by furnishing efficient machines and keeping its machines in proper adjustment and repair it maintains a high standard of product. Where an outside machine is introduced it may produce defective work.

The United Company owns the trademarks "Goodyear Welt" and "Goodyear Turn" and grants to its lessees the right to use them. Its machines have been especially developed to make "Goodyear Welts" and "Goodyear Turns." It is vitally interested in the quality of the product of its machines. Defective work affects the reputation of its machines.

When machines of different makes are used together on the same product it is not easy to tell which is responsible for defective work, and the results of poor work by one machine may run along and accumulate with each operation and produce unsalable or defective shoes and thereby affect the reputation of the United

Company's machines, even though they are not responsible for the defective work.

Mr. Winslow testified:—

> "The reputation for efficiency, both in quantity and quality of work done by our machines, is always in jeopardy and affected by the introduction of a machine of some other manufacturer into the series of operations done by our machines. The reputation of our Goodyear welt shoe, the standing of that shoe, is dependent upon the two different kinds of seams that are made by the two different machines used in the manufacture of that shoe. And the quality of work done is affected, and would be necessarily affected, by the way in which the work comes from, or is prepared by, one machine to go to the next machine.
>
> "Prior to the formation of the United Company there was a constant dispute between the different companies which made up the United Company as to who was responsible for a poor piece of work. As an illustration, which could be easily understood even by one not familiar with the manufacture of shoes, the very next operation from the lasting is the welt sewing. The welt-sewing machine operator would constantly lay the blame for poor work upon the lasting operator—the operator upon the lasting machine. The lasting machine operator would constantly blame the operator upon the welt-sewing machine.
>
> "Both those reasons have to do with the use of our tying clauses for the greatest and most successful production of our machines" (R. Vol. 1, pp. 866–7, lines 34–43, 1–12).

(*e*) The United Company also furnishes the best machines. This is proved by all the evidence and is found as a fact by the District Court. Having the best machines, adapted and developed to be used consecutively, as a team or plant, it is distinctly injurious to it to have an inferior machine introduced into the line, for at once the certainty and regularity of production is endangered, and royalties exposed to diminution.

One of the principal reasons for the formation of the United Company was to improve the service rendered with its machines and thus increase their productivity (*supra*, pp. 171–172). The three constituent companies prior to the formation of the United Company often had their machines in the same factory, but no one of the three could afford a really satis-

factory service. The extent to which the United Company was enabled to improve this service has been shown above (*supra*, pp. 186–188). The testimony of shoe manufacturers as to the efficiency and necessity of the service has also been referred to (*supra*, pp. 189–194). It has also been shown that as a result in part of this service and the use of the United Company's machines as a series or team the efficiency or productivity of each machine has increased to a startling extent. Thus each Goodyear welter operated on 66.7 per cent. more shoes in 1910 than it did in 1900, each Goodyear stitcher operated on 69.5 per cent. more shoes in 1910 than in 1900, each Goodyear turn sewing machine operated on 54.3 per cent. more shoes in 1910 than in 1900, each heel attaching machine operated on 62.3 per cent. more shoes in 1910 than in 1900, and each lasting machine operated on 24 per cent. more shoes in 1910 than in 1900 (*supra*, p. 197; Defs.' Ex. 218, R. Vol. 1, p. 428).

The foregoing conditions show beyond question that when a series of the United Company's machines is used the total number of shoes operated on by each machine is increased and therefore the amount of income on account of each machine carrying a royalty is proportionately increased; that the cost of the caring for each machine is reduced and the reputation of the defendants' machines is increased, factory space is economized because fewer machines will produce a larger output, and the regularity and certainty of product is assured. These results clearly justify the United Company (if any justification is needed) in granting the shoe manufacturer who uses a team of machines a better rate than is granted a shoe manufacturer who uses a single machine out of the team or only a portion of the machines constituting the team. Indeed, the shoe manufacturer may well insist that such wholesale or team rate is only fair to him, because when he so uses the machines the return to the United Company is greater on each machine. By granting such a team rate the shoe manufacturer is permitted to share in the economies resulting from the formation of the United Company and its consequent ability to furnish and care for a complete team of machines adapted for use together.

Mr. Winslow testified:—

"The restricted-use clause was adopted in our leases for the purpose of giving the company the proper return for the use of the machines when they were leased without initial premiums, and for that reason alone. With the terms of royalty fixed the company would not, without the initial premiums, receive a fair return for the machines unless they were used together as restricted in the leases. As a business proposition, after the initial premiums were removed, there would be no security whatever for a proper and fair return for the use of the machines without the restricted-use clause" (R. Vol. 1, p. 452, lines 29-38).

He further testified:—

"When I testified on cross-examination that the reason for the use of the tying clauses was not to cause more of our machines to be used and to make more people use them, but that the real reason was to increase the productivity of our machines, I meant that the clauses were introduced to increase the productivity of the principal machines and by increasing that productivity to reduce the number of machines required to do the work, and thereby reduce the cost to the company of the up-keep and service in connection with the machines, and at the same time increase the earnings of each machine.

"By limiting the use of one principal machine of the company to work which has been operated upon by other principal machines of the company, its use is confined to work done by machines with which we know that prompt and efficient service is furnished to keep that machine in proper condition to operate, and with operators who have been properly instructed in the operation of the machine at the expense of our company, and also with machines where new operators will be taught whenever they are needed. Now, of course, under those conditions we have a definite assurance as to the maintenance of the productivity of the machines and the quality of work that will be produced by those principal machines with which another principal machine is used.

This tendency in the operation of the tying clauses is clearly shown by the comparison in the exhibits showing the efficiency of the machines in 1911 over the machines in the year 1900. A relatively smaller number of machines are producing a larger number of shoes, resulting in less necessary investment in machines to produce a given product

and less relative expense to maintain those machines in condition to operate continuously, in the up-keep of those machines, and in the number of operators which must be instructed. The productive efficiency and quality of work done by any line of machines is only equal to that of the least efficient machine in the line.

. . . . . .

"With reference to this question of productivity, it would not be a business possibility for the company, without the requirement of initial premiums, to lease its machines on the terms of the restricted leases without the restrictions in those leases" (R. Vol. 1, p. 856, line 39; p. 857, line 39).

"While the restricted form of lease could not increase the number of our machines in use the two sets of machines were used in unison. The cost of the care of those machines was less per unit, and increased efficiency resulted because the same concern would from its branch office attend to the metallic machine so that it would not be delayed, or attend to the laster so that that would not be delayed" (R. Vol. 1, p. 550, lines 13–19).

"The manufacturers believe that we have the best machines, and they take them, first, for that reason. They take them on the limited lease system because it costs them less to equip their factories and they have the money that they would otherwise have in machinery to use to buy leather and other articles that they use, and they turn that money over two or three times a year. They know by experience that the life of a machine, while sometimes a long period, is many times a short period, and since the United Company was formed they have seen many improved machines. They know that if we improve a machine which they have without the license payment we will put the improved machine in their factory and take out the old one without any cost to them" (R. Vol. 1, p. 551, lines 5–17).

"The reputation for efficiency, both in quantity and quality of work done by our machines, is always in jeopardy and affected by the introduction of a machine of some other manufacturer into the series of operations done by our machines. The reputation of our Goodyear welt shoe, the standing of that shoe, is dependent upon the two different kinds of seams that are made by the two different machines used in the manufacture of that shoe. And the quality of work done is affected, and would be necessarily affected, by the way in which the work comes from, or is prepared by, one machine to go to the next machine" (R. Vol. 1, p. 866, lines 34–43).

(2) TESTIMONY OF SHOE MANUFACTURERS TO MERITS OF RESTRICTED LEASES.

The shoe manufacturers themselves appreciate the merits of the restricted forms of lease and prefer those forms to any others.

R. P. HAZZARD, manufacturer of 5,000 pairs of welt shoes daily, testified:—

> "When I started in for myself I adopted the plan of obtaining machines on the restricted leases because I considered it to our advantage to do so. Because in my judgment it was a necessity for the United Shoe Machinery Company to restrict in some way the use of those machines in connection with the machines paying a royalty, in order to make it practical for them to supply us with the agents' service which they give us, and that the saving in the machinery investment in our plant and the chances of new models coming up made the purchase of the machines in this manner better for us in a financial way as regards the investment of the machine, besides the advantage of the agents' services" (R. Vol. 1, p. 641, line 35; p. 642, line 2).
>
> "My reason for taking the restricted lease was primarily a question of finances, to save my money for working capital instead of tying it up in dead capital. Another reason was that I considered that the liability of loss in the replacement of a machine by a more up-to-date model would be less under the restricted lease than under the other lease. . . . I have never taken as much interest in the legal wording of the United Company's leases as I have in the personality of its people, and I have always had fair treatment from the United Company" (R. Vol. 1, p. 653, lines 10–20).

MARTIN E. WELCH testified:—

> "At the time we made up our minds to add a welt line of shoes I thought the United Company had the best machines and put them out on the best terms. I thought the restricted lease the best terms. First, because it allowed us the use of the money which would have to be put in machinery that at some time would be absolutely worthless; secondly, because we could tell almost to a dollar what the depreciation would be at the end, and thirdly, because I made a partner of the United Company. They owned the machines, and it was just as much to their interest to make the machines work to their fullest capacity

as it was to my interest to have them work to their fullest capacity. Again, when a man owns his own machine if a part breaks he must put it in, but if there are any poor parts in the United machines they paid for the parts. They have used me fair in that respect" (R. Vol. 1, pp. 709–10).

"As between the unrestricted lease and the restricted lease, in my judgment the restricted lease is preferable because, first, I can put into my business the money that I save instead of investing it in the machinery, so that I have more money; second, I can tell almost to a cent just what the depreciation is on that machinery—I call the return charges the depreciation; and, thirdly, I make a partner of the United Company. I have not a dollar invested in the machines, and their interest in the machines is fully as great as mine, and it is to their advantage to keep the machines working to their fullest capacity. That means less machinery for me to run in the factory, and it means a less investment for the United Company. It is true that under the unrestricted lease the United Company owns the machine, and the company draws the same royalty from that machine as it obtains from the other machine. . . .

"I do not see any advantage to the manufacturer in taking the unrestricted instead of the restricted lease, the advantage is with the restricted lease. . . .

"Before I changed to the restricted lease I had had the initial premium leases for about two years. I had practically all my machines on the initial payment basis and changed over from my own choice. I got back everything that was owed me" (R. Vol. 1, p. 713, lines 5–34).

FREDERICK ALLEN said:—

"When we equipped our new factory with machinery for making welt shoes we took the restricted form of lease. Of the three forms of obtaining machinery for making welt shoes—by purchase, by the independent lease, or by the restricted lease—in my judgment the restricted lease is the more advantageous for the manufacturer. I prefer that to purchase because I don't have to tie up our money in machinery, which as an asset is worthless as soon as it is installed. An investment in machinery has not any value for the purpose of obtaining credit; no one considers it an asset. Also the money is tied up so that a manufacturer is prevented from doing that much more business" (R. Vol. 1, p. 722, lines 6–16).

"I preferred the restricted form of lease because I am not obliged to tie up my money. There was a less invest-

ment of money if I took the machines under the restricted form of lease than if I took them under the unrestricted form" (R. Vol. 1, p. 723, lines 33–36).

CHARLES A. EATON testified:—

"We take a very large proportion of our machinery from the United Company. We chose the restricted lease because we felt that it was for our interest. That was because we were relieved from a large investment of capital, and because we believed that the development of shoe machinery was along that line and that we should get better and improved service by so doing.

"I have read the leases. The restrictions do not affect our activities at all. We have full confidence in the management of the company as indicated by their dealings with us since it was formed. They have not taken advantage of the technicalities of their leases to the extent that they could. They have been lenient in all their dealings and in the exchange of machines. Their policy has been very liberal, and they have kept the machines up to date. As new machines were brought out they have exchanged the old ones without any return payment or any charge to us, except for missing or worn parts and freight charges. Those are all the charges that have been made to us on account of the replacement of machines during these years of development since we have done business with the company" (R. Vol. 1, pp. 751–2).

EDWARD W. BURT testified:—

"We have always taken our machines on royalty leases, not paying initial charges. I have done that because I prefer not to tie up capital in machinery. It is a very great expense and, in securing credit, bankers never consider machinery worth a dollar" (R. Vol. 1, p. 740, lines 37–41).

C. WILLIS BENNET testified:—

"When I started out for myself I got my machinery from the United Company and from the Singer, the Union Special, and the Wheeler & Wilson Companies. I make from 800 to 1,400 pairs a day, depending upon the season.

"I took my machines from the United Company on the restricted form of lease without initial premiums. I chose that form because I had a very small capital when I started

and I didn't care to lock up so much money in machinery. I had been a superintendent and had saved some money. That is all I had to start with" (R. Vol. 1, p. 757, lines 40–45; p. 758, lines 1–4).

"As between purchasing machinery, or obtaining it upon an independent lease with an initial premium, or obtaining it on the restricted form of lease which I have, the restricted lease was the most advantageous because I had no money to tie up in machinery. Had I not been able to obtain my machines in that way, I would not have been able to start in business at all; never could have started if it hadn't been for the United Company. . . .

"I do not find anything irksome or difficult about the clauses in the leases limiting the use of our machines. I have read the leases" (R. Vol. 1, p. 759, lines 9–23).

(3) THE RESTRICTED USE CLAUSE DOES NOT REQUIRE A LESSEE TAKING ESSENTIAL MACHINES FROM THE UNITED COMPANY TO LEASE OF IT PRACTICALLY ALL OTHER MACHINES.

The fundamental charge of the petition, as we have shown (*supra*, p. 240), is that the defendants planned to acquire or obtain a monopoly by

A. Acquiring all concerns engaged in the shoe machinery business, and then

B. Refusing to sell or lease any essential machines, viz., lasting, welt sewing, outsole stitching, heeling, and metallic fastening machines, except on condition that the shoe manufacturer take from them "practically all other machines" which he required.

The United States relies upon the "Restricted Use Clause" to prove the second portion of this charge, namely, that the United Company refused to lease any of its essential machines, namely,

(1) Lasting machines,

(2) Welt sewing and outsole stitching machines,

(3) Heeling machines,

(4) Metallic fastening machines,

except on condition that the shoe manufacturer take practically all other machinery from it.

Unless, then, the Restricted Use Clause has the Effect of Requiring a Lessee taking Essential Machines to take Practically All Other Machinery from the United Company, it Fails to Support the Allegation of the Petition, and is Immaterial in the Present Case.

The charge is not that the United Company refused to furnish one of the so-called "essential" machines except upon conditions requiring the manufacturer to take from it the rest of the "essential" machines. The whole theory of this branch of the petitioner's case was that the manufacturer had to have the United Company's "essential" machines (that is, the five above enumerated), and that the United Company made use of its lawful patent monopoly of these machines and their controlling superiority to all others on the market to force upon the shoe manufacturers its much more numerous line of what the petitioner would presumably designate as "non-essential" machines and thus to exclude competitors and maintain an unlawful monopoly of such "non-essential" machines. It is clear, therefore, that the words, "practically all *other machines*," are intended to refer to machines other than the five kinds which the petitioner designates as "essential."

That the Restricted Use Clause has no such effect as that alleged is apparent from an examination of the leases themselves.

In the first place, it must be remembered throughout the discussion that the United Company never "refused to sell or lease" any of its machines, "essential" or "non-essential," except with the Restricted Use Clause in the lease. On the contrary, the United Company has always continued to offer all its machines, either for outright sale (as in the case of the General Department machines), or under leases containing no Restricted Use Clause, on the same or even more favorable terms than were in effect when the United Company was formed. The Restricted Use Clause merely offers an alternative form of lease at a reduced price to lessees desiring to use a number of the United Company's machines as a team. The wholly unfounded charge that the difference in price under the two forms of lease is prohibitive, or exorbitant, or in any way unreasonable, will be dealt with below.

Again, the Restricted Use Clause is not a "condition that the shoe manufacturer take from" the United Company "practically

all other machinery which he required," or all other machines even of a particular kind, or for a particular purpose. A lessee holding any machine under a lease containing this clause may take any other machines from competitors which he desires without in any way violating the terms of the Restricted Use Clause. The restriction is that he do not use certain of these machines *on the same shoes* on which he uses the United Company's machine. The clause merely limits the method of use of that particular machine. That this is not an immaterial distinction will appear below.

But disregarding for the moment both of these fundamentally erroneous statements in the petitioner's charge, the whole theory of this contention falls to the ground when it appears upon examination of the leases that instead of being customarily attached to the leases of the "essential" machines, and requiring these to be used only with the United Company's "other machinery," that is, the "non-essential" machines, the Restricted Use Clause was never used at all in any leases of the two machines which could most properly be described as "essential," namely, the Goodyear welt sewing and outsole stitching machines; and when used in leases of other so-called "essential" machines it restricts their use (with one or two minor exceptions noted below among the many forms of leases put out) not to use with other "non-essential" machinery, but solely to use with one or more of the other "essential" machines; and the Restricted Use Clauses, found in the leases of the "non-essential" machines, restrict them not to use with other "non-essential" machines, but to use with certain of the "essential" machines. Such a leasing system lends absolutely no support whatever to the charge that the "essential" machines were used to compel or even to induce by means of the Restricted Use Clause the purchase or leasing from the United Company of its "other machinery" or to exclude the "other machinery" of competitors. The Restricted Use Clause operated in exactly the wrong direction to support that theory; and the failure of this part of the petitioner's case was so complete as to make it rather astonishing that any one who had ever had an opportunity to read with any care the United Company's leases should ever have put forward such a claim.

The examination of the leases shows that a lessee, taking every

one of the so-called "essential" machines from the United Company under the restricted form of lease, is free to use with all of them on the same shoes any machines of any *other* kinds whatsoever obtained from competing makers, with only these two very small exceptions, namely, that if he uses under restricted lease a No. 5 Lasting Machine (which is only one of several kinds of lasting machines made by the United Company), he must, if he pulls over by machinery the shoes on which that lasting machine is employed, use the United Company's pulling-over machine in connection therewith; and that if he uses the United Company's heeling machine *on pegged shoes* (of which very few are made), he must use the United Company's pegging machine in connection therewith. With these two minor exceptions he is absolutely free to use all of the United Company's "essential" machines under restricted leases on the same shoes on which any other machines obtained from competitors are used, such as machines for stitching uppers, pulling-over machines, eyeletting machines, clicking machines, a large number of auxiliary machines (there being 43 in the Goodyear department alone), General Department machines (of which there are over 170 different kinds), and any other machines of any kind which may be useful in the manufacture of shoes.

That this statement, if true, completely disposes of the petitions charge must be apparent. It is only necessary to support the statement which has been made by a detailed examination of the leases of the so-called "essential" machines.

(*a*) Lasting Machines.

There were introduced by the Government, to show the form of lease upon which the United Company put out its lasting machines, nine different forms,—in addition to the forms in use before the United Company was formed and which the United Company continued to use.

Of the two forms introduced in respect to the **Consolidated hand method (welt) lasting machine** only one contains any limitation whatever to use with machines of any other department. That one limits the lasting machines held under it to use alone with the United Company's welt sewing and outsole stitching machines. There is no limitation or condition

as to any of what the Government refers to as "*other machinery*" whatsoever.

Of the two forms of lease for the **consolidated hand method (McKay) lasting machine** only one contains any limitation whatever to machines of any other department. That one limits the lasting machines held under it to use alone with United Company's metallic machines. There is no limitation as to any "*other machinery*" whatsoever.

Of the forms of lease introduced in respect to the United Company's **Ideal** and **Chase** lasting machines neither one limits to use with any machines other than the United Company's welt sewing and outsole stitching machines and metallic machines. In the case of the **Ideal** the restriction is to the United Company's welt sewing and outsole stitching machines only—there is no limitation or condition as to any "*other machinery*" whatsoever.

For the **McKay & Copeland lasting machines** one form of lease only (which was introduced by the United Company in 1903—four years after its formation) limits to any of what the Government refers to as "*other machinery.*" Of such "*other machinery*" that one limits to pegging machines only.

Of the two forms of lease introduced in respect to the United Company's **No. 5 lasting machines** only one contains any limitation to use with any other of the United Company's machines. That one so far as relates to what the Government refers to as "*other machinery*" limits to use with United Company's pulling-over machines only. This No. 5 Lasting Machine was not developed or put on the market until 1908—nine years after the formation of the United Company.

In the case of the other groups the lack of foundation for the Government's allegation is even more striking, if that is possible.

The second group which the Government refers to is—

(*b*) Welt Sewing Machines and Outsole Stitching Machines.

The Government introduced three forms of leases as showing the manner in which the United Company has leased these machines. There is not one of these leases which limits the machines to use with any "*other machinery*" whatsoever. As

a matter of fact, the United Company has never at any time in its existence put out any form of lease for its welt sewing and outsole stitching machines which limited such machines to use with the United Company's lasting, metallic fastening or heeling machines or any of them or which limited them to use with any "*other machinery*" whatsoever; or which prevented the use with the United Company's welt sewing and outsole stitching machines of any other machines of whatsoever kind or from whatsoever source obtained.

The next group mentioned by the Government is—

(*c*) Heeling Machines.

Of the three forms of lease in respect to the United Company's heeling machines only one contains any limitation whatsoever. Of such "*other machinery*," that one form (which was not adopted until 1904) restricts to pegging machines only.

The final group mentioned by the Government is—

(*d*) Metallic Machines.

The Government introduced seven forms of lease as showing the manner in which the United Company has put out its metallic machines; only three contain any limitation whatsoever to use with any of the United Company's other machines. In no instance is such limitation extended to the use of any of what the Government has referred to as "*other machinery*"—the limitation in the three cases which contain any limitation being to the United Company's lasting and to its welt sewing and outsole stitching machines alone.

The existence of a limitation to the United Company's pulling-over machinery in the one isolated instance in one form of lease for the No. 5 Lasting Machine adopted nine years after the formation of the United Company, and of a limitation to the United Company's Pegging Machine in the two instances mentioned, viz., one form of Lasting Machine lease adopted five years after the formation of the United Company and one form of Heeling Machine lease adopted six years after such formation, can hardly be taken as a demonstration of an "idea" alleged to have

been "conceived" by the defendants at the time of its formation years before—

> "*to refuse to sell or lease any of the essential machines* [(1) lasting machines, (2) welt sewing machines and outsole stitching machines, (3) heeling machines, and (4) metallic fastening machines] to the manufacturer of shoes *except on condition that he buy or lease of them practically all other machinery of whatever kind necessary or useful to* such manufacturer of shoes" (italics ours) (R. Vol. 1, pp. 991, 994).

As a matter of fact, an examination of all the leases offered in evidence will show that, with the exceptions noted below, in all those cases in which any limitation whatsoever exists it is always *to* one or more of the machines which the Government in its petition has designated as "essential" machines and never *from* such "essential" machines *to* "other" machines.

The only exceptions are that in a few instances, such as above pointed out, under particular forms of leases machines are limited to use with the United Company's pegging machines on pegged work, and in one instance, above noted (other than in the pulling-over leases themselves), there is a limitation to use with the United Company's pulling-over machines. The other limitations, where they exist, are all *to* one or more of the following of the United Company's machines, viz.: (1) lasting machines, (2) welt sewing and outsole stitching machines, (3) heeling machines, and (4) metallic machines.

The foregoing appears to be a complete answer to any claim that the United Company determined to "refuse to sell or lease any of the '*essential*' machines to the manufacturer of shoes except on condition that he buy or lease of them practically all *other machinery* of whatever kind necessary or useful to such manufacturer of shoes," but to further emphasize the lack of basis for such claim, consideration of some of the items of "*other machinery*" is illuminating. For example:—

"Other machinery" must include all of the machines used for attaching the soles of McKay shoes to their uppers. In 1899 such McKay sewed shoes amounted to 82,000,000 pairs out of a total of 172,000,000 pairs of shoes made in the United States; in 1904 to 94,000,000 pairs out of a total of 219,000,000 pairs made in the United States; and in 1910 to 105,000,000

out of a total of 278,000,000 pairs made in the United States (Defs'. Exhibit 215, Vol. 5, p. 322).

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines of any kind, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any McKay sewing machine from the United Company, or which limited the use of any of the United Company's machines to use with McKay sewing machines obtained from the United Company, or which precluded the use of any of the United Company's machines with McKay sewing machines obtained from any source whatever.

"*Other machinery*" must include all of the **machines used for the many operations in sewing together the parts of the uppers and linings** of all shoes made (100 per cent.). Such machinery in number of machines used represents a very large per cent. of all the machines used in the manufacture of shoes.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any machinery for performing any such operations from the United Company, or which limited the use of any of the United Company's machines to use with machines for such purposes obtained from the United Company, or which precluded the use of any of the United Company's machines with machines for such purposes obtained from any other source whatsoever.

"*Other machinery*" must include all of the **machines used for cutting or dieing out the various parts of the uppers and soles** of all shoes. This includes all **clicking** machines.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any such cutting or dieing-out machines or clicking machines from the United Company, or which limited

the use of any of the United Company's machines to use with cutting or dieing-out or clicking machines obtained from the United Company, or which precluded the use of any of the United Company's machines with cutting or dieing-out or clicking machines obtained from any other source whatsoever.

"*Other machinery*" must include all of the **machines for performing the various operations similar to those performed by the auxiliary machines of the Goodyear Department of the United Shoe Company, or other similar operations.**

The United Company never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer should buy or lease any such auxiliary machines from the United Company, or which limited the use of any of the United Company's machines to use with such auxiliary machines obtained from the United Company, or which precluded the use of any of the United Company's machines with similar auxiliary machines obtained from any other source whatsoever.

"*Other machinery*" must include all **machines for inserting the eyelets and for inserting the lacing hooks** in all laced shoes made.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any eyeletting or lacing hook machines from the United Company or which limited the use of any of the United Company's machines to use with eyeletting or lacing hook machines obtained from the United Company or which precluded the use of any of the United Company's machines with eyeletting and lacing hook machines obtained from any other source whatsoever.

"*Other machinery*" must include all **machines for making and finishing all buttonholes and for attaching the buttons** of all buttoned shoes made.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic

machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any button or buttonhole machinery of any kind from the United Company or which limited the use of any of the United Company's machines to use with button or buttonhole machinery obtained from the United Company or which precluded the use of any of the United Company's machines with button or buttonhole machinery obtained from any other source whatsoever.

"*Other machinery*" must include all **machines for treeing and finishing** all shoes made.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any treeing or finishing machinery from the United Company or which limited the use of any of the United Company's machines to use with treeing or finishing machinery obtained from the United Company, or which precluded the use of any of the United Company's machines with treeing or finishing machinery obtained from any other source whatsoever.

"*Other machinery*" must include all **machines for performing the operation of pulling over and the operations of the various auxiliary machines connected therewith** upon all shoes made which are so operated upon.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any pulling-over or auxiliary machinery from the United Company or (excepting in so far as in some forms of Pulling-Over Department leases the pulling-over machine and its auxiliaries are limited to use together) which limited the use of any of the United Company's other machines to use with pulling-over or auxiliary machinery obtained from the United Company or which precluded the use of any of the United Company's machines with pulling-over or auxiliary machinery obtained from any other source whatsoever. There is one exception that out of all the forms of lease put out by the United Company there was one

isolated form of lease for a No. 5 lasting machine (P.'s Ex. 21), which limited the No. 5 lasting machine when held on that particular form of lease to use with the United Company's pulling-over machine, when the shoes were pulled over by machine but not otherwise.

"*Other machinery*" must include all **machines for performing all of the various operations similar to those performed by the many different kinds of machines offered by the United Company for outright sale in its General Department.**

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any machinery for performing any of such operations from the United Company, or which limited the use of any of the United Company's machines to use with General Department machines obtained from the United Company or which precluded the use of any of the United Company's machines with machines for performing such operations obtained from any other source whatsoever.

(4) THE RESTRICTED USE CLAUSES WERE NOT ADOPTED FOR THE PURPOSE OF EXCLUDING COMPETITORS' MACHINES.

We have shown above that the Restricted Use Clauses were adopted for the purpose of offering a wholesale rate to lessees desiring to use a team of the United Company's machines adapted for use together, and working most effectively together.

We have also shown that they do not require or even offer inducements to a lessee taking essential machines from the United Company to take of it practically all other machinery, or indeed any other machinery, and thus that they offer no support to the charge on which the petition is based. This being so, these clauses become immaterial in the present case.

However, we wish to call the court's attention to various other considerations supporting our showing that the Restricted Use Clauses were adopted solely for the purpose of offering reduced

rates to shoe manufacturers using a team of machines, and that they were not adopted for the purpose of excluding competitors' machines.

(a) THE FACT THAT THE UNITED COMPANY HAS ALWAYS OFFERED ALTERNATIVE LEASES CONTAINING NO RESTRICTED USE CLAUSES DISPROVES ANY INTENT TO COMPEL THE USE OF OTHER MACHINES.

There has never been a time when a lessee could not obtain machines of any department upon a form of lease containing no restrictions as to use with machines of other departments. Mr. Winslow testified (R. Vol. 1, pp. 440–1, lines 45, 1–2),—

> "There never has been a time when a lessee could not obtain the machines of any department upon an independent form of lease."

In 1911 Mr. Winslow gave to a committee representing the Manufacturers' Alliance a statement of the terms upon which lessees could then and could at all times previously obtain machines on unrestricted leases from the United Company. This statement is given in Defendants' Exhibit 40 (R. Vol. 5, p. 40).

Mr. Winslow testified with reference to this statement:—

> "Referring to defendants' Exhibit 40, the statement under the heading 'Goodyear welt and turn shoe machine and Goodyear outsole rapid lockstitch machine' represents the practice of the United Company at that time and prior thereto, from the date of the formation of the company and since that time, at least up to the time when this suit was brought. The statements in the three paragraphs under the heading 'Goodyear auxiliary machines' in defendants' Exhibit 40 are true of the company's practice with reference to the marketing of the Goodyear auxiliary machines at that time and prior thereto and up to the time of the bringing of this suit.
>
> "The statement (in defendants' Exhibit 40) under the heading 'Rex pulling-over machine' was true of the practice of the company at that time and prior thereto from the time when we first put out the pulling-over machine, and it has continued to be true of the company's practice up

to the time this suit was brought. We had been prepared to furnish machines in that way at any time and had issued leases in that form.

"The statement in the first paragraph under the heading 'Rex pulling-over system—Auxiliary machines,' in defendants' Exhibit 40, has reference to the pulling-over department alone, and the statements in the three following paragraphs under that heading were true of the practice of the company regarding the pulling-over auxiliaries up to the time the suit was brought.

"The statement under the heading 'Consolidated hand method lasting machine—U. S. M. Co. lasting machine, No. 5,' in defendants' Exhibit 40, is true of the company's practice with reference to those machines. The statements in that exhibit under the headings 'Metallic machines,' 'Heeling machines,' 'Clicking machines,' and 'General department machinery' are true of the company's practice and readiness to perform at that time and prior thereto and up to the time the suit was brought" (R. Vol. 1, p. 514).

Furthermore, the United Company has always been willing to permit a lessee holding a lease of a machine containing a Restricted Use Clause to cancel his lease and take in exchange an unrestricted form of lease. On pages 450 to 451 of the Record, Vol. 1, are given the names of nineteen shoe manufacturers who were offered unrestricted leases in exchange for their restricted leases.

The unrestricted leases carry the same royalty as the restricted leases; the only difference is that an initial payment is charged under the unrestricted leases with the single exception of the unrestricted lease of metallic machines adopted in 1901 by agreement with a committee of shoe manufacturers. In that lease no initial payment is charged, but instead the United Company is authorized to charge 10% more for fastening material used in the machine, the profit from the sale of which constitutes the only royalty that is charged under the lease.

In no instance where an initial payment is charged for an unrestricted lease has the amount of the payment been increased over what was charged prior to 1899, the date of the formation of the United Company, and in some cases the initial payment has been reduced, and in no instance has the royalty charged on any machine been increased

over that charged in 1899 (R. Vol. 1, p. 433, lines 29–32). On the contrary, certain of the initial payments previously required have been removed and the machines leased without the Restricted Use Clause on leases requiring no initial payment. Thus in 1899 $300 initial payment was charged for the Goodyear Welter and the same amount for the Goodyear Stitcher (R. Vol. 1, p. 515, lines 1–12, and Defs.' Ex. 41, Vol. 5, p. 44). The charge for some of the auxiliary machines was as much as $500 each (Defs.' Ex. 41, Vol. 5, p. 45). The lessee to-day can get his Goodyear machines without any initial payment, paying on the auxiliary machines only a small annual rental (Defs.' Ex. 230A, Vol. 5, p. 443), and the leases contain no clause restricting their use to use with other groups of machines. In addition the royalty on the turn machine has been reduced 50%.

The result is that a lessee to-day who does not wish to be bound by the Restricted Use Clauses adopted by the United Company can get leases without these clauses on better terms than were available in 1899, before the formation of the United Company, although the machines themselves have been much improved, numerous auxiliary machines have been added, and the cost of manufacturing machines has unquestionably increased.

It is obvious that if the defendants, as charged by the United States, had organized the United Company in order to insert clauses in the leases requiring the use of machines of different groups if the machines of one group were taken in order to oppress shoe manufacturers and obtain an unlawful monopoly, they would not have continued to offer machines of each group independently on as favorable or more favorable terms than before.

The District Court, referring to the contention that the leases of the United Company compel shoe manufacturers desiring to take certain machines from the United Company to take other machines which prior to the formation of the United Company they could obtain separately, said,—

> "The alleged plan of a refusal of what before could be had separately, as a means of compelling the taking of other machines, was a principal ground for invoking the Sherman Act" (R. Vol. 1, p. 1162).

After reviewing the various clauses in the leases, the District Court found that the Restricted Use Clause was the only one that

> "... has relation to the supposed scheme of using the power acquired by combination to refuse machines that before were separately obtainable, and to offer such machines only on condition that other machines of different kinds should also be taken" (R. Vol. 1, p. 1163).

The District Court, however, found not only that the Restricted Use Clause was lawful in and by itself, but that in view of the fact that machines on unrestricted leases are offered on as favorable terms as previously the United States must be held to have utterly failed to prove its contention.

Thus the District Court said,—

> "The restricted or prohibitive leases do not in themselves as documents prove the denial of the right to procure, as before, independent leases for individual machines. As matter of fact, independent leases which did give the right to use the machines with machines of other kinds, made by other machinery manufacturers, were always procurable. This was the general rule, and if there were any exceptions they were, so far as appears, inconsiderable.
>
> "It is a result of the consolidation that the United Company offers more attractive contracts for a group of machines of different kinds than for machines of one kind only; but as it still offers the contract for machines of one kind on as good terms as before it is difficult to see how that is detrimental to the shoe manufacturers.
>
> "The charge of this supposed scheme to deprive former customers of the right to use some machines unless they would use also others seems to have originated either in the erroneous assumption that a prohibitive lease was the only kind procurable, and that the former customer had no choice, or in disregard of the fact that it was merely an alternative form of lease. As the leases prove no such plan, whether of the extent alleged or of less extent, and as the evidence proves the exact contrary of what is charged, we think that the United Shoe Machinery Company is, upon the merits, entitled to a full clearance from this charge" (R. Vol. 1, p. 1163).

The Contention of the United States that the Prices Charged for Unrestricted Leases are Prohibitive is Utterly Unfounded.

The United States contended in the District Court that the initial payments charged for machines under the unrestricted leases were prohibitive. This of course is not the fact, because they are the same or less than the initial payments that manufacturers had paid and prospered under for many years before the United Company inaugurated the group form of leases from which the initial payments were eliminated.

The objection to the initial payment leases is not that the initial payments are exorbitant, but it lies only in the fact that the United Company's non-initial payment leases are more favorable.

No evidence was introduced by the United States as to the cost of building or the value of the machines, and there was absolutely no evidence that these initial payments were unfair. The United States did not attempt to show that the amount of the initial payments exceeded the difference between the return to the United Company when its principal machines are used as a team, and when they are used independently. In the case of the metallic lease adopted in 1901, where no initial payment was charged for the unrestricted lease, but the royalty was increased, where this form of lease was taken, over the amount charged under the restricted lease, the difference was only 10%.

The District Court said (R. Vol. 1, p. 1166):—

> "But surely, if the argument is made that there is coercion through an excessive price, such an argument can have no weight whatever for any purpose legal or ethical unless the fact that it is excessive affirmatively appears. From such evidence as is presented in this case as to the amount of initial charges upon independent leases we can draw no support for the charge of coercion through excessive charges."

Mr. F. C. Rand, vice-president of the International Shoe Company, a witness for the United States, testified that his company operated 1,635 machines taken from the United Company; that the cost of installing them under the restricted form of lease was between $10,000 and $12,000, and the cost under

the unrestricted form would be over $250,000, the royalty charged in both cases being the same (R. Vol. 1, p. 180, lines 38–45; p. 183, lines 37–38). The amount of the initial payment on each machine of the kind held by Mr. Rand is given in Defendants' Exhibit 41 (R. Vol. 5, p. 44). It is to be noted: *First*, that the amount stated by Mr. Rand as the cost of installation includes not only initial payments under the unrestricted form of leases of certain departments, but also the cost price of all General Department machines when purchased outright, which amounts to one-third of the total. The International Company by purchasing these General Department machines would avoid the annual rental otherwise payable on them; *Second*, that this total includes initial payments on Goodyear machines, the leases of which contain no clause restricting their use to use with other groups of machines, so that it would not be necessary to take the Goodyear machines on the initial payment form of lease to avoid the effect of the Restricted Use Clause; *Third*, that if a manufacturer desired to use machines without Restricted Use Clauses it would only be because he desired to use some but not all machines obtained from others, in which case he would not take machines of that kind from the United Company, and therefore would not pay the initial premiums required on such machines. This, of course, would reduce the total initial premiums paid by him. The more machines of others he took, the fewer would be the machines of the United Company which he used, and thus the initial payments made by him to the United Company would be proportionately reduced. In no possible case, then, would he be under the necessity of paying $250,000, or anything approaching that sum, because he wished to use a competitor's machines.

The International Company is one of the two largest shoe manufacturers in the world, having $25,000,000 capital, making 50,000 pairs of shoes a day, and operating twenty different factories (R. Vol. 1, p. 184). $250,000 (an average of $12,500 for each of the International Company's factories) is on its face a small sum to cover the cost of selling outright the General Department machines used in these twenty factories and furnishing the remaining machinery of the types manufactured by the United Company under conditions whereby the machines could be used at the option of the lessee independently of each other and not as part of a series.

That the Terms Charged for Unrestricted Leases are not Prohibitive or Arbitrary is Conclusively Shown by the Large Number of Machines which have been Taken on these Terms by Shoe Manufacturers.

On March 1, 1905, 1,798 out of a total of 1,851 welt and turn machines and 1,817 out of a total of 1,871 stitchers were out on unrestricted forms of lease, 603 out of a total of 8,129 metallic machines were on unrestricted leases, 1,500 out of a total of 1,652 heel attaching machines were on the unrestricted lease, and 1,956 out of a total of 5,280 lasting machines were on unrestricted leases (R. Vol. 1, pp. 448–9).

Mr. Winslow testified that in 1905 seven hundred and six manufacturers had principal machines of the United Company on unrestricted leases. "There were 186 unrestricted leases of principal metallic machines, 536 unrestricted leases of heel attaching machines, and 322 unrestricted leases of lasting machines" (R. Vol. 1, p. 976, line 43; p. 977, line 5).

As illustrating the extent to which manufacturers chose unrestricted leases and paid initial premiums, Mr. Winslow had compiled statistics for the Hand Method McKay Lasting Machine for each year from 1899 to 1911, as follows:—

March 1, 1899, to December 31, 1899, independent lease 185, restricted lease 250; in 1900, independent lease 65, restricted lease 283; in 1901, independent lease 143, restricted lease 415; in 1902, independent lease 115, restricted lease 425; in 1903, independent lease 72, restricted lease 385; in 1904, independent lease 54, restricted lease 233; in 1906, independent lease 59, restricted lease 293; in 1907, independent lease 36, restricted lease 247; in 1908, independent lease 47, restricted lease 159; in 1909, independent lease 54, restricted lease 169; in 1910, independent lease 21, restricted lease 200; in 1911, independent lease 18, restricted lease 214 (R. Vol. 1, p. 478, line 36–p. 479, line 2).

In 1911, 23,404 Goodyear, metallic, heeling, and lasting machines, including auxiliaries, were out on leases containing no Restricted Use Clauses (except that the auxiliaries were limited to use with the principal machines) out of a total number of machines in those departments under lease of 47,985. In other words, about half the total number of machines in these departments were leased on unrestricted leases (R. Vol. 1, p. 449, lines 25–32).

It is to be noted that the smallest number of unrestricted machines was in the Metallic Department. An unrestricted lease in this department can be obtained without initial payment for 10% more royalty than was charged on the restricted form, surely a small discount for a wholesale use of the machines as a team.

(b) OTHER CONSIDERATIONS SHOWING THAT THE RESTRICTED USE CLAUSES WERE NOT ADOPTED FOR THE PURPOSE OF EXCLUDING COMPETITORS' MACHINES.

That the Restricted Use Clauses are intended to offer wholesale prices to shoe manufacturers desiring to use a series or team of the United Company's machines and that they were not adopted to require an exclusive use of the Company's machines or to arbitrarily exclude competitors' machines is further shown by the following considerations:—

1. The clause, as we have shown above, does not require the lessee to use the United Company's machines at all. On the contrary, it prohibits the use of the United Company's machines except on certain conditions, that is, when they are used as part of a team.

The only effect, therefore, that it can have is to induce the shoe manufacturer to use a team of the United Company's machines because he thereby gets a wholesale price instead of a retail price.

Had the United Company planned, as charged, to refuse to lease any of its essential machines unless the lessee bought or leased practically all other machinery of it, or had it intended to require an exclusive use of its machines, or to arbitrarily exclude competitors' machines, it is obvious that it would have adopted a very different kind of provision to carry this purpose into effect.

2. The United Company, as we have shown, eliminated the clause occurring in a number of the leases put out by the constituent companies requiring the lessee to take additional machines of the same kind as those leased, if he needed them for additional work. The effect of this clause was to require an exclusive use of the machines of the kind leased. The fact that the United Company used this clause only to a limited

extent after its formation, and discarded it entirely after 1907, shows that it did not intend by its leases to require even an exclusive use of machines of the particular kind which the shoe manufacturer desired to take.

3. The Restricted Use Clause was not introduced at once upon the formation of the United Company, but only from time to time as special conditions, such as a reduction or elimination of an initial payment, called for its use. Thus, as we have shown, it was introduced into the metallic leases only when the cost of copper wire used by the lessees in the machines, the purchase of which afforded the royalty, compelled the United Company to introduce this clause or increase the price at which it sold the wire. It was not introduced into the heeling leases until the fall of 1904, nearly six years after the formation of the United Company, and was then introduced as partial compensation for the elimination of the initial payments previously charged for the Goodyear machines.

4. The United Company never inserted any Restricted Use Clause in its leases of Goodyear machines, restricting their use to use with machines of other departments. The Goodyear Welter and Stitcher are in many respects the most important machines manufactured by the United Company. Petitioner's patent expert Chapman testified that they were the only essential machines for welt shoes (R. Vol. 2, p. 2794). They are fundamental in its welt system and the largest royalty is paid for their use. Had the United Company contemplated refusing to lease its important or essential machines, unless the manufacturer took or used other machines furnished by it, it surely would have restricted the use of its Goodyear Welter and Stitcher.

5. The United Company sells outright 172 General Department machines which were invented or acquired by it after its formation (Defs.' Ex. 227). More than one-half the machines which it manufactures are General Department machines.

In other words, while the constituent companies prior to the formation of the United Company sold no machines, the United Company now sells outright more than half of the kinds of machines it makes. No other machines furnished by the United Company are restricted to use with any General Department machines. Had the United Company planned to compel shoe manufacturers leasing its machines, whether essential or otherwise, to take all

or a large part of the other machines required by them, it would certainly not have sold its General Department machines outright to any shoe manufacturer whether or not such shoe manufacturer took or used any of its other machines nor continued to lease all its other machines without any reference to whether the lessee bought any of its General Department machines.

6. The effect of the Restricted Use Clauses is very limited. Thus, a shoe manufacturer holding machines under restricted use leases can, without violating the restrictions applicable to such machines, obtain from competitors and use in connection with the United Company's machines the larger portion of the machines required by him in his factory. We consider this limited effect of the Restricted Use Clauses more in detail below.

(c) THE EFFECT OF THE RESTRICTED USE CLAUSES IS VERY LIMITED. A SHOE MANUFACTURER HOLDING MACHINES UNDER RESTRICTED LEASES CAN, WITHOUT VIOLATING THE RESTRICTIONS, OBTAIN FROM COMPETITORS, AND USE IN CONNECTION WITH UNITED COMPANY'S MACHINES BY FAR THE LARGER PORTION OF THE MACHINES REQUIRED BY HIM.

The restrictions contained in the United Company's restricted use leases, as we have shown above, limit the use of the machines to use in connection with only a few of its principal machines which are peculiarly delicate in their operation, which have, as we have stated, been constructed for use together, which are essential to the integrity of a shoe, and which comprise only a very small proportion of the total number of machines required by a shoe manufacturer.

As we have shown above, these so-called principal machines are restricted to use in certain cases with each other, but they are not restricted to use with any other machines, and while other machines are restricted to use with the principal machines, they are not restricted to use with each other. There are then no restrictions in any of the leases of any kind of machines which restrict the use of the leased machines except to use in connection with one or more of the following, viz., the Goodyear Welter and Stitcher (but not the 43 Goodyear Auxiliary Machines) Lasting Machines, Heeling Machines, Metallic Machines, and Pegging

Machines. The only exception to the foregoing statement is that the No. 5 Laster is limited to use with the Pulling-over Machine.

The result is that, with the single exception above noted, requiring a lessee of a No. 5 Laster to use it in connection with the United Company's Pulling-over Machine, a shoe manufacturer who leases from the United Company under restricted leases a Welter and Stitcher, a Lasting Machine, a Heeling Machine, a Metallic Fastening Machine (and, if he makes pegged shoes of which kind very few are made, a Pegging Machine) can use in connection with them, or in connection with any other machine leased from the United Company, any other kinds of machines he desires, whether obtained from competitors or not, without violating any Restricted Use Clause.

Thus he can take from competitors and use in connection with any machine he may lease from the United Company any one or all of the 43 different kinds of Goodyear Auxiliary Machines, any one or all of the 172 different kinds of General Department Machines, any Pulling-over Machines, Eyeletting Machines, Clicking Machines, Heeling Machines, or McKay Sewing Machines.

The Restricted Use Clause thus has a very limited effect.

Defendants' Exhibit 230 (R. Vol. 1, p. 456) shows the number of Pulling-over, Lasting, Heeling and Metallic Machines, and Welters and Stitchers required in factories making from 100 to 450 pairs of shoes per day. Only 7 such machines are needed in a factory making 100 pairs per day; only 12 in a factory making 450 pairs per day. In the manufacture of McKay shoes, the Welters and Stitchers are not needed, so that a factory making 450 pairs per day would require only 8 of these machines (R. Vol. 1, p. 456, lines 10–13). Out of a total of 1,150 factories which used the United Company's machinery in 1911, about half made less than 450 pairs per day (R. Vol. 1, p. 455). In a factory making 600 pairs of turn shoes only 6 such machines are needed, and in a factory making 4,800 pairs per day only 23 (Defs.' Ex. 249, R. Vol. 1, p. 506).

A shoe manufacturer, then, who leases from the United Company under restricted leases 12 machines of the kinds above mentioned in a factory making 450 pairs of welt shoes daily, or 8 of such machines in a factory making 450 pairs of McKay shoes daily,

or 6 of such machines in a factory making 600 pairs of turn shoes, can, at his option, take from competitors or from the United Company any one or more of 43 different kinds of Goodyear Auxiliary Machines, 172 General Department Machines, any eyeletting machines, insole machines, lacing machines, clicking machines, or any other kinds of machines, and use them in connection with any machines of any kind whatsoever leased from the United Company on restricted leases without violating any Restricted Use Clauses in such leases.

The foregoing limited effect of the Restricted Use Clauses is illustrated by the machines in the factory of R. P. Hazzard, who makes about 5,000 pairs of Goodyear Welt shoes per day (R. Vol. 1, p. 641, lines 9–10), and who, therefore, is one of the large manufacturers, and who takes from the United Company his welters, stitchers, lasting machines, heeling machines and metallic machines. A complete list of the machines in his factory is given in Defendants' Exhibit 262 (R. Vol. 5, p. 707). This company has in all 746 machines. 419 of these machines were obtained from other persons than the United Company and can be used in connection with any machine which the United Company makes without violating any restriction contained in any lease which it puts out. Of the remaining 327 machines which are furnished by the United Company only 121 including 14 pulling-over machines are machines to use with which any other machine made by the United Company is restricted in any of its leases. In other words, out of a total of 746 machines actually used by Mr. Hazzard's Company any one or all of 625 machines whether or not obtained from a competitor can be used in connection with any machine put out by the United Company on a restricted lease without violating any restriction contained in any such lease.

J. Brown & Sons' factory has a capacity of 7,500 pairs of McKay and Standard Screw shoes a day (R. Vol. 1, p. 730, lines 14–15). It is, therefore, one of the fifteen or sixteen largest factories in the country (R. Vol. 1, p. 455). A complete list of the machines in his factory is given in Defendants' Exhibit 236 (R. Vol. 5, p. 671). This company has a total of 424 machines. 296 of these machines were obtained from other persons than the United Company, and can be used in connection with any machine which the United Company makes without violating any restric-

tion contained in any lease which the United Company puts out. Of the remaining 128 machines furnished by the United Company only 53 are machines to use with which any other machines made by the United Company are restricted in any of its leases. In other words, out of a total of 424 machines actually used in this factory any one or more of 371 machines could be bought from a competitor and used in connection with any machine put out by the United Company without violating any Restricted Use Clause in any lease.

It seems self-evident that Restricted Use Clauses which, as in the case of J. Brown & Sons' factory, permit a lessee to use in connection with any of the United Company's machines he may take or wish to take 371 machines of competitors out of a total of 424 machines needed by him can hardly be said to show an intent to exclude competitors' machines, or, as alleged in the petition, an intention to require a lessee taking essential machines to take practically all other machinery from the United Company.

Furthermore, Each of the So-called Principal Machines is not Restricted to Use with all Other Principal Machines.

We have shown above that the only machines to use with which other machines are restricted are the two principal Goodyear Machines, viz., the Welter and Stitcher, Lasting Machines, Heeling Machines, Metallic Fastening Machines, and Pegging Machines with the single exception that the No. 5 Laster is restricted to use with the Pulling-over Machine.

However, the restricted leases do not restrict the use in most cases to all of the above-mentioned machines. Even in the case of the principal machines themselves this is not true. The result is that a shoe manufacturer can take various principal machines of competitors which he may desire to use and use them in connection with the United Company's principal machines of other kinds without taking all of such other principal machines from the United Company on unrestricted leases.

To illustrate:—

The Goodyear Welter and Stitcher are not restricted to use with any other machines whatsoever.

The Metallic Machines are restricted to use with the Goodyear Welter and Stitcher and the Lasting Machines.

The Heeling Machines are restricted to use with the Goodyear Welter and Stitcher, Lasting, Pegging, and Metallic Machines.

Lasting Machines are restricted:—

The Hand Method Welt to the Goodyear Welter and Stitcher.

The Hand Method McKay to the Metallic Machines.

The No. 5 to the Goodyear Welter and Stitcher, Pulling-over and Metallic Machines.

The other lasting machines have become practically or entirely obsolete.

The McKay Sewing Machine, when leased and not purchased, is restricted to use with the Lasting Machine.

A shoe manufacturer who does not desire to take all restricted or all independent leases from the United Company and who desires to use certain machines of the above classes obtained from competitors may therefore take the following, among many, combinations of machines and use them on the same shoes without violating any Restricted Use Clause and with very slight additional expense for such unrestricted or independent leases as are required. In no case will he be required to make an initial payment for his Goodyear machines.

FOR MAKING WELT SHOES.

No. 1. United Company's Goodyear Welter, Stitcher and Auxiliaries.
United Company's Metallic Machines on unrestricted 10% lease or initial payment lease.
Competitor's Heeler and Laster.

No. 2. United Company's Goodyear Welter, Stitcher.
Competitor's Auxiliaries.
United Company's Metallic Machines on restricted lease.
United Company's Lasting Machine on restricted lease.
Competitor's Heeler.

In this combination he will not be required to take any initial payment lease from the United Company.

No. 3. United Company's Welter and Stitcher, with either the United Company's or Competitor's Auxiliaries.
Competitor's Metallic Machines.
United Company's Hand Method Welt Laster on restricted lease.
Competitor's Heeler.

In this combination he will not be required to take any initial payment lease from the United Company.

No. 4. United Company's Welter and Stitcher with or without Auxiliaries.
Competitor's Laster.
United Company's Metallic on unrestricted 10% lease or initial payment lease.
United Company's Heeler on independent lease.

No. 5. United Company's Welter and Stitcher as above.
United Company's No. 5 Laster (on independent lease).
United Company's Metallic on restricted lease.
Competitor's Heeler.

No. 6. Competitor's Welter, Stitcher, and Auxiliaries.
United Company's Laster on independent lease.
United Company's Metallic on unrestricted 10% lease or initial payment lease.
United Company's Heeler on independent lease.

FOR MAKING MCKAY SHOES.

A manufacturer may take

No. 1. United Company's McKay Sewing Machine.
United Company's Hand Method McKay Laster—restricted.
United Company's Metallic—restricted.
Competitor's Heeler.

In this combination he need take no initial payment leases from the United Company.

No. 2. Competitor's McKay Sewing Machine.
United Company's Hand Method McKay Laster—restricted.
United Company's Metallic—restricted.
United Company's Heeler—restricted.

In this combination he need take no initial payment leases from the United Company.

No. 3. Competitor's McKay Sewing Machine.
Competitor's Laster.
United Company's Heeler—independent lease.
United Company's Metallic—unrestricted 10% lease or initial payment lease.

No. 4. Competitor's McKay Sewing Machine.
Competitor's Metallic Machines.
United Company's Heeler—independent lease.
United Company's Laster—independent lease.

No. 5. Competitor's McKay Sewing Machine.
Competitor's Laster.
Competitor's Heeler.
United Company's Metallic on unrestricted 10% lease or initial payment lease.

No. 6. United Company's McKay Sewing Machine.
United Company's Laster—independent lease.
Competitor's Heeler.
Competitor's Metallic Machines.

No. 7. United Company's McKay Sewing Machine—restricted.
United Company's Laster—restricted.
United Company's Metallic—restricted.
Competitor's Heeler.

In this combination he need take no initial payment lease from the United Company.

If a manufacturer has a full line of the United Company's Goodyear Machines, Lasting, Metallic and Heeling Machines on restricted leases and wants to use with them a competitor's

lasting machines, he need only change his heeling and metallic machine restricted leases to independent leases.

To change to a competitor's metallic machine he need only put his heeling machines on independent leases.

To change to a competitor's heeling machine he need not take unrestricted leases of any of the other machines. None of them is restricted to use with the heeling machine.

The foregoing are only a few illustrations of the many combinations available to a lessee desiring to equip his factory partially with United Company's principal machines, and partially with a competitor's principal machines.

Had the United Company intended by the use of the Restricted Clauses to exclude competitors' machines, it would obviously not have so drawn the clauses as to permit shoe manufacturers to use its machines in connection with competitors' machines, not only by taking initial payment leases, but even under the restricted leases with so little interference on account of the restrictions. The conclusion is obvious that the restricted clauses were not intended to exclude the use of competitors' machines.

(5) REASONS FOR ADOPTION OF "AUXILIARY RESTRICTED USE CLAUSE."

The "Auxiliary Restricted Use Clause" restricts the use of auxiliary machines to use on shoes operated on by the principal machines of the department.

This clause was used by the constituent companies, and the United Company merely continued the practice.

The larger number of auxiliary machines are in the Goodyear Department, and the reasons for the use of this clause can perhaps be best explained in connection with the Goodyear machines. The principal reasons for the use of this clause are as follows:—

1. The principal machines and the auxiliary machines as a rule perform practically a single operation, such as welting, pulling-over, or heeling. The auxiliary machines were originated and developed to assist the principal machine with which they are used, and are adapted for that particular purpose. For practical purposes they constitute a single machine. The principal machine or machines and the auxiliary machines used

in connection therewith are therefore leased as a unit, the auxiliaries being restricted to use with the principal machines, as this is the purpose for which they are taken by the lessee.

2. The United Company prefers not to put out machines of the kinds it leases unless it assures their being satisfactory by repairing them and keeping them in proper operating condition. A group of machines it can care for at a more or less ascertained price. A single auxiliary machine would be costly to care for by itself.

Mr. Winslow testified:—

> "I will state one reason why the United Company has not adopted a form of lease for the Goodyear auxiliary machines which would permit them to be used in connection with welters and stitchers manufactured by other companies, upon payment of a royalty. Of course our machines are all taken care of in the factories, and the expense of taking care of individual machines would be very large and no prices have been established for that. It was not the policy of the Goodyear Company, and we have developed along the same lines trying to furnish to manufacturers the greatest amount of help that we could in manufacturing Goodyear welt shoes, and it was only on these lines that we could see how to give the manufacturer the greatest value for the money. We spent large sums in developing these auxiliary machines, perhaps much in excess of their value as machines, or what we could charge for, but there was every incentive to do it to develop the manufacture of the shoes made by the principal machines" (R. Vol. 1, p. 544, lines 23–39).

3. As a matter of historical growth the principal machine of a group has been developed first and the auxiliary machines have been developed later to assist the work of the principal machine. When an auxiliary has been developed, therefore, the situation has been that the lessees already had the principal machine under leases requiring them to pay a specific royalty for each pair of shoes on which the principal machine was used. The lessor, having originated a new auxiliary machine, was therefore confronted with the question of whether he should put the machine out on an independent lease, charging a separate and additional royalty for its use, or should let the shoe manufacturer who was already using his principal machine have the new

auxiliary without additional royalty. It has always been the practice of the United Company and its predecessors to furnish lessees of its principal machines with auxiliary machines, as they have been successively developed, without requiring payment of any additional royalty. They have therefore furnished to a lessee a new auxiliary machine when it was developed, restricted to use with the principal machine the lessee already held, without exacting any additional payment except in some cases a small rental or initial payment. They have received their return for the use of the new machine indirectly through the increased use and efficiency of the principal machine on which royalty was paid. It is obvious that they could not be asked to furnish the new auxiliary machine without exacting any additional royalty for its use unless its use was so restricted, for otherwise they would have received no return whatsoever for the machine.

It is further obvious that as a practical business matter it was necessary to lease these machines as a group for a single royalty, which could only be done by restricting their use in this way. For example, the net royalty charged for Goodyear machines when used on men's shoes was four cents per pair (P.'s Ex. 24). It would have been impossible to distribute this royalty over the forty-five machines included in the Goodyear Department. Furthermore, as each new machine was put out it would have been necessary to increase the total royalty for the group by charging a new royalty on the new machine or to readjust the royalties on all outstanding machines. Such a readjustment would have been wholly impracticable.

4. The principal machines do better and more work when auxiliary machines are also used. It is to the advantage of both parties to furnish the lessees with auxiliary machines, which assist the principal machines, increase their productivity, and improve the quality of their work. The shoe manufacturer's output and the company's royalties are both increased. It therefore finds it to its interest to furnish lessees with auxiliary machines to be used in connection with the principal machines for the same reason that it finds it advantageous to furnish efficient repair service to lessees without making any charge for such service, believing thereby that the increased use of the principal machine will compensate it.

5. The royalty paid by the lessee is based on the number of

shoes on which the principal machines are or could be used. This at once presents a serious problem, namely, the problem of checking up the amount of the use of each machine. In the case of a large group of machines, such as the Goodyear Department group, where there are two principal machines and forty-three auxiliaries, it would be almost impossible to check the actual use of each machine, particularly in view of the fact that some of the auxiliaries are useful only on particular kinds of shoes and are not used at all on other kinds. It is easier to check the use of the principal machine or machines, which are always used, especially when, as in the case of the Goodyear Welter and Stitcher, they have recording mechanisms which show approximately the amount of their use. It would not be practicable to place such mechanisms on most of the auxiliary machines. The principal machines are therefore used as measuring machines to measure the payment required for the use of the entire group (R. Vol. 1, p. 442, lines 15–21). No independent charge is made for the use of the auxiliary machines except in some cases a small annual payment, but they are restricted to use with the principal machines, and thus the payment for their use is received indirectly through the royalty on the principal machines.

(6) THE "AUXILIARY RESTRICTED USE CLAUSE" DOES NOT RESTRICT THE PRINCIPAL MACHINES TO USE WITH THE AUXILIARY MACHINES NOR RESTRICT THE USE OF THE AUXILIARY MACHINES TO USE WITH EACH OTHER.

The "Auxiliary Restricted Use Clause" as a rule does not restrict the principal machines to use with the auxiliary machines. The lessee for example, who has the Goodyear Welter and Stitcher may use as many auxiliary machines obtained from others in connection with them as he pleases. Furthermore, the auxiliary machines are not restricted to use together; the lessee may use Goodyear auxiliaries and auxiliaries obtained from others on the same shoes. Finally, a lessee is not required to use auxiliary machines to full capacity, this clause being applicable only to the use of the principal machines; for instance, in the case of the Goodyear Welt set, to the Welter and Stitcher.

And the "Exclusive Use Cancellation Clause" is likewise applied only to the use of the principal machines, so that the United Company cannot cancel its leases of machines if Goodyear auxiliaries obtained from others are used.

A lessee of the Welter and Stitcher is furthermore under no obligation to take any auxiliary machines unless he wishes to do so.

The lessee can, therefore, freely take and use Goodyear auxiliary machines obtained from others in connection with any of the United Company's machines he may have. Many of these auxiliary machines are important, expensive machines. Had the United Company intended to compel lessees to use its machines exclusively and to exclude competitors' machines, it would surely have required that lessees using its principal machines must also take and use its auxiliary machines.

LEGALITY OF THE "RESTRICTED USE CLAUSE."

(7) THE RESTRICTED USE CLAUSE IS A NORMAL PROVISION ADOPTED TO ACCOMPLISH A LEGITIMATE BUSINESS PURPOSE, BENEFICIAL TO BOTH THE LESSOR AND LESSEE, AND IT IS THEREFORE LAWFUL.

The "Restricted Use Clause," where applied to principal machines, restricts the use of the principal machines of one department to use on shoes operated upon by certain of the principal machines of another department.

We have shown above that this clause was adopted for proper commercial reasons, namely, to grant wholesale terms where certain of the United Company's principal machines are used as a team or series, and the return to the United Company is consequently increased because of the increased productivity of the machines, and the cost of service is consequently decreased. The clause was therefore adopted for the purpose of furthering the United Company's business by enabling it to offer a wholesale rate to a lessee using its principal machines in a wholesale manner. It is therefore a normal agreement, adopted for a legitimate business purpose, beneficial alike to the lessee and the lessor, and not prohibited by the Sherman Act unless it is of such an inherently wrongful character that its use is

necessarily unlawful no matter with what intent it is employed. The contention that it is inherently unlawful we submit is without foundation.

It is necessary first to analyze the effect of the clause. As we have shown, it does not require the lessee to use any other machines of the United Company nor does it prohibit it from using competitors' machines. The clause merely defines the character of the use of the machines, which the lessee is authorized to make by the terms of the lease. It grants the lessee the use in a limited and defined field of a machine which without such grant he could not have used at all. The District Court (Brown, J.) said of its effect, referring to it as the "Tying Clause" (R. Vol. 1, p. 1163):—

> "'Tying,' therefore, does not mean that the manufacturer is required to agree, or agrees not to use the machines of others, but merely that he has secured only limited rights of use, and that if he exceeds such limited rights he may lose his lease. It is not a question of the legal effect of the lease, but of the practical consequences of securing only restricted rights of use. *The term is misleading in its implication that the manufacturer is bound by contract not to use the machines of others. He is bound only not to use the leased machinery in violation of the terms of the lease*" (italics ours).

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The fault, then, which the United States finds with this Restricted Use Clause is not that it imposes an obligation on the lessee not to use the machines of others or that it requires the lessee to use the United Company's machines, because it contains no such provision, but, on the contrary, that it forbids the use of the United Company's machines except on certain conditions.

If a lessee holding the United Company's principal machines on restrictive leases obtains an entire series of machines from a competitor, he can, so far as this clause is concerned, use them exclusively and discard the United Company's machines. If he obtains a competitor's machines of only one or more departments, he can also use them as much or as little as he pleases. The only restriction is that if he does use them on certain shoes he cannot use certain of the United Company's machines of other departments on the same shoes without giving up his

leases of such machines of other departments, making initial payments on the machines he desires so to use, and getting unrestricted leases.

If, for example, the lessee has a No. 5 lasting machine on a restricted lease, it can be used only on shoes operated on, or to be operated on, by the United Company's Welter, Stitcher, Pulling-over Machine and Metallic Machine. If the lessee obtains a metallic machine from a competitor, then as each shoe is started through the factory the lessee is free to use the competitor's metallic machine on it or the United Company's Metallic Machine. If he does use the competitor's metallic machine, however, he must use some competitor's lasting machine, or last by hand, or change his lease of the No. 5 machine, paying $300 initial premium and taking an unrestricted lease of the machine.

The only effect of the Restricted Use Clauses, then, is that the lessee as each shoe goes through his factory is forced to choose between (1) using on it certain of the principal machines of the United Company as a team and paying the wholesale rate or royalty for their use, or (2) using a team or series of some competitor's machines and discarding certain of the United Company's machines, or (3) using one or more groups of United Company's machines and one or more groups of competitor's machines, in which case he must in the case of certain of such machines of the United Company obtain unrestricted leases and pay the initial payments required for such leases. In other words, the effect is to make the shoe manufacturer choose between paying the wholesale rate for the use of a series of the United Company's machines, if he desires to use them as a series, or the retail rate on certain of the machines, if he desires to use them independently in a retail manner in connection with machines of other kinds obtained from others.

The only complaint that a shoe manufacturer can make is that if he desires to use only one or more groups of the United Company's machines, and not the entire series, he must pay more for the use of each group than is paid by the manufacturer who uses them as a series.

What possible right has a shoe manufacturer to demand that the United Company market separate machines forming part of a series adapted for use together for the same price per machine that is charged when the entire series is taken?

The shoe manufacturer desiring to take the series has far more right to ask that he be given a reduced price.

A manufacturer of locomotives cannot be required to sell the various parts of the locomotive, namely, the boilers, wheels, axles, etc., at prices which will aggregate no more than the price of the complete locomotive. The Pullman Company, which leases Pullman cars, is not required to lease separately the parts which go to make up its car, namely, the wheels, body, axles, etc., at prices which exactly aggregate the prices charged for the complete car.

In all these cases the manufacturer can furnish the series of machines or the completed article cheaper than he can furnish the units separately. The purchaser or lessee desiring the series of the completed article may properly be given a share of the increased profit resulting from his wholesale use.

The District Court said of the effect of these clauses:—

> "We are unable to see that a shoe manufacturer has any just cause of complaint that the defendants offer him and their other customers restricted leases. One who refuses these leases and takes the independent leases may complain that other shoe manufacturers are getting their machinery on lower terms; but the royalty rate will be the same, and the cost of initial payments is fixed and may be weighed as against the estimated value of taking machinery from other manufacturers. It is a mere question of dollars and cents. It is legal for the defendants to discriminate in price between customers who take large amounts and those who take small amounts" (R. Vol. 1, p. 1168).
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> "The assumption that it is highly desirable that the shoe manufacturer should be at liberty to group the defendant's machines with such other machines, taken from other manufacturers, as he may see fit, ignores the fact that though machines may be treated in the Patent Office as separate, in a shoe factory the machines have a very definite mechanical relation to each other and to the particular method of making the shoe. The grouping of machines in order that some may aid others in turning out a product affords a sufficient mechanical reason for installing them as groups and a sufficient business reason for dealing with them as groups.

"That there are sound mechanical and business reasons for grouping together machinery as it is grouped by a series of prohibitive leases is abundantly established. . . .

"A contract for a group of related machinery, or for a supply of machines not immediately related but used only in separate mechanical steps of a manufacturing business, is an entirely proper and normal contract" (R. Vol. 1, p. 1184).

It must be remembered that it is not the United Company alone which profits from the Restricted Use Clauses. The United Company profits because its machines when used together produce a larger royalty per machine. But the shoe manufacturer profits also, not only because he uses machines adapted for use together, and kept in repair by the United Company, but because he is enabled by the wholesale rate which the United Company can charge under these leases to obtain his machinery cheaper.

Nor has the competing shoe machinery manufacturer any cause of complaint when he attempts to dispose of his machines to a shoe manufacturer holding United Company's machines under restricted leases. He finds the shoe manufacturer entirely free to take and use his machines so far as these clauses are concerned. In other words, the leases contain no agreements whatever not to use machinery of others. If he can supply a complete series of machines, these clauses do not interfere with him at all. It is only the Full Capacity Clause, the only clause in the United Company's leases which requires a lessee to use its machines at all, which in any way interferes with him, and then only because he tries to supply a man who, to the extent of that particular machine's capacity but no further, has already been supplied and already taken out of the market.

If the machinery manufacturer has only a single kind of machine to offer, his only difficulty, so far as the Restricted Use Clauses are concerned, is that the lessee may prefer to use a series of the United Company's machines as a unit at a wholesale rate rather than to use separate groups of machines obtained from two or more manufacturers at retail rates. Unless the machinery manufacturer has a much superior machine to offer which justifies the lessee in paying retail rates this may prove a serious obstacle, but it is a normal, natural obstacle. In the same

way the manufacturer of one part of a locomotive, such for example as wheels, is at a disadvantage in competing with the manufacturer of complete locomotives.

The court in *United States* v. *Winslow*, 227 U. S. 202, 218, said,—

> "It is as lawful for one corporation to make every part of a steam engine and to put the machine together as it would be for one to make the boilers and another to make the wheels."

A manufacturer who makes the completed engine has a right to offer it at a wholesale price, as we have shown above. It is only by offering such a wholesale price that the purchaser or lessee can be permitted to share in the economies resulting from the manufacture and marketing of the complete product.

The District Court, referring to the effect of these clauses on competing shoe manufacturers, said (R. Vol. 1, p. 1184):—

> "He [the shoe manufacturer] has taken the machines as a group, and one who has not a group to offer in substitution has little practical chance to compete. But a competitor must be able to compete. If leases for machines for use as a group are offered and accepted for sound business reasons, and if, because of the greater productivity of a group and of the less cost of maintenance, better prices can be made, the defendants and the shoe manufacturers need not forego the making of such contracts for the sake of possible competitors who may have only single machines to offer. Contracts for large equipments of machinery, furniture, and other articles are too common to be condemned for such reason."

The United Company could, we contend, perfectly properly adopt clauses which went much further than the Restricted Use Clauses actually used here. For example, it could perfectly lawfully (*A*) lease the entire system of machines restricted to use together, and refuse to offer any alternative leases without restrictions, or (*B*) require the lessee to use its machines of every kind exclusively.

We refer to such possible forms of lease merely to illustrate how far short the United Company's leases fall from requiring what they might lawfully and properly exact.

A. A manufacturer may lawfully refuse to sell at retail. In

the same way he may lawfully refuse to sell different parts of a machine or series of machines or any other collection of articles separately. A manufacturer of automobiles is not required to sell the parts separately. He can refuse to sell anything but the completed automobile. The Pullman Company cannot be compelled to lease wheels, trucks, bodies, and other parts of its cars separately.

What the United Company really sells is the use of its machines, charging a royalty for each time that they are used. Just as it can refuse to sell any of its series of machines unless all are bought, so it can refuse to sell the use of one machine unless the use of all is bought. It owns the machines; it can refuse to grant any right to use them at all. If it chooses to grant the right to use them as a series, why may it not lawfully do so? It could not be compelled to grant the right to use them separately. When, then, it grants the right to use them as a series it presents a new opportunity to the shoe manufacturer which he did not have before. This offer, then, can in no wise restrain trade.

The United Company could thus insist that if any of its machines were used all must be used, even though its purpose were solely to induce shoe manufacturers desiring only certain of its machines to use all. This would be merely a legitimate competitive method. It is common and usual for a manufacturer to attempt to make some particular part of his machine or product better than the corresponding part of his competitor's machine or product and thus induce customers to use his machine or product for this reason. Thus a manufacturer of printing-presses may introduce and obtain an attachment on his press which his competitor cannot use on account of the patent, and may advertise this feature and obtain customers on account of it. He is not obliged to sell this attachment separately in order to accommodate either his customers or his competitors. By being permitted to reap the advantage of offering some special feature which is better than anything offered by competitors, invention is stimulated and competition developed.

There is no difference in this respect between a single machine made up of parts which could be sold separately, such as a printing-press, a locomotive, or an automobile, and a series of machines adapted for use together. The machines in the present case are all adapted to a single purpose; they are co-related,

and quite conceivably could be incorporated into a single machine, just as a device for cutting paper may be used separately or may be attached to a printing-press. It is immaterial and a mere matter of convenience whether two operations are performed by a single machine or by two separate machines each performing a single function.

B. It would also be lawful for the United Company to lease its machines under agreements requiring the lessee to use its machines exclusively. In a case where a machinery manufacturer provides without initial payment an equipment of expensive machines, cares for the machines, instructs operatives in their use, and depends for substantially all his payment on royalties received from the use of the machines, he becomes for practical purposes a partner with a shoe manufacturer, being dependent upon the latter's success for his return. As such quasi partner he can properly by agreement control the manufacturing conditions which are essential to a return on his investment by providing that his own machines be used exclusively.

As said by the District Court (R. Vol. 1, p. 1174):—

> "A contract requiring the use of certain machinery in a manufacturing business, between one who is to carry it on and one who is to furnish capital, or his own property tangible or intangible as a means for carrying it on, is a provision 'for the prosecution of the business in a particular mode and not for its restraint.'"

An exclusive contract is not inherently illegal, and if adopted for a reasonable purpose it is unobjectionable. In *Chicago, etc., R.R. Co.* v. *Pullman Car Co.*, 139 U. S. 79, the Pullman Company agreed to lease to the Railroad Company drawing-room and sleeping cars sufficient to meet requirements of travel. It was agreed that it should have the exclusive right for a term of fifteen years to furnish such cars for the Railroad Company's use on the roads then or subsequently controlled or owned by it. The Railroad Company being expressly forbidden to contract with any other party to run cars of this character, the Railroad Company contended that the contract was void as against public policy because of the exclusive rights granted the Pullman Company.

The court said (p. 89):—

> "We cannot perceive that such a contract is at all in restraint of trade."

(p. 90)

> "But we are of opinion that public policy did not forbid the Railroad Company from employing the Pullman Southern Car Company to supply drawing-room and sleeping cars to be used by its passengers, and, as a means of inducing the plaintiff to perform this public service and to incur the expense and hazard incident thereto, from giving it an exclusive right to furnish cars for that purpose."

(p. 91)

> "The stipulation, therefore, that the plaintiff, not being in default, should have the exclusive right for fifteen years to furnish drawing-room and sleeping cars for the defendant's use, and that the defendant should not, during that period, contract for cars of that kind with any other party, rightly construed is not unreasonable, and, properly performed, will promote the convenience of the public in that it enables the defendant to have on its lines, at all times, and as the requirements of travel demand, drawing-room and sleeping cars for use by passengers."

In *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, it appeared that the Corn Products Company agreed with its customers to give them a discount of ten cents per hundred pounds on all shipments of glucose and grape sugar at the end of the year provided they should have purchased exclusively from the Corn Products Company all glucose and grape sugar required by them.

The court said (p. 172):—

> "The case therefore reduces itself to the question whether the contract of sale was inherently illegal so as to bring it within the also elementary rule that courts will not exert their powers to enforce illegal contracts or to compel wrongdoing. The only suggestion as to the intrinsic illegality of the sale results from the averments of the answer as to the offer of a percentage of profits upon the condition of dealing exclusively with the Refining Company for the following year and the clause to the effect that the goods were bought by the Manufacturing Company for its own use and not for resale. But we can see no ground whatever for holding that the contract of sale was illegal because of these conditions.

The leases of the United Company, however, neither require that the machines be all used together nor require an exclusive use of the United Company's machines.

The United States may contend that a single lease might be legal but that leases of the same kind made with shoe manufacturers all over the country have in some way a cumulative effect which make them illegal. In support of this contention it cited, in the District Court, *U. S.* v. *Reading Co.*, 226 U. S. 324.

In the Reading case a number of different railroad companies controlled about 90% of the anthracite coal deposit and about 75% of the annual output. The railroads, acting in unison, made contracts with a large proportion of the independent coal owners containing substantially uniform provisions by which the independent coal owners agreed to deliver to the various railroad companies all the anthracite coal thereafter mined from any of their mines now being operated or which might thereafter be owned and operated. The court held that these contracts were illegal, an intent to suppress competition and restrain trade being shown by the extent of the control over the limited supply of anthracite coal acquired thereby.

As said by the District Court (R. Vol. 1, p. 1181),—

> "The resemblance between the Reading case and the present case lies only in the fact that in each is a large number of contracts."

In the first place, in the Reading case, practically all of the anthracite coal in existence was monopolized by means of these contracts. In the present case the leases do not give control of an existing supply of shoe machinery. On the contrary, as pointed out by the District Court (R. Vol. 1, pp. 1181–2), if the leases give any control it is a control of customers and not of machines. Such customers cannot be monopolized to any substantial extent. For example, the record shows that from 1900 to 1911 an average of 62 new firms entered business each year and an average of 22 new firms succeeded old firms (Defs.' Ex. 223). Thus an average of 84 concerns each year started business free from any obligation to the United Company. The United Company in 1911 had a total of only 1,033 lessees (R. Vol. 1, p. 26, lines 38–40). Furthermore, a rival shoe machinery manufacturer could appeal to any business man in the country to

enter the shoe business and if, as claimed by the United States, existing manufacturers were burdened by their leases with the United Company such appeal would be effective. Furthermore, any existing shoe manufacturer could join in forming a new corporation and it could do business free from obligations to the United Company. It is impossible, then, to monopolize the field of customers for shoe machinery (see opinion of District Court R. Vol. 1, pp. 1181–2).

In the second place, in the Reading case, it was not necessary for the various coal companies to enter into similar contracts with a large proportion of the coal owners. The making of these identical contracts by the different coal companies with such a large proportion of the coal owners was unnatural and gave rise to a clear inference of a conspiracy to monopolize the coal supply. In the case of the United Company's leases, if a single lease of the kind in question with a single lessee was natural and justified, the making of identical leases with all lessees desiring its machines was likewise natural and normal. The United Company has properly adopted the policy of offering to all lessees the same terms it offers any one lessee. It would be abnormal to offer leases of this kind to, let us say, ten or a hundred lessees and then to refuse the same terms to the remaining nine hundred.

In the third place, in the Reading case, we find separate coal companies combining to make these contracts, giving rise to an inference of conspiracy, while in the present case we find only the United Company, a single concern, putting out the leases complained of.

These very Restricted Use Clauses were upheld as lawful at common law by the Privy Council of Great Britain, in the case of *United Shoe Machinery Company of Canada* v. *Brunet*, (1909) A. C. 330, Lords MacNaghten, Atkinson, Collins, and Gorell composing the court. An injunction was ordered enjoining the violation of the clauses. The Canadian Patent Act contained certain provisions providing for the terms on which patented articles could be disposed of. It was not shown by the record, however, that the machines were patented, and the court, therefore, treated them as unpatented machines and disregarded the provisions of the Patent Act.

The court said (p. 342):—

> "The findings of the jury, therefore, dispose completely of all questions arising on the Patent Act, as, indeed, they also dispose of all the charges of fraud and coercion, since they remove the foundation on which the first charge rests, and their answer to question 19 limits the latter to the presentation to the shoe manufacturers of Canada of the alternative of either doing without these machines altogether, or of hiring them on terms identical with or similar to those contained in the 'leases sued on.' This alternative, however, does not subject the would-be customers of the appellants to any coercion beyond what their desire to promote their own trade interests imposes upon them. By virtue of the privilege which the law secures to all traders, namely, that they shall be left free to conduct their own trade in the manner which they deem best for their own interests, so long as that manner is not in itself illegal, the respondents are at liberty to hire or not to hire the appellants' machines, as they choose, irrespective altogether of the injury their refusal to deal may inflict on others. The same privilege entitles the appellants to dispose of the products they manufacture on any terms not in themselves illegal, or not to dispose of their products at all, as they may deem best in their own interest, irrespective of the like consequences. This privilege is, indeed, the very essence of that freedom of trade in the name and in the interest of which the respondents claim to escape from the obligations of their contracts."

(8) THE RESTRICTED USE CLAUSE IS MERELY THE GRANT OF A LIMITED PATENT LICENSE, WHICH IS CLEARLY LAWFUL.

(a) GENERAL DISCUSSION.

In the foregoing discussion we have shown that the "Restricted Use Clauses" are reasonable provisions adopted for the purpose of offering wholesale terms for the use of a series of machines and therefore they would be lawful whether or not the machines were patented.

The machines, however, are patented, and the "Restricted Use Clauses" clearly contain such restrictions as a patentee is permitted to impose by the terms of his patent. They, therefore, are the mere exercise of patent rights and cannot fall within the prohibition of the Sherman Law.

The agreements under which the machines are leased constitute leases of the machines covered thereby and also licenses under patents providing that the lessee may use the leased machines and defining the extent and character of use which is permitted. The "Restricted Use Clause" provides that the use of the leased machine which the licensee is authorized to make is a use on shoes operated on by certain other principal machines leased from the United Company in connection with which the leased machine can, in the opinion of the United Company, be used most effectively and thus produce the largest royalty return. That such a restriction imposed on the use of a patented machine is the lawful exercise of a patentee's rights has been determined by this court.

The Dick Case.

The "Restricted Use Clauses" are clearly legal within the authority of *Henry* v. *Dick*, 224 U. S. 1. Just as in the Dick case the license clause restricted the use of the mimeograph to use with certain specified supplies, so do the Restricted Use Clauses restrict the use of the machines to use on shoes on which certain other machines operate.

But it should be noted that the decision in the Dick case goes much further than is necessary to support the Restricted Use Clauses.

In the Dick case the mimeograph had been sold, title was in the purchaser, and the restriction therefore applied to a machine which the patentee no longer owned. In the present case the Restricted Use Clauses apply only to machines owned by the United Company and for which, in most cases, the lessee has made no payment whatsoever except in the form of royalties covering such past use as he may have made of the machines. (*Victor Talking Machine Co.* v. *Strauss*, 230 Fed. 449.) If public policy were to be considered in determining the validity of such restrictions, an argument might well be made that the ownership of a machine should not be separated from the unlimited right to use it, with the consequence that, if the particular use for which the machine was licensed were abandoned, the machine could not be used at all.

It was not shown in the Dick case that the supplies furnished by the patentee increased the efficiency of the machine and

therefore it did not appear that the use of these supplies increased the return to the patentee over what it would have received had it charged a money royalty based on the amount of use. In the present case we have shown that the use of the United Company's machines as a series as required by the restrictive use clauses, enormously increases the productivity of the machines. In the present case, therefore, there is a strong reason for sustaining these restrictive use clauses which directly promote the efficiency of the machines, which was not applicable in the Dick case.

In the Dick case the restriction permitted the use only of unpatented supplies sold by the patentee. In the present case the restriction applies only to use in connection with other patented machines. The United Company, therefore, by its restrictive use clause does not attempt to induce the use of unpatented articles or to project its control beyond its own patented field.

Minority Opinion in the Dick Case.

The objections to the decision in the Dick case raised by the minority dissenting opinion are not applicable to the present case.

In the opinion of the minority the restriction in the Dick case was not a restriction upon the use of the machine (which would have made it a legitimate patent restriction), but it was in truth a restriction upon the use of certain unpatented materials not embraced within the patent. Thus the minority said (p. 52):—

> "But as the right to employ any desired operative materials in using the patented machine was not a right derived from or protected by the patent law, but was a mere right arising from the ownership of property, it cannot be said that the restriction concerning the *use of the materials* was a restriction upon the *use of the machine* protected by the patent law. . . . And this after all serves to demonstrate that it is a misconception to qualify the restriction as one on the use of the machine, when in truth both in form and substance it was but a restriction upon the use of materials capable of being employed in operating the machine" (italics ours).

Defining the use which the patent protected, the minority said (p. 52),—

> "The exclusive right of use of the invention embodied in the machine which the patent protected was a right to use it anywhere and everywhere for all and every purpose of which the machine as embraced by the patent was susceptible."

In the present case the restriction is clearly upon the use of the machine, and not upon the materials to be used in it. The right to use the machine on shoes which have been operated on by machines other than those specified is reserved to the patentee.

The patentee does not by contract "bring within the claims of his patent things which are not embraced therein" as the minority held to be true in the Dick case (p. 53). He merely restricts the use of his own patented machines to use on certain specified shoes. In the manufacture of the shoes the licensee is free to use any materials he pleases wherever obtained. No attempt is made to control such supplies or materials as in the Dick case.

The restriction in the present case is the same character of restriction made by the patentee in *Rubber Company* v. *Goodyear*, 9 Wall. 788, which was differentiated from the Dick case and approved in the minority opinion. In that case the licensee was authorized to use the patented invention in the manufacture and sale of certain goods, but was not authorized to "make any contract with the Government of the United States" (p. 799). In other words, the patentee reserved to himself the right to make goods sold or to be sold to the United States Government. So in the present case the patentee reserves the right to make shoes operated on, or to be operated on, by certain other machines.

Again, in the Dick case the transaction by which the patented mimeograph was sold amounted in the opinion of the minority to a sale of the machine together with all the patent rights relating to it. By this sale the machine was placed completely outside the patent monopoly. The alleged restriction, therefore, in the opinion of the minority, could not be a patent restriction, but was necessarily a mere covenant or contract on the part of the purchaser. Thus, the minority opinion says (p. 65),—

> "That the sale here in question was one of all the rights which the patent protected has, it seems to me, at the outset been demonstrated beyond reasonable dispute."

And again (p. 53),—

> "In other words, every use which the patent protected was transferred to Miss Skou, and the very existence of the particular restriction under consideration presupposes such right of complete enjoyment, and because of its possession there was engrafted a contract restriction, not upon the use of the machine, but upon the materials."

It having been found by the minority that by the transaction the patentee sold all his patent rights in respect to the machine, the machine was thereafter outside the patent monopoly, and it, of course, followed that the alleged restriction, if effective at all, was effective solely as an agreement on the part of the owner of the machine. This being accepted, it followed that to hold this agreement to be protected by the patent law was an "extension by contract of the patent laws" (p. 56). It also followed that the Federal courts in taking jurisdiction of the case as a patent case were unwarrantedly extending the Federal judicial power.

In the present case the United Company has clearly not sold the licensee "all the rights which the patent protected." It still owns the machines and at the termination of the lease has a right to take them back, the patent license in such case being terminated entirely. Furthermore, the right to use is restricted in various other ways. It can, for example, be exercised only in a designated factory. It is obvious that the machines have not passed outside the patent monopoly and that the United Company has not sold the lessee all the patent rights it had in respect to the machine, as the minority opinion held had resulted in the Dick case, and the patented inventions embodied in the machines even under the rule contended for by the minority opinion are therefore still subject to the control of the patentee.

The case of *Bauer* v. *O'Donnell*, 229 U. S. 1, does not affect the decision in the Dick case. It holds that a patentee who sells his patented article receiving full consideration cannot impose a price restriction on future sales. By making such a sale the patentee has exercised the exclusive right to sell granted by his

patent. The Dick case was expressly differentiated as involving a restriction on the right to use. The decision in *Bauer* v. *O'Donnell*, therefore, does not affect the present case. In the present case the United Company's machines have not been sold, they are to be returned at the expiration of the leases, the lessee has only a right to use them, and the full consideration for such use is not received by the United Company when the lease is made but is to be paid only when and as machines are used. In other words the restriction which the patentee attempted to impose in *Bauer* v. *O'Donnell* was on the right to sell, which the court held had been fully exercised by the sale made by the patentee. In the case of the United Company's leases the restriction is on the right to use.

In *United Shoe Machinery Co.* v. *La Chapelle*, 212 Mass. 467, the court applied the doctrine of the Dick case to the United Company's leases as set out in the bill in that case. It was alleged that the United Company was an illegal monopoly, and that as a means of maintaining its monopoly it inserted in its leases of the principal or basic machines a requirement that the lessee should use only its machines in the manufacture of shoes,—a provision which we have shown goes further than any clause actually contained in the Company's leases. The court on demurrer said of this allegation (p. 478):—

> "There are averments that the plaintiff is a monopoly perpetuated by means of conditions in leases of certain patented machines to the effect that the lessees shall use no other machines not manufactured by the plaintiff, and that the plaintiff thus secures to itself a monopoly of all machinery used in the manufacture of footwear which is alleged to be an infraction of the federal anti-trust act of July 2, 1890, 26 U. S. Sts. at Large, c. 647. The power to make such leases appears to be within the protection granted by the patents. This is settled by *Henry* v. *A. B. Dick Co.*, 224 U. S. 1, decided since the argument of this case. See also *National Phonograph Co. of Australia* v. *Menck*, [1911] A. C. 336; *United Shoe Machinery Co. of Canada* v. *Brunet*, [1909] A. C. 330, 344. Hence these allegations and the evidence offered in support of them drop out of the case."

This restrictive clause is incidental to a license to use a patented machine and is used to define the field in which such use may

be made. It consists merely in the exercise of the right to subdivide the patentee's monopoly and to grant a portion of it to persons who wish to use a portion.

The right referred to is a property right belonging to the owner of the patent. It is a property in the patented thing which he has not granted; because of every restrictive use, it has been said time and again that those rights not granted, the owner of the patent retains. To his exclusive enjoyment in the retained rights the public faith is pledged.

Grant v. *Raymond*, 6 Peters, 218, 241.

Suppose the United Company leases a lasting machine and restricts the use of it to use upon shoes operated upon by its Welter and Stitcher. Every other use of the patented idea the company retains itself to do with as it chooses. This is merely a subdivision of the monopoly; the right to use the invention embodied in the laster in ways other than those granted, the company retains to enjoy itself or to lease to others.

Thus partially to grant a use of the patent is not to make a contract restraining the use of that which was free before the grant, but is to give a partial use of that invention, the enjoyment of which Congress has vested exclusively in the owner and which the licensee could not use at all.

It cannot now be denied, as held in the Dick case, that a license to use a patented invention only with unpatented articles could at the time this suit was brought lawfully be made. But the United States seems to deny that such a result can be accomplished if the article with which the patented invention must be used is also patented. That is to say, the United States must admit that the Dick Company can restrict its Neostyle to use with certain unpatented inks and papers, but it denies that the United Company has a right to restrict the use of its patented Lasting Machine to use with its patented Metallic Machine.

The distinction is plainly untenable. The United Company seeks only to sustain its right to restrict the use of one patented machine to use upon shoes operated upon by another patented machine, when such restriction is necessary and reasonable and incidental to obtaining the best results and a full return from the patented invention, when without such restriction it would not obtain such return.

It is clear that the United Company may restrict the use of its metallic machines to use with fastening material furnished by it, and thus receive its income indirectly from the sale of an unpatented article. It is equally clear that if it does not thus receive a full return it may further restrict their use to use with its lasting machines, and thus indirectly obtain its full return. If this method of restriction operates to confine the activities of the user, it is not because his rights are interfered with or his liberties restrained, because he had none before he received his license.

All rights of enjoyment of the patented invention were, prior to that grant, vested exclusively in the owner of the patent; by granting a use thus restricted he has not restrained trade, but has enlarged the use of his invention, which prior to his grant Congress had forbidden all the world but him to use.

All that the patentee does by such a license is to grant a right. No new obligation is imposed on the licensee at all.

But the United States argues that if the licensee accepts such a restricted license he is restrained of his liberty to trade with others. This is not so. The licensee accepting such a license does not agree that he will not use other machines. He does not even agree by this clause that he will use the leased machine. All that he agrees to is that he will not use the leased machines except in accordance with the restricted license. He is restricted in the use of the leased machine, not in the use of any other machines.

To make a contract to abide by restrictions lawful for the licensor to impose is not unlawful, and the actions of the licensee are not in truth restrained at all. He receives a limited license to use a patented article which before he had no right to use whatever. His enjoyment of *that* and *that only* is circumscribed by the license. As to all else he is exactly as he was before.

The United States may argue,—

> "One who holds a heeling machine under a restricted lease is prohibited from using, during the entire term of such lease, in the manufacture of a shoe upon which the leased machine operated, a lasting machine, or a welting machine, or an out-sole or turn sewing machine, or a pegging or metallic machine not obtained from the lessor."

This is not true, for the only restriction is upon the heeling machine. It is *its use and its use only* which is restricted.

He may use any one's lasting, welting, stitching, pegging, and metallic machines he wants to; but without the license from the patentee he may not use the United Company's heeling machine at all. If he takes such license, he has added to his rights, not subtracted from them, for in addition to his right to use any one's laster, welter, stitcher, pegger, etc., upon all the shoes he was previously making he has acquired the right to use the patented heeler upon shoes operated upon by certain of the patentee's other machines if he desires to use them.

In no case do the leases of the company operate to restrict the licensee in the use of any machines except those which he would have no right to use at all except for licenses granted by the company.

Manufacturers who take such licenses are not prohibited from taking machines from others. They are simply limited to using the leased machines with certain other machines of the same owner. But the company was not required to allow them to use the machines even for such limited purpose, and such use as has been permitted is a removal of the restraint and not the imposition of a new one.

The very use of the word "restraint" in this connection is apt to raise a misconception as to the true situation. There is in truth no restraint, there is a partial grant; and it is when the grantee desires to use beyond the line of the grant and infringes upon the patent rights of the grantor that the United States claims his liberties have been restrained.

This is a common and legitimate exercise of the patent monopoly, and if exercised in the marketing of one type of machine would not be questioned. But it is argued that if the owner of several patented machines exercises this right as to each machine, he extends the monopolies which the several patents give him. This is not true. With reference to each patent he exercises only the rights which the patent grant gives him; viz., to subdivide his monopoly and allow others a partial enjoyment of it.

Suppose A had a welter which would, in A's opinion, do better work when operating on shoes lasted on B's lasting machine than on shoes lasted on any other machine, would A not have the right to license another to use it and restrict its use to shoes

lasted on B's machine, and retain himself or grant to others the right to use the welter with C's machine or any one's else?

Suppose one owner has a patented laster and a patented heeler and licenses each to be used only upon shoes operated on by the other. If there are no other heelers or lasters in the market, of course no question arises. No one is prevented from inventing or supplying other heelers and lasters. If both are invented and supplied, no licensee of the first inventor is prevented from taking them. If a new heeler, only, is invented, it will find a market if it is good enough to furnish more advantages than both heeler and laster together of the first owner.

But the first owner is entitled to the advantage that lies in being able to furnish both heelers and lasters instead of only one of the two. Unless he is permitted to exercise his patent right as to both, he is by reason of his ownership of both deprived of rights which belong to each separately.

The truth is that the inventor of the new heeler is at a commercial disadvantage because he has not so much to offer as the man who has both heeler and laster. And until he can make as advantageous an offer, either upon equal terms as to quantity, or his one article is worth more to the trade than the other man's combination of articles, he will not get the business.

If the first man has been clever enough to invent or acquire two machines, it is a perfectly legitimate exercise of his right to say to customers, "You must use both of my machines on a shoe or neither." Even if there were no patents this must be so, as we have shown above.

A clothing dealer offers suits consisting of coat, vest, and trousers, but refuses to sell anything less than a complete suit. Can a manufacturer of trousers complain because the first man refuses to sell a coat and vest to go with the second man's trousers? Or is the trade of the consumer or the trousers manufacturer restrained? This is but one of thousands of illustrations of trade practices always regarded as normal and legitimate, and never attacked, which involve exactly the same principle as the case at bar.

If a manufacturer of coats, a manufacturer of trousers, and a manufacturer of vests can combine, as they surely lawfully may, to manufacture complete suits, they can when combined refuse to sell anything less than complete suits. The situation

is not changed if each had a monopoly of his line before the combination.

As was said in *United States* v. *Winslow*, the law does not require the reduction of all manufacture to isolated units of the lowest degree. The competition between makers of complete suits is adequate. It need not be between vest makers. So here competition between makers of lines of machines for making particular types of shoes meets the requirements of the Sherman Act. It is not necessary that there be separate and distinct competition in every unit in the series or line of machines with other manufactures.

Otherwise a manufacturer would not be able to put out a complete machine because the maker of a pulley, or a shaft, or an awl, or a needle might complain.

(b) PATENT RESTRICTIONS ARE LAWFUL UNLESS IN THEIR VERY NATURE ILLEGAL.

The general rule is that conditions or restrictions imposed by patentees are lawful unless they are in their very nature illegal.

In *Bement* v. *National Harrow Co.*, 186 U. S. 70, the following general rule was laid down (p. 91):—

> "Notwithstanding these exceptions, the general rule is absolute freedom in the use or sale of rights under the patent laws of the United States. The very object of these laws is monopoly, and *the rule is, with few exceptions, that any conditions which are not in their very nature illegal with regard to this kind of property, imposed by the patentee and agreed to by the licensee for the right to manufacture or use or sell the article, will be upheld by the courts.* The fact that the conditions in the contracts keep up the monopoly or fix prices does not render them illegal" (italics ours).

(c) CONSIDERATIONS OF PUBLIC POLICY NOT RECOGNIZED IN THE PATENT LAW ARE NOT RELEVANT WITH REGARD TO SUCH CONDITIONS OR RESTRICTIONS.

The rule permitting patentees to impose such conditions or restrictions as they please, provided only they are not definitely illegal, is a necessary part of and is included in the exclusive

right granted by the patent. As the patentee has the absolute right to exclude all others from any use, he necessarily must have the right to grant only a limited or restricted right of use, or a right to use only under such conditions as he pleases. As said by this court in *Henry* v. *Dick Co.*, 224 U. S. 1 (p. 35),—

> "This larger right [viz., the right of excluding all and refraining from use himself] embraces the lesser of permitting others to use upon such terms as the patentee chooses to prescribe."

The patentee's right, then, to prescribe the terms on which his patented article shall be used, being a right granted by the patent law, cannot be abrogated without depriving him of his rights of property granted by that law. So long, therefore, as the patent law remains in force the court cannot consider the legality of such restrictions in the light of public policy. To do so would be to abrogate the patent law. Public policy in respect to these restrictions is established by the Act of Congress.

As said by this court in *Henry* v. *Dick Co.*, supra (to repeat and add to the citation above made):—

> "This larger right [viz., the right of excluding all others and of refraining from use himself] embraces the lesser of permitting others to use upon such terms as the patentee chooses to prescribe. It must not be forgotten that we are dealing with a constitutional and statutory monopoly. An attack upon the rights under a patent because it secures a monopoly to make, to sell and to use, is an attack upon the whole patent system. We are not at liberty to say that the Constitution has unwisely provided for granting a monopolistic right to inventors, or that Congress has unwisely failed to impose limitations upon the inventor's exclusive right of use. And if it be that the ingenuity of patentees in devising ways in which to reap the benefit of their discoveries requires to be restrained, Congress alone has the power to determine what restraints shall be imposed. As the law now stands it contains none, and the duty which rests upon this and upon every other court is to expound the law as it is written. Arguments based upon suggestions of public policy not recognized in the patent laws are not relevant. The field to which we are invited by such arguments is legislative, not judicial."

Not only, then, is the patentee's right to impose restrictions included in the broader grant of rights to which his patent entitles him, and to the maintenance of which, to use Chief Justice Marshall's words below quoted, "the public faith is pledged," but, being a portion of those rights, it should be regarded and construed in the same liberal spirit in which a patentee's other rights are regarded and construed.

Mr. Justice Story, in *Ames* v. *Howard*, 1 Sumner, 482, 485, said:—

> "Patents for inventions are not to be treated as mere monopolies odious in the eyes of the law, and therefore not to be favored; nor are they to be construed with the utmost rigor, as *strictissimi juris*. The Constitution of the United States, in giving authority to Congress to grant such patents for a limited period, declares the object to be to promote the progress of science and useful arts, an object as truly national, and meritorious, and well founded in public policy, as any which can possibly be within the scope of national protection. Hence it has always been the course of the American Courts, (and it has latterly become that of the English Courts also,) to construe these patents fairly and liberally, and not to subject them to any over-nice and critical refinements."

In *Henry* v. *Dick Co.*, 224 U. S. 1, the Supreme Court said (p. 27) (in speaking of the patent law):—

> "It is a statute creating and protecting a monopoly. It is a true monopoly, one having its origin in the ultimate authority, the Constitution. . . . In *Bement* v. *National Harrow Co.*, 186 U. S. 70, 89, 90, 91 and 92, this court quoted with approval the language of Chief Justice Marshall in *Grant* v. *Raymond*, 6 Pet. 218, 241. Concerning the favorable view which the law takes as to the protection extended to the exclusive right, the court, through Chief Justice Marshall, said:
>
> "'It is the reward stipulated for the advantages derived by the public for the exertions of the individual, and is intended as a stimulus to those exertions. The laws which are passed to give effect to this purpose ought, we think, to be construed in the spirit in which they have been made; and to execute the contract fairly on the part of the United States, where the full benefit has been actually received, if this can be done without tran-

> scending the intention of the statute, or countenancing acts which are fraudulent or may prove mischievous. The public yields nothing which it has not agreed to yield; it receives all which it has contracted to receive. The full benefit of the discovery, after its enjoyment by the discoverer for fourteen years, is preserved, and for his exclusive enjoyment of it during that time the public faith is pledged.'"

Furthermore, such restrictions should be viewed with favor by the courts in order to carry out the manifest purpose and policy of the patent law. Congress, in granting a patentee exclusive rights for seventeen years, did so to enable the patentee to obtain as large a financial return as possible. It offered this opportunity "to promote the progress of science and the useful arts" by encouraging invention. Congress might have restricted the patentee's profits by providing, as has been done in some other countries, that the patentee should permit the use of his invention by others on reasonable terms. But it declined so to do, and, on the contrary, adopted the policy of permitting the patentee to obtain as much return as he could, either by granting licenses or by using the patented invention himself exclusively, or, if he deemed it to his best interest, by not using it at all. (*Paper Bag Patent Case*, 210 U. S. 405.) If, therefore, the patentee finds that his best return is obtained by granting restricted rather than unlimited licenses, it is clearly in accord with the policy of the patent law that he should be permitted to do so freely, and should be prohibited only when his conditions or restrictions are clearly and definitely illegal.

As the patentee can exclude all others from the use of his invention and use it exclusively himself, it is to the benefit of the public to induce him to permit others to enjoy the benefits of his invention, even if only to a limited extent. If, therefore, he is unwilling to grant others his full rights, he should be encouraged to grant them limited rights by being allowed to impose conditions or restrictions on the rights he grants. Public policy must favor conditions which give the public rights which might otherwise be denied them.

(d) RESTRICTIONS WHICH MERELY REQUIRE THE LICENSEE TO USE THE PATENTED ARTICLE IN A MANNER IN WHICH THE PATENTEE HIMSELF MIGHT LAWFULLY USE IT ARE NOT "IN THEIR VERY NATURE ILLEGAL."

As held in *Bement* v. *National Harrow Co.*, supra, the conditions and restrictions imposed by a patentee upon the use of the patented article are lawful except such as are "in their very nature illegal."

Conditions are in their very nature illegal which require a licensee to do something which it would be illegal for the patentee himself to do. Thus a patentee cannot himself sell a patented illuminating oil which falls below the standard required by law. He, therefore, cannot require or authorize his licensee to do so (*Patterson* v. *Kentucky*, 97 U. S. 501), and a provision to this effect in a patent license would be unlawful. The patentee cannot himself use a patented instrument as part of the equipment of a public service company and decline equal service to all. He, therefore, cannot authorize his licensee to do so.

In the present case the license merely grants the right to use the United Company's machines as a series. It is unquestioned that the United Company could use its own machines as a series and it would obviously violate no law in so doing. In granting the right to a licensee to use them in the same way, it is therefore merely restricting their use to a use which the United Company itself could lawfully and properly make of them. Such a limited license is clearly not in its very nature illegal.

(e) THE SHERMAN ACT DOES NOT FORBID SUCH RESTRICTIONS IMPOSED BY A PATENTEE.

In *Bement* v. *National Harrow Company*, supra, the court said (p. 92):—

> "But that statute [namely, the Sherman Act] clearly does not refer to that kind of a restraint of interstate commerce which may arise from reasonable and legal conditions imposed upon the assignee or licensee of a patent by the owner thereof, restricting the terms upon which the article may be used and the price to be demanded therefor.

> Such a construction of the act we have no doubt was never contemplated by its framers."

In *Henry* v. *Dick Company*, supra, the court, after quoting the above language and after referring to the fact that the court in that case held that restrictions as to the price at which patented articles could be sold were reasonable and legal, said (p. 31),—

> "If the stipulation in an agreement between patentees and dealers in patented articles, which, among other things, fixed a price below which the patented articles should not be sold, would be a reasonable and valid condition, it must follow that any other reasonable stipulation, not inherently violative of some substantive law, imposed by a patentee as part of a sale of a patented machine, would be equally valid and enforceable."

The language above quoted from the opinion in the Bement case was expressly quoted with approval in *Standard Sanitary Manufacturing Company et al.* v. *United States*, 226 U. S. 20.

In *Park* v. *Hartman*, 153 Fed. 24, at page 27, Mr. Justice Lurton (then circuit judge) said,—

> "That articles made under patents may be the subject of contracts by which their use and price in subsales may be controlled by the patentee, and that such contracts, if otherwise valid, are not within the terms of the act of Congress against restraints of interstate commerce or the rules of the common law against monopolies and restraints of trade, is now well settled."

In *Rubber Tire Wheel Co.* v. *Milwaukee Rubber Works Co.*, 154 Fed. 358, 362, the court said:—

> "The Sherman law contains no reference to the patent law. Each was passed under a separate and distinct constitutional grant of power; each was passed professedly to advantage the public; the necessary implication is not that one iota was taken away from the patent law; the necessary implication is that patented articles, unless or until they are released by the owner of the patent from the dominion of his monopoly, are not articles of trade or commerce among the several states."

In *Cilley* v. *United Shoe Machinery Co.*, 152 Fed. 726, 728, it was said,—

> "Contracts with respect to patents are, as a general rule, outside the doctrine of restraint of trade, both at common law and under the federal statute."

To the same effect are:—

Dickerson v. *Tinling*, 84 Fed. 192.
Edison Phonograph Co. v. *Kaufmann*, 105 Fed. 960.
Same v. *Pike*, 116 Fed. 863.
Rupp v. *Elliott*, 131 Fed. 730.
Victor Talking Machine Co. v. *The Fair*, 123 Fed. 424.

The reasons why the Sherman Act does not forbid restrictions which merely grant a limited or restricted right of use of a kind which the patentee himself might lawfully exercise are obvious. The grant of such a license is, as pointed out in the Dick case, the mere exercise of the patent rights granted by the patent, and the Sherman Act was not intended to repeal the Patent Act.

(f) THE GRANT OF A RESTRICTED LICENSE IMPOSES NO RESTRAINT ON TRADE.

The Sherman Act was directed against restraints imposed on trade. The grant of such a license imposes no restraint on trade; on the contrary it actually relaxes an existing restraint lawfully imposed by the patent law.

The patentee of inventions covering shoe machinery can absolutely exclude all others from the use of such machinery and either use it himself exclusively or not use it at all. In such a case no shoe manufacturer in the country can use the patented machines. Their use is absolutely restrained as the result of lawful patent monopolies. When the patentee grants the right to use these machines as a series he is imposing no new restraint on their use, but, on the contrary, is relaxing a restraint which previously was absolute. It is true that if he sold or leased the machines without any restriction whatsoever, he would still further remove the restraint imposed by the patent monopolies, but

this does not refute the fact that the grant of the restricted right, that is, the grant of the right to use as a series, removes an existing restraint and imposes no new restraint. Prior to the grant of such a license a shoe manufacturer had no right to use the patented machines at all; after the grant of this license he has a new right which he did not previously have, namely, the right to use them as a series. He is under no additional restraint of any kind because these Restricted Use Clauses do not require him to use the machines at all; they merely permit him to do so if he so desires.

It is important to bear in mind the fundamental distinction between contracts relating to patented articles and contracts relating to unpatented articles. In the case of unpatented articles, such as grain, lumber, and iron, every one is free to trade in and use them, and there is a natural flow of these articles in trade. As a matter of public policy the law requires such trade to continue free from monopoly or undue restraint caused by any contract or combination. In the case of patented articles there is an absolute restraint imposed by law except so far as the patentee is willing to release his rights. There is no trade in such articles to which the public is entitled, and there is no trade in them which the law on grounds of public policy holds should be free and untrammeled. As a matter of public policy the court is as much obliged to support and foster this monopoly and restraint which surrounds patented articles as in the case of unpatented articles it is obliged to encourage and insist upon freedom. No contract which the patentee can make with respect to such patented articles so long as they remain within the patent monopoly can impose a greater restraint on their use or a greater monopoly in respect to them than already exists by authority of the patent law.

To use the expression "suppression or restraint of trade" with respect to patented articles still in the control of the patentee is to misdescribe the situation. "Suppression" and "restraint" are predicated upon a former state of freedom of trade. They presuppose a restraint or restriction upon trade which but for such restraint or restriction would be free and untrammeled, which is not the case with the patented articles until they are released from the domain of the patent monopoly. Until such time the patentee can make no contract which restrains trade

in such articles, as there is no lawful existing trade to restrain, and he can do no act which creates a monopoly in them, as a complete lawful monopoly already exists.

In the present case the Restricted Use Clauses clearly impose no new restraint upon the lessee as respects the leased machines, because the lessee is absolutely restrained from using the patented machines until the license is granted. They impose no restraint upon the lessee as regards the use of other machines, as they do not prohibit him from using other machines, but, on the contrary, merely license him to use the United Company's machines if he so desires. It is clear, therefore, that these clauses impose no new restraint of any kind upon the licensee. Even then, if the Sherman Act applied to restrictions imposed by patentees (which the cases cited above show it does not) it could not be held to forbid the Restricted Use Clauses now under discussion.

(g) IF THE COURSE OF TRADE IS AFFECTED BY SUCH RESTRICTIONS IMPOSED BY A PATENTEE, SUCH EFFECT IS INCIDENTAL TO THE EXERCISE OF LAWFUL RIGHTS.

Any new invention or new method of doing business may greatly affect existing trade conditions. So also the grant of a restricted license may have an effect upon trade conditions. If so, it is merely incidental to the exercise of a lawful right and therefore not within the scope of the Sherman Act.

In the case of the restricted use clause which we are now considering, the only effect would be, as we have shown, that the shoe manufacturer might prefer to use a series of the United Company's machines at a wholesale rate, rather than to use a series of machines obtained from some other manufacturer or certain of the United Company's machines at retail rates in connection with certain other machines obtained from other manufacturers. Such an effect would be purely incidental to the exercise of a lawful patent right by the United Company.

The United States contends that, if the United Company granted only unrestricted leases, *i.e.*, only leased its machines separately, shoe manufacturers might be more easily induced by competitors to use certain of such competitors' machines. Of

course the United Company could not afford to furnish its machines separately at wholesale rates; if it only leased its machines separately, it could therefore not offer a wholesale price. Public policy does not require a course of marketing machines which would increase the cost to users thereof, but apart from this consideration the United Company has a right to refuse any use of its machines, and under these circumstances public policy cannot forbid the United Company to grant a limited use. Argument that the grant of an unlimited use would be more beneficial, even if true, is beside the point. As said by the Court in *Henry* v. *Dick* with reference to the consequences which might result from certain suggested conditions which patentees might impose (p. 34):—

> "But these illustrations all fail of their purpose, because the public is always free to take or refuse the patented article on the terms imposed. If they be too onerous or not in keeping with the benefits, the patented article will not find a market. The public, by permitting the invention to go unused, loses nothing which it had before, and when the patent expires will be free to use the invention without compensation or restriction. . . . It must not be forgotten that we are dealing with a constitutional and statutory monopoly. An attack upon the rights under a patent because it secures a monopoly to make, to sell and to use, is an attack upon the whole patent system. We are not at liberty to say that the Constitution has unwisely provided for granting a monopolistic right to inventors, or that Congress has unwisely failed to impose limitations upon the inventor's exclusive right of use."

An example of an incidental and therefore lawful effect on trade caused by the grant of a restricted license is furnished by *Heaton-Peninsular Co.* v. *Eureka Co.*, 77 Fed. 288. There the use of the patented machine for affixing buttons to shoes was restricted to use with staples furnished by the patentee. As such machines largely displaced all other machines previously used for the purpose, the market for the sale to the shoe trade of staples not adapted for use in the patented machines was practically destroyed, and, further, the users of the machines were restrained from purchasing staples for use on the machine other than from the patentee. Of this result Judge (later Mr. Justice) Lurton said (p. 296):—

"The monopoly in the unpatented staple results as an incident from the monopoly in the use of complainant's invention, and is, therefore, a legitimate result of the patentee's control over the use of his invention by others. Depending, as such a monopoly would, upon the merits of the invention to which it is a mere incident, it is neither obnoxious to public policy, nor an illegal restraint of trade."

Another example of an incidental effect is furnished by the case of *Henry* v. *Dick Co.*, supra, where the patentee's mimeograph could be used only with stencil paper and ink furnished by the patentee. Again, to the extent that this mimeograph process took the place of other processes for copying, the trade in paper and ink for such other copying purposes was destroyed and others were restrained from engaging in the business of furnishing such supplies for the new process.

A further example of the far-reaching but lawful effect on trade of the exercise of patent rights covering important or essential machines is set out by the court in the *Heaton-Peninsular case*, supra (p. 295):—

"Let it be supposed that the patents owned by this complainant were of so wide a character as to cheapen the process of manufacturing shoes, and to drive from competition all other modes of manufacture. Then suppose the patentees were of opinion that they could most profitably enjoy their inventions by retaining the monopoly of the use, and engaging in the manufacture of shoes. If content to undersell all others, they could engross the market for shoes, to the extent of their capacity to supply the demand during the life of their patents, or so long as their invention was not superseded by subsequent inventions still further cheapening the cost of manufacture. The monopoly thus secured would be the legitimate consequence of the meritorious character of their invention. Yet just such monopolies may result whenever a new and surprising advance is made in some art of wide and general use. The great consuming public would be benefited, rather than injured, for the monopoly could endure so long only as shoes were supplied at a less price than had prevailed before the invention. Now, if the patentees, by retaining to themselves the exclusive use of their invention, are able, legitimately and lawfully, to acquire a monopoly of the manufacture of shoes, and destroy the shoe market for those who before had shared it, why may they not, by a

system of restricted licenses, permit others to use their devices on condition that only some minor part of the shoe,—the pegs, the tips, the thread, or the buttons, or the button fasteners,—shall be bought from them? If these concessions were such as to enable others to compete, though their use of the mechanism was restricted by the terms of the license, who could justly complain, if the inventors, content with a monopoly of the market for the article named in their license, surrendered the opportunity for a monopoly of the manufacture of the complete shoe? The device protected by the patents owned by complainant is of no such wide or radical character as that used for purposes of illustration. Yet there is no appreciable difference in the legal principles applicable to the supposed facts used for illustration, and those stated on the face of the complainant's bill."

(h) RESTRICTIONS OF THE CHARACTER EMPLOYED BY THE UNITED COMPANY HAVE BEEN RECOGNIZED AS LAWFUL BY A LONG LINE OF DECISIONS. THE UNITED COMPANY IN EMPLOYING THESE PROVISIONS USED A METHOD OF MARKETING ITS MACHINES LONG RECOGNIZED AS NORMAL AND PROPER.

A great body of law has been built up which has recognized the right of patentees to restrict their patented machines not only in the manner employed in the present case, but in ways more far-reaching still.

Henry v. *Dick Co.*, 224 U. S. 1.
Bement v. *National Harrow Co.*, 186 U. S. 70.
Providence Rubber Co. v. *Goodyear*, 9 Wall. 788.
Mitchell v. *Hawley*, 16 Wall. 544.
Cilley v. *United Shoe Machinery Co.*, 152 Fed. 726.
U. S. Consolidated Co. v. *Griffin Co.*, 126 F. 364.
Heaton-Pen. Co. v. *Eureka Co.*, 77 F. 288.
Rupp v. *Elliott*, 131 F. 730.
Æolian Co. v. *Juelg Co.*, 155 F. 119.
Crown Cork and Seal Cases, 172 F. 225, 174 F. 252.
Commercial Acetylene Co. v. *Autolux Co.*, 181 F. 387.
Dickerson v. *Tinling*, 84 F. 192.
Broderick Copygraph Co. v. *Mayhew*, 131 F. 92.
Dickerson v. *Matheson*, 57 Fed. 524.

Burr v. *Duryee*, Fed. Cas. 2190.
Chambers v. *Smith*, Fed. Cas. 2582.
Machine Co. v. *Gibson*, 46 Fed. 488, 50 Fed. 423.
Pope Manufacturing Co. v. *Owsley*, 27 Fed. 100.
Tubular Rivet & Stud Co. v. *O'Brien*, 93 Fed. 200.
Broderick Copygraph v. *Roper*, 124 Fed. 1019.
Cortelyou v. *Lowe*, 111 Fed. 1005.
Cortelyou v. *Carters Ink Co.*, 118 Fed. 1022.
Rajah Auto Supply Co. v. *Rex Ignition Mfg. Co.*, 209 Fed. 622.
Incandescent Gas Light Co. v. *Cantello*, 11 T. L. R. 381.
British Mutoscope & Biograph Co. v. *Homer*, 17 T. L. R. 213.
Nat. Phonograph Co. v. *Menck*, 27 T. L. R. 239.

In *Henry* v. *Dick Co.*, supra, this court said (p. 36):—

> "That a violation of any such restriction annexed to a sale by one with notice constitutes an infringing use has been decided by a great majority of the Circuit Courts and Circuit Courts of Appeal, and has come to be a well-recognized principle in the patent law, in accordance with which vast transactions in respect to patented articles have been conducted. But it is now said that the numerous decisions by the lower courts have been erroneous in respect to the proper construction of the limit of the monopoly conferred by a patent, and that they should now be overruled. To these courts has been committed the duty of interpreting and administering the patent law. There is no power in this court to review their judgments, except upon a writ of certiorari, or to direct their decisions, save through a certified interrogatory for direction upon a question of law. This power to review by certiorari is one which has been seldom exercised in patent cases. *A line of decisions, which has come to be something like a rule of property, under which large businesses have been conducted, should at least not be overruled except upon reasons so clear as to make any other construction of the patent law inadmissible*" (italics ours).

The United Company in employing these restrictions, therefore, merely employed methods which were in general use in respect to patented machines and which were therefore normal and

natural in respect to such machines and were recognized by numerous decisions as a proper exercise of patent rights. Their doing so can give rise to no inference of intent to oppress shoe manufacturers or the public unlawfully. The use of these clauses can be material in the present case only if they are held to be inherently unlawful no matter with what intention they were used. This result can be reached only by overruling a large number of decisions which have established a rule that, as said in the Dick case, "has come to be something like a rule of property."

(i) CONSIDERATION OF DECISION IN STANDARD SANITARY MFG. CO. v. U. S., 226 U. S. 20.

The United States contends that the decision in *Standard Sanitary Mfg. Co.* v. *U. S.*, supra, shows that patent restrictions may be within the prohibition of the Sherman Act.

In this case sixteen competing manufacturers of enamel ware accepted licenses under a patent for the use of a tool the employment of which was useful but not essential to one out of many steps in the manufacture of the ware. Prior thereto the Standard Company, one of the manufacturers, had owned the patent, and none of the others had had licenses. A few of the others had used it by infringing, others had not used it at all. In accordance with an arrangement made by one Wayman the Standard Company transferred the patent to him, and he granted licenses to all the competing manufacturers to use the patented implement. Under these licenses the manufacturers agreed, among other things, to sell their enameled ware only at prices determined by a commission composed of the licensor and of five of their number. All jobbers were likewise required to sign licenses agreeing to sell only at stipulated prices and to buy all their enameled ware from the licensees. The concerns which accepted such licenses manufactured 85% of the total production. "The trade was, therefore, practically controlled from producer to consumer and the potency of the scheme was established by the co-operation of 85 per cent of the manufacturers and their fidelity to it was secured, not only by trade advantages, but by what was practically a pecuniary penalty."

The agreements were clearly in restraint of trade unless justi-

fied as restrictions under the patent. The court held that they were not so justified, because they "transcended what was necessary to protect the use of the patent or the monopoly which the law conferred upon it." In other words, the restrictions were not restrictions imposed by the patentee for his benefit upon the use of his patent and accepted by licensees in order to obtain the use of the patent. They were imposed, as the court pointed out, for the purpose of restraining trade, and were accepted by the licensees for this purpose. In fact, it was the licensees and not the patentee who insisted upon them. They were put in the form of restrictions in a patent license as a subterfuge with the hope of thereby legalizing them. The use of the patent was an entirely secondary consideration.

The court emphasizes the circumstances showing this. Thus the Standard Company which had owned the patent prior to the combination was unwilling to grant licenses, and the other manufacturers were unwilling to accept them, until the scheme for the elimination of competition was proposed. The manufacturers were also unwilling to accept the licenses until 83% of the total production assented, and it was provided that the licenses should not go into effect until such assents had been obtained. Furthermore, the patentee testified that "he hoped as one of the features of the license agreements to enable the companies to abolish ruinous competition," and he induced jobbers to accept licenses by stating that it was "a matter entirely for the jobber's benefit," and "much more advantageous than a continuous cut market."

It is clear that the entire transaction was brought about by a desire on the part of the competing manufacturers to restrain trade and regulate prices. The patent was merely used in an attempt to legalize this unlawful combination. The conditions contained in the licenses were not imposed by the patentee for his protection or benefit, but were, on the contrary, imposed by the licensees for their benefit. For example, the patentee did not benefit at all from the regulation of prices. The elimination of competition, therefore, did not result incidentally from the desire of the licensees to use the patented article and their consequent willingness to submit to conditions imposed by the patentee for his benefit.

Patents and patent rights cannot, of course, be used as a

subterfuge to justify an illegal combination. As the court said in *Virtue* v. *Creamery Package Co.*, 227 U. S. 8, 32,—

> "Of course patents and patent rights cannot be made a cover for a violation of law, as we said in *Standard Sanitary Manufacturing Company* v. *United States*, 226 U. S. 20."

The court in the Sanitary case took pains to point out that it approved the principle laid down in the Bement case, that the Sherman Act does not refer to that kind of restraint of commerce which may arise from reasonable and legal conditions imposed upon the licensee of a patent restricting the terms upon which the article may be used (p. 40). It further pointed out that its decision in no wise affected the decision in *Henry* v. *Dick* (p. 48).

The present case is different in every respect from the Sanitary case. There is no question in the present case but that the Restricted Use Clauses were imposed by the United Company for its benefit and protection and were accepted by licensees in order to enable them to use the patented machines. These clauses are not a subterfuge employed by agreement of the parties to effect some ulterior purpose. The present case falls within the rules laid down in the Bement case and the Dick case which, as expressly pointed out, were not affected by the decision in the Sanitary case.

It may further be noted that the restrictions in the Sanitary case applied to the prices charged for unpatented articles made and owned by the licensee by the use of an instrument not even essential to their production, while the restrictions in the present case relate to the use of patented articles owned by the patentee. There are no restrictions as to the prices which shall be charged for the shoes produced by the use of those patented articles. Further, it may be noted that these price restrictions in the Sanitary case applied to the goods even after they had been sold to jobbers, and thus, even had they been patented, they would have passed beyond the domain of the patent monopoly.

(9) LEGALITY OF "AUXILIARY RESTRICTED USE CLAUSE."

The legality of the "Auxiliary Restricted Use Clause" needs little further discussion, as it has been covered by the foregoing discussion of the "Restricted Use Clause."

It restricts the use of auxiliary machines to use with the principal machines, for the assistance of which the auxiliary machines were developed. As we have shown above, such clauses were used by the constituent companies and there were and are business reasons justifying and requiring their use. They were not adopted for the purpose of unlawfully excluding the use of other machines.

While no alternative forms of lease have been prepared permitting their use with principal machines obtained from other manufacturers, this is because they were developed for the purpose of assisting the principal machines of the United Company, and there has been no call for an unrestricted lease. The record showed no such demand. Mr. Winslow testified that the United Company would be prepared to so furnish them if there were such a demand and conditions justified (R. Vol. 1, pp. 544–6). As we have shown above, however, the United Company was under no obligation to furnish its machines except for use as a series.

13. ENFORCEMENT BY THE UNITED COMPANY OF ITS LEASES.

The petition alleges that the United Company has continually, persistently, and arbitrarily enforced the provisions of its leases (R. Vol. 1, p. 997). This charge is without any foundation whatsoever.

We have discussed the provisions of the leases above as though they were strictly enforced by the United Company. As a matter of fact, the United Company has only enforced them in a very few instances when the conditions in the lessee's factory were such that its machines were being damaged or it was being deprived of a proper return on its machines as was fairly contemplated by their spirit and intent.

The purpose and effect of leases of this character cannot, as stated above, be tested solely by an examination of the literal wording of the leases. In leasing a complicated set of shoe machinery to over a thousand lessees scattered all over the country, it is impossible to foresee all the conditions which may arise under which it may be unfair for the lessee to use the machinery, and even when such conditions can be foreseen it is often a ques-

tion of degree or of the particular circumstances of the case as to whether the lessor needs protection. It is essential that the lease contain general provisions agreed to by the lessee, which the lessor can enforce if his protection so requires. The same is true of the ordinary lease of a house or of business premises. For example, such a lease often contains a covenant on the part of the lessee not to permit any nails to be inserted in the walls, and the lessor is authorized to forfeit for violation of any covenant. If the lessee or any of his family drives a small nail into the wall, the lessor has a technical right to forfeit the lease. This, however, does not make the lease oppressive. It is obvious that the lease cannot specify exactly how many nails a lessee may drive without forfeiture. The reservation of this general right is necessary and the lessor in the ordinary lease exercises a reasonable discretion as to the exercise of his rights, and a court of equity will restrain an unjust forfeiture.

In considering, then, the purpose and effect of the provisions contained in the United Company's leases, it is necessary to consider not only the literal wording of the clauses, but the extent and manner in which the United Company has enforced these provisions.

The United Company has been far more Liberal to Lessees than the Terms of its Leases Required.

The following are a few striking examples of the extent to which the United Company has treated its lessees more liberally than was required by the terms of the leases.

1. Every lease which the United Company has put out requires the lessee at his own expense to keep the leased machinery in good and efficient working order and condition. (For example, see P.'s Ex. 24, par. Two; R. Vol. 3, p. 216.) None of the leases has required the United Company to instruct operatives for the lessee. Yet the United Company has always kept the machines in repair, charging only for the cost of new parts, and has always instructed operatives. It has charged the shoe manufacturer absolutely nothing for this service, except the cost of new parts, even paying the traveling expenses of its service men. In 1911 this service cost the United Company $1,196,494.86 (R. Vol. 1, p. 421, lines 18–23, 31–34; p. 974, line 22).

2. Every lease provides that the lessee upon the termination of the lease shall pay the lessor such sum as is necessary to put the leased machinery in suitable order and condition to lease to another lessee. (For example, see P.'s Ex. 24, par. Nine, R. Vol. 3, p. 223.) As a matter of practice the United Company has charged lessees upon the return of machines much less than the cost of repairs. For example, in 1911, the cost of repairing returned machines was $350,000, and the amount charged lessees was only $70,000 (R. Vol. 1, p. 853, lines 19–32).

The United Company has established a standard price for repairs to which is added the cost of new parts so that each lessee may know before he returns a machine how much the cost to him will be. All customers are treated exactly alike (R. Vol. 1, p. 853, lines 33–44; p. 854, lines 1–29).

3. When a lease of a machine is once made, the United Company has, of course, a right to insist that it be retained by the lessee for the period of seventeen years.

The United Company has disregarded this provision of its leases wherever a new machine has been developed which was better than a machine then in use. In such cases the United Company has offered the new machine to lessees, and taken back the machine previously leased, and when obsolete has scrapped it. The United Company has done this without making any charge to lessees for so doing, either on account of the scrapping of the old machine, or on account of the increased efficiency of the new machine (R. Vol. 1, p. 425, lines 12–20). The new Model K Welter, for example, effects a saving to shoe manufacturers and operatives of at least $800 per year. Yet these welters are substituted for the old welters without any charge, or the requirement of any additional royalty, although the United Company is under absolutely no obligation to do so. The United Company has thus substituted new improved machines for a large portion of the machines which were outstanding when it was formed. Nearly all of the machines made by the Goodyear Company in 1899 have been replaced by new and improved machines (R. Vol. 1, p. 430, lines 32–34).

4. The United Company has since its organization developed a large number of new auxiliary machines not supplied in 1899. It has, for example, added 22 welt auxiliary machines, and 6 turn auxiliary machines (Defs.' Ex. 242, R. Vol. 5, pp. 681; Defs.'

Ex. 245, R. Vol. 5, p. 683). Although under no obligation whatsoever to do so, it has furnished lessees under existing leases these new auxiliary machines without extra charge or royalty except a small rental or initial payment which affords no fair return on the machines.

5. Many of the leases require the lessee to guarantee a minimum payment. This clause has never been enforced, except for the purpose of requiring a lessee to return idle machines for which he had no further use (R. Vol. 1, p. 553, lines 4–19).

The United States, in spite of extraordinary efforts to present the evidence of every dissatisfied lessee out of the hundreds of lessees who have dealt with the United Company since 1899, has utterly failed to show a single instance of any arbitrary or oppressive enforcement of its leases. The thirteen instances of such conduct which it finally charged are set forth in its bill of particulars under the heading of "Misrepresentation and Threats to Induce Customers of Competitors to Abandon Competing Machinery" (R. Vol. 1, pp. 1075–8). As to six of these alleged instances it introduced no evidence whatsoever. The evidence as to the remaining seven showed the charge to be utterly unfounded. A statement of the evidence in respect to these charges is contained in the Appendix (Appendix, pp. 88–103), and a short summary is given below in the Brief (*infra*, pp. 544–546).

In a very few instances the record shows that the United Company called the attention of its lessees to the clauses in the leases. Except in the five cases of cancellation referred to below, and a single suit brought against the Plant Shoe Company under its leases, the record shows no instance of an enforcement by the United Company, by legal action or by cancellation of its leases, of any of the clauses objected to by the United States, viz., the clause providing that the lease should run for seventeen years, the Full Capacity Clause, the Exclusive Use Cancellation Clause, the Cancellation for Breach Clause, the Restricted Use Clause, or the Auxiliary Restricted Use Clause.

In each of the five cases of cancellation referred to, the United

Company cancelled its leases because of a most flagrant violation by the lessee of its rights. These were the cases of C. E. Ramlose, E. F. Bell & Co., Peter Tessier & Co., E. Bottomley & Co., and T. D. Barry & Co. (R. Vol. 1, p. 447).

In the Ramlose case the lessee persistently cheated the United Company by reporting on his royalty returns only about half the shoes made (R. Vol. 1, p. 447, lines 36–45).

In the Bell case the lessee persistently used wire purchased from others on his metallic machines, thus depriving the United Company of its royalty on these machines. Only the machines which were being so wrongfully used were removed, and the others were left (R. Vol. 1, p. 448, lines 1–10).

In the Tessier case the lessee had abandoned the use of the United Company's machines and was paying it no royalty (R. Vol. 1, p. 448, lines 11–18; see Appendix, p. 88).

In the Bottomley case the lessee obtained other machines and abandoned the use of the United Company's machines and wrote the United Company he would pay it no further royalties on them (see Appendix, p. 90).

In the Barry case the lessee abandoned the use of the Goodyear Welter, but used the Goodyear Auxiliaries without making any payment for such use (see Appendix, p. 92).

Not only then does the record fail to show any instances of oppressive enforcement of the provisions of the leases, but it shows various instances in addition to those stated above in which the United Company did not insist upon a compliance with the provisions of the leases or exercise its full rights reserved under the leases.

In respect to the term of the leases, we have shown that the United Company upon the invention of a new improved machine was always ready to cancel the old lease, and furnish the new machines without charge. The United Company was also ready at all times to change over restricted leases to unrestricted leases or vice versa (*supra*, p. 358). It was further ready to permit a shoe manufacturer to give up his leases if circumstances justified. Thus Mr. McElwain, whose company is one of the largest shoe concerns in the country, making about 30,000 pairs a day, asked the United Company if he could cancel his leases in case he decided he would take other machines, and was told by Mr. Winslow that the United Company would be

glad to make fair arrangements to cancel any or all of his leases, so that he might use another line of machines if he desired (R. Vol. 1, p. 502, lines 12–18).

Plaintiff's Exhibit 161 (R. Vol. 4, p. 1118), introduced by Louis H. Harriman of the Haverhill Shoe Machinery Company, a witness for the United States, gives a list of eight concerns which had used the Haverhill Company's Turn machine in the same factory with the United Company's Goodyear Turn machine, and of nine other concerns who were still doing so. In none of these cases had the United Company exercised the right to withdraw its Goodyear Turn machines, although it could have done so under the Exclusive Use Cancellation Clause, and although the lessee in certain cases was apparently using in connection with the Haverhill Turn machines, machines held under Restricted Use Clauses forbidding such use, including General Department machines on which no separate royalty was paid, and on which the entire royalty was received indirectly from the machines to use with which they were restricted (Donham, R. Vol. 1, pp. 828–30).

We do not intend to intimate that the lease clauses are not essential to the protection of the United Company. We merely wish to point out that, like all clauses of this kind, it is necessary that they should be general in their terms, and that the United Company enforces them only if necessary to protect itself against damage to its machines, or against the use of its machines under conditions which do not give it a fair return.

Furthermore, the leases as introduced in evidence do not give a complete picture of the policy of the United Company towards its lessees. The United Company is willing at all times to adapt its system to meet the reasonable requirements of shoe manufacturers.

Riders in great variety, as the record shows, have been adopted from time to time modifying the terms of the leases to meet particular situations, and the United Company is prepared to continue this policy. The policy of the United Company is expressed by Mr. Winslow's statement on cross-examination with reference to making a separate price for Goodyear Auxiliary machines:—

> "It is not fair to state that we will not permit one of these important auxiliary machines that we have developed and

are developing to be used in connection with a welter or outsole stitcher made by any one else. We have followed the line which in our judgment would give to the manufacturers of shoes the greatest amount of value for the money that we received, and there has been no other reason for it" (R. Vol. 1, p. 545, lines 19–25).

"Should a welter or a stitching machine that was the equal of our machine be developed and offered to the manufacturers, and the developer of that machine or that concern were not attempting to use it as a blackmailing proposition, or attempting to make shoes and call them Goodyear welts when they were not, I can quite understand our company to be perfectly willing to establish prices for its auxiliary machines" (R. Vol. 1, p. 545, lines 31–38).

The leases in evidence only represent the terms under which the United Company offers its machines for use under conditions for which there has so far been a demand. As Mr. Winslow testified:—

"The assumption that these leases that you have put in, or have been putting in, represent the policy of the company is entirely unfair. We have riders continually, when a condition arises, by which we let manufacturers use machines. They only represent just exactly certain notices as to how those machines should be used for the money that is paid for them, nothing more" (R. Vol. 1, p. 546, lines 13–20).

14. THE PROVISIONS IN THE LEASES ARE ESSENTIAL TO A CONTINUANCE OF THE PRESENT SATISFACTORY LEASE SYSTEM UNDER WHICH SHOE MANUFACTURERS OBTAIN MACHINES WITHOUT INITIAL PAYMENT FOR A ROYALTY BASED ON THE USE OF THE MACHINES. THEY ARE, THEREFORE, CLEARLY NOT CONDEMNED BY THE SHERMAN ACT.

The foregoing survey of the reasons necessitating the various provisions in the leases attacked by the United States shows that they are essential to a continuance of the present satisfactory lease system under which shoe manufacturers obtain machines without initial payment, and for a royalty based upon the use of the machine.

For example:—

The "Full Capacity Clause" is essential if machines are leased

without initial payment for a royalty based on use. The return to the United Company on its investment in machines cannot be made dependent on use unless the lessee agrees that he will use. If prohibited from employing this clause, the United Company would be obliged to (1) sell its machines, or (2) charge a large initial premium upon the installation of its machines, or (3) charge a fixed rental instead of a royalty based on use.

The "Restricted Use Clause," or some provision having the same effect, is essential if the shoe manufacturer who desires to use a team of the United Company's machines is to be given a wholesale rate and thus be permitted to share in the economies resulting from the use of the machines as a team. If forbidden to use this clause, the United Company must charge for each machine a price based upon the probable return from the machine when used as an independent unit, which is necessarily higher than the price charged when it is taken to be used as a part of a team of the United Company's machines. The shoe manufacturer desiring to use a team of the United Company's machines would, therefore, be obliged to pay more for his machines.

The "Exclusive Use Cancellation Clause" permits the United Company to withdraw its machines of a particular kind if, owing to the use by the lessee of the same kind of machines obtained from others, its machines are not used sufficiently to afford a fair return, or it has reason to believe that the lessee carelessly or dishonestly does more work on its machines than is reported. The United Company could not continue furnishing machines without an initial payment or fixed rental unless it had this right.

The "Cancellation for Breach Clause" enables the United Company to withdraw its machines if the lessee violates his agreements. If, in case the lessee refused to pay royalties, or damaged, removed, or assigned the machines or otherwise violated his agreements, the United Company had no remedy except to bring a succession of suits which might take years to conclude, and which might not be determined until after the lessee became insolvent, it could not continue to furnish its machines on lease at all, or, if it did lease them, without large initial payments.

A term of seventeen years is, of course, not essential. But a long term is essential. The United Company could not be asked to build $40,000,000 of machines and install them in

lessees' factories without initial payment on their part unless the lessees agreed to use the machines for a term long enough to insure an adequate return. The lessee likewise desires a long term; otherwise his royalties may be increased at any time. If the term is long, it is not of much consequence whether it be fifteen or seventeen years.

The clause requiring the lessee to obtain new parts needed in the leased machines from the United Company is essential to assure the proper maintenance of the machines which belong to the United Company. The United Company could not furnish its machines without initial payment if the lessee were permitted to replace broken parts with cheap parts or parts not adapted to the machine, and thus depreciate its value.

These clauses, then, or clauses similar in effect, are essential to the continuance of the present highly satisfactory lease system. The District Court said (R. Vol. 1, p. 1187):—

> "The attack of the United States is not upon these rights, but upon the particular mode in which they have sought to exercise them. Other modes, such as the requirement of arbitrary payment for the full period of the patents, would escape all such attacks. *The attack arises from the attempt to adjust the payments to the amount of use which particular manufacturers may have for the patented inventions*" (italics ours).

If the United Company should be forbidden to employ those or similar provisions and thus be prevented from continuing the present reasonable and satisfactory lease system, the consequences to shoe manufacturers and the public would be most serious.

Not only would the cost of machines be increased, but shoe manufacturers like Bennett, Burt, and Allen, as they testified, would not be able to start in business at all. Many existing shoe manufacturers who have made no initial payment on their machines and who have little capital would probably be unable to make an initial payment on the machines now held by them and thus be forced out of business.

Provisions necessary to enable the United Company to furnish machines without initial payment for a royalty based on use, and to share with its lessees the economies resulting from the use of machines as a team, are obviously normal, reasonable provisions not affected by the Sherman Act.

IV.

THE "ACQUISITIONS" OF OTHER CONCERNS AND PATENTS.

(The acquisition of the patents of Thomas G. Plant will for convenience be discussed separately (*infra*, pp. 476-542).)

1. GENERAL DISCUSSION.

The petition alleges that defendants

> "determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery, destroy existing competition among the manufacturers and dealers in such machinery, . . ."

and that

> "they conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery . . ." (R. Vol. 1, p. 994).

Section VII of the petition (R. Vol. 1, pp. 999–1023), which sets forth the "acquisitions," is introduced by these allegations:—

> "In pursuance of their purpose to monopolize the shoe machinery industry, the defendants have, through United Shoe Machinery Company, of New Jersey, by the methods herein described, absorbed many competitors. . . . Among the individuals, partnerships, and corporations who were competitors of the defendants, and whose businesses have been so acquired and absorbed by them are the following:" (R. Vol. 1, pp. 999–1000).

The petition then recites fifty-eight transactions entered into by the United Company at various separated times during a period of twelve years, and concludes,—

> "The competition which previously existed between said several concerns has been entirely destroyed" (R. Vol. 1, p. 1023).

The petition also alleges that defendants

> "have acquired many letters patent for valuable inventions, and have held the same for long periods of time without making use thereof, thus depriving the manufacturers and the public of the benefits arising therefrom; . . . they have bought the business of many competitors, though compelled to pay exorbitant prices therefor . . ." (R. Vol. 1, p. 999).

In view of these unqualified allegations that the parties with whom these dealings were had were "competitors" of the United Company, and, in view of the failure of the petition to set forth either adequately or accurately the facts regarding either defendants' intent or their accomplishment, it is important that at the outset an understanding be had as to the general character of these transactions.

GENERAL SURVEY OF THE "ACQUISITIONS."

These fifty-eight parties, almost without exception, were *not* competitors of the United Company. The petition aims to create the impression that most of them were manufacturers or dealers in shoe machinery generally, like so many sugar refineries or so many tobacco factories, and that by these transactions the United Company removed so many competitors from the shoe machinery field. This is very far from the facts.

Less than a Half of the Parties were Engaged in any Shoe Machinery Business.

In the first place, in twenty-four of these transactions *no shoe machinery was acquired.* In eight more transactions the parties were doing no business, their machines were only experimental. That is, only twenty-six of the parties to the fifty-eight transactions set out in the petition were doing any shoe machinery business of any kind; thirty-two were not doing any shoe machinery business at all. Accordingly more than half of these transactions are not even *prima facie* within the allegation in the petition that defendants' intent was

> "acquiring the ownership or control of all concerns engaged in *manufacturing and dealing in* any and all kinds of *shoe machinery*" (italics ours) (R. Vol. 1, p. 994).

And further, with but few exceptions the machines of those concerns which were in one way or another engaged in shoe machinery business were all different, not only from anything that the United Company had before, but each from the machines of all the others. So far from the truth is the allegation that

> "the competition which previously existed between said several concerns has been entirely destroyed" (R. Vol. 1, p. 1023).

By nearly All of the Transactions by which the United Company Acquired Anything it Acquired Something which it had never Had before.

Probably the most striking fact about the "acquisitions" is that by nearly all of the transactions by which the United Company acquired anything it acquired something which it had never had before. By fifty of the fifty-eight transactions, including nearly all of those by which any shoe machinery was acquired, the United Company entered an entirely new field by acquiring machines for performing operations for which it did not have machines, or supplies or findings which it did not have before; or it acquired patented improvements or inventions for the purpose of enabling it to supply better machines or products than it had before; or it acquired no property or business whatever. The remaining eight concerns were either not engaged in the shoe machinery business or were not in any sense competitors.

In so far as there was any suggestion of competition in respect to any of those fifty concerns by reason of slight overlapping of the field in which any of them was doing business and the United Company's field,—and there were but few cases of that,—either (1) the United Company's machine or product was very inferior and unsatisfactory and was discarded when the new machine or product was acquired; or (2) the acquisition of the overlapping machine or product was merely incidental to the transaction, entirely outside of its real purpose and object, and such slight competition as existed or was promised was of no consequence at all and may be disregarded. In every one of these transactions the all-important fact bearing upon both the intent and what was actually accomplished was that the United Company ac-

quired a new machine or a new product which it did not have before but which its customers used and demanded, or a new invention which was needed to improve its machines. The charge that the United Company acquired competing concerns is thus absolutely without foundation.

In its efforts to show that in some instances there was competition between the acquired concerns and the United Company petitioner has throughout the case endeavored to obscure the facts by telling only a part of the story,—for example, that the United Company and an acquired concern had machines of the same or similar names. In considering such arguments by petitioner it is highly important that the court keep in mind the fact that as clearly appears from the record the different kinds of shoes, owing to their radically different shoe organizations, in most instances require different machines for the same, or corresponding, operation (R. Vol. 1, p. 84, lines 1–4).

By a Majority of the Transactions the United Company did not Acquire any Machine of the Class in respect to which the United States Claims a Monopoly.

Considering the "acquisitions" from another viewpoint, it is an illuminating fact that in thirty-two of the transactions the United Company did not acquire any machine of the class in respect to which the United States claims a monopoly, namely, machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines. By twenty-three of the twenty-six transactions which do fall within the above classification as to which monopoly is claimed the United Company acquired a machine or an invention which it did not have before and which it needed. As to the three remaining transactions, in one case the machines were only experimental and infringed many of the United Company's patents. The other two transactions related solely to foreign business and were in effect only purchases of foreign patents; in one of those cases there were patent complications and in the other the United Company had been agent for the machine affected.

This shows that the acquisitions did not give the United Company any monopoly such as that charged, or affect the alleged monopoly to any significant extent, and they may therefore be disregarded in this aspect of the case.

As to acquisitions of this class the District Court said (Dodge, J., R. Vol. 1, p. 1140):—

> "It does not appear that they contributed anything essentially important to that degree of commercial success obtained by the company as above. If they assisted in obtaining it, it was by assisting the development of the machines to whose ultimate efficiency it was due. It can hardly be said as to any of them that they afforded anything more than a basis whereon to build."

The Concerns and Inventions which were Offered to the United Company and Declined were far more Numerous and Important than Those which it Acquired.

An examination of the lists of concerns dealing in shoe machinery and findings which were offered for sale to the United Company, but which it declined to purchase, and of the large number of other concerns engaged in the shoe machinery business in competition with the United Company which it has never acquired or attempted to acquire shows conclusively that the United Company made no attempt to acquire all concerns engaged in the shoe machinery business. This is confirmed by Mr. Winslow's testimony that in each instance outstanding competitors were left (R. Vol. 1, p. 465, lines 20–23).

Thus Defendants' Exhibit 233 (R. Vol. 5, p. 527), which is a partial list of concerns offered for sale to the United Company but declined, contains the names of 75 different concerns, many of great size and importance. (See Mr. Winslow's testimony regarding the business done by these concerns,—R. Vol. 1, pp. 472–5.) Many of these concerns had machines which are included within the classes of machines as to which the Government charges a monopoly. Mr. Winslow said of them (R. Vol. 1, p. 472, lines 16–23),—

> "Broadly speaking, this list includes manufacturers who, taken together, were making, or are now making, I should say, a complete line of shoe machinery, including the sewing machines for the fitting room."

The list includes such important concerns as the following:—

The Wheeler & Wilson Company (R. Vol. 1, p. 472, lines 24–26), manufacturing 90% of the machines used in making uppers.

The Atlas Tack Co., the largest manufacturer of tacks and a large producer of eyelets (R. Vol. 1, p. 472, lines 39–43).

The Canadian Shoe Machinery Co., making a full line of what is termed the important machines, including welters and stitchers, which did business in the United States through the Duplessis Company (R. Vol. 1, p. 473, lines 13–18).

The Duplessis Shoe Machinery Company (now the Hamel Shoe Machinery Company) which manufactured complete sets of machines for making welt, turn and McKay shoes (R. Vol. 1, p. 327, lines 15–25; p. 473, lines 30–31; p. 945, lines 1–4).

The Boylston Manufacturing Company, making lasting machines (R. Vol. 1, p. 956, line 8).

The Haverhill Shoe Machinery Company, which furnishes all kinds of shoe machinery for welts, McKays, turns, or pegged shoes (R. Vol. 1, p. 301, lines 5–9).

The Frechette Pegging Machine Co., making pegging machines (R. Vol. 1, p. 474, lines 9–12).

The Krentler Pym Lasting Machine Co., which manufactured a lasting machine (R. Vol. 1, p. 474, lines 26–28).

The R. H. Long Machinery Co., which manufactures large numbers of welters, stitchers, and lasting machines and is prepared to furnish a full line of machines for welt or turn shoes (R. Vol. 1, p. 345, lines 39–44).

The Union Lockstitch Co., which made and marketed large numbers of outsole stitchers (R. Vol. 1, p. 199, lines 9–45).

The Stanley Manufacturing Co., the successor of the McKay Sewing Machine Company, which manufactured the McKay Sewing Machine and carried on the business originally established by Gordon McKay (R. Vol. 1, p. 475, lines 26–32).

Defendants' Exhibit 336 (R. Vol. 5, p. 849) contains a list of shoe machinery manufacturers or dealers not acquired by the United Company, setting out the machines they offer for sale taken from Defendants' Physical Exhibits 311–321, which consist of catalogues, letters, and advertisements. It shows

over 125 different manufacturers and dealers offering every kind of machine, a number of them offering complete lines of machines.

Comparing the number of concerns which the United Company refused to purchase with those actually purchased the District Court said:—

> "As to several, at least, of these instances of refusal, the evidence warrants the belief that the business offered and refused much exceeded in importance to any such scheme of monopoly as now charged, any of the specified acquisitions. . . . If a monopoly of all machinery for attaching bottoms to uppers was really undertaken, it is hard to believe that opportunities would have been neglected, as they were, such as those for acquiring the Union lock-stitch machines or the welters and stitchers of the R. H. Long Company, all of them patented machines for use on welt shoes; or for acquiring a considerable business in producing McKay sewing machines, though these were unpatented and not capable of use on shoes of that kind" (Dodge, J., R. Vol. 1, p. 1141).

Defendants' failure to take advantage of the opportunities to acquire those companies could only be regarded as extraordinary, if back in 1899 they had, as the petition alleges,

> "determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery" (R. Vol. 1, p. 994).

Mr. Winslow's testimony regarding those concerns which were offered to the United Company but were not acquired (R. Vol. 1, pp. 472–5) also shows that a large number of them were engaged in the same lines of business in which many of the concerns which the United Company acquired were engaged.

In addition to the businesses offered to the United Company and not purchased, there were offered to the United Company between June, 1904, and December, 1911, 493 inventions which it did not acquire. These are shown by Defendants' Exhibit 222 (R. Vol. 5, pp. 370, 371–389). A large portion of the so-called "acquisitions" consisted merely of the purchase of inventions of the same kind as the 493 so offered the United Company, the purchase of which was declined.

This list of inventions the purchase of which was declined

includes over two hundred inventions which it is obvious from their titles related to machines of the kind in respect to which monopoly is charged. Of these the District Court said:—

> "The cases in which inventions were offered and refused during the same period were many times more numerous than the patents or inventions acquired" (Dodge, J., R. Vol. 1, p. 1141).

The Transactions Extended through a Period of Twelve Years.

Reverting to the allegations of the petition that prior to the formation of the United Company the officers and directors of the predecessor companies, individual defendants,

> "determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery,"

and

> "conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery" (R. Vol. 1, p. 994),

and that these fifty-eight "acquisitions" were made

> "in pursuance of their purpose to monopolize the shoe machinery industry" (R. Vol. 1, p. 999),—

these allegations prepare the reader for a showing that these defendants immediately went about gathering in all existing competitors and that they did this by a great number of practically simultaneous transactions so that within a few months at the most they had the field entirely to themselves.

On the contrary, the showing of the petition itself is that *these transactions were entered into at different separated times through a period of twelve years.* The petition alleges that eleven of them were at various times in 1899; seven in 1900; six each in 1901 and 1902; four in 1903; nine in 1904; one each in 1905, 1907, 1909, and 1911; three each in 1906 and 1908; and five in 1910. But, as we have already explained and shall later point out in detail, by a majority of these transactions the United Company did not acquire any shoe machinery business. Notwithstanding this fact, as was well stated by the District Court,—

> "Though thus extended through a period of years, and though widely varying each from the others in character, both in

respect to the nature of the transaction itself and also regarding the circumstances attending it, the petition sets them forth as if all had been in pursuance of one and the same scheme; there described as a scheme to control shoe machinery in general, though now called a scheme only to control the particular classes of shoe machinery before mentioned.

"The nature of some of these acquisitions may be regarded as enough of itself to prevent them from being called indications of a purpose to control any of the particular classes of machinery now important, however it might have been were the scheme now asserted the one originally alleged for controlling all shoe machinery in general" (Dodge, J., R. Vol. 1, p. 1138).

Taking only those transactions which are within the particular classes of machinery as to which monopoly is charged, there were, adopting the dates alleged in the petition, three transactions in 1899; four each in 1900, 1901, and 1902; two each in 1903 and 1908; one each in 1904, 1905, 1909, and 1911; and three in 1910.

It is beyond belief that these transactions, entered into at these widely separated times during this long period, none of which had any connection with or bearing upon any of the others, were entered into in the carrying out of an intent conceived in 1899, and defined in the petition as

"acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery" (R. Vol. 1, p. 994).

It was found by the District Court:—

"The acquisitions above regarded as the only ones of any possible significance in the case were made at various separated times during the period of eleven years or thereabouts above referred to. It cannot be said that the later ones were in contemplation when the earlier acquisitions were made, because there is nothing to show that the circumstances attending any of them were such as could have been anticipated as likely to occur at the time of the preceding acquisitions. The most that can be said is, that as, in the progress of events, the needs of the United Company became manifest and these opportunities presented themselves, they were availed of" (Dodge, J., R. Vol. 1, p. 1140).

It is Essential to Normal Development of a Business in Patented Shoe Machinery that Patented Inventions Occasionally be Purchased from Others.

The United States may rely upon the number of the transactions to show an intent to monopolize. That this is no evidence of such intent is shown by the facts set forth above that the purchases were small in number and importance compared with the business and inventions offered for sale and refused, and that they were not purchases of competing concerns.

There are special reasons why a large number of acquisitions are normal and necessary in the shoe machinery business if a company desires to develop its business and furnish the best machines. In the case of most manufacturing businesses the product is more or less uniform and is not patented. Each concern in the business is engaged in making more or less the same goods in competition. In the shoe machinery business, however, we find over three hundred different kinds of machines, each patented, and a great variety of different findings and supplies, such as eyelets, tacks, wire, cement, sandpaper, glue, peg-wood, awls, needles, etc. We also find new machines being developed constantly. For example, the United Company, since its organization, has developed and put upon the market over 39 different machines to do work previously done by hand (R. Vol. 1, p. 503, lines 37–41; Defs.' Ex. 247, R. Vol. 5, p. 690). We further find many concerns making or dealing in a single machine, or a single kind of supply (Defs.' Ex. 336, R. Vol. 5, p. 849). A shoe machinery company desiring to furnish a line of machines or supplies may therefore acquire hundreds of concerns without purchasing a single one which is in any sense a competitor. Furthermore, we find that many of the individual machines embody over a dozen different patented inventions. A shoe machinery company in developing a single machine, therefore, may acquire half a dozen different patents from as many different people for the purpose of combining them in a single effective machine. An examination of the so-called "acquisitions" in this case will show that many of them were of this class, namely for the purpose of acquiring an invention to be combined with other inventions in the development of or perfecting or improving a single machine.

It must also be remembered that since the shoe machinery art is entirely dominated by patents, a manufacturer desiring to furnish a variety of machines of the most efficient type must not only be constantly engaged in inventing himself, but must occasionally acquire inventions from others whose patents stand in the way of his own experimental work. The situation is entirely different from that found in an unpatented industry, such, for instance, as the woolen, steel, or tobacco industry where the manufacturer can, without purchasing any inventions, engage freely in the business and manufacture any goods which his customers may desire without being restrained by patent monopolies held by other persons.

An examination of the record will show that the acquisitions of the United Company have been made (1) to enable it to furnish machines which it did not at the time manufacture; (2) to enable it to obtain inventions to be combined with other inventions for developing or perfecting some machine; (3) to enable it to furnish its customers supplies or findings, such as eyelets, peg-wood, awls, needles, sandpaper, etc., which it did not manufacture at the time; or (4) that they have not been acquisitions of property at all, but merely employment contracts, transactions whereby litigation was settled, settlements of prior obligations, or similar transactions.

At the time the United Company was formed it had a comparatively small number of machines for an equally small number of operations (R. Vol. 1, p. 2, lines 10–22; p. 3, lines 15–19; p. 4, lines 23–27), and for the most part those machines were adapted for welt shoes only (R. Vol. 1, p. 48, lines 35–38). Since that time it has greatly extended the kinds of machines which it furnishes. Thus since its formation in 1899 it has added to the machines furnished by it over 170 different General Department machines. In addition to the machines which it has acquired it has developed and put out 150 entirely new machines and it has produced 39 machines which perform operations which in 1899 were performed by hand or not at all, including the pulling-over machine and auxiliaries, the eyeletting machines, and the clicking machines (R. Vol. 1, p. 503, lines 7–12, 17, 37–41; Defs.' Exs. 246, 247, R. Vol. 5, pp. 683, 690). The number of machines and inventions purchased by the United Company is small in comparison with the number developed and invented by its own experimental department.

The Allegation that Defendants Paid Exorbitant Prices.

The petition also alleges that defendants

> "have bought the business of many competitors, though compelled to pay exorbitant prices therefor" (R. Vol. 1, p. 999).

Passing over the allegation that these concerns were "competitors," which as we have shown and shall later explain more in detail is not supported by the facts, there is not a word of testimony in the entire record which shows or even suggests that the consideration paid in any instance was more than the property acquired was worth. The largest consideration, $775,000, was that paid in the J. C. Rhodes & Company transaction, and they did no shoe machinery business whatever. They were a large eyelet-making concern established long before, owning real estate and a factory and employing 116 men. The broadly patented enamel eyelet which they manufactured was in general use.

In only one other transaction, Pearson & Bennion, Ltd., did the consideration exceed $200,000. That concern did business only in England and it in no way competed with the United Company. The list of their assets, including a new factory, at the end of Plaintiff's Exhibit 61, coupled with their agreement to assign their Letters Patent (R. Vol. 3, pp. 525, 527, 530), shows that the United Company got full value for the amount which it paid, $410,245.

The aggregate of the considerations paid in all of the fifty-eight transactions, including nearly $1,200,000 paid in the Rhodes and Pearson & Bennion transactions, was approximately $3,555,000, an average of less than $62,000. That sum, excepting the consideration in the Plant purchase, which will be discussed by itself, represents the entire amount paid by the United Company over a period of twelve years for new machines, new products, and patented inventions which enabled it to enter many new fields and to add a great number of substantial and important improvements to its machines. It is certainly an insignificant sum as compared with the United Company's assets of over $40,000,000 on March 1, 1911 (P.'s Ex. 167, R. Vol. 4, pp. 1137, 1143). And compare the amounts paid from 1907 to 1911 with the $2,267,000 which it expended on its own experimental work in

that same period,—1907 to 1911 (Defs.' Ex. 216, R. Vol. 5, p. 322). The aggregate of the considerations paid for the acquisitions during those five years, including a number not doing any shoe machinery business, was $639,588.93; for those concerns which were doing shoe machinery business approximately $375,000 was paid during that period.

The District Court held:—

> "An allegation in the petition that the business of many competitors was bought at exorbitant prices, fails of support in the evidence relating to any specified instance of acquisition among those thus far considered [all except the Plant purchase]. As to them, indeed, no claim of the kind seems to be seriously urged" (Dodge J., R. Vol. 1, p. 1142).

The Charges that Plants have been Closed and Businesses have been Discontinued.

In the summary of the "acquisitions" in the petition there are frequent statements that "the plant has been closed" and "the business has been discontinued." The facts are as follows:—

In thirty-three of these transactions *no plant was acquired.* Real estate was acquired in only six. Five of those six businesses were continued and are now being carried on in the same plants, and the sixth was continued for a considerable time in the same plant and then, for reasons of convenience and economy, was transferred to the United Company's Beverly factory where it has since been continued and increased.

In general, as to forty-one of the fifty-eight transactions the United Company has continued to carry on the business when the transaction involved the acquisition of a business, or has used the patented inventions when those were the subjects-matter of the transactions; in most of the other seventeen transactions no shoe machinery business was acquired; while as to the few transactions in respect to which the United Company has not yet succeeded in doing anything with what it acquired, either the demand ceased entirely owing to radical changes in manufacturing methods or it proved impossible to make the experimental machines acquired commercially successful, as will be fully set forth in our detailed discussion.

Again, the petition alleges that defendants

> "have acquired many letters patent for valuable inventions, and have held the same for long periods of time without making use thereof, thus depriving the manufacturers and the public of the benefits arising therefrom" (R. Vol. 1, p. 999).

There is not a particle of evidence in support of this allegation, but there is ample evidence which positively disproves it. Mr. Winslow testified:—

> "The United Company has suppressed absolutely no machines, no inventions and no improvements" (R. Vol. 1, p. 433, lines 27–28).

Mr. Howe testified:—

> "The United Shoe Machinery Company has never suppressed an invention that it thought could be worked out to make a commercial machine which would benefit the lessees. . . . I have never known of a single patent which had prospective value when embodied in machinery being laid on the shelf or suppressed" (R. Vol. 1, p. 671, lines 18–20, 23–25).

Mr. Howard testified that as regards all the acquisitions the acquired inventions were put to practical use so far as they were useful, and that in every instance where the invention was not put into practical use, it was because study and experiment proved that it was not practicable or was inferior to what the industry already had (R. Vol. 2, pp. 2087, 2088, Cr. Ints. 1657, 1658).

2. DETAILED DISCUSSION OF THE ACQUISITIONS.

(NOTE.—The Plant purchase (R. Vol. 1, p. 1019) will be discussed separately (*infra*, pp. 476–542). The allegation in the petition regarding the Boston Blacking Company (R. Vol. 1, p. 1005) was abandoned by petitioner and Plaintiff's Exhibit 76 (R. Vol. 3, p. 599) was withdrawn (R. Vol. 1, p. 47, lines 21–43).)

On examining the facts regarding these transactions, which are set forth in the Appendix to this Brief (pp. 3–81), the court will find that the circumstances attending each transaction fully justified the United Company in entering into it, and that the facts about all of them completely disprove the allegations of the

petition that these transactions were made in pursuance of any "purpose to monopolize the shoe machinery industry" (R. Vol. 1, p. 999), or with the intent to suppress competition, or that they had any such effect.

It is of course impracticable to review here the facts of each transaction, but, as indicated in our general discussion, each transaction presented one or more striking characteristics which were common to a large proportion of the others, so that the discussion of the transactions may be facilitated by grouping those presenting important distinctive features in common.

A. CLASSIFICATION OF THE ACQUISITIONS.

(1) In Nine Transactions no Tangible Property or Business of Any Kind was Acquired.

The agreements with GEORGE W. FREEMAN, FRED H. PERRY, and JOHN H. RICHARDSON were merely contracts of employment (Appendix, pp. 14, 49, 68).

The agreements with the LINCOLN SEWING MACHINE COMPANY and ZACHARY T. FRENCH were merely contracts commuting obligations created and existing before 1899 (Appendix, pp. 23, 53).

The AMERICAN GLUE COMPANY transaction was merely an exclusive agency, terminable by either party on six months' notice, for sandpaper in the shoe trade. The United Company was not manufacturing sandpaper (Appendix, p. 52).

By the BREACH MANUFACTURING COMPANY transaction the United Company acquired only an exclusive license under patents. Those patents related to a machine for cutting outsoles. The United Company had no such machine, and acquired this license for the purpose of developing a clicking machine under those patents (Appendix, p. 10).

From JOSEPH P. CURTIS the United Company acquired only two pending patent applications, which related to a machine for cementing a piece of fabric to an upper. Curtis had only an experimental machine which was not acquired. The United Company had no machine for that work and desired to be able to furnish one (Appendix, p. 48).

From LEOPOLD J. COURTEAU the United Company acquired a patented invention relating to a mechanism for holding linings

of uppers while being pasted to the upper leather. Courteau was doing no business and had only an experimental machine. Even that was not acquired. The United Company had no machine for that work and wished to develop one under the Courteau patent (Appendix, p. 56).

(2) By Fifteen Other Transactions the United Company Acquired Nothing More than Supplies of Various Kinds which are Used by Shoe Manufacturers; it did not Acquire Any Shoe Machinery.

The Corrugated Wire Fastening Company was doing a small business in supplying wire and spare parts for an obsolete machine which had not been put out for years (Appendix, p. 9). This business was characterized by the District Court "as making wire and spare parts for use in an obsolete metallic fastening machine" (Dodge, J., R. Vol. 1, p. 1128).

The Globe Shoe Tool Company was manufacturing and selling cutters and edge irons, which are tools, not machines. The Globe Company infringed two of the United Company's patents. The United Company desired to secure the services of H. M. Loomer, one of the vendors, as manager or superintendent (Appendix, p. 17).

The John Ritchie Company, who were shoe manufacturers at Quebec, Canada, were also, in a small way, making wire for use on standard screw machines and were selling it to lessees of the United Company. This was a dishonest situation which it was the purpose of the transaction to remove (Appendix, p. 18).

The Boston Fast Color Eyelet Company was dealing in patented celluloid covered eyelets known as Fast Color Eyelets. This was a new field for the United Company. The purpose of the transaction was to enable the United Company to go into the fast color eyelet business (Appendix, p. 23).

The Enamel Eyelet Company was endeavoring unsuccessfully to market a patented enamel eyelet. This was a new field for the United Company. The object of acquiring the Enamel Company's patents was to enable the United Company to enter that field (Appendix, p. 24).

J. C. Rhodes & Company was doing a large business in enamel eyelets which were broadly patented. Both the Rhodes

Company and the Enamel Company infringed a patent owned by the other and each had sued the other. The objects of this acquisition were to compose that litigation, to enable the United Company to produce a commercially satisfactory enamel eyelet without infringement, and to enable it to procure satisfactory metal blanks for its fast color eyelets (Appendix, p. 32).

From the MORLEY BUTTON MANUFACTURING COMPANY the United Company acquired a patented enamel eyelet of a different type from the Enamel Company and Rhodes Company eyelets. The Morley Company infringed and had been sued under the patents on both the Enamel and Rhodes eyelets. The objects of this transaction were to settle that litigation and to obtain valuable patents on a new type of enamel eyelet. The principal business of the Morley Company was manufacturing buttons; that business was not acquired (Appendix, p. 34).

The MARLBORO AWL & NEEDLE COMPANY was manufacturing McKay needles, hand awls and mallets,—none of which the United Company had made before. The object of this acquisition was to enable the United Company to enter that new field (Appendix, p. 36).

W. W. CROSS & COMPANY, INCORPORATED, was manufacturing nails and tacks. The United Company had never made any nails or tacks, but was buying tacks in large quantities from Cross for its lasting machines. The purpose of this transaction was to obtain an assured source of supply for the tacks which the United Company needed (Appendix, p. 45).

JOSEPH W. LEARY had a small business in cements and blackings and was dealing in an insignificant way in second-hand upper sewing machines. This transaction was merely an employment contract, Leary making it a condition of his employment that the United Company take over his small stock (Appendix, p. 49).

THE F. G. FARNHAM BRUSH MANUFACTURING CO. was dealing in patented brushes and parts of brushes. The United Company bought its patents in order to be able to furnish a better brush (Appendix, p. 50).

KIMBALL & HADLEY were making and selling Goodyear needles. The United Company was not making Goodyear needles and had been obliged to purchase from others the needles which it supplied for its own Goodyear machines. Its purpose was to

enable the United Company to manufacture its own Goodyear needles (Appendix, p. 54).

The METALLIC HEEL AND COUNTER COMPANY was manufacturing a patented metallic heel and counter for use on shoes worn by miners and quarrymen, etc. The United Company had nothing of the kind before. The United Company desired to enter that new field and to secure the services of three experts who were connected with that company (Appendix, p. 60).

The ELLIS LACER COMPANY was making a patented wire lacer for holding the edges of an upper at the right distance apart during manufacture. This was a new field for the United Company which it desired to enter but could not without acquiring the Ellis Company's patents, while on the other hand the Ellis Company infringed broad patents of the United Company (Appendix, p. 72).

The B. F. STURTEVANT COMPANY were manufacturing peg-wood and wooden shanks. The United Company had previously been obliged to purchase from others, including the Sturtevant Company, the peg-wood and shanks which it supplied to its customers; peg-wood was required for its pegging machines. The object of this transaction was to obtain an assured source of supply for those articles (Appendix, p. 75).

(3) Eight of the Parties from which Shoe Machinery was Acquired were Doing no Business at all with their Machines which were Merely Experimental and not Adapted for Commercial Use.

The GODDU SONS METAL FASTENING COMPANY had experimental metallic fastening machines of four types. It had done no business and its machines could not have been used commercially without entire reconstruction. The McKay Shoe Machinery Company claimed that the inventions in those machines belonged to it and had brought suit to compel the transfer of the inventions, which had been vigorously prosecuted. The McKay Company had also prepared to bring suits for infringements of several of its patents by each of the Goddu Company's machines. The purpose of this transaction was to settle and avoid litigation (Appendix, p. 3). The finding of the District Court on this transaction was:—

"The metallic fastening machines acquired by purchase of a controlling interest in the company were none of them in the hands of users; their then state of development does not appear to have been such as made them capable of commercial use, whatever the merit of the inventive ideas they sought to embody; nor is the evidence sufficient for a belief that without reconstruction, radical in character, anyone could have used them as competing machines" (Dodge, J., R. Vol. 1, p. 1140).

EDWIN T. FREEMAN had constructed an experimental slugging machine which was patented. He had put out no machines. The United Company infringed one of his patents, there was an interference pending in the Patent Office, Freeman's machine infringed the United Company's patents, and the Freeman patents barred the way to improvement of the United Company's machines. The objects of the transaction were to avoid litigation and to enable the United Company to improve its machines without infringement. His inventions have since been embodied in three different machines of the United Company (Appendix, p. 13).

ALBERT G. BREWER had built an experimental heel breasting machine which was patented. The United Company had no such machine, but was experimenting on a machine of similar type, which was not successful until the Brewer invention had been incorporated in it. Brewer infringed a broad patent owned by the United Company. The purpose of the transaction was to obtain an invention needed to make the United Company's machine successful (Appendix, p. 15).

ERASTUS E. WINKLEY and BENJAMIN PHILLIPS were not engaged in business and no machinery was acquired from them. They had invented a leveling machine adapted for McKay shoes. The United Company had no leveling machine for McKay shoes and used the Winkley and Phillips inventions in the Atlas leveling machine. The object of this transaction was to enable the United Company to produce a leveling machine for McKay shoes (Appendix, p. 20).

THE SMITH LACING MACHINE COMPANY had an entirely new machine for lacing uppers. It was experimental and had not been put out. The United Company had no machine for that work and desired to obtain one. The Smith Company had broad

patents but infringed a patent owned by the United Company (Appendix, p. 59).

From ZOTIQUE BEAUDRY the United Company acquired a patented experimental heel burnishing machine. The inventions could be embodied in the machine of the United Company which had nothing like them. Beaudry's machine infringed the United Company's patents. These inventions were acquired for the purpose of improving the United Company's machine (Appendix, p. 62).

From HARRY L. RICE and FRED LACHAPELLE radically new patented welting machine inventions were acquired. Their machine was only experimental. These inventions could be put into the United Company's machines and were acquired for that purpose because they would strengthen the stitch and effect substantial economies (Appendix, p. 71).

From ADAM H. PRENZEL, a shoe manufacturer, patented inventions relating to children's shoes and machines for making them were acquired. The United Company had nothing of the kind and desired to be able to furnish these valuable inventions to its customers. Prenzel infringed (Appendix, p. 75).

From all of these eight parties excepting the Goddu Company the United Company acquired *either new machines which it did not have before or patented inventions which could be embodied in its own machines for the purpose of improving those machines.*

All of the Thirty-two Transactions which have been Named are Outside of the Petition's Allegations as to the Defendants' Intent.

The allegations as to defendants' intent in entering into these transactions are that they—

> "determined to acquire a complete monopoly of the *manufacture, sale, and lease of shoe machinery* . . ." (italics ours) (R. Vol. 1, p. 994),—

and that—

> "they conceived the idea of acquiring the ownership or control of all concerns *engaged in manufacturing and dealing in* any and all kinds of *shoe machinery*" (italics ours) (R. Vol. 1, p. 994).

These allegations certainly cannot be stretched to include either twenty-four concerns from whom no shoe machinery whatever was acquired or eight concerns whose machines were only experimental, far from being commercial, and who could not possibly be regarded as "engaged in manufacturing and dealing in . . . shoe machinery."

(4) By Seventeen of the Transactions with Parties who were actually doing Shoe Machinery Business the United Company entered an Entirely New Field by Acquiring Machines for Performing Operations for which it did not have Machines Before.

The new machines which were acquired will be briefly indicated in the following list of these transactions:—

PEARSON & BENNION, LTD., General Department machines (Appendix, p. 7).

PETER A. COUPAL and WILLIAM GORDON, experimental basting machine, really an employment contract (Appendix, p. 11).

BOSTON SHOE TOOL COMPANY (Timothy A. Bresnahan), edge trimming and setting machines and tools (Appendix, p. 12).

STANLEY MANUFACTURING COMPANY, foreign agency for McKay sewing machine and for some "General Department" machines (Appendix, p. 21).

ROSS-MOYER MANUFACTURING COMPANY, General Department machines (Appendix, p. 25).

SWAIN-FULLER MANUFACTURING COMPANY, leveler for turn shoes (Appendix, p. 29).

OLIVER A. MILLER, treeing machine (Appendix, p. 35).

THE T. A. NORRIS MACHINE COMPANY, six new "General Department" machines (Appendix, p. 37).

THE GEORGE A. SMITH MACHINERY COMPANY, supplies, spring heel scarfer (Appendix, p. 42).

G. W. EMERSON & COMPANY, tip scourer, power spring heel scarfer (Appendix, p. 43).

J. K. KRIEG & COMPANY, heel seat rounding, Louis heel scarfing machines (Appendix, p. 46).

ARNOLD MACHINE & SUPPLY COMPANY, machine for cementing Gem insoles (Appendix, p. 55).

Booth Brothers (1904 agreement), vamp perforating machine (Appendix, p. 57).

Brockton Supply Company, patents on tack pulling machine (Appendix, p. 58).

Booth Brothers (entire business), two new machines (Appendix, p. 63).

Carver Cotton Gin Company, leveling machine for "freaks" and samples, leatherboard skiver, counter dividing machine (Appendix, p. 68).

Charles P. Stanbon & Company, new folding machine, important improvements on two others (Appendix, p. 78).

(5) By Seven of the Nine Remaining Transactions the United Company Acquired Patented Improvements or Inventions for the Purpose of Enabling it to Supply Better Machines than it had Before.

The Boot & Shoe Sole Laying Company had a patented sole laying machine. The United Company's machine was inferior, of different type, and very unsatisfactory. The United Company infringed a patent owned by the Boot & Shoe Sole Laying Company (Appendix, p. 8).

The Seaver Process Lasting Company had a patented experimental pulling-over machine which, although a commercial failure, embodied inventions indispensable to a successful machine. The United Company was developing a pulling-over machine, not yet commercial, which embodied those inventions; they have been in all pulling-over machines put out by the United Company and are of the utmost importance (Appendix, p. 19).

The Globe Sewing Machine Company had patents on very superior features in its lockstitch welter which barred the way to development by the United Company of its lockstitch welter (Appendix, p. 30).

The American Sole Laying Machine Company had patent rights which prevented the United Company from making a double or two-form sole laying machine which would operate on right and left shoes and have double the capacity of the United Company's machine, and which also prevented development of the Atlas leveling machine. The United Company infringed (Appendix, p. 38).

The RICHARDSON SHOE MACHINERY COMPANY had a greatly improved, patented McKay sewing machine, which was much superior to and did a great deal better work than the United Company's machine. The Richardson patents prevented development of the United Company's machines and one of them was infringed by the United Company (Appendix, p. 65).

THE WENTWORTH COMPANY had a patent on a shank sticking machine which prevented the United Company from developing such a machine (Appendix, p. 73).

M. V. BRESNAHAN & COMPANY had a patented experimental lasting machine, not yet commercial, and a patented heel burnishing machine, which infringed two patents controlled by the United Company. The United Company had nothing in its lasting machines or its heel burnishing machines which would do the work that was done by the patented mechanisms in the two Bresnahan machines. A large amount of litigation was composed by this transaction (Appendix, p. 77).

(6) The Two Remaining Transactions.

The transactions with the BAY STATE INTERNATIONAL SHOE MACHINERY COMPANY (Appendix, p. 28) and WILLIAM J. YOUNG (Appendix, p. 40) both related solely to foreign business in patented machines, in no way to business or conditions in the United States. Both were in effect merely purchases of foreign patents. The Bay State Company was infringing the United Company's foreign patents. Its business was insignificant. The acquisition was made at the earnest solicitation of the people interested, who were shoe manufacturers and customers of the United Company, because it was the cheapest way to settle the litigation. The only property acquired from Young was his foreign patents under which as agent for Young the United Company had for years been putting out his heel compressing machine abroad. Young's machine was the only one of the kind that the United Company had been putting out abroad. Young has ever since continued to put out his machine in the United States in competition with the United Company.

The foregoing summary shows that by forty-four of the transactions the United Company either entered an entirely new field by acquiring machines or patents on machines for

performing operations for which it did not have machines, or supplies or findings which it did not have before, or it acquired patented improvements or inventions for the purpose of enabling it to supply better machines or products than it had before; and that the remaining transactions consisted merely in contracts of employment, contracts commuting obligations created before 1899, purchases to settle or avoid serious patent litigation or transactions of such character that they are entirely unimportant and have no significance in this case. Of the 58 transactions at least 20 were not concerned with the acquisition of shoe machinery or patents on shoe machinery at all.

During this period the United Company was engaged in a remarkable development of the art of shoe machinery. It improved by new inventions practically all its machines. It developed 150 new machines including 39 machines which performed work previously done by hand.

It developed and acquired 172 different General Department machines (*supra*, pp. 194–197). The patents and machines acquired by the acquisitions were used in building up and perfecting this large body of new and improved machines. They were, however, of insignificant importance, as the foregoing summary shows, compared with the results accomplished by the inventive efforts of the United Company itself.

B. THE ACQUISITIONS CONSIDERED FROM OTHER VIEWPOINTS.

(1) In Thirty-two of the Transactions the United Company did not Acquire Any Machine which was within the Scope of the Alleged Monopoly.

The parties to thirty-two of the transactions did not have any machine which was within the field to which petitioner has limited its charge of monopoly:—

> "Machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines" (R. Vol. 1, p. 837, lines 40–43; p. 838, lines 1–3, 18–20).

In this classification we have omitted all concerns which might possibly be regarded as within the field as to which petitioner claims a monopoly, although a number of those concerns had no "bottoming" machines but only machines of General

Department types performing minor operations in the way of "preparing" the soles.

As to the twenty-six transactions which may be regarded as within the class of machines as to which a monopoly is charged:—

(1) By fifteen transactions the United Company acquired machines for performing operations for which it did not have machines before, so that by each of those transactions it was entering a new field. These were: Pearson & Bennion, Ltd. (Appendix, p. 7); Breach Manufacturing Company (Appendix, p. 10); Erastus E. Winkley and Benjamin Phillips (Appendix, p. 20); Stanley Manufacturing Company (Appendix, p. 21); Ross-Moyer Manufacturing Company (Appendix, p. 25); Swain-Fuller Manufacturing Company (Appendix, p. 29); The T. A. Norris Machine Company (Appendix, p. 37); The George A. Smith Machinery Company (Appendix, p. 42); G. W. Emerson & Company (Appendix, p. 43); J. K. Krieg & Company (Appendix, p. 46); Arnold Machine & Supply Company (Appendix, p. 55); Brockton Supply Company (Appendix, p. 58); Carver Cotton Gin Company (Appendix, p. 68); Adam H. Prenzel (Appendix, p. 75); Charles P. Stanbon & Company (Appendix, p. 78).

It was held by the District Court:—

> "There remain a number of instances involving the acquisition of patent rights, patents, or machines relating to or capable of being included within some of those kinds of shoe machinery whereto the case is restricted as above. In the larger portion of these the device or machine acquired is shown to have been of a kind not then being produced by the United Company. There being nothing unlawful, as above stated, in the acquisition of different groups of non-competing patented machines, it is clear that by such enlargements of the United Company's field of operation no 'competitor' can be said to have been absorbed or driven out of business, and that no reason appears for holding the acquisitions thus made unlawful either in themselves or because made in furtherance of an unlawful purpose" (Dodge, J., R. Vol. 1, p. 1139).

All of these transactions are clearly within the rule of *United States* v. *Winslow*. So also, we submit, are the eight named in the next paragraph.

(2) By eight of the eleven remaining transactions the United Company acquired patented improvements or inventions for the purpose of enabling it to supply better machines than it had before. These were: Boot & Shoe Sole Laying Company (Appendix, p. 8); Seaver Process Lasting Company (Appendix, p. 19); Globe Sewing Machine Company (Appendix, p. 30); American Sole Laying Machine Company (Appendix, p. 38); Richardson Shoe Machinery Company (Appendix, p. 65); Harry L. Rice and Fred LaChapelle (Appendix, p. 71); The Wentworth Company (Appendix, p. 73); M. V. Bresnahan & Company (Appendix, p. 77).

The District Court held:—

> "In all such cases it appears that the acquisitions made were of patented improvements, whether or not embodied in an actual machine, enabling the United Company to increase the efficiency of its own machines, or to complete the development of others with which it was then experimenting or had not yet succeeding[ed] in rendering commercially successful. . . . The most that can be said is, that as, in the progress of events, the needs of the United Company became manifest and these opportunities presented themselves, they were availed of" (Dodge, J., R. Vol. 1, pp. 1139, 1140).

It should also be noted that the United Company infringed patents owned by the Boot & Shoe Sole Laying Company and the Richardson Company; while the Seaver Company, the Globe Company, The Wentworth Company, and Bresnahan infringed the United Company's patents.

(3) There are but three other transactions which were within the class of machines as to which a monopoly is charged,—those with the Goddu Sons Metal Fastening Company, the Bay State International Shoe Machinery Company, and William J. Young.

As has previously been explained (*supra*, pp. 440-441) and as is set forth in detail in the Appendix (pp. 3–6), it is shown by the record and it was held by the District Court that the metallic fastening machines of the Goddu Company were experimental, and that they could not have been used without radical reconstruction. A suit had been brought by the McKay Shoe Ma-

chinery Company and had been vigorously prosecuted before February, 1899, to compel the transfer of the inventions embodied in the Goddu Company's machines on the ground that those inventions belonged to the McKay Company. The Goddu Company's machines all infringed the United Company's patents, in the aggregate a large number, and the only purpose of this transaction was to settle and avoid litigation.

The facts which we have already stated (*supra*, p. 445) show that the transactions with the Bay State International Shoe Machinery Company (Appendix, p. 28) and William J. Young (Appendix, p. 40) were entirely without significance in this case.

(2) In Forty-eight of the Transactions the United Company did not Acquire Any Machines which were Adapted or Intended for the Same Work as Any of the Machines which the United Company was Putting Out in February, 1899, or Any of its Predecessors before That.

In only ten of the fifty-eight transactions did the United Company acquire any machines which were adapted or intended for the same work as any of the machines which it was putting out in February, 1899, or any of its predecessors before that.

This shows conclusively that the United Company's purpose in making the acquisitions was to acquire machines or patents or supplies in new fields.

The ten concerns which had a machine or machines adapted or intended for the same work as any of the machines which the United Company was putting out in February, 1899, were: Goddu Sons Metal Fastening Company, Boot & Shoe Sole Laying Company, Edwin T. Freeman, Seaver Process Lasting Company, Bay State International Shoe Machinery Company, Globe Sewing Machine Company, American Sole Laying Machine Company, William J. Young, Harry L. Rice and Fred LaChapelle, M. V. Bresnahan & Company.

Summarizing the facts already stated about these ten concerns:—

(1) The machines acquired from four of these concerns were experimental, and no business was being done or could be done with them for they were far from being commercial. Those

were: Goddu Sons Metal Fastening Company (Appendix, p. 3), Edwin T. Freeman (Appendix, p. 13), Rice and LaChapelle (Appendix, p. 71), and M. V. Bresnahan & Company (Appendix, p. 77).

From three of those four, Freeman, Rice and LaChapelle, and Bresnahan, valuable inventions were acquired which the United Company did not have before. Also there were serious patent complications in connection with the Goddu Company, Freeman, and Bresnahan transactions. Other litigation with the Goddu Company and Bresnahan was pending.

(2) By four transactions the United Company acquired valuable inventions which were a bar to further development of its own machines. These were: Boot & Shoe Sole Laying Company (Appendix, p. 8), Seaver Process Lasting Company (Appendix, p. 19), Globe Sewing Machine Company (Appendix, p. 30), and American Sole Laying Machine Company (Appendix, p. 38).

(3) The two remaining transactions, those with the Bay State International Shoe Machinery Company (Appendix, p. 28) and William J. Young (Appendix, p. 40), have already been explained (*supra*, p. 445).

(4) There are other facts showing the little importance of these ten transactions. No real estate was acquired from any of the ten concerns and from only one of the six who were actually doing business was even a machine shop acquired. That was the Seaver Company, which employed only six men, whose lasting machine infringed, whose business had fallen to pieces, and which was insolvent (Appendix, p. 19). Further the aggregate considerations paid in the six transactions with the concerns which were actually doing business were less than $150,000.

(3) Serious Patent Complications were Cleared Up by a Large Number of the Acquisitions.

By twenty-six transactions the United Company secured patents completely dominating new fields which it desired to enter, patents which it infringed, patents which barred the way to needed improvements in its own machines, or patent applications with which its own applications were in interference; or

it acquired machines which infringed its patents, thereby composing and avoiding expensive and annoying litigation and protecting its lessees from the embarrassment of infringement suits.

Officials of the United Company were aware of these complications and they were, in all instances, the subject of study before the several acquisitions were made (R. Vol. 1, p. 821, lines 13–19).

All of the few concerns which petitioner may urge had apparently competing machines are in this class.

> "In most of the cases of this sort the machine or device acquired was claimed to infringe patents belonging to the United Company, or the patent acquired was one which some machine belonging to it was claimed to infringe, or the application acquired was in interference with applications of its own; and the object of the acquisition is shown to have been the avoidance or compromise of pending or threatened litigation. In such cases it is still less possible to say that any wrongful absorption of a 'competitor's' business has been proved" (Dodge, J., R. Vol. 1, p. 1140).

(NOTE.—These complications are set forth in full detail in Defs.' Ex. 275, R. Vol. 5, pp. 755–777, which consists largely in statements of the opinions of defendants' patent expert Howard in regard to these patent complications. Not a single statement in this exhibit and none of Mr. Howard's testimony to the same effect, no statement by Mr. Winslow as to patent complications in Defs.' Ex. 231, R. Vol. 5, pp. 444–479, and none of Mr. Winslow's or Mr. Howe's testimony to the same effect, have been controverted in any manner by petitioner.)

These transactions were: Goddu Sons Metal Fastening Company (Appendix, p. 3), Boot & Shoe Sole Laying Company (Appendix, p. 8), Peter A. Coupal and William Gordon (Appendix, p. 11), Edwin T. Freeman (Appendix, p. 13), Albert G. Brewer (Appendix, p. 15), Globe Shoe Tool Company (Appendix, p. 17), Seaver Process Lasting Company (Appendix, p. 19), Boston Fast Color Eyelet Company (Appendix, p. 23), Enamel Eyelet Company (Appendix, p. 24), Bay State International Shoe Machinery Company (Appendix, p. 28), Swain-Fuller Manufacturing Company (Appendix, p. 29), Globe Sewing Machine Company (Appendix, p. 30), J. C. Rhodes & Company (Appendix, p. 32), Morley Button Manufacturing Company (Appendix, p. 34), American Sole Laying Machine Company (Appendix, p. 38), G. W. Emerson & Company (Appendix, p. 43), Brockton Supply Company (Appendix, p. 58), The

Smith Lacing Machine Company (Appendix, p. 59), Zotique Beaudry (Appendix, p. 62), Booth Brothers (entire business) (Appendix, p. 63), Richardson Shoe Machinery Company (Appendix, p. 65), Ellis Lacer Company (Appendix, p. 72), The Wentworth Company (Appendix, p. 73), Adam H. Prenzel (Appendix, p. 75), M. V. Bresnahan & Company (Appendix, p. 77), Charles P. Stanbon & Company (Appendix, p. 78).

As to these transactions defendants' expert Howard, who has been head of the United Company's Patent Department since the company was organized (R. Vol. 2, p. 1998), testified:—

> "In some cases there were interferences pending in the Patent Office; in others, actual litigation, or, in my opinion, such a conflict of patents as to threaten litigation; or a field which we desired to enter was absolutely dominated, in our opinion, by patents owned by the acquired company; or the acquired company had inventions which we believed we ought to have and must have to make our machines commercially satisfactory" (R. Vol. 1, p. 820, lines 22-29).

3. WHAT THE UNITED COMPANY HAS DONE WITH THE ACQUIRED BUSINESSES.

In the summary of the acquisitions in the petition there are frequent statements that the "plant has been closed" or that "the business has been discontinued." The petition also alleges that defendants

> "have acquired many letters patent for valuable inventions, and have held the same for long periods of time without making use thereof, thus depriving the manufacturers and the public of the benefits arising therefrom" (R. Vol. 1, p. 999).

These allegations are disproved, first, by the testimony of defendants' witnesses as to the United Company's general policy. Mr. Winslow testified:—

> "The United Company has suppressed absolutely no machines, no inventions and no improvements" (R. Vol. 1, p. 433, lines 27-28).

Mr. Howe testified:—

> "The United Shoe Machinery Company has never suppressed an invention that it thought could be worked out

to make a commercial machine which would benefit the lessees. . . . I have never known of a single patent which had prospective value when embodied in machinery being laid on the shelf or suppressed" (R. Vol. 1, p. 671, lines 18–20, 23–25).

These allegations of the petition are further disproved as to all the transactions by the evidence regarding each of those transactions.

As to the Allegations of the Petition that the Businesses have been Discontinued.

(*A*) With respect to forty-one of the transactions the record shows that the United Company has continued to carry on the business where a business was acquired, or has used inventions where those were the subjects-matter of the transactions. These were: Pearson & Bennion, Ltd. (Appendix, p. 7); Boot & Shoe Sole Laying Company (Appendix, p. 8); The Corrugated Wire Fastening Company (Appendix, p. 9); Peter A. Coupal and William Gordon (Appendix, p. 11); Boston Shoe Tool Company (Timothy A. Bresnahan) (Appendix, p. 12); Edwin T. Freeman (Appendix, p. 13); Albert G. Brewer (Appendix, p. 15); Globe Shoe Tool Company (Appendix, p. 17); Seaver Process Lasting Company (Appendix, p. 19); Erastus E. Winkley and Benjamin Phillips (Appendix, p. 20); Boston Fast Color Eyelet Company (Appendix, p. 23); Enamel Eyelet Company (Appendix, p. 24); Ross-Moyer Manufacturing Company (Appendix, p. 25); Swain-Fuller Manufacturing Company (Appendix, p. 29); J. C. Rhodes & Company (Appendix, p. 32); Morley Button Manufacturing Company (Appendix, p. 34); Oliver A. Miller (Appendix, p. 35); Marlboro Awl & Needle Company (Appendix, p. 36); The T. A. Norris Machine Company (Appendix, p. 37); American Sole Laying Machine Company (Appendix, p. 38); William J. Young (Appendix, p. 40); The George A. Smith Machinery Company (Appendix, p. 42); G. W. Emerson & Company (Appendix, p. 43); W. W. Cross & Company, Incorporated (Appendix, p. 45); J. K. Krieg & Company (Appendix, p. 46); The F. G. Farnham Brush Manufacturing Co. (Appendix, p. 50); American Glue Company

(Appendix, p. 52); Kimball & Hadley (Appendix, p. 54); Booth Brothers (1904 agreement) (Appendix, p. 57); Brockton Supply Company (Appendix, p. 58); The Smith Lacing Machine Company (Appendix, p. 59); Metallic Heel & Counter Company (Appendix, p. 60); Booth Brothers (entire business) (Appendix, p. 63); Richardson Shoe Machinery Company (Appendix, p. 65); Carver Cotton Gin Company (Appendix, p. 68); Ellis Lacer Company (Appendix, p. 72); The Wentworth Company (Appendix, p. 73); B. F. Sturtevant Company (Appendix, p. 75); Adam H. Prenzel (Appendix, p. 75); M. V. Bresnahan & Company (Appendix, p. 77); Charles P. Stanbon & Company (Appendix, p. 78).

. (*B*) *By thirteen of the seventeen transactions not included in the above list no shoe machinery business was acquired.* These were: Goddu Sons Metal Fastening Company (Appendix, p. 3); Breach Manufacturing Company (Appendix, p. 10); George W. Freeman (Appendix, p. 14); John Ritchie Company (John Ritchie) (Appendix, p. 18); Lincoln Sewing Machine Company (Appendix, p. 23); Joseph P. Curtis (Appendix, p. 48); Fred H. Perry (Appendix, p. 49); Joseph W. Leary (disregarding his insignificant dealing in second-hand upper sewing machines) (Appendix, p. 49); Zachary T. French (Appendix, p. 53); Leopold J. Courteau (Appendix, p. 56); Zotique Beaudry (Appendix, p. 62); John H. Richardson (Appendix, p. 68); Harry L. Rice and Fred LaChapelle (Appendix, p. 71).

As to these transactions:—

(1) From eight of these parties no tangible property whatever was acquired. The Freeman, Perry, and Richardson transactions were merely contracts of employment. The Lincoln Company and French transactions were merely contracts commuting obligations created and existing before 1899. From the Breach Company, Curtis and Courteau, the United Company acquired certain patent rights and nothing more.

(2) As we have already explained (*supra*, pp. 440, 441) the record shows and District Court held that the metallic fastening machines of the Goddu Company were experimental, that they were not capable of commercial use and that they could not have been used without radical reconstruction. The evidence also

shows that the minority stockholders of that company stood in the way of development of those machines.

(3) As to the inventions acquired from the Breach Company, Curtis and Courteau named above, and from Beaudry, the United Company experimented aggressively with each of those inventions until in each instance it was proved that the invention was of no commercial value. Each of these situations is set forth in detail in the Appendix.

(4) As to the John Ritchie Company business it is to be presumed that the United Company's lessees were supplied with the wire which they needed. It could not be expected that the United Company would continue the dishonest situation which it was the object of that transaction to eliminate, as fully explained in the Appendix (p. 18).

(5) The Leary transaction was in effect merely a contract of employment. He was dealing in a small way in cements, blacking and second-hand upper sewing machines and made it a condition of his employment by the United Company that it should buy his stock. The consideration was $3,052.

(6) The United Company has been working on the Rice and LaChapelle inventions since they were acquired, it has tried them out several times in a shoe factory, and is still at work with the purpose of developing them into a commercial machine. "It takes a long time to develop one of these machines" (R. Vol. 1, p. 72, lines 3–4).

(*C*) As to the four remaining transactions:—

For the machine acquired from the Arnold Machine & Supply Company (Appendix, p. 55) the demand ceased immediately after the acquisition owing to a revolutionary change in the methods of shoemaking.

Shortly after the acquisition of the patents of the Globe Sewing Machine Company (Appendix, p. 30) shoe manufacturers decided that they did not desire to sew the inseam by a lockstitch as they found it was impossible to secure a tight inseam, and they refused to use lockstitch welters.

The record is silent as to the history of the machines of the Stanley Manufacturing Company (Appendix, p. 21) and the Bay State International Shoe Machinery Company (Appendix, p. 28) after the dates of those transactions, but both of them

related to foreign business only. The Bay State Company had put out only a few machines in England and its machines were distinctly inferior to those of the United Company. The Stanley Company transaction amounted simply to an agency contract which contained a covenant that the United Company should use its best endeavors to sell the Stanley machines in foreign countries and provided that if it should fail to purchase machines from the Stanley Company, that company should then have the right to sell them abroad itself.

As to the Allegations of the Petition that the Plants have been Closed.

(*A*) *Thirty-three of the parties either did not have any manufacturing plant or even a machine-shop, or if they had any the United Company did not acquire it.* These were: Goddu Sons Metal Fastening Company (Appendix, p. 3); Boot & Shoe Sole Laying Company (Appendix, p. 8); Breach Manufacturing Company (Appendix, p. 10); Edwin T. Freeman (Appendix, p. 13); George W. Freeman (Appendix, p. 14); Albert G. Brewer (Appendix, p. 15); John Ritchie Company (John Ritchie) (Appendix, p. 18); Erastus E. Winkley and Benjamin Phillips (Appendix, p. 20); Stanley Manufacturing Company (Appendix, p. 21); Lincoln Sewing Machine Company (Appendix, p. 23); Boston Fast Color Eyelet Company (Appendix, p. 23); Enamel Eyelet Company (Appendix, p. 24); Bay State International Shoe Machinery Company (Appendix, p. 28); Globe Sewing Machine Company (Appendix, p. 30); Morley Button Manufacturing Company (Appendix, p. 34); American Sole Laying Machine Company (Appendix, p. 38); William J. Young (Appendix, p. 40); The George A. Smith Machinery Company (Appendix, p. 42); Joseph P. Curtis (Appendix, p. 48); Fred H. Perry (Appendix, p. 49); Joseph W. Leary (Appendix, p. 49); American Glue Company (Appendix, p. 52); Zachary T. French (Appendix, p. 53); Arnold Machine & Supply Company (Appendix, p. 55); Leopold J. Courteau (Appendix, p. 56); Booth Brothers (1904 agreement) (Appendix, p. 57); The Smith Lacing Machine Company (Appendix, p. 59); Zotique Beaudry (Appendix, p. 62); Richardson Shoe Machinery Company (Appendix, p. 65); John H. Richardson (Appendix, p.

68); Carver Cotton Gin Company (Appendix, p. 68); Harry L. Rice and Fred LaChapelle (Appendix, p. 71); Adam H. Prenzel (Appendix, p. 75).

Some of these parties had their machines or products made for them by others, *e.g.*, Boot & Shoe Sole Laying Company, Boston Fast Color Eyelet Company, Globe Sewing Machine Company, American Sole Laying Machine Company, Richardson Company. Others had each only a single experimental machine, *e.g.*, Brewer, Winkley and Phillips, Rice and LaChapelle. From others no tangible property of any kind was acquired, *e.g.*, Breach, G. W. Freeman, Lincoln Company, Curtis, Courteau, Perry, French, J. H. Richardson.

Seven of these thirty-three parties had manufacturing plants *but the United Company did not acquire the plants.* These parties were: Stanley Company, Morley Company, Young, American Glue Company, Booth Brothers (1904 agreement), Beaudry, Carver Cotton Gin Company.

(*B*) *Nineteen of the parties leased the premises which they occupied and no real estate was acquired from any of them.* These were: The Corrugated Wire Fastening Company (Appendix, p. 9); Peter A. Coupal and William Gordon (Appendix, p. 11); Globe Shoe Tool Company (Appendix, p. 17); Seaver Process Lasting Company (Appendix, p. 19); Ross-Moyer Manufacturing Company (Appendix, p. 25); Swain-Fuller Manufacturing Company (Appendix, p. 29); Marlboro Awl & Needle Company (Appendix, p. 36); The T. A. Norris Machine Company (Appendix, p. 37); G. W. Emerson & Company (Appendix, p. 43); J. K. Krieg & Company (Appendix, p. 46); The F. G. Farnham Brush Manufacturing Co. (Appendix, p. 50); Kimball & Hadley (Appendix, p. 54); Brockton Supply Company (Appendix, p. 58); Metallic Heel & Counter Company (Appendix, p. 60); Booth Brothers (entire business) (Appendix, p. 63); Ellis Lacer Company (Appendix, p. 72); The Wentworth Company (Appendix, p. 73); M. V. Bresnahan & Company (Appendix, p. 77); Charles P. Stanbon & Company (Appendix, p. 78).

As to these nineteen transactions, in every instance the business was continued, if a business was acquired, and the United Company has continued to manufacture the machines or products either on the acquired concern's leased premises or at the Beverly factory; or, if patented inventions were what was acquired, the

United Company has incorporated those inventions in its machines. The only apparent exception is the Seaver Process Lasting Company, but that company's lasting machine was inferior to the United Company's and there was no demand for it after the acquisition. Its valuable pulling-over inventions, the acquisition of which was the real object of that transaction, have been embodied ever since in the United Company's pulling-over machine and are of vital importance in that machine (Appendix, p. 19).

(*C*) *In only six of the transactions did the United Company acquire any real estate.* These were: Pearson & Bennion, Ltd. (Appendix, p. 7); Boston Shoe Tool Company (Timothy A. Bresnahan) (Appendix, p. 12); J. C. Rhodes & Company (Appendix, p. 32); Oliver A. Miller (Appendix, p. 35); W. W. Cross & Company, Incorporated (Appendix, p. 45); B. F. Sturtevant Company (Appendix, p. 75).

The businesses of five of those concerns were continued and are still being carried on *in the same plants.* These were: Pearson & Bennion; Rhodes; Miller; Cross; Sturtevant Company.

In the case of the Boston Shoe Tool Company

> "the business was continued at the same plant for a considerable period of time. Subsequently, for convenience and economy of manufacture, the business was transferred to the Beverly Factory, where the United Company has ever since continued and increased the business" (Winslow, Defs.' Ex. 231, R. Vol. 5, pp. 444, 460).

In this connection it should be understood that the purchase of machine-shops where shoe machinery has been made does not give the vendee control of existing facilities for making shoe machinery. As explained by Mr. Winslow:—

> "The manufacture of shoe machinery does not require any particular kind of machine tools. The standard machine tools used in manufacturing all ordinary machines are the tools that are used in every factory making shoe machinery. The only other things needed are the special tools and jigs which are made by any manufacturer of a particular machine" (R. Vol. 1, p. 858, lines 25–31).

4. CONCLUSION AS TO THE "ACQUISITIONS."

Petitioner has completely failed to establish its charges that these fifty-eight individuals or concerns were competitors, that these transactions were entered into in pursuance of a purpose to monopolize the shoe machinery industry or with intent to suppress competition, that defendants have acquired patents and suppressed them, or that the considerations in the transactions were exorbitant.

The parties from whom these acquisitions were made were not competing with the United Company; in the few cases in which a machine was acquired of the character of one made by the United Company, or an invention was acquired applicable to a machine made by the United Company, the purpose of the United Company in entering into the transaction was to acquire a patent necessary to perfect or improve its own machines, or to acquire a patented machine of the same name as one it had, but used for a different purpose, or to settle litigation which might have prevented the United Company from putting out its own machine, and if any possible competition was eliminated, it was trivial in character, its elimination was not a motive for the transaction, but incidental thereto, and in no case did such competition have any material effect upon the industry.

Practically all the parties who were doing business—and many were not doing any—were putting out machines performing operations which no machine that the United Company had before could perform; or they were making and selling some of the great variety of supplies or "findings" which were used by the United Company's customers and none of which it supplied or was in position to supply before; or they had valuable patented inventions which the United Company had to acquire in order to make some of its machines commercially successful or to enable it to effect substantial improvements in the quality of work or speed of operation of its machines.

Viewing the acquisitions as a whole it is clear that they were made for the purpose of enlarging the United Company's field or adding important and needed improvements to its machines. They were plainly a continuation of that "effort after greater efficiency" which began with the formation of the United Company in 1899, already approved by this court, and which has re-

sulted in the United Company's taking advantage of opportunities, which have presented themselves from time to time during a period of more than twelve years, to enlarge its field and improve its machines. That such transactions were lawful has been established by *United States* v. *Winslow*. The court in that case said:

> "It is said that from seventy to eighty per cent. of all the shoe machinery business was put into a single hand. This is inaccurate, since the machines in question are not alleged to be types of all the machines used in making shoes, and since the defendants' share in commerce among the States does not appear. *But taking it as true* we can see no greater objection to one corporation manufacturing seventy per cent. of three non-competing groups of patented machines collectively used for making a single product than to three corporations making the same proportion of one group each. The disintegration aimed at by the statute does not extend to reducing all manufacture to isolated units of the lowest degree" (italics ours) (*United States* v. *Winslow*, 227 U. S. 202, 217).

If any further proof were needed that these fifty-eight transactions were normal and reasonable steps in the developing and carrying on of the United Company's business, we have, first, the fact that there were serious patent complications attending a large proportion of the transactions, including all of the few concerns which petitioner may urge had apparently competing machines. The acquiring of patents which it infringed or which barred the development of its machines, frequently preventing the construction of a successful machine, and the avoidance or composing of patent litigation are certainly normal, reasonable, and lawful steps in the development of the business of a corporation doing business in patented machines. Transactions entered into for such reasons and with such objects not only benefit the corporation, but they are clearly to the advantage of its customers and the public.

The unimportant character of these transactions in their bearing upon this case is further shown by the facts that more than half of the transactions were clearly outside of the scope of the alleged actual monopoly as frequently defined by counsel for the United States during the trial; that only ten of the parties had any machine which performed the same work as any of the machines which the United Company was putting out in February, 1899; that no

factory or machine shop was acquired in more than half of the transactions and real estate was acquired in only six, and that there is nothing on the record to show that any of forty-four of the parties were engaged in interstate or foreign trade or commerce. Nearly all of the parties that had any machines had but one or two. Many had but one machine, and that frequently only an experimental machine, never in a shoe factory.

If defendants had had any such intent as was alleged they never would have refused the opportunities which were offered them to acquire the large concerns which were and are actively competing with the United Company. The record shows that its biggest and most aggressive competitors, putting out complete lines of machines for making all kinds of shoes, were offered to the United Company and those offers were declined. And, in general, the record shows that a much greater number of shoe machinery concerns than it acquired, many of them having bottoming machines, and a far greater number of inventions than it purchased, over two hundred of which were within petitioner's definition of the alleged monopoly, were offered to the United Company and declined by it.

And finally the record shows that the United Company has *used* what it has acquired by these acquisitions. In a very few cases its hopes were disappointed and the most aggressive experimenting failed to make an acquired invention commercially successful, as frequently happens with its own experimental machines. But in nearly all cases the company has been able to utilize what it acquired to great advantage. For years it has been putting out and its customers have been using scores of machines—including such important machines as the Pulling-over Machine, Model M Outsole Stitcher, Goodyear Tack Pulling and Resetting Machine, Goodyear Twin Sole Layer, Goodyear Welt Indenting and Burnishing Machine, Model B Standard Screw Machine, Atlas Leveling Machine, Imperial Heel Breasting Machine, Ensign Lacing Machine, and Model B McKay Sewing Machine—which the United Company could not have manufactured or put out without infringement if it had not made these acquisitions.

In considering the few purchases of machines similar to machines held by the United Company or inventions applicable to machines of the kind already owned by the United Company,

the distinction between the acquisition of a patent or patented machine and the acquisition of an unpatented machine must be borne in mind. Even if the acquisition of a patent or patented machine may result in the elimination of actual or potential competition, it does not make the transaction inherently unlawful.

In the case of the purchase of the business of manufacturing and furnishing to the trade an unpatented machine, the purchaser, prior to the purchase, is free to make the machine and furnish it to his customers in competition. He is under no restraint, and by making the purchase he does not relieve himself of any restraint previously imposed upon him which forbade his furnishing the same kind of machine. By the purchase of a patented machine the purchaser acquires the patents covering the machine. Prior to the purchase he was restrained by these patents from making the machine; by the purchase he is relieved from this restraint. If the patented machine is one desired by his customers, he cannot satisfy their demands without making the purchase. Unless he make the purchase he is therefore not in a position to compete on equal terms with the owner of the patented machine.

The Sherman Act was intended to protect the normal flow of commerce. Where a manufacturer is lawfully restrained by a patent monopoly owned by another person from manufacturing machines desired by such manufacturer's customers, the Sherman Act was not intended to prevent his acquiring the right to make and furnish such machines by the acquisition of the patent even if thereby an incidental competition is eliminated.

In *Virtue* v. *Creamery Package Company*, 227 U. S. 8, it appeared that the Disbrow Company entered into a contract with the Owatonna Company granting the latter rights under patents for churns and butter workers. The latter company at the time had other patents covering such articles. The Owatonna Company also made the Creamery Package Company its exclusive sales agent.

The court said (pp. 36, 37):—

> "We may therefore sum up by saying that the Disbrow Company, by its contract with the Owatonna Company, did nothing more than confirm or enlarge the rights which the Owatonna Company had obtained, by the contract of 1893, and conveyed to it the exclusive right in the patents for cer-

tain named royalties. This was no violation of law. The Owatonna Company did nothing more in its contract with the Creamery Package Manufacturing Company than to make that Company its exclusive sales agent, and this was no violation of law. Both contracts had natural and adequate legal inducements and conveyed rights that could under the law be conveyed, and, as a necessary incident to the conveyance, one only of the parties could thereafter exercise them. *It may be that the Disbrow Company was to an extent in competition with the Owatonna Company, but it was a competition in part, at least, which, it was contended, was illegally conducted against rights which had been transferred in 1893. But, be that as it may, we repeat, patent rights may be conveyed partially or entirely, and the monopoly of use, of manufacture or of sale is not one condemned by law*" (italics ours).

If two patented machines can do the same work, it is not infrequently the case that each has a patented improvement which the other does not have. A far more efficient machine would result if the patents were combined and the two improvements embodied in a single machine. In such a case the manufacturer of one machine may lawfully purchase the patents held by the manufacturer of the other machine, even though competition between the two machines is thereby eliminated. To hold otherwise would be to hold that the public could not be furnished the most efficient machines possible to the art. But the Sherman Act was intended to benefit the public, not to injure it.

In *Nash* v. *United States*, 229 U.S. 373, the court said (p. 376):—

> " . . . Only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade."

In *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, the court said (p. 174):—

> "In other words, founded upon broad conceptions of public policy, the prohibitions of the statute were enacted to prevent not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented."

A purchase which is made for the purpose of enabling the purchaser to produce a more efficient machine, even if it does result in the elimination of competition between inferior machines, cannot be said to "prejudice the public interests" or produce "harm to the general public." Such a purchase distinctly benefits the public, and is obviously a normal, legitimate step in the development of the industry.

In *United States* v. *American Bell Telephone Company*, 167 U. S. 224, the right of a patentee to acquire other patents which will improve his apparatus, although thereby his monopoly will be extended indefinitely, was affirmed as undoubted.

The court said (p. 249):—

> "Much is said in the briefs and in the arguments about the practical continuance of the telephone monopoly. It is well to understand exactly what is meant thereby. No one questions that the Bell patent has expired, and that all of his invention is free to the use of the public. It is not denied that Berliner's invention is something independent and distinct from the Bell invention. It is the combination of these inventions with those of Blake and Edison which makes the instrument in commercial use, and because this is the most serviceable it is the one that the public insists upon having. But each invention has independent rights. It loses nothing because when united with another it results in an instrument more valuable than either alone will give. Suppose that at the expiration of this Berliner patent some new invention shall be made by which in connection with those already free to the public an instrument can be manufactured far surpassing in utility that used today, and the Bell Company shall purchase that invention, the public, which always insists on having the best and most serviceable, will undoubtedly take the new instrument, and in that way it may happen that what is called the telephone monopoly is practically still further continued. But surely that does not abridge the legal rights of anyone. The inventor of the latest addition is entitled to full protection, and if the telephone company buys that invention it is entitled to all the rights which the inventor had."

It appears from that case that the telephone was covered by four patents. Bell's invention was the fundamental invention; the others were improvements. If, as was not impossible, after the expiration of Bell's patents, a telephone could have been con-

structed by the addition of either one of the improvements, could it possibly have been contended that the owners of those improvements, although there would have been competition between them if they had remained separate, could not have combined, and by the use of all their patents made a more perfect instrument? We think it clear from the language of the court that such a combination would have been permissible.

We do not here contend that every purchase of patents or of a business protected by patents is lawful, although there is authority to this effect. We do submit that every such purchase made to enable the purchaser to manufacture and offer his customers machines which he could not manufacture unless he purchased the patents, or to enable the purchaser by a combination of different patents to put on the market a better machine than any then manufactured, is lawful. To hold otherwise would prevent a manufacturer from fairly competing with his competitors by preventing his manufacturing the same class of machines which they can manufacture under their patents, or would prevent his putting upon the market the best machines which could be manufactured by a combination of patents.

Unless a company like the United Company which is engaged in an industry dominated by patents is privileged to make such acquisitions, the character of its machines will deteriorate and its business decline.

The United Company's machines are the best in the market. It hopes that they may continue to be the best. To this end it expends enormous sums each year in conducting experiments and making inventions. It also acquires from others such inventions as will improve or perfect its machines, or enable it to put out new machines. This it is legitimately and lawfully entitled to do.

Its lessees look to it to furnish them with the best and most improved machines. It can only do this by maintaining its own experimental department, and by acquiring such inventions made or owned by others as will effect this end. It is not only entitled to do so: it would be lax in its obligations to its lessees if it declined to do so.

V.

COVENANTS TAKEN FROM VENDORS, INVENTORS, AND EMPLOYEES IN CONNECTION WITH THE ACQUISITIONS.

1. GENERAL DISCUSSION.

The petition alleges that the defendants have taken from "*all or substantially all*" of those whose businesses they have purchased covenants in writing not to engage for long terms of years in trade "*in shoe machinery in competition*" with the defendants and have further required the vendors to agree that if they "*shall invent or cause to be invented*" or shall patent or cause to be patented "*any machines adapted for use in the manufacture of boots or shoes*" or shall acquire interests in or under letters patent relating thereto, they shall assign and transfer to the defendants all such inventions and letters patent (R. Vol. 1, p. 1000). The District Court found with respect to these allegations as follows (Dodge, J., R. Vol. 1, p. 1141):—

> "These charges are not justified by the documents themselves, which have been produced. They are by no means uniform in their terms, there was no generally prescribed form for them, nor were they all the work of the same hands. Each was framed according to the circumstances of the particular transaction. In many cases, at least, the agreements required only that there should be no competition in the line of business involved in the particular transaction, or that all patents or inventions thereafter made in the particular line to which the acquired invention belonged should be transferred. There are enough of the agreements in these cases which are without covenants of the kind described, to leave the allegation unjustified that such covenants were required in substantially all. And of the instances wherein covenants are found in any degree answering the alleged description, it may be said generally that none are clearly shown to have exceeded what the law permits. Still less reasonable would it be to regard what is found in them as indicating a consistent purpose on the defendants' part to exclude all those with whom the agreements were made from all possible future competition with the United Company."
>
> . . . . . .

This finding of the District Court is fully supported by the record.

The covenants are only such covenants as are usual and customary in the case of a purchase of a business, the purchase of patents, or a contract of employment with an inventor.

In the case of the purchase of a business it is well recognized as usual and necessary to require the vendor to covenant not to compete with the business sold. Such a covenant in nowise violates the Sherman Act.

When an inventor sells his patents it is recognized as equally essential that he covenant to transfer his future inventions covering the same subject-matter in order to give the purchaser protection. It is common experience that an inventor at the time of sale may have in mind inventions which he has not yet patented which may render valueless what he is selling.

When an inventor is employed and taken into the employer's experimental department a covenant to assign future inventions is even more essential. Not only must much expense be incurred in providing draughtsmen and mechanics to work out his inventions, but the inventor has every opportunity to acquire highly confidential information. It is accordingly essential that he be required to agree that if he leaves the company's employ, he will assign future inventions because, first, such inventions are likely to be the fruits of his labors while with the company and in reality the results of the work which the company has paid for; second, there is serious danger that if he has not agreed to transfer future inventions he will not disclose an important invention, but leave the company's employ and then patent the invention, taking to himself the benefit of the work for which the company has paid; and, third, there is grave danger that if unscrupulous he will appropriate the inventions of others with which his confidential relations have permitted him to become familiar, and will patent them himself,—dangers which render such covenants both usual and normal.

In the present case the covenants in each and every instance were necessary for the protection of the United Company, and the District Court so found. But this is not the material issue in the present case. Whether or not a covenant in a particular case is absolutely necessary for the protection of one of the parties is a question of judgment which must be determined in the light

of the circumstances surrounding that particular case, a question difficult alike for the court and for the parties themselves to decide, with reference to which the law has been developing and changing and differs in different states. The material fact here is that the covenants are of the general character which are customary, normal, and proper in such transactions, and afford no evidence of a design to take broader covenants than the parties fairly believed necessary and usual.

The record shows that the officers of the company had no plan or design whatsoever with respect to these covenants and did nothing but leave it to the attorney who drew the papers to insert such clauses as were usual to protect the company as purchaser.

Thus Mr. Howe testified:—

> "Neither the Directors nor officers of the Company, so far as I know, ever had anything to do with them [the covenants]. In fact, except in special instances, where they may have read that part of the contract, I doubt if they knew what they were" (R. Vol. 1, p. 667, lines 16–19).

He further testified (R. Vol. 1, p. 667, lines 20–27):—

> "*Q.* Or did you receive directions from President Winslow as to the covenants you should use?
> "*A.* Neither from the President nor from any officer.
> "*Q.* You then exercised your own judgment as a lawyer?
> "*A.* That matter was all left to the Legal Department.
> "*Q.* Was there any intent upon your part to bring about a monopoly or an unlawful restraint of trade by the use of those covenants?
> "*A.* No intention whatever. It was merely intended for the protection of the Company in what it had paid for, or what it had contracted to pay for."

Mr. Winslow testified (R. Vol. 1, p. 502, lines 19–30):—

> "With reference to the covenants in agreements of purchase of properties by the United Company, I have had nothing to do with the covenants of the vendors, with respect to their future activities, in agreements relating to the acquisitions by the United Company. The drafting of those papers was left entirely to the United Company's Legal Department; I did not direct anything to be inserted and

no action was taken by me, or by the Board of Directors, or by any officer of the Company that I knew of, directing or requiring the insertion of any such restrictive covenants in any agreement. These matters were left to counsel like the drawing of a deed, and I paid no attention to whether they put in covenants or what covenants they put in."

In thirteen transactions there were no covenants whatever as to competition or to future inventions. These were: The Corrugated Wire Fastening Company (R. Vol. 3, p. 530); Seaver Process Lasting Company (R. Vol. 3, p. 591); Lincoln Sewing Machine Company (R. Vol. 3, p. 628); Bay State International Shoe Machinery Company (R. Vol. 3, p. 655); Swain-Fuller Manufacturing Company (R. Vol. 3, p. 660); Globe Sewing Machine Company (R. Vol. 3, p. 662); Boot & Shoe Sole Laying Company (R. Vol. 3, p. 666); Marlboro Awl & Needle Company (R. Vol. 4, pp. 693, 703); The T. A. Norris Machine Company (R. Vol. 4, p. 734); W. W. Cross & Company, Incorporated (R. Vol. 4, p. 744); Brockton Supply Company (R. Vol. 4, p. 831); Metallic Heel & Counter Company (R. Vol. 4, p. 843); B. F. Sturtevant Company (R. Vol. 4, p. 928).

In the case of most of the transactions where covenants were inserted particular pains were taken to limit the covenant strictly to the particular kind of machines or goods which were sold. The allegation in the petition that the vendors who made covenants not to compete were restrained in all cases from engaging in competition in shoe machinery generally and that inventors were required to convey patents on shoe machinery generally which they might thereafter invent or acquire is absolutely without foundation. The very few cases in which general covenants were taken were either employment contracts where such broad protection was necessary or the general covenants were justified by the special circumstances of the case. Furthermore in nearly every case the covenants have been limited in time.

In the only case in which the United Company has sought to enforce any of these covenants they were held to be reasonable and the defendant was restrained (*United Shoe Machinery Company* v. *Kimball*, 193 Mass. 351). That was the contract with Kimball & Hadley (R. Vol. 4, p. 814).

2. LAW AS TO COVENANTS NOT TO COMPETE.

That a covenant not to compete when made as part of the sale of a business, although it directly undertakes to restrain trade, is not within the prohibition of the Sherman Act is settled by *Cincinnati Packet Co.* v. *Bay*, 200 U. S. 179. The court there says (pp. 184–5):—

> "Presumably all that there was to sell, besides certain instruments of competition, was the competition itself, and the purchasers did not want the vendors' names.
>
> "This being our view of the covenant in question, whatever differences of opinion there may have been with regard to the scope of the Act of July 2, 1890, there has been no intimation from anyone, we believe, that such a contract, made as part of the sale of a business and not as a device to control commerce, would fall within the act. On the contrary, it has been suggested repeatedly that such a contract is not within the letter or spirit of the statute, *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 329, *United States* v. *Joint Traffic Association*, 171 U. S. 505, 568, and it was so decided in the case of a patent. *Bement* v. *National Harrow Co.*, 186 U. S. 70, 92."

See also

Darius Coal Transportation Co. v. *White Star Line*, 186 Fed. 63 at p. 65.

Blount Mfg. Co. v. *Yale & Towne Mfg. Co.*, 166 Fed. 555 at p. 558.

Indeed, a covenant not to compete is so necessary to the protection of a purchaser of a business, that in Massachusetts, where most of these contracts were made, a covenant not to compete is implied by law where the good-will of a business is sold and such covenant is necessary or proper for the protection of the purchaser.

Marshall Engine Co. v. *New Marshall Engine Co.*, 203 Mass. 410.

It appears then that even if the United Company had not taken express covenants not to compete, its right to take such cove-

nants is so clear that the law would have protected it by implying them.

The law goes so far that under such an implied covenant the vendor may be forbidden to set up a competing business in any part of the world.

In *Marshall Engine Co.* v. *New Marshall Engine Co.*, supra, the court said (p. 422):—

> "On the other hand had there been no covenant in the sale by Nordenfelt of his good will as a manufacturer of guns and ammunition, which was before the House of Lords in *Nordenfelt* v. *Maxim Nordenfelt Guns & Ammunition Co.* (1894) A. C. 535, under the Massachusetts rule he could not have set up a similar business anywhere. Where the governments of the world are the customers, the place of business is of no consequence."

Such a covenant not to compete may, if necessary for the vendee's protection, be unlimited both in time and space.

In *Marshall Engine Co.* v. *New Marshall Engine Co.*, supra, the court said (p. 424):—

> "The defendants have argued that if Marshall had entered into a covenant never to engage in the business of manufacturing Marshall Perfecting Engines it would have been void as a covenant in restraint of trade. But it is now settled that a covenant, even if it be unlimited both in time and space (*United Shoe Machinery Co.* v. *Kimball*, 193 Mass. 351, 358), not to engage in a particular business is valid if it is coupled with the sale of a business and is necessary to give to the purchaser what he has bought. *Anchor Electric Co.* v. *Hawkes*, 171 Mass. 101. *United Shoe Machinery Co.* v. *Kimball*, 193 Mass. 351."

Where necessary to protect the vendee, a covenant not to compete with the business of the vendee generally, although that business is broader than the particular business sold, is valid.

Anchor Electric Company v. *Hawkes*, 171 Mass. 101.

3. LAW AS TO COVENANTS TO ASSIGN FUTURE INVENTIONS.

Covenants, by vendors of patents or by inventors who enter the employ of the company, not to compete are even more necessary for the vendee's or employer's protection than covenants not to compete made upon the sale of a business.

This is well recognized by numerous decisions.

In *Aspinwall Mfg. Co.* v. *Gill*, 32 Fed. 697, Mr. Justice Bradley said (p. 700):—

> "But where a man purchases a particular machine secured by a patent, and open to an indefinite line of improvements, it is often of great consequence to him that he should have the benefit of any future improvements that may be made to it. Without that the whole value of the thing may be taken away from him the next day. A better machine might be made by the inventor, and sold to another party, which would make the machine acquired by the first purchaser entirely useless. *These things happen every day. And hence it has become the practice, in many cases, to stipulate for all future improvements that may be made by the same inventor upon any particular machine which he induces a party to purchase from him, sometimes by way of license to use such improvements and sometimes by way of purchase and ownership thereof.* Where the inventor is connected in business with the party making such stipulation, or is interested in the profits arising from the business in which the invention is used, the arrangement seems to be altogether unobjectionable. But such a connection or interest does not seem to be necessary to the validity of such bargains" (italics ours).

In *Hulse* v. *Bonsack Machine Co.*, 65 Fed. Rep. 864, an agreement by an employee to assign all inventions made by him while in the company's employ or at any time thereafter was held reasonable and valid. The court said (p. 867):—

> "Is this contract unreasonable or unconscionable? The Bonsack Machine Company owned valuable patented machines, employed in the manufacture of cigarettes. Comparatively the invention was in its infancy, and the machinery was known to be difficult of operation, and open to improvement. Any one entering into the employment of the company had full opportunity of learning the merits of the machines,

and, by constant and daily use, could see where the machine was defective, and where improvement was needed. If any improvement suggested itself to his mind, he could, by using the machine and the time and material of the company, experiment upon it, and ascertain its value. The improvement would be his own idea. But it owed its suggestion and origin, its progressive development and perfection, to the business, the practical working, the opportunity afforded by the company. When, therefore, the company, taught by costly experience, determined to protect itself from the discovery of improvements by its own servants, it did a natural and reasonable thing; and, when it protected itself by a covenant in advance of any employment with those seeking its service, it did a fair thing. Nor was that part of the contract which put in the same category improvements made while in the employment of the company and those made at any time thereafter unconscionable or unreasonable."

See also *Westinghouse Air Brake Co.* v. *Chicago Brake Mfg. Co.*, 85 Fed. Rep. 786.

In *Registering Company* v. *Sampson*, L. R. 19, Eq. 462, the court said:—

"Now nothing is better known than this, that when persons have turned their attention to a particular class of invention they are likely to go on and invent, and likely to continuously improve the nature of their invention, and continuously to discover new modes of attaining the end desired. Persons, therefore, who buy patents of inventors are in the habit of protecting themselves from the utter destruction of the value of the thing purchased by bargaining with the seller that he shall not use any new invention of his for producing that product in which they are about to deal at a cheaper rate, because if he were allowed to do so he might, the day after he had sold his patent, produce something which, *without being technically an infringement, and without being technically an improvement*, might accomplish the desired object in some other way, and utterly destroy the value of that which they had purchased. They, therefore, not unreasonably, and not unusually, make it a part of their bargain that whatever the man discovers of the same kind in the shape of machinery or apparatus which will produce the product in which they are about to deal shall belong to them. They say, 'We cannot buy on any other terms, because otherwise we are exposed to the instantaneous, or almost instantaneous, competition of

the inventor with the benefit of his previous experience.' That, as I said before, is not an unusual, nor is it an unreasonable, bargain" (italics ours).

Reece Folding Machine Company v. *Fenwick*, 140 Fed. Rep. 287, decided in the First Circuit in 1905, is a strong case on this point. Judge Putnam in the opinion of the court, page 288, says:—

"By the last contract Fenwick agreed to assign all the inventions which he had already made, together with any which he might thereafter make, appertaining to the particular subject-matter to which the prior contracts related; that is, certain details in the manufacture of collars and cuffs. . . .

"The defense is set up that such contracts for an indefinite period, covering inventions to be afterwards made, are against public policy. On the other hand, whether based on agreements for employment or on other valuable considerations, such contracts have been extensively made, and have never been doubted until of late. They are essential to the business of the contracting parties, and are not unjust. A person may purchase an invention, and pay therefor a very large sum, and proceed to make use of it. The inventor, according to a practice not uncommon, may subsequently overlap that invention by improvements, which, though small, may be enough, in these days of sharp competition, to build up a successful hostile business. This court recognized these principles to a certain extent in *Thibodeau* v. *Hildreth*, 124 Fed. 892, 893, 60 C. C. A. 78, 63 L. R. A. 480. Therefore it is right and reasonable, and legal, that contracts of the kind in suit should be made and sustained where they relate to improvements upon inventions already purchased, as in the case at bar."

See also

American Brake Beam Company v. *Pungs*, 141 Fed. 923.

Thibodeau v. *Hildreth*, 124 Fed. 892.

McKinnon Pen Co. v. *Fountain Ink Co.*, 48 N. Y. Super. Ct. 442.

Wright v. *Vocalion Organ Co.*, 148 Fed. 209.

Brown v. *Rounsavell*, 78 Ill. 589.

Long v. *Towl*, 42 Mo. 545.

4. MISSTATEMENTS MADE IN THE PETITION AS TO THE COVENANTS.

In its statement of the alleged facts regarding the acquisitions (R. Vol. 1, pp. 999–1023), the petition purports to state the substance of the agreements and the covenants contained in the agreements entered into in connection with the respective transactions. Many of these statements are entirely inaccurate and grossly exaggerate the nature and scope of the covenants, although the United States had the original agreements in its possession for months prior to the filing of the petition (R. Vol. 1, p. 37, lines 15–20; p. 78, lines 24–29). The most glaring of these misstatements are set out in the appendix (see Appendix pp. 82–87).

VI.

THE PLANT PURCHASE.

1. INTRODUCTORY STATEMENT.

In September, 1910, the United Company acquired the patents and inventions of Thomas G. Plant. In the same transaction it acquired from Plant sixty per cent. of the capital stock of the Thomas G. Plant Company, a corporation manufacturing women's shoes.

The petition alleges that Plant—

> "was engaged in the manufacture of machines designed and adapted for use in performing all the principal operations in the manufacture of boots and shoes which can be performed by the aid and use of machinery" (R. Vol. 1, p. 1019).

This statement and many others in the petition regarding this transaction are incorrect and are entirely unsupported by the evidence.

Plant had constructed a number of experimental machines embodying his inventions and had installed them in the shoe factory which he controlled where women's shoes were made exclusively. He had not put any machines into any other factory.

Plant was not a competitor of the United Company. He was not carrying on any shoe machinery business and he was not prepared to supply any machines. He declared that he did not want to go into the shoe machinery business, that he desired to retire from business; and after the purchase he did retire. There is uncontradicted evidence showing that the sole purpose of the Plant enterprise was to create something which he could sell to the United Company. He so stated himself and the history of his negotiations with the United Company proves this to be the fact. He offered a large commission—$250,000 and later $500,000—to an influential shoe manufacturer if he succeeded in effecting a sale to the United Company, and he later offered and had to pay a commission of five per cent. to another

intermediary who undertook to effect a sale to the United Company.

Attention will be called to evidence, for the most part uncontradicted, which establishes that the Plant machines were crude, really in the experimental stage, entirely useless for men's shoes and unfit for the making of women's shoes; that in their use in the Plant shoe factory they were constantly breaking down; that they broke a great number of lasts; that it was necessary to employ a large number of men to repair shoes that were defective on account of the poor work of the machines; that it cost three and a quarter cents per pair more to make shoes on them than it cost on the United Company machines; that the profits of the Plant shoe business after the Plant machines were installed were one-half less than they had been when the United Company machines were used; that the machines could not be used for manufacturing shoes according to the methods universally followed by other shoe manufacturers; and that after the purchase the managers of the shoe factory, Plant's former associates, found it impracticable to continue the manufacture of shoes with Plant's machines and of their own volition discontinued the use of those machines and substituted United Company machines.

On the other hand, in the course of his experimental work Plant had made many inventions and his machines were patented. Although their mechanical embodiments in Plant's crude machines were defective and unsatisfactory, the United Company's experts could see that many of those inventions were extremely valuable and represented important advances in the shoe machinery art.

Plant had, however, developed his inventions and constructed his experimental machines upon the foundation which for many years the United Company and its predecessors had been building; he had added his improvements to old machines of the United Company, and all of his important machines infringed the United Company's patents,—a great number of claims in approximately a hundred patents,—as shown by evidence entirely uncontradicted. Many suits had already been brought by the United Company for infringements of its patents by the Plant machines. On the other hand, fifteen of the United Company's machines infringed twenty patents owned by Plant.

There were also pending in the United States Patent Office twenty-three interferences between patent applications owned by Plant and applications owned by the United Company. The patent complications in which the extremely valuable Plant welter and stitcher improvements were involved were such that neither Plant nor the United Company could have supplied those inventions to the public without infringing the other's patents.

The United Company had never sought nor even considered any purchase from Plant until overtures were made by Plant. The interviews resulting from those overtures were all sought by Plant and his proposals were several times declined without encouragement to renew them. Throughout the negotiations Mr. Winslow insisted that he would not consider the purchase unless there were opportunity for the United Company's experts to examine the Plant machines and determine the value of his inventions, and that he would consider purchasing those inventions upon no basis other than the value which they would have to the shoe industry and to the United Company in the advancement of the art.

After negotiations had several times been broken off by the United Company and renewed by Plant, he finally permitted its experts to examine the machines in the Plant shoe factory. As a result of the extended and thorough examination which was then made it was determined that while the Plant machines themselves were crude and unsatisfactory, Plant had made some very valuable inventions which could be incorporated in the United Company's machines with great advantage to the United Company and to its customers. Accordingly, when Plant offered to sell those inventions at a much lower price than he had previously named, and offered also to include his valuable holdings in the shoe manufacturing company, the United Company accepted the offer. The primary reason for the purchase was the great value of the Plant inventions, but the United Company's officials were also greatly influenced by a realization that common ownership of the patents and applications of the two parties would avoid endless litigation and chaotic conditions in the shoe manufacturing industry which would have been intolerable.

Immediately after the acquisition of the Plant patents and inventions the United Company put many inventors at work

to adapt to the United Company's machines the most important Plant inventions, the value of which had already been determined, and its inventors and mechanics worked night and day until those inventions had been successfully embodied in its machines. Experts were sent to the Plant shoe factory to make a thorough study of the Plant machines and inventions and to recommend what should be done with each Plant machine and invention. They spent many weeks in that investigation and their exhaustive written report is an exhibit (*infra*, pp. 504–505).

The United Company improved and adopted seventeen of Plant's patented machines, and inventions covered by forty-three of the patents acquired from Plant have been incorporated in twenty-six of the United Company's machines. Of these the welter and stitcher inventions are so valuable that alone they more than justify the price paid for all the Plant inventions. The record abounds with testimony as to the savings in material and other economies, the increased output and the improved working conditions, both in higher wages and in convenience of operation, which have been effected by these improvements as they have been incorporated in the United Company's machines (*infra*, pp. 506–514).

That the shoe manufacturing industry has been greatly benefited by common ownership of the Plant patents and those of the United Company is beyond dispute. Shoe manufacturers now have the best machines available, incorporating the valuable inventions of both parties, which could not have been had without common ownership of the patents, and intolerable conditions which otherwise would have inevitably resulted from the chaotic patent situation have been avoided.

We propose to discuss the evidence relating to the Plant purchase in the following order:—

(1) The evidence showing that Plant was not in competition with the United Company and did not desire or intend to go into the shoe machinery business.

(2) The evidence that Plant's machines were not commercially successful.

(3) The evidence as to Plant's valuable inventions and the use which the United Company has made of them.

(4) The evidence showing that the Plant purchase was a great benefit to the industry.

(5) The evidence showing that these great benefits were the only reason for the purchase.

(6) The evidence that the Plant patents were worth more than was paid for them.

(7) The evidence showing the history of the negotiations between Plant and the United Company.

(8) The evidence regarding the alleged attempt of certain shoe manufacturers to purchase Plant's patents after he had agreed to sell to the United Company.

(9) The evidence regarding misstatements as to facts by petitioner's patent expert.

2. PLANT WAS NOT IN COMPETITION WITH THE UNITED COMPANY, HE HAD NO MACHINES TO SELL, AND THE MACHINES WHICH HE HAD CONSTRUCTED AND HAD SOLD TO HIS OWN SHOE COMPANY WERE NOT COMMERCIALLY SUCCESSFUL.

A. Plant was not Engaged in Shoe Machinery Business, He did not Intend to Engage in that Business, and He had no Machines to Sell.

The only machines which Plant had constructed were the crude and defective machines which months before he had forced into his own shoe factory, of which he owned sixty per cent. of the stock (R. Vol. 1, p. 777, lines 18–23). Those machines had been bought and paid for by the Shoe Company (R. Vol. 1, p. 778, lines 13–14, 20–21), and accordingly had been definitely and completely withdrawn from the field of shoe machinery competition; there is no evidence that in September, 1910, Plant had any machines to sell or that he intended to make any machines.

The petition alleges that Plant had advertised his machines extensively through the public press (R. Vol. 1, p. 1020). Petitioner failed to put any such advertisements in evidence, although it had no difficulty in producing other advertisements published before the United Company was formed. The record shows that the advertisements which Plant did publish were not advertisements of machinery.

> "There were advertisements of the opinions of lawyers in regard to the shoe machinery leases. . . . The advertise-

ments attacked the United Company's leases, but they were not advertisements of machinery in the sense of advertisements of anything for sale" (Herrick, R. Vol. 1, p. 611, lines 17–21).

"They were advertisements calculated to 'bear' the stock of the United Shoe" (Howe, R. Vol. 1, p. 687, lines 44–45).

The petition alleges that Plant

"had solicited among shoe manufacturers, in various parts of the United States orders for the sale and lease of such machines" (R. Vol. 1, p. 1020).

Absolutely the only evidence suggesting any attempt by Plant to put machines into any shoe factory is the testimony regarding his offers, declined in both instances (R. Vol. 1, p. 576, lines 15–21; p. 720, line 5), to equip the factories of the Commonwealth Shoe & Leather Company (of which C. H. Jones is president) and the Endicott, Johnson Company, as a part of his scheme for forcing a sale to the United Company. Mr. Endicott testified that Plant in May, 1910,

"stated that his plan was to fit up three factories—the Thomas G. Plant factory, Commonwealth Shoe & Leather Company factory, and Endicott, Johnson's factories—with his machinery, and then sell out to the United Company" (R. Vol. 1, p. 575, lines 41–45; p. 576, lines 25–26).

"I think his proposition to equip our factory and the Commonwealth factory and the T. G. Plant factory was made to me in the presence of my partner and my expert, I think, and in the presence of Mr. Charles H. Jones and Mr. Clarence D. Reed. Mr. Reed is Mr. Jones's associate and is the practical man in the Commonwealth Shoe Company" (R. Vol. 1, p. 576, lines 27–32).

"He stated to me, as I testified, that he wanted to fit us up, use us as a club to sell out to the Machinery people" (R. Vol. 1, p. 576, lines 34–36).

"He said he would like to fit up our factory to help him to sell out to the United Shoe Machinery Company" (R. Vol. 1, p. 585, lines 2–4).

As to these offers it was found by the District Court (Dodge, J., R. Vol. 1, p. 1142):—

"There is uncontradicted evidence of declarations by Plant in 1909 that his intention was to equip these two

other factories and his own with his new machines and then sell out to the United Company. That the effecting of such a sale, and not any actual competition in the market with machines then in use, was his real purpose, is hardly left doubtful by the history of his subsequent negotiations with the defendants."

Robert Hazzard, a shoe manufacturer, testified:—

"Mr. Plant sent me one of his statements and wrote me a very nice letter about the wonderful things he had in machinery at the time he started his newspaper campaign. I told him I was very much interested and should like to bring my superintendent to Boston and look the plant over, but he wrote me that the plant was not open for inspection. Afterwards he sent a nice illustrated pamphlet and I told him I could not see any use in sending it out if he didn't have anything to sell; and that if he did, I would like to see it. My letter was never answered. I never had anything to do with the operation of Plant's machines; he would not let me see them" (R. Vol. 1, p. 650, lines 28–38).

There is a great deal more testimony, entirely uncontradicted, showing that Plant never had any intention of going into the machinery business, but his real purpose, the sole object and end of his enterprise was to sell out to the United Company.

Plant himself made repeated declarations to this effect. For example:—

"Mr. Plant stated, as he had before, that *he wanted to get out of business entirely* . . . that *he didn't want to embark in the shoe machinery business*" (italics ours) (Winslow, R. Vol. 1, p. 487, lines 11–12, 15–16).

"Mr. Plant stated that he would like to get out of business" (Endicott, R. Vol. 1, p. 580, lines 36–37).

Plant had previously, in 1909, endeavored to interest Mr. Endicott in his venture, stating that the investment

"would require some nerve, but *would be a pretty quick turn-over*" (italics ours) (Endicott, R. Vol. 1, p. 576, lines 5–6).

Plant told Mr. Herrick that

"he was anxious to get out of business . . . that he would like to get the money and retire . . . *that he had always planned to so arrange himself that he would be free to sell out*

to the United Shoe Machinery Company" (italics ours) (Herrick, R. Vol. 1, p. 603, lines 26–27, 30, 32–34).

At another time Plant told Mr. Herrick that while he had talked about putting his machinery in a factory he didn't intend to do it and that

> *"he had always held himself in a position where he could trade with the United Shoe Machinery Company, and that was his plan"* (italics ours) (R. Vol. 1, p. 611, lines 3–5).

On cross-examination Mr. Herrick testified that during a conversation with Mr. Plant

> "he never said anything to the effect that he was going to put competition into the field. *He always said that he had got it up to sell to the United Company"* (italics ours) (R. Vol. 1, p. 615, lines 26–28).

Harry W. Smith, whom Plant employed to effect the sale, testified that on July 22, 1910, Plant said to him *"that he wanted to play the game as he had figured to play it"* (italics ours), and also said:—

> "'I can do nothing on the eastern end. I have broken with Winslow, and Endicott has gone back on me.' . . . 'Now, if you can get Barbour to send for me, as you told me you could, then I can get an opening with Barbour, and if you can get Herrick, so Herrick will come to my side of the case, I believe something can be done.' . . . He said Mr. Herrick and Mr. Barbour were the strongest against him" (R. Vol. 1, p. 769, lines 38–44; p. 770, lines 7–9).

Finally there is uncontradicted evidence that Plant agreed to pay Mr. Endicott a commission of $250,000 if he would effect or help effect a sale to the United Company and that later he increased the offer to $500,000 (Endicott, R. Vol. 1, p. 576, lines 39–41; p. 580, lines 16–18); and that he paid his intermediary, Smith, a commission of $300,000.

> "For accomplishing what he wanted me to do, he paid me five per cent. on the six million—$300,000" (Smith, R. Vol. 1, p. 771, lines 8–10).

It appears that after the sale of his patents Plant carried out his expressed intention of retiring from business (R. Vol. 1, p. 488, lines 24–25).

B. Even if Plant's Machines had been Commercially Successful They would not have been Accepted by Shoe Manufacturers because They Made Shoes by Obsolete Methods and could not be Used for Making Shoes according to the Methods Universally Followed by Other Shoe Manufacturers.

George E. Warren, defendants' practical expert, who spent over two days examining the Plant machines before the purchase and about eight weeks in continuous study of them after the purchase (R. Vol. 1, p. 785, lines 7–20; p. 808, lines 42–44; p. 809, lines 1–3; p. 814, lines 34–35; p. 815, line 44; p. 816, lines 1–2), testified that every manufacturer that he knows of is using the rounding and channeling machine. Plant had no rounding and channeling machine. His catalogue illustrates a "Rough Rounder," *i.e.*, rounding and channeling machine, but it "was never completed" and Plant told Warren that it "was not in any condition to be shown" (R. Vol. 1, p. 792, lines 16, 18–19; p. 793, lines 13, 30–31). McGaffee, general manager of the Plant shoe factory, had never seen such a machine; Plant told him "he didn't have any rough rounding machine" (R. Vol. 1, p. 776, line 29; p. 781, lines 2–3). Plant's method of making shoes without a rounding and channeling machine was obsolete before the United Company was formed. The invention of the rounding and channeling machine revolutionized the method of attaching the outersole. By the old method which Plant used the outsole was shaped and then channeled before it was put on the shoe. By the modern method a blocked or unshaped outsole is temporarily cemented to the shoe and then is shaped to that particular shoe and the channel is formed in exactly the right location for that shoe, both operations being performed simultaneously by the rounding and channeling machine. The advantages of the modern method as compared with Plant's obsolete method are set forth in the record in detail, and an adequate explanation of the absence of a rounding and channeling machine from Plant's line will be found in the discussion of the United Company's patents on such machines (R. Vol. 1, p. 793, lines 13–15, 23–24; R. Vol. 2, pp. 2304–6, 2330, 2331).

Nine of Plant's machines were adapted only to peculiar methods which were in use only in the Plant factory. For example,

Plant used a peculiar kind of innersole and five of his machines were peculiarly adapted for making that innersole, of which Mr. Warren said, "We don't know of anybody that would care to make it" (R. Vol. 1, p. 792, lines 34–37, 42–43). Another of these machines was Plant's "cleaning and treeing leg" which operated according to an obsolete method and "the result was that the shape of the shoe was spoiled" (R. Vol. 1, p. 793, lines 34–43; p. 794, lines 1–9).

Plant's stitcher

> "could not be used commercially because it had never been organized to sew shoes with extension edges. This was a very serious defect, because almost every manufacturer wished to make shoes with extension edges" (Warren, R. Vol. 1, p. 794, lines 37–40).

Mr. McGaffee testified that it cost three and one-quarter cents per pair more to manufacture shoes in the Plant factory in accordance with the Plant method than in accordance with the method of the United Company's machines (R. Vol. 1, p. 780, lines 43–45).

Nearly all manufacturers used and insisted upon the extension edge organization (sometimes called the Baltimore Edge Attachment) and it produced a great deal better work (R. Vol. 1, p. 795, lines 25–27). Nearly all welt shoes, both men's and women's, are made with extension edges. The practical advantages of the extension edge and the importance and value of an organization in an outsole stitching machine which will enable it to attach the soles of extension edge shoes are explained in full detail by defendants' experts (R. Vol. 1, p. 794, lines 41–44; p. 795, lines 1–5; Vol. 2, pp. 2281–3, 2762).

Mr. McGaffee stated that the lack of an extension edge organization on the Plant stitcher "was a great hindrance to the quality made on that machine" and that it resulted in the shoe ripping (R. Vol. 1, p. 775, lines 34–35, 43–45). Ryan, who operated a Plant stitcher, testified that through the lack of the extension edge device there was "a great deal of trouble running into seams and one thing and another" (R. Vol. 1, p. 707, lines 7–9).

Plant told McGaffee that he could not use an extension edge

organization on account of the United Company's patents, which are set forth in the record (R. Vol. 1, p. 775, lines 32–34; p. 780, lines 1–7; Vol. 2, p. 2282).

Again, Plant had produced no pulling-over machine (R. Vol. 1, p. 792, lines 10–11), another of the "machines for preparing and attaching the bottoms to the uppers of shoes" (R. Vol. 1, p. 839, lines 13–14). The testimony regarding defendants' patents on that machine shows that Plant was wise not to enter that field (R. Vol. 2, pp. 2540–8).

Plant's heel slugger "couldn't handle the zinc wire or soft brass wire" which are commonly used for slugging, and in using that machine they had to slug the toplifts before they were attached to the shoe, thus not securing the advantages which are obtained by the general practice of inserting the slugs after the toplifts are attached to the shoe (R. Vol. 1, p. 796, lines 38–44; p. 797, lines 10–11; Vol. 2, p. 2464).

Also eight other Plant machines, including important machines such as the heelseat dinker, stitch separator and sole rounder, were either unfinished or were regarded by Plant himself as experimental, and the Plant Shoe Company was making shoes without using those machines, getting along in one way or another as best it could (R. Vol. 1, p. 791, lines 35–45; p. 792, lines 1–33; p. 814, lines 1–7).

C. Even for Manufacturing Shoes according to Plant's Obsolete Methods, Differing Radically from Methods Universally Used, Plant's Machines were not Commercially Successful in his own Factory where Women's Shoes only were Made.

No better evidence on this proposition can be had than that of the man who as general manager of the Plant factory had to make shoes on the Plant machines. Mr. McGaffee testified that the Plant machines "wouldn't stand up" (R. Vol. 1, p. 774, lines 15–16); that the profits of the shoe business the first year that the Plant machines were installed were one-half less than the profits of the preceding year when United Company machines were used, on account of "the great amount of bother and trouble we had with the Wonder Worker* machines" (R. Vol. 1, p. 778, lines

*Plant called his machines "Wonder Workers" (R. Vol. 1, p. 773, lines 20–22).

6–12); that an average of 235 pairs of lasts were broken each week on the Plant machines as compared with ten pairs a week on the United machines which were displaced by the Plant machines (R. Vol. 1, p. 777, lines 6–12; p. 780, lines 9–10); and that he had thirty repairers at one time repairing shoes after the Plant machines (R. Vol. 1, p. 776, lines 1–2).

> "The Wonder Worker would do the work so poorly that I would have to have somebody fixing the work up by hand before it could go to the next department" (R. Vol. 1, p. 779, lines 3–5).

He also testified as to the "continual breaking down" of the Plant machines (R. Vol. 1, p. 774, lines 22–23), and, finally, he stated as his reason for substituting the United Company machines for the Plant machines,—

> "I put those machines in for the simple reason that I couldn't make the shoes with the Wonder Worker" (R. Vol. 1, p. 774, lines 40–41).

Mr. Winslow testified:—

> "During our inspection we saw many machines that were broken down, not in condition to operate" (R. Vol. 1, p. 491, lines 24–26).

Mr. Warren testified that of the sixty-nine machines in the Plant catalogue (P.'s Ex. 266) ten machines were unfinished or had only been used experimentally (R. Vol. 1, p. 788, line 27; p. 791, lines 35–40); that eleven more machines were not commercial, with detailed explanations (R. Vol. 1, pp. 794–7); that seven other machines were "faulty in construction," also with detailed explanations (R. Vol. 1, p. 797, lines 28–45).

Among his criticisms of specific machines he testified that he observed frequent breakage in the welter, in the stitcher and in the heel-attaching machine, and observed also the noticeable breakage of lasts (R. Vol. 1, p. 790, lines 35–40); and stated that the Plant welter was mechanically defective and had to be run at practically maximum speed all the time "or else it would stop" (R. Vol. 1, p. 797, lines 23–27; p. 818, lines 26–37). The necessity of capacity for different speeds is explained in McGaffee's comparison of the Plant welter with the United Com-

pany welter (R. Vol. 1, p. 775, lines 23–28). Even the valuable improvements in the welter and stitcher "had not been carried out in a mechanical way," and Mr. Warren "felt satisfied that they would not stand up and do the work" (R. Vol. 1, p. 788, lines 3–7).

Of another defect in the welter Mr. Warren said:—

> "A particular weakness was the construction of the welt guide and back gage movement. With the particular mechanism used and the lightness of its construction this would not have lasted any time at all" (R. Vol. 1, p. 810, lines 20–24).

The leveler was constantly breaking lasts and required a great number of expensive forms,—the forms used at the Plant factory cost over $4,000. The custom sole layer required the same expensive forms and it was 50 per cent. slower than the United Company machine (R. Vol. 1, p. 795, lines 44–45; p. 796, lines 1–14, 24–28).

Four operators at the Plant shoe factory testified that the Plant toe and heel laster was much slower, that the work on the machine was very hard, and that accordingly the operators on those machines were given a raise in wages (R. Vol. 1, p. 761, lines 27–29; p. 762, lines 41–43; p. 764, lines 42–44; p. 765, lines 1–2, 31–38).

The testimony just referred to is typical of the evidence regarding the Plant machines, which is well summarized in Mr. Warren's following general comments:—

> "Generally speaking they were of such construction that they would break and get out of order" (R. Vol. 1, p. 794, lines 17–18).
>
> "And in looking over all these Plant machines we found by a careful examination that they were faulty in construction, light in weight in places, and badly designed" (R. Vol. 1, p. 790, lines 28–31).
>
> "These machines of Mr. Plant's, built as they were, in my opinion *would not have been commercially successful* to do work under the varying conditions under which machines have to be supplied to shoe manufacturers" (italics ours) (R. Vol. 1, p. 790, lines 15–18).

But perhaps the most conclusive evidence is the action of the Plant Shoe Company in throwing out the Plant machines, for

which they had paid $400,000 less than three years before, and substituting the United Company's machines (R. Vol. 1, p. 774, lines 33–44; p. 778, lines 13–14).

Mr. McGaffee, general manager and vice-president of the Plant Shoe Company, stated his reasons for discarding the Plant machines as follows:—

> "I changed back again because I wanted to see if I could get a line of machinery that would stand up and manufacture shoes, without manufacturing machines all the time. I was absolutely satisfied that the Wonder Workers wouldn't stand up . . . the longer they ran the weaker they got. . . . I was not able to get out the work. . . . I couldn't make the shoes with the Wonder Worker" (R. Vol. 1, p. 774, lines 13–16, 23, 24, 40–41).

Mr. McGaffee further testified:—

> "The United Company has not in the slightest way interfered with my management of the business, or in any way attempted to exercise any influence or control over my judgment in the management of the business. . . . It was my judgment that determined the policy of the company with respect to the changing over from the Wonder Workers. . . . My action in putting in the United Company machines was governed absolutely by my own wishes and my own independent judgment. I did it because I felt that it was for the interests of the business of the Thomas G. Plant Company, of which I am a stockholder. The United Company never approached me in any way" (R. Vol. 1, p. 773, lines 15–19; p. 774, lines 16–18; p. 775, lines 1–6).

He found that the work of the United machines was "a great deal less expensive," that on those machines they saved three cents and a quarter a pair as compared with the work on the Plant machines, and that his operators could do a good deal more work and make more money than they could on the Plant machines (R. Vol. 1, p. 775, lines 13–16; p. 776, lines 17–22; p. 777, lines 24–28).

Mr. McLeod, "practical man" and a director of the Plant Shoe Company, who shared the responsibility for the selection of machinery, decided that the United machines would be best for their business and approved the change. Among his reasons he stated that the United machines

> "do not tire an operator so much, so that the operator can do better work and feel fresher at night. . . . He can turn out a bigger day's work with the United machine than he could with the Wonder Worker machine" (R. Vol. 1, p. 782, lines 3–20, 25–27, 30–32).

He testified that he was in accord with what Mr. McGaffee said as to the economies and advantages effected by the change, the United Company did not bring any pressure or influence to bear, no suggestion was made that it would be advantageous to change machines, and the change was made in the exercise of his honest and independent judgment (R. Vol. 1, p. 783, lines 25–28, 33–39). Both these men had been connected with the Plant Shoe Company for over twenty years (R. Vol. 1, p. 773, lines 4–6; p. 782, line 6).

D. Much less could Plant's Machines have been Used on Men's Shoes, which Require much Stronger Machines and Frequently Machines of Entirely Different Types from Those Used on Women's Shoes.

It is not disputed that women's shoes exclusively were made in the Plant shoe factory and that there had been no use of the Plant machines in any other factory.

It is clear from the record that the problems that have to be solved in handling men's shoes, which are larger, made of heavier leather and with heavier box toes and counters and in which durability and wearing qualities are the first requisite, are entirely different from the problems met in producing machines for making women's shoes, which are smaller, made of lighter materials throughout, and in which the primary consideration is style and appearance. Accordingly for many operations the machines used on men's shoes and women's shoes are different. For example, we have seen that the Chase lasting machine was structurally not adapted and was never used for lasting women's welt shoes, while the Ideal lasting machine was structurally not adapted and was not successfully used for lasting men's welt shoes (*supra*, pp. 124-129, 133–135).

All the testimony which we have reviewed above (*supra*, pp. 484–486) showing that many of Plant's machines could be used for making shoes only by obsolete methods or by peculiar

methods used only in Plant's factory, and at prohibitive expense, condemns the machines for men's work as well as for women's work. The testimony that as used in the Plant shoe factory on women's shoes the machines were continually breaking down, that they were destroying lasts and that they did the work so poorly that it had to be fixed up by hand (*supra*, pp. 486–490), is further conclusive proof that the machines were entirely impracticable for use on men's shoes.

In addition to that evidence there is testimony bearing directly upon the capacity of Plant's machines for men's work and the possibility of using them on that work.

Mr. McGaffee, general manager of the Plant shoe factory, testified:—

> "I don't think you could have manufactured men's shoes on that line of machinery that Mr. Plant had got out and do it anywhere near satisfactory at all" (R. Vol. 1, p. 774, lines 30–32).

Mr. Howe, who examined the Plant machines with Mr. Winslow, testified that the Plant machines were

> "too light to stand commercial use for making men's work,"

and that they

> "were not strong enough for continuous use, in my judgment, on his own manufacture, women's welts" (R. Vol. 1, p. 668, lines 35–37; p. 688, line 44; p. 689, lines 8–9).

Mr. Warren testified that in his opinion the Plant machines

> "would not have been commercially successful to do work under the varying conditions under which machines have to be supplied to shoe manufacturers . . . it has always been the experience of anybody that has designed or made any shoe machinery that you can't tell by trial on one kind of work whether a machine will become commercial or not" (R. Vol. 1, p. 790, lines 16–18, 21–24).

The mechanical and shoemaking reasons why the various Plant machines could not be used for men's shoes were explained in great detail by Mr. Warren. Typical of his criticisms of specific machines are the following:—

HEELER AND ATTACHER: "The pressure in closing the heel down on to the shoe is much greater on a man's shoe than on a woman's shoe. We found parts that would break on a woman's shoe on account of this pressure, and we knew that when we attempted to apply any more pressure the breakage would be more frequent; and, also, there are more nails to drive in a man's shoe than in a woman's shoe, and that would have put additional strain on the machine, so that there would have been continual trouble in that respect, as there was in doing the women's shoes" (R. Vol. 1, p. 794, lines 24–33).

HEEL AND TOE LASTER: "We knew that it did not compare with our No. 5 machine for strength, and that trouble would come if it was attempted to be used on any heavy grade of work" (R. Vol. 1, p. 796, lines 34–37).

HEEL LOADER: "The machines in use at the Plant factory were continually giving trouble, and they only had to handle a small number of nails. Now, the wear and strain on the machine when used for men's work would have been a great deal worse" (R. Vol. 1, p. 797, lines 14–18).

"The LOOSE NAILER had the disadvantage that it was so constructed that you could not handle a nail longer than seven-eighths of an inch. In some classes of work, heavy double outersoles and spring heels, it is necessary quite often to drive nails longer than that" (R. Vol. 1, p. 797, lines 41–45).

"The WELT BEATER was not provided with any means for what is called slashing the welt . . . all men's work had to be slashed in order to beat it out properly" (R. Vol. 1, p. 795, lines 34–35, 40–41).

"The HEEL BREASTER was particularly adapted for women's work. There are several types of heels used in men's factories that could not be done on this machine, because either the knife or some of the mechanism was in the way" (R. Vol. 1, p. 797, lines 19–22).

Two Manufacturers of Men's Shoes to whom Plant Offered his Machines Examined the Machines and Decided that they were not Practicable for Men's Shoes.

As we have shown (*supra*, p. 481), Plant made an effort to put these machines into the factories of two shoe manufacturers as a part of his scheme for forcing a sale to the United Company. In consequence of those offers his machines were examined by those manufacturers.

Clarence D. Reed, treasurer of the Commonwealth Shoe & Leather Company (of which petitioner's witness C. H. Jones is president), who has charge of all the factories, the machinery and the selection of the machinery for that company (R. Vol. 1, p. 119, lines 16–17; p. 719, lines 25–26, 34–36), examined the Plant machines with particular reference to their adaptability for his factories, and "decided we better not have them" (R. Vol. 1, p. 720, line 5). He testified:—

> "Of course the machines looked light to us, and our work is men's work, which is heavier, and we thought there would be danger of breakage and trouble. . . . We thought that it would be too much of a risk, and that we should have to lower our standard of shoemaking. . . . We should get poorer work" (R. Vol. 1, p. 720, lines 7–9, 12–13, 16).

Henry B. Endicott, of the firm of Endicott, Johnson & Company, who made 40,000 pairs a day of all kinds of men's shoes (R. Vol. 1, p. 575, line 31; p. 576, lines 21–23), testified that he, his partner, and one of his superintendents spent a day examining the Plant machines (R. Vol. 1, p. 583, lines 28–30), and that—

> "as a result of my own examination and the reports of my experts the conclusion which I came to, as a practical shoe manufacturer, in regard to the equipment of my factory with Plant's inventions, was *not to put in his machines.* The reason for that conclusion was that, from the reports of my experts, my own judgment was that *the machines were not strong enough or practical to do our work*" (italics ours) (R. Vol. 1, p. 576, lines 15–21).

On cross-examination he testified:—

> "From the reports my experts gave me, I felt they were not practical for our business" (R. Vol. 1, p. 584, lines 8–9).

Petitioner's Fruitless Efforts to Show that the Plant Machines could have been Used for Men's Shoes.

In support of its contention that the Plant machines could have been used on men's shoes, petitioner relies upon the testimony of three witnesses, McElroy, Selz, and Jones.

McElroy testified that he examined the Plant machines and that

"They were actually at work on women's shoes. I saw men's shoes there which were made upon them" (R. Vol. 1, p. 189, lines 24–25).

On cross-examination he testified that the men's shoes that he saw there had been stitched but not heeled, that he didn't know when they had been stitched, and that to the best of his information men's shoes had never been made for the market on the Plant machines (R. Vol. 1, p. 193, lines 13–17). He added:

"I questioned the strength of those machines for making men's shoes. . . . The making of men's welts involves dealing with heavier material and requires more strength in the machine than the making of women's welts. If his machines had been used commercially on men's shoes the frames should have been stronger. As a commercial proposition they would have to be built heavier to make them available for that purpose" (R. Vol. 1, p. 193, lines 17–18, 20–26).

Selz, another shoe manufacturer, testified that he spent half a day examining the Plant machines and that they could have been used in making men's shoes (R. Vol. 1, p. 146, lines 1–2, 28–30). On cross-examination he testified that he questioned the strength of the Plant machines for making men's shoes and that he had never seen them used for making men's shoes (R. Vol. 1, p. 155, lines 33–45; p. 156, lines 1–3).

Selz was a prejudiced witness.

"*Q.* Mr. Selz, how large an interest have you in the Boylston Manufacturing Company?
"*A.* I think up to date we have paid in somewhere between twenty-five and thirty thousand dollars.
"*Q.* So you have that amount at stake upon these machinery leases being declared invalid?
"*A.* If you choose to look at it that way.
"*Q.* If they are not, you stand to lose that money?
"*A.* Yes, sir.
"*Q.* If they are, you stand to make it?
"*A.* Yes." (R. Vol. 1, p. 157, lines 41–44; p. 158, lines 1–7.)

Selz also testified that with several others, including Mr. Jones, he had visited the Attorney-General's office in Washington on shoe machinery business (R. Vol. 1, p. 155, lines 1–4).

Jones's testimony goes no further. Basing his expression of opinion upon an examination of Plant's machines "at different times during one entire day" (R. Vol. 1, p. 114, lines 29–30), he said that those machines could be used on men's shoes,—although admitting that he never knew of men's shoes being made on them (R. Vol. 1, p. 124, lines 16–27). That is all,—the barest expression of opinion without a bit of technical or practical explanation. But Jones's opinion on a matter requiring practical and technical knowledge is of no weight. He is not a practical shoe manufacturer. He admitted, "I haven't visited the factory for three years" (R. Vol. 1, p. 127, line 10). And against his testimony we have that of Clarence D. Reed, the treasurer of Jones's company, the Commonwealth Shoe & Leather Company, who owns over one-third of that company, and who has charge of the manufacturing end of the business, including the making of the shoes. He testified that he had charge of all the factories and has had charge of the selecting of the machinery for the factories for over ten years. He said that he examined the Plant machines in 1910, "saw them operating and went through them," considered the question of equipping his factories with those machines, and decided not to take them. His reasons were that the machines were too light, that "there would be danger of breakage and trouble," and that they would "get poorer work."

> "We thought that it would be too much of a risk, and that we should have to lower our standard of shoemaking" (R. Vol. 1, pp. 719–21).

Furthermore, Jones, like Selz, was a prejudiced witness. He testified:—

> "I am a stockholder and director in the Boylston Manufacturing Company. I have a stockholding interest in it that is large for me" (R. Vol. 1, p. 122, lines 28–30).

His well-known hostility to and activities against the United Company were evidenced by reluctant admissions and evasive answers throughout his cross-examination. When questioned about his attacks on and activities against the United Company he admitted that he had made "perhaps three visits to Washington" and that he had appeared before the Massachusetts

Legislature; that he had called on the Attorney-General and appeared before committees of Congress making complaints against the United Company:—

> "*Q.* And you spent a number of days there detached from your shoe business in Massachusetts, sitting around committee rooms and making complaints, didn't you?
> "*A.* Yes, sir";

that he had furnished information regarding the United Company to assistants to the Attorney-General; that he had appeared before a committee of the Massachusetts Legislature making complaints against the United Company's leases; and that he had published articles in the newspapers attacking the United Company's method of leasing machinery (R. Vol. 1, p. 119, lines 34–44; pp. 120, 121; p. 122, lines 1–24).

These bare expressions of opinion by three witnesses,—none of whom went so far as to say that the Plant machines were capable of *actual commercial use* on men's shoes,—constituted petitioner's entire showing on this point; and, as we have seen, Selz and Jones were prejudiced witnesses and Selz and McElroy retracted on cross-examination. And after defendants had introduced overwhelming testimony of many witnesses showing that the Plant machines were absolutely unfit for use on men's shoes (*supra*, pp. 490–493), no attempt to answer that evidence was made in petitioner's rebuttal.

E. There is Nothing in the Record to Indicate that Plant could have made his Machines Commercially Successful.

There is nothing in the record to indicate that Plant ever could have made his machines commercially successful for either men's or women's shoes. On the other hand, the record does contain abundant evidence as to the time that is required and the difficulties that must be overcome in transforming an experimental shoe machine into a commercially successful machine. That evidence shows that after a new machine has been constructed so that it can actually be used in making shoes, it frequently takes years of continuous experimental work before the machine becomes a commercial success, that

is, before the machine can be satisfactorily used under commercial conditions, and that during all that period there is no assurance that it ever will be made commercial.

The inseam trimming machine, which was put out by the Goodyear Company prior to 1899, did not become an entirely successful machine until 1909, after ten years of experimental work resulting in a long series of improvements (R. Vol. 2, pp. 2505–7). Experimental work upon a new slugging machine began in 1902 and has been continuously carried on ever since; the third design was given a shoe factory trial in 1907 and it then seemed sufficiently promising to justify building a number of machines to try out in different factories, and fourteen machines of that design were put into factories. It was confidently believed that the difficulties which were encountered in the use of those machines could all be overcome in time, but those problems have not been solved and the machine is not yet successful (R. Vol. 2, pp. 2468–70).

> "Whether or not the machine will ever become commercially successful is still problematical. Considerably over $100,000 has been spent already in the experimental work upon this machine" (Howard, R. Vol. 2, p. 2470).

Again, it was not until the third experimental pulling-over machine was constructed that the machine was deemed worthy of a factory trial, and after that nearly four years of continuous experimental work was required before the machine became a commercial success. During that period the United Company built and put into shoe factories over a hundred experimental machines, but, after a commercially successful machine had been produced, all of those machines, which had all been built less than three years before, were broken up for junk. Nearly a million dollars was spent in the development of the pulling-over machine before any revenue was derived from it (R. Vol. 2, pp. 2542, 2552, 2553).

The power heel breasting machine, which the McKay Company had started to develop before 1899, did not become commercially successful until 1902, when the invention purchased from Brewer was put into the machine. Up to that time experimental work on that machine had been carried on continuously; some fifty experimental machines had been constructed and put into shoe

factories, but none of them was commercially successful, none was operated at all after a few months' trial and eventually all of those fifty machines were junked (R. Vol. 1, p. 45, lines 9–16; R. Vol. 2, pp. 2473, 2474). Another machine which was started before 1899, the tack puller and resetter, did not become commercially successful until 1910, after experimental work extending over a period of more than ten years, during which a number of experimental machines had been successively constructed (R. Vol. 2, pp. 2525, 2526).

The United Company spent two years in the endeavor to make the Breach sole rounding machine commercially successful and had to give it up. This endeavor cost the United Company $40,000 (R. Vol. 2, pp. 2068, 2084, 2100; Defs.' Ex. 231, R. Vol. 5, p. 467).

The Beaudry experimental heel finishing machine contained inventions of which the United Company thought so highly that they paid $12,500 for the experimental machine. After it was acquired,—

> "we constructed several experimental machines. . . . We tried in all sorts of ways to make it practicable, but the extreme inconvenience to which the operator would be put by a machine so organized finally condemned it as entirely impracticable" (R. Vol. 1, p. 86, lines 1–3, 12–15; Defs.' Ex. 231, R. Vol. 5, p. 469).

Mr. Howard testified as to two other machines:—

> "We were unable to make a practicable machine embodying the Courteau invention. We made a very determined effort to make it practicable. . . . We did the best we could with it but could not develop anything out of it, and it was given up" (R. Vol. 1, p. 87, lines 38–40; p. 88, lines 3–4).
>
> "The Curtis machine did not prove commercially acceptable and was not a success. We did what we could to make it a commercial success. We put out some forty-five of them, but they were constantly giving trouble. . . . Most of the machines which we put out have come back" (R. Vol. 1, p. 92, lines 13–16, 19–20).

Another difficulty frequently encountered in developing shoe machinery, of which the record affords many specific illustrations, is stated by Mr. Winslow:—

"In other words, a machine may be constructed that will work perfectly in A's factory, but is entirely imperfect when you try to use it in B's factory in work that varies to the ordinary eye but very little. In the list that I presented to the Court the other day we have one machine on there which we have been at work on for seven or eight years to accomplish just that very thing" (R. Vol. 1, p. 491, lines 40–45; p. 492, line 1).

Mr. Warren testified that, "because conditions vary so in different factories," before the United Company adopts improved devices,—

"We will try out a machine with improved devices in one factory for several months, and then we give the machine a similar trial in some other factory on another kind of work, and we try it out in that way in six or eight different factories" (R. Vol. 1, p. 790, lines 7–14).

This testimony shows what Plant would have had to go through before he could have made his machines commercially successful, if indeed he ever could have done that. Mr. Howe thus summarized the situation:—

"To redesign and strengthen the machines would require first the making of working drawings and then changes in the patterns and tools for making the machines and making dies for parts that were to be drop forged, or else make the first machines by hand work in order to test them; it would require going back to first principles" (R. Vol. 1, p. 689, lines 1–6).

Mr. Warren testified:—

"Well, it would have taken him years to remedy those things. . . .

"*Q.* Couldn't it have been made a little heavier?

"*A.* When we say that, that leads to a change in some other part of the machine. It might finally mean a total reorganization of a machine to make it better.

"*Q.* But you don't mean to say, Mr. Warren, that that machine could not have been taken up by a mechanical expert or five mechanical experts, and those various defects taken out of it within a few months' time or a year's time, say?

"*A*. I think when they had done that they would probably have had a machine like ours" (R. Vol. 1, p. 809, lines 42–43; p. 810, lines 25–34).

F. Finding of the District Court as to the Character and Capacity of the Plant Machines.

"Whatever the merit of Plant's inventions, these machines in which he had first embodied them are not shown by the evidence to have been commercially successful in September, 1910, or to have been capable of such success in their then stage of development. They are shown to have been lightly built, not adapted to produce men's shoes, and by no means satisfactory in making women's shoes, the kind of work to which the Plant factory was devoted. The evidence is uncontradicted that, while operated there, they fell behind the United Company's machines, which they had supplanted, in efficiency,—that breaking down and defective work was more frequent with them,—and the cost per pair of making shoes with them distinctly greater. Though some of them, as later developed and improved by the United Company, proved to have merit, the most that can be fairly said of them in 1910, on the evidence, is that they were more or less promising experimental machines. There was no complete set of them for combined operation; for that purpose several important machines were yet to be developed. In the state in which the United Company took them over, they were not found capable of profitable use. Nothing is found in the evidence which affords reasonable support for the petitioner's contention that they were 'right at the threshold of extensive competition with the United Company'" (Dodge, J., R. Vol. 1, p. 1143).

3. CRUDE AND UNSATISFACTORY AS PLANT'S MACHINES WERE, HE HAD INCORPORATED IN THEM MANY VERY VALUABLE INVENTIONS WHICH WERE CAPABLE OF BEING USED IN THE UNITED COMPANY'S MACHINES.

While, as we have seen, Plant's machines were crude and not adapted for commercial use, Plant had nevertheless incorporated in them many extremely valuable inventions. Although the mechanical embodiments of those inventions in the Plant machines were also crude and unsatisfactory, the United Company's experts were able to see that the inventions

had great value and that when the Plant mechanisms had been reconstructed and reorganized to overcome their mechanical defects and to adapt them to the United Company's superior machines, those inventions would be of great value both to the United Company and its customers.

Mr. Winslow testified that the more important of the Plant inventions, "that were of special service in the development of our machinery," were those relating to the welt sewing machine, stitching machine, lasting machine, rough rounding machine and heel attaching machine (R. Vol. 1, p. 559, lines 11–13, 21–27). These inventions and numerous others, covered by forty-three of Plant's patents, are now embodied in twenty-six of the United Company's machines.

To explain here the nature and importance of inventions claimed in forty-three patents and to review the evidence regarding those inventions is of course out of the question. Accordingly we shall confine ourselves to a brief summary of the testimony regarding Plant's improvements on the welter and the outsole stitcher, the two machines which petitioner's patent counsel characterized as "the only indispensable machines required for the commercial bottoming of shoes by machinery" (R. Vol. 2, p. 2808, Int. 10).

The Plant Welter Inventions.

For the first time in the history of the industry Plant had embodied in a welt sewing machine means for cutting off the welt close to the end of the seam, for holding the end of the welt in proper position to start on the next shoe with minimum waste of welting, for measuring the welt and positively preventing waste, and, finally, means for automatically stopping the machine and casting off the last loop of thread from the barb of the needle. Always before, even in the United Company's new Model G Welter, it had been necessary for the operator to stop the machine by putting his hand on the belt pulley, first slowing up the machine, then stopping it, and finally turning the machine backward at such time and in such manner as to free the needle from the last loop of thread, in order to free the shoe from the machine. Then with a hand knife he cut the welt. In starting with the next shoe he had to hold the end of the welt with

his finger and this involved wasting about two inches of welting upon each pair of shoes, worth at least a quarter of a cent per pair,—more on men's shoes (R. Vol. 1, p. 488, lines 28–45; p. 489; p. 490, lines 1–7; p. 786, lines 29–46; p. 787, lines 1–3; p. 810, lines 43–44; p. 811, lines 1–8; Vol. 2, pp. 2259, 2260, 2263, 2268).

Mr. Warren reported to Mr. Winslow "that the advance made in the welter was very great" (R. Vol. 1, p. 786, lines 1–2). Mr. Winslow testified that he "studied those machines personally as an expert" and that he regarded those welter improvements "as of the very greatest practical importance and of very great value,"—"almost incalculable" (R. Vol. 1, p. 485, lines 15, 41–42; p. 488, line 32). Mr. Howard explained their importance and value in great detail and quoted typical claims from the Plant patents (R. Vol. 2, pp. 2259, 2265).

The Plant Stitcher Inventions.

The practical advantages of the Plant Stitcher improvements are explained in detail by Mr. Howard (R. Vol. 2, pp. 2296, 2298). The nature of these improvements is indicated by Mr. Warren (R. Vol. 1, p. 787, lines 16–23, 26–30) as follows:—

> "The stitcher was provided with a stop motion similar to that one on the welter, so arranged that the machine would always stop in a proper position to remove a shoe, and so that another could be inserted, and in this stopping it raised the presser-foot which helps hold the shoe in position. Before this it always had been necessary for the operator to stop the machine by hand—remove one hand from the shoe, stop the machine, and then raise the presser-foot so he could remove the work. . . . Also, under the old method, it was necessary for the operator to lift the presser-foot so he could introduce a shoe. Now, in this machine, after the shoe had been finished and removed, it was all ready to start again. This was a great saving in time and a great saving in the exertion of the operator."

Mr. Winslow testified:—

> "That was fundamental; it was a very important invention" (R. Vol. 1, p. 560, lines 11–12).

Speaking of the welter and stitcher inventions together, Mr. Warren testified:—

> "I was much impressed with the improvements. . . . I reported to Mr. Winslow that they were very valuable indeed. . . . I told Mr. Winslow that we should have them" (R. Vol. 1, p. 787, lines 34–35; p. 788, line 7; p. 809, line 35).

4. USE MADE BY THE UNITED COMPANY OF THE PLANT INVENTIONS.

The general policy which the United Company has followed in regard to the Plant inventions was set forth by Mr. Howe. He said that ever since the purchase the resources of the United Company's Experimental Department had been crowded to the full in the work of embodying the Plant inventions in the United Company's machines or building new machines to incorporate those inventions (R. Vol. 1, p. 670, lines 41–44; p. 671, lines 11–13).

Mr. Winslow testified (R. Vol. 1, p. 491, lines 12–14):—

> "We have offered every one of them to our customers as fast as we have perfected them, or where we have been able to take them without the necessity for perfection."

Mr. Warren testified that out of Plant's 69 machines and devices the United Company had so far made use of 30 and was still at work upon others which had not yet been satisfactorily worked out (R. Vol. 1, p. 799, lines 15–17).

The United Company adopted seventeen of the Plant machines, although they all required more or less development or improvement, and those machines have all been offered to the trade. Mr. Warren testified:—

> "Seventeen were adopted, but we found after adopting them that a number of them were not as good as we thought they would be, and especially when they were put on another kind of work. And the result is that several have been wholly reconstructed. Others we had to make some changes in to suit conditions that were different from the conditions in the Plant factory" (R. Vol. 1, p. 789, lines 33–39).

The United Company has also incorporated in its own machines thirteen devices which were found in the Plant machines. Mr. Warren said about these:—

> "We found many devices which would either assist the operator to do more work or better work, which we thought if they were embodied in our machines would be a great improvement, and we recommended that quite a number of those be adopted. And out of that number there were finally thirteen embodied in our machines. A great many more were tried but were found to be inoperative or not practical" (R. Vol. 1, p. 789, lines 17–24).

Striking illustrations of the United Company's aggressive work in perfecting the Plant inventions and incorporating them in its machines are afforded by the history of the Plant welter and stitcher inventions after the purchase.

The United Company immediately put to work six inventors to adapt the Plant welter improvements for the United Company's Model G Welter. They worked night and day and the result was the Model K Welter, which embodied all of the Plant inventions and also important improvements on them made by the United Company's inventors, and which was put out for commercial use in June 1911. On January 1, 1914, 1,024 of these Model K Welters were in use (R. Vol. 1, p. 810, lines 1–10; p. 812, lines 38–42; p. 817, lines 8–14; p. 863, lines 3–5; Vol. 2, pp. 2259, 2260, 2765). The advantages of these improvements as embodied in the Model K Welter will be referred to later (*infra*, pp. 506–510).

Immediately after the purchase five different inventors were put to work to adapt Plant's stitcher improvements to the United Company's Model K Stitcher. Their combined work resulted in the Model M Stitcher, which was first supplied to manufacturers in June, 1911, and of which 1,158 were in use on January 1, 1914 (R. Vol. 1, p. 863, lines 5–7; R. Vol. 2, pp. 2297, 2836 (42)). The advantages of the Plant improvements in that machine will be summarized later (*infra*, pp. 510–513).

The Mayo and Warren Report.

Immediately after the purchase of Plant's inventions two of the United Company's experts, Messrs. Mayo and Warren,

were sent to the Plant shoe factory to make a thorough examination of the Plant machines and the inventions incorporated in them and to recommend what should be done with each machine and each invention. Their entire time for eight weeks was spent in that work, and upon its completion on November 26, 1910, they submitted an exhaustive report (R. Vol. 1, p. 785, lines 35–43; p. 815, lines 43–44; p. 816, lines 1–2). Mr. Winslow testified that this report was made

> "to show what machines or improvements could be adopted to benefit our machines and in what respects. . . . Also to show if an invention in Plant's machines was in commercial shape or condition, or if it required and was advisable to try to develop it—that is to say, whether it gave promise of being of value to our customers in the trade" (R. Vol. 1, p. 594, lines 32–39).

The original signed report is Plaintiff's Exhibit 267, a physical exhibit. The typewritten matter in that report, but not the numerous illustrations, is reproduced in the record (R. Vol. 4, pp. 1396–1441). The letter which introduces the report (R. Vol. 4, p. 1395) shows how thoroughly their examination was conducted and how intelligently their report was prepared. Mr. Warren's testimony shows that the United Company has adopted practically all the machines and devices which they recommended. Could any doubt remain as to the United Company's motives in acquiring the Plant inventions, that doubt would be removed by this Mayo and Warren report and by the United Company's conduct in accordance with it.

5. THE ACQUISITION OF THE PLANT PATENTS BY THE UNITED COMPANY WAS A GREAT BENEFIT TO THE INDUSTRY.

A. Common ownership of the Plant patents and the United Company's patents made possible, first, the use of the valuable Plant inventions by shoe manufacturers without infringement of the controlling patents owned by the United Company; second, the incorporation of the Plant inventions in the superior machines of the United Company; and, third, further important improvements on those inventions by United Company inventors,—improvements which otherwise would never have been made.

The benefits to the industry which have resulted from common ownership of the Plant patents and the United Company's patents are strikingly illustrated by the testimony showing how the United Company has used and has improved upon the Plant welter and stitcher inventions.

Welter.

The testimony is uncontradicted that Plant's welter, incorporating his improvements, infringed United Company's patent No. 700,279, May 20, 1902, Winkley, which claimed a welt holder broadly (R. Vol. 2, p. 2262; Defs.' Ex. 273, R. Vol. 5, p. 739), and suits had already been brought by the United Company on that patent against Plant and the Plant Shoe Company (Defs.' Ex. 270, R. Vol. 5, p. 723). But the United Company had not succeeded in producing a commercially successful welt holder, the Winkley mechanism was only experimental, it did not include any means for either cutting or measuring the welt, and in Plant's improvements it was the combination of means for holding, cutting, and measuring that saved the welting (R. Vol. 1, p. 684, lines 10–24; p. 689, lines 20–29; p. 786, lines 13–18, 29–46; p. 787, lines 1–3; p. 816, lines 17–26; Defs.' Ex. 273, R. Vol. 5, p. 739). In Mr. Winslow's words,—

> "In a broad way it was a perfect deadlock. He had controlling patents for a practical way of doing it while we had the controlling patents of the invention itself" (R. Vol. 1, p. 488, lines 41–43).

Common ownership of the Winkley patent and the Plant patents removed this deadlock and made possible the use of these valuable improvements by shoe manufacturers without infringement. It also enabled the United Company to incorporate the Plant improvements in its own Model G Welter, which was much superior to Plant's (R. Vol. 1, p. 787, lines 36–37, 43–45; p. 809, lines 28–38; p. 815, lines 29–31; p. 818, lines 24–33), and which Mr. Winslow characterized as

> "the highest development of sewing mechanism for attaching the welt, innersole, and upper together that had been developed in the world up to that time" (R. Vol. 1, p. 560, lines 34–36).

The Plant welter was "constructed substantially on the lines of the United Company's 1899 machine" and was "not so satisfactory a machine as was the United Company's 1899 machine" (Vol. 2, p. 2266). Plant added these improved devices to the old type of machine (Warren, R. Vol. 1, p. 787, lines 6–7).

> "It was not, therefore, until these improvements were incorporated in the high speed Model G machine of the United Company that the advantages and utility of the improvements were fully realized" (Howard, R. Vol. 2, p. 2266).

This was an important development in the industry, but even greater advantages resulted. In the United Company's experimental work in adapting the Plant improvements to its Model G Welter,—

> "improvements were made which represent almost as important advances in the industry as did the Plant improvements" (Howard, R. Vol. 2, pp. 2260, 2261).

For example, in the use of the plant welter the operator had to step on a treadle to actuate the welt holder and cutter, while it is automatic in the Model K Machine,—the new United machine incorporating the Plant improvements,—"the machine itself operates it when the man gets ready to remove the shoe" (R. Vol. 1, p. 812, lines 3–4; R. Vol. 2, p. 2261). Again, the Plant mechanism for stopping the machine and freeing the shoe by casting off the loop of thread held by the needle was so constructed that the Plant machine had to be run "practically at

one speed all the time . . . or else it would stop" (R. Vol. 1, p. 818, lines 31–32, 37). This was bad, because it is essential that a welter have capacity for being run at a reduced speed around the toe, where the work is most difficult. The Model K Machine can be slowed down at any time when the operator desires (R. Vol. 1, p. 491, lines 6–7; p. 660, lines 3–4; p. 775, lines 26–28).

Also the mechanical embodiments of the Plant inventions in his machine were not commercially satisfactory.

> "The welter was defective in the stop motion and in the mechanisms for holding and cutting the welt. . . . The ideas were excellent, but they hadn't been carried out in such a manner that they could have been used in other factories" (Warren, R. Vol. 1, p. 797, lines 23–27).

These defects were all remedied when the Plant inventions were adapted to the United Company's machine.

> "We improved the stop mechanism very much, and also the cutting mechanism and the welt holder. We also made over the back gage and welt guide motion so as to put it on our machine in better shape than on the Plant machine" (Warren, R. Vol. 1, p. 798, lines 39–43).

The result of the incorporation of the Plant inventions in the United Company's machine in commercially successful constructions, with the important improvements made on them by the United Company's inventors, was the new Model K Welter, "a very much better machine" than either the United Company or Plant had before (R. Vol. 1, p. 799, lines 1–3). The record abounds with testimony to this effect. For example, McGaffee testified that in the Plant factory they "do 50 pairs of shoes a day more" on the Model K Welter embodying the Plant improvements than they did on the Plant welter, and that the operators can make a great deal more money (R. Vol. 1, p. 777, lines 24–32; p. 779, lines 42–44). Hazzard testified that in his factory the average wages of operators on the Model K Welter are 36 per cent. higher than the average wages of operators on the old model, although the piece price was higher on the old machine than on the new; that the average output of the old welter was 25 dozen pairs a day, while the average on the new welter is 40 dozen pairs per day; that the new welter sews a tighter seam; and that the saving in welting by the welt holding

and cutting device is at least half a cent a pair and amounts to $24 a day, five or six hundred dollars a year on each of their thirteen machines (R. Vol. 1, p. 646, lines 14–18, 41–44; p. 647, lines 1–3, 25–26, 41–44; p. 648, lines 6–7, 10).

Eaton, another manufacturer, testified:—

> "We have found that the saving in welting by the Model K welter, as compared with the Model G welter, was five per cent. under exactly similar conditions" (R. Vol. 1, p. 753, lines 6–8).

Allen testified that the new machine saves four inches of welting on a pair of shoes; that while on the old machine operators in his factory earned from $30 up to $40 a week, operators on the new machine had been earning over $50 a week (R. Vol. 1, p. 723, lines 1–2, 10–12).

Welch testified that in his factory they make a saving of a quarter of a cent per pair in the length of welting and also a saving in the width of welting which amounts to from one-quarter to three-quarters of a cent, according to the quality of the welting (R. Vol. 1, p. 710, lines 37–44).

Blagden, who had operated different types of welters since 1903, explained in detail the disadvantages and inconveniences of the old welter from the operator's standpoint. He said that the new machine

> "saves his time and saves his strength and quickens him in his work";

that on the old machine 25 dozen pairs were considered a good day's work, while an average day's work on the Model K Machine is 40 dozen pairs, and that he had done 65 dozen pairs in a day: that he earned 20 per cent. more on the Model K Welter than he did on the old welter and didn't have to work so hard, although the piece price on the old welter was about one-third more. He also said that there was a saving in both the length and width of the welting and a saving in thread on the new machine (R. Vol. 1, pp. 658–60).

Figuring the saving in welting at $500 per machine (which was Mr. Hazzard's minimum figure), the aggregate saving in welting alone effected by the 1,024 Model K Welters in use on

January 1, 1914 (R. Vol. 1, p. 810, lines 1–10), amounts to $512,000 per year. The Model K Welters were rapidly displacing the old machines and when the 2,527 machines which were out on March 1, 1911 (Defs.' Ex. 226, R. Vol. 5, p. 424) are all displaced, the saving in welting alone, figured on the same basis, will amount to $1,263,500 per year. Adding the large savings due to the greater capacity of the machine and the increase in the wages which were in consequence earned by the operators, the total economies effected for manufacturers and operators by each Model K Machine must be at least $800 per year. When the substitution of the new machines for the old ones has been completed, this saving will aggregate over $2,000,000 per year.

For an extended technical explanation of the commercial superiority of the Model K Machine see pages 2259–68 of Vol. 2 of the record. On January 1, 1914, 1,024 of the Model K Machines were being used (R. Vol. 1, p. 863, lines 3–4).

It is obvious that the industry would not have had this important machine with all these striking advantages if the Plant patents had not been acquired by the United Company. In no other way could it have been possible for shoe manufacturers to have a machine which embodied, first, the broad invention of the United Company's Winkley patent for holding the welt, which it had not made commercially successful; second, the valuable Plant inventions comprising the first practical mechanisms ever devised for holding, measuring, and cutting off the welt, and the combined stop motion and loop cast-off (all broadly claimed in four Plant patents) (R. Vol. 2, pp. 2262, 2263, 2266, 2267); and, third, the important improvements upon those Plant inventions made by the United Company's inventors, on which many applications for patents have been made (R. Vol. 1, p. 812, lines 42–44; Vol. 2, p. 2117).

Stitcher.

One of the two extremely valuable improvements in the Plant stitcher, the mechanism for automatically lifting the presser-foot to free the shoe from the machine when the machine stopped, infringed two of the United Company's patents and five allowed claims of an application filed in 1906 on which has been granted

patent No. 1,087,602, February 17, 1914, Nash (R. Vol. 2, pp. 2836 (67), 2836 (68); Defs.' Ex. 273, R. Vol. 5, p. 741).

On the other hand, the United Company had never had in its stitcher—even its new Model K Stitcher adopted in May, 1910 (R. Vol. 2, p. 2290),—any mechanism for automatically stopping the machine and lifting the presser-foot, or any mechanism for stopping the machine in proper position to permit the shoe to be removed and a new shoe put into the machine,—Plant's notable improvements (*supra*, p. 502).

Immediately after the acquisition of the Plant patents the United Company put to work five different inventors upon the problem of embodying these Plant inventions in satisfactory mechanical form and adapting them for the United Company's new Model K Stitcher (R. Vol. 2, p. 2297). That machine, after it was reorganized to embody these improvements, was named the Model M, and was first put into commercial use in June, 1911 (R. Vol. 2, p. 2836 (42)). On January 1, 1914, 1,158 Model M Stitchers, incorporating these Plant improvements, were in use (R. Vol. 1, p. 863, lines 5–6).

Mr. Howard's detailed statement of the advantages of the new machine as compared with the United Company's old machine (R. Vol. 2, pp. 2296–8) is strongly confirmed by the testimony of shoe manufacturers and machine operators.

For example, Eaton, a manufacturer, testified:—

> "Our stitcher will show an advance by comparison with the same operator under the same conditions a fifteen to twenty per cent. increased capacity over the old, because it is a higher speed machine and it takes less operations to work it" (R. Vol. 1, p. 753, lines 16–19).

Hazzard testified that on the Model M Stitcher, as compared with the old machine, there was

> "an increase in the average wage of about 24 per cent., while the piece price on the old model was 40 per cent. more than we are paying on the Model M" (R. Vol. 1, p. 647, lines 12–14).

He also said that this was not a fair showing because they had been educating nearly all of their operators, and that a compari-

son of the best operators on the old stitcher and on the new showed an increase in wages on the new machine of 45 per cent., with a piece price 40 per cent. less than that on the old stitcher (R. Vol. 1, p. 647, lines 21–23).

Ryan, a stitcher operator who had worked on the successive models of the United Company's stitcher and also on the Plant stitcher, explained in detail the difficulties in operating the old United Company machine and the advantages of the Model M Stitcher from the operator's standpoint (R. Vol. 1, p. 705, lines 1–38). He said that his average day's work on the Model M Stitcher was fifty pairs per day more than the average on the old machine, and further:—

> "The work on the Model M stitcher is a great deal easier. I earn more money. I will average fifty to seventy-five cents a day more on the Model M stitcher than on the old stitcher; and that is in less hours than I worked on the old stitcher" (R. Vol. 1, p. 706, lines 4–8).

McGaffee testified that

> "the operator could make a great deal more money on the United stitcher than he could on the Wonder Worker" (R. Vol. 1, p. 777, lines 29–31).

This great advance in the industry was made possible by the purchase of Plant's patents by the United Company. In a word, this is the story of the Model M Stitcher. Those valuable Plant improvements, embodied by him in a stitcher which was like the United Company's 1899 machine and, like that machine, operated at a speed of only 375 revolutions per minute (R. Vol. 1, p. 787, lines 31–32; p. 818, lines 15–16); which was not organized to sew shoes with extension edges, which nearly all welt shoes have, because such an organization would infringe patents of the United Company (R. Vol. 1, p. 775, lines 32–34; p. 780, lines 1–7; p. 818, lines 17–18, 20–23; R. Vol. 2, pp. 2283, 2762); and which was defective and frequently breaking (R. Vol. 1, p. 790, lines 30–31, 36–38; p. 815, line 14), "the weakest machine we had," "the one that caused the greatest trouble" (McGaffee, R. Vol. 1, p. 773, lines 37–38; p. 777, line 29), were incorporated by the United Company in its much superior stitcher, which operated at a speed of 540 to 550 stitches per minute (R. Vol. 2,

p. 2293), and in greatly improved mechanical constructions (R. Vol. 2, pp. 2836 (44), 2836 (45); R. Vol. 1, p. 798, lines 22–23).

That is, through common ownership of the United Company's patents which Plant infringed, Plant's patents on his improvements, and the United Company's patents and applications on the further improvements which it in turn made on Plant's inventions, the industry has been provided with the Model M Stitcher, in which all of these inventions and improvements are combined, and which is greatly superior both to Plant's machine and to any machine which the United Company had before (R. Vol. 1, p. 799, lines 1–3).

This welter and stitcher situation was thus summarized by Mr. Warren, from the standpoint of the practical expert:—

> "Assuming that each party had its patents on its respective inventions and devices, neither party could have accomplished the development of the machine which we have now developed, either as a stitcher or a welter, without the aid of the other; nor could either party have developed so satisfactory a machine" (R. Vol. 1, p. 799, lines 4–9).

And it will be remembered that in accordance with the United Company's invariable practice the new welters and stitchers, containing all these valuable improvements, were substituted for the older models without any charge whatever and without any increase in royalty, although the Model G Welter, previously the United Company's standard welter, had been put out only since October, 1908, and the Model K Stitcher, formerly its standard Stitcher, had been put out only since May, 1910 (R. Vol. 2, pp. 2254, 2290).

The Other Plant Inventions.

In addition to the Plant welter and stitcher improvements the United Company, as already stated, has adopted seventeen of the Plant machines and thirteen of his devices and improvements, with the result that the inventions of forty-three of Plant's patents are incorporated in twenty-six of the United Company's machines (R. Vol. 1, p. 799, lines 13, 14; Defs.' Ex. 342, R. Vol. 5, p. 949). The Plant purchase has made possible the use of these machines and devices by shoe manufacturers without in-

fringement of the United Company's patents and has also cleared the way for the reconstruction of some of the machines and the changes in others which were found to be necessary to make the machines commercially successful (*supra*, pp. 503–504).

B. Chaotic conditions in the shoe industry have been averted by common ownership of the patents of the United Company and the Plant patents.

As was found by the District Court,—

> "And between Plant, or concerns wherewith he was identified, and the United Company there were pending interferences, claims of infringement on both sides, and pending infringement suits, raising questions relating to his or its patents so numerous, complicated and important as to threaten interminable controversy" (Dodge, J., R. Vol. 1, p. 1145).

(1) Infringement of the United Company's Patents by Plant.

Plant had patterned his machines after the United Company's machines. The welter and stitcher were substantially the same as the machines which the United Company had been putting out in 1899, with the addition of Plant's improvements, fifteen other Plant machines were "practically duplicates" of the United Company's machines, and nearly all "had a family resemblance to the United Company's machines" (R. Vol. 1, p. 485, lines 29–31; p. 668, lines 42–45; p. 669, line 1; p. 789, lines 13–16; p. 814, lines 22–23; p. 818, lines 15–16, 24–26; Vol. 2, p. 2266).

> "He had taken our machines, whether he had a right to or not, and had made certain improvements on them" (Howe, R. Vol. 1, p. 669, lines 17–18).

With this situation extensive infringement of the United Company's patents was to be expected.

Defendants' patent expert Howard testified that in his opinion 37 of Plant's machines, including practically all of his important machines, infringed claims in 99 patents and three pending applications owned by the United Company, amounting in the aggregate to 546 claims; and that many claims were infringed

by more than one machine, with the result that there were 708 distinct cases of infringement of United Company's patents by Plant machines (R. Vol. 1, p. 799, lines 31–44; p. 800, lines 1–6; p. 801, lines 26–39; Defs.' Ex. 273, R. Vol. 5, p. 750). Defendants' Exhibit 273 (R. Vol. 5, p. 733), Mr. Howard's detailed statement of these infringements, shows their serious character.

During the trial counsel for petitioner repeatedly stated that it was their intention to introduce testimony to contradict this evidence (R. Vol. 1, p. 394, lines 26–29; p. 800, lines 23–30; p. 803, lines 26–27, 38–40), and they secured an opportunity to do so by the order of February 10, 1914 (R. Vol. 1, pp. 984, 985).

All of the Plant machines were placed at the disposal of petitioner's counsel and its patent expert, and, assisted by Mr. Warren, they made an extended investigation of the machines (R. Vol. 1, p. 984, lines 24–39; Vol. 2, p. 2836 (156–159)); but no attempt to controvert this testimony was made by petitioner. It is submitted, therefore, that for the purposes of this suit defendants have proved these infringements. In fact, Mr. Gregg said during the trial—

> "If we don't contest it then the case rests . . . that there was an infringement by Plant" (R. Vol. 1, p. 394, lines 40, 43).

Eight infringement suits against Plant and ten suits against the Plant Shoe Company had already been begun, and bills of complaint had been prepared and signed in suits on six more patents (R. Vol. 1, p. 802, lines 7–11; Defs.' Ex. 270, R. Vol. 5, p. 723). For many months nearly all of Mr. Howard's time and a large part of the time of his associates had been spent on these infringements, and the United Company was "ready to go ahead" with a large number of suits (R. Vol. 1, p. 801, lines 5–7; p. 822, lines 3–7). Mr. Winslow testified:—

> "It was our intention to bring suits to protect our rights and undoubtedly we should have done so" (R. Vol. 1, p. 566, lines 38–39).

There was also a suit pending against the Plant Shoe Company and Plant for the purpose of enforcing the contracts which the Shoe Company had made with the United Company and which it had violated by substituting Plant's machines (R. Vol. 1, p. 688, lines 1–8; P.'s Ex. 162, a physical exhibit).

During the negotiations between Mr. Plant and Mr. Winslow, Plant expressed great concern over these suits and repeatedly stated that his refusal to allow an examination of his machines by the United Company's experts was due to his fear that additional infringement suits would be brought as a result of such an examination, and he stated that his counsel refused to sanction the examination for that reason (R. Vol. 1, p. 480, lines 15–22, 44–45; p. 481, lines 1–2, 45–46; p. 482, lines 6–8; p. 577, lines 29–33; p. 609, lines 38–42; p. 611, lines 38–45).

> "He seemed to be quite fearful that the experts would be of great assistance in the patent suits that were being brought and that were likely to be brought" (Endicott, R. Vol. 1, p. 580, lines 24–26).

So great was Plant's concern over these infringements that he made it a condition of the purchase that the United Company should release and discharge him from "claims of infringement of Letters Patent by said Plant" (P.'s Ex. 132, R. Vol. 4, pp. 932, 934; P.'s Ex. 139, R. Vol. 4, p. 1039).

(2) Infringement of Plant's Patents by the United Company.

Mr. Howard testified that in his opinion fifteen of the United Company's machines infringed twenty Plant patents. Defendants' Exhibit 274 (R. Vol. 5, p. 750) is his detailed statement of these infringements.

These infringements were due to the fact that for several years Plant's inventive work and that of the United Company's inventors had been going on simultaneously with the result that in a number of instances the United Company had embodied inventions in its machines which were later found to infringe Plant's patents (Winslow, R. Vol. 1, p. 870, lines 43–44; p. 871, lines 1–9; Howe, R. Vol. 1, p. 877, lines 12–26). In this embarrassing situation were involved some of the United Company's most important machines, such as its new Model K Outsole Stitcher, its No. 5 Lasting Machine, its new Model B Heel Attaching Machine, its American Lightning Nailing Machine, its new Model E Rounding and Channeling Machine. The serious character of these infringements is shown by testimony of Mr. Browne, Mr. Warren, and Mr. Howard (R. Vol. 2, pp. 2836 (125) (130–135) (154–156); Defs.' Ex. 274, pp. 751–754).

Ample opportunity was afforded petitioner's counsel and its patent expert, Mr. Chapman, to examine these fifteen infringing United Company machines, and Mr. Chapman did examine them (R. Vol. 2, pp. 2836 (156–159)), but he took issue with Mr. Howard as to only six. Mr. Chapman's testimony was completely answered by the noted patent expert Arthur S. Browne, who agreed with Mr. Howard's views as to infringement in every instance (R. Vol. 2, pp. 2836 (123–153)). It is submitted that Mr. Browne's testimony, supporting the testimony of defendants' expert in all respects and disagreeing with all the opinions expressed by petitioner's expert, establishes a preponderance of evidence which entitles defendants to claim that for the purposes of this case it has been proved that those six United Company machines, as well as the other nine, infringed Plant's patents. At the end of this discussion (*infra*, pp. 536-538) attention will be called to many misstatements as to facts made by Mr. Chapman in his testimony.

(3) Interferences.

There had been declared by the United States Patent Office 23 interferences between patent applications owned by Plant and applications owned by the United Company (R. Vol. 1, p. 819, lines 23–31; p. 846, lines 14–17; Defs.' Ex. 272, R. Vol. 5, p. 730).

Intolerable Conditions would have Resulted if the Plant Purchase had not been Made.

It cannot be doubted that if Plant had kept on he would have enforced his rights under his patents and would have brought suits on account of the infringements by the United Company's machines; indeed, his intention to bring suits was asserted over his signature in Plaintiff's Exhibit 137, a release signed by Plant on September 30, 1910:—

> "I . . . have planned to bring certain suits against said United Shoe Machinery Company" (P.'s Ex. 137, R. Vol. 4, p. 1037).

Mr. Winslow and Mr. Howe fully expected that Plant would bring suits against these infringing machines (R. Vol. 1, p. 862, lines 25–26; p. 877, lines 27–30; p. 878, lines 1–2).

The inconvenience and embarrassment to which the United Company and its customers would have been put if Plant had succeeded in litigation against these machines would have been intolerable. It might well have involved replacing thousands of machines or very likely discarding them altogether,—in any event endless experimental work in developing organizations which would avoid infringement, at an expense, to say nothing of the cost of the litigation, which would have mounted to a staggering sum. No wonder the United Company took pains to obtain from Plant a release from

> "all manner of actions and causes of action . . . and demands of every name and nature in law or equity" (P.'s Ex. 137, R. Vol. 4, p. 1037).

On the other hand, it is difficult to imagine the chaotic condition which would have resulted if Plant had put his machines in a number of shoe factories. Mr. Winslow declared:—

> "It was our intention to bring suits to protect our rights, and undoubtedly we should have done so" (R. Vol. 1, p. 566, lines 38–39).

The record shows that this intention was being aggressively carried out. Many suits had already been brought, a considerable number of bills of complaint had been prepared and were ready for filing, counsel had been engaged for months in work on these infringements and were "ready to go ahead" on nearly all of them before the date of the purchase (R. Vol. 1, p. 800, lines 36–44; p. 801, lines 1–11; p. 821, lines 20–34; p. 822, lines 1–7; p. 877, lines 5–12, 31–33).

As to these patent controversies the District Court held:—

> "The evidence shows also, without serious contradiction, that one result of the bargain made with Plant was to relieve the United Company from an amount of litigation, then pending or in prospect, which would otherwise have burdened and hindered it to an extent far greater than it had ever had reason to apprehend from any litigation with which it had before been concerned.
>
> "A suit by it to restrain the Plant Company from breaking the leases of its machines, displaced in order to instal the Plant machines as above, had been pending since May, 1910. And between Plant or concerns wherewith he was

identified and the United Company there were pending interferences, claims of infringement on both sides, and pending infringement suits, raising questions relating to his or its patents, so numerous, complicated, and important as to threaten interminable controversy" (Dodge, J., R. Vol. 1, p. 1145).

The evidence which we have just reviewed proves that the expectations of the United Company in purchasing Plant's patents were fully realized. These great benefits were anticipated and were the reasons for the purchase, as we shall now show.

6. THE UNITED COMPANY ACQUIRED THE PLANT PATENTS BECAUSE ITS OFFICERS BELIEVED THAT THE ACQUISITION WOULD BE OF GREAT BENEFIT TO THE SHOE MANUFACTURING INDUSTRY.

A. The controlling consideration was the value to the shoe industry which the valuable Plant inventions would have if incorporated in the United Company's superior machines.

Typical of numerous statements in Mr. Winslow's testimony is the following:—

> "My entire and only interest was whether those patents could be made of benefit to our customers and the trade. If they could be of benefit, if they were of large benefit, and the trade ought to have them, I should be very glad to buy them and embody them in our machines for what I thought they were worth, irrespective of what they had cost him,—but I would not pay a cent more for them" (R. Vol. 1, p. 482, lines 26–32).

Mr. Howe testified:—

> "After we examined it, Mr. Winslow and I . . . agreed that Plant had some very valuable improvements that if we could get the ownership of at the right price could be introduced into our machinery in conjunction with our own experiments in the way of improvements that had then been under way for several years, and that by utilizing them in that way Plant's inventions could be made very valuable" (R. Vol. 1, p. 670, lines 29–37).

Mr. Endicott testified that Mr. Winslow told Mr. Plant that

> "he could not consider the proposition at all until he knew the value, and he stated then that he meant the value to the advancing of the art of shoemaking" (R. Vol. 1, p. 577, lines 12–14),

and that at a later interview Mr. Winslow said that he

> "would only purchase it if it was of value—if it was a good, fair offer at the price and was of value to the shoe trade and to the United Company" (R. Vol. 1, p. 582, lines 14–16).

Mr. Winslow's attitude is further shown by his refusal to consider the purchase at all

> "without seeing the machines, having them fully examined by our experts, and a full report made to me by them as to the advantages that there might be in those machines.
>
> "I always declined to have anything to do not only with buying it but considering his propositions without a full and complete right to examine his machinery, determine the value of the inventions—the patents that he had" (R. Vol. 1, p. 482, lines 20–24; p. 484, lines 16–19).

Mr. Howe confirms this:—

> "At these conferences and all along Mr. Winslow always took the position of declining to discuss prices or a price for the machinery and inventions until he had convinced himself by experts, in whom he had confidence, as to the value of these inventions to the United Shoe Machinery Company and to its lessees, . . . declined to have anything to do with any proposition unless he could have the machines examined by our experts and demonstrate that they would be of value to the United Company and its lessees" (R. Vol. 1, p. 670, lines 18–22; p. 687, lines 20–23).

Mr. Herrick testified that at a conference which he attended Mr. Winslow took the position

> "that there would be no consideration of that machinery without a careful examination by men who were competent to value what Mr. Plant had, and that there would have to be time enough for that, and that there would have to be a thorough examination,"

and that Mr. Winslow said to Mr. Plant:—

> "'If we see it has got value, we are perfectly ready to negotiate on the basis of whatever actual value it has got,

and there will be no hurry about it, and we will not deal at all without seeing it, and then we will only deal after the examination, and if we can't have the examination we won't deal at all'" (R. Vol. 1, p. 604, lines 17–21, 41–44; p. 605, lines 1–2).

Mr. Endicott and Plant's intermediary, Smith, testified to the same effect (R. Vol. 1, p. 577, lines 12–14; p. 772, lines 33–35).

As to the instructions given by Mr. Winslow to the experts, when Plant, after repeated refusals, had finally decided to permit the examination, Mr. Warren testified that he

> "was told to go with the rest of the gentlemen that were there to the Plant factory and look at any or all of the machines in that factory, and examine them to see what features there might be, if any, about the machines that would be valuable if added to our machines, or if they would be any addition in any way to the manufacture of shoes" (R. Vol. 1, p. 785, lines 27–32).
>
> "My orders were to look at the machines and tell Mr. Winslow, or report, what I could see in the machines that would be of value or that would improve our machines, to improve the art of making shoes" (R. Vol. 1, p. 814, lines 38–41).

The District Court found:—

> "The agreement to take the patents and inventions was not made until after a careful examination and report as to their merits. The belief thereon founded that, used as above, they would be worth acquiring upon the terms proposed, is shown to have been justified by the result, and the acquisition cannot be criticised so far as it was occasioned by that belief. As developed and added to its own machines by the United Company, some of the inventions acquired have proved to be of a value such as fairly justifies their claim that the patents acquired were the controlling feature of the purchase" (Dodge, J., R. Vol. 1, p. 1145).

B. Another consideration was the avoidance of endless litigation and intolerable conditions in the industry which would have resulted from the hopelessly complicated patent situation.

We have already shown (*supra*, pp. 514–519) that there was uncontradicted testimony that there were 708 distinct cases of infringement of the United Company's patents by thirty-seven

Plant machines; that the evidence shows that fifteen of the United Company's machines infringed twenty Plant patents,—evidence contradicted by petitioner as to only six machines, and as to those amply corroborated; that twenty-three interferences had been declared by the United States Patent Office between patent applications owned by Plant and applications owned by the United Company. We have explained that many suits had been brought against Plant for infringement by his machines, and that the United Company was prepared and intended to bring a large number of additional suits.

Before the Plant purchase all these patent complications were the subject of extended discussion by Mr. Howe, Mr. Howard, and other counsel with Mr. Winslow (R. Vol. 1, p. 821, lines 20–34; p. 862, lines 11–21; p. 877, lines 31–33).

Mr. Winslow testified (R. Vol. 1, p. 862, lines 24–31):—

> "The confusion and conflict in the patent situation of my own company and of Mr. Plant, the chaos which might result from conflicting claims and constant litigation, was a substantial consideration in my mind, affecting my negotiations or willingness to negotiate with Mr. Plant, and when Mr. Plant offered to me the patents at a price which to my mind was less than their value to the art of shoe manufacturing when combined with our machines, it might be said to be a controlling factor."

Mr. Howe testified:—

> "There would have been a large amount of litigation both by the owners of the Plant patents against the United Company, and by the United Company against Plant machines. . . . This chaotic condition which might result from the patent situation had considerable weight in my mind. Of course, the controlling consideration for the purchase of the Plant patents, was the value, the great value, it seemed to me, of his inventions, especially when combined with and merged in our machines. Then another consideration for the purchase was this avoidance of litigation either by ourselves against him, which would have cost a great deal of money and would have annoyed the trade very much, the shoe manufacturers, and also the cost and annoyance of having to be sued by Plant" (R. Vol. 1, p. 877, lines 28–31, 36–44; p. 878, lines 1–2).

It was held by the District Court (Dodge, J., R. Vol. 1, p. 1145):—

> "It was part of the bargain with Plant, or followed from it as a result, that the above controversies were settled or avoided. That the prospect of accomplishing this result was a further normal, natural, and powerful inducement to the agreement made with him cannot be reasonably doubted. In so far as the agreement was thus intended, no criticism of it can be valid."

7. THE PLANT PATENTS WERE WORTH MORE THAN THE PRICE PAID FOR THEM.

For the Plant inventions and patents and for 60 per cent. of the stock of the Thomas G. Plant Company, the shoe manufacturing concern, the United Company paid Plant $6,000,000, and of this amount Mr. Winslow considered that $2,500,000 ($1,250,000 in United Company stock at twice par) was paid for the Plant patents and inventions (R. Vol. 1, p. 490, lines 35–39; p. 569, lines 17–22; P.'s Ex. 132, R. Vol. 4, p. 935).

The stock of the Shoe Company was purchased because Plant refused to sell the inventions unless that stock were also purchased. He wanted to get out of business and retire (R. Vol. 1, p. 486, lines 2–7; p. 487, lines 11–16; p. 580, lines 36–39; p. 603, lines 26–30; P.'s Ex. 132, R. Vol. 4, p. 932). Mr. Winslow testified (R. Vol. 1, p. 568, lines 14–16):—

> "I did not want the shoe manufacturing stock, but at the price it was offered I thought it was a good bargain."

Mr. Winslow valued the shoe company stock purchased at $3,500,000 (R. Vol. 1, p. 490, lines 35–36). This seems a conservative estimate as the company was extremely prosperous. Its earnings for the past four years had averaged $738,000 annually and for the year preceding the use of Plant's own machinery had amounted to $1,122,196.28. These figures are taken from a sworn statement by a public accountant (P.'s Ex. 132, R. Vol. 4, pp. 1013–15). Mr. Winslow required Plant to guarantee the accuracy of that statement (R. Vol. 1, p. 496, lines 21–27; P.'s Ex. 132, R. Vol. 4, p. 936).

Plant owned and sold 60 per cent. interest in the stock of the company. Sixty per cent. of the average earnings for the past four years amounted to $442,800 annually. Capitalized at 10 per cent. this would show a value for the Shoe Company's stock which was purchased of $4,428,000.

The District Court held (Dodge, J., R. Vol. 1, pp. 1144–5):—

> "That it was of great value is shown beyond question by the dividends then and afterwards paid on the stock acquired by the United Company. These, and the ultimate disposition of the stock itself, afford every reason to believe its actual value when acquired sufficiently great to reduce the actual cost of the patented improvements also acquired to a comparatively small proportion of the total payment made to Plant."

Assuming, however, that the Shoe Company's stock was worth no more than $3,500,000, this would leave $2,500,000 to represent the patents. They are undoubtedly worth more than this to the United Company.

Mr. Winslow testified that to his mind this price was "less than their value to the art of shoe manufacturing when combined with our machines," that he would have considered them a very cheap purchase at a sum "much in excess of that price," that he would be "very glad to buy the same value next week," and that

> "if my judgment hadn't been that they were worth more than we paid for them, we never should have bought them" (R. Vol. 1, p. 490, lines 28–34; p. 569, lines 22–23; p. 862, lines 29–30).

Mr. Warren testified that it was his opinion and that soon after the purchase he told Mr. Winslow that the improvements on the *welter and stitcher alone* were worth all Mr. Winslow gave for the entire property (R. Vol. 1, p. 788, lines 8–10; p. 813, lines 6–9).

The District Court held (Dodge, J., R. Vol. 1, p. 1145):—

> "Taking the transaction as a whole, if the total amount paid by the United Company was large, the total value of all that was received in exchange also appears, not as matter of opinion merely, but by actual results shown, quite suffi-

cient to negative any claim that the defendants paid an exorbitant price for what they got.

"The evidence that among these patented improvements obtained from Plant there were enough of sufficient value in the defendants' hands and used as they only could have used them in further developing and perfecting the machines they were then producing or trying to produce, to make this part of the total acquisition extremely profitable to the United Company was not met by any sufficient proof to the contrary."

8. THAT THE UNITED COMPANY PURCHASED THE PLANT PATENTS BECAUSE IT WAS BELIEVED THAT THE PURCHASE WOULD BE A GREAT BENEFIT TO THE SHOE INDUSTRY, AND FOR NO OTHER REASON, IS FURTHER SHOWN BY THE HISTORY OF THE NEGOTIATIONS.

The United Company never approached Plant in any way directly or indirectly with reference to acquiring either his patents or his stock in the Plant Shoe Company. There is no evidence that before Plant made his overtures the United Company had ever considered acquiring his patents.

Negotiations were Opened by Plant.

Plant asked Henry B. Endicott, a shoe manufacturer, to help him make a sale of his patents to the United Company, and he offered Mr. Endicott a commission of $250,000 if he would effect the sale. He later increased that offer to $500,000 (Endicott, R. Vol. 1, p. 576, lines 33–43; p. 580, lines 16–18).

Accordingly Endicott invited Winslow to meet Plant at Endicott's house. That meeting was held in June, 1910 (Winslow, R. Vol. 1, p. 479, lines 27–40; Endicott, p. 577, lines 1–3).

At this first meeting, after explaining the merits of his machines, claiming that they were wonderful and very valuable, Plant offered to sell his patents for $6,000,000 and said that at the end of the week the price would go up $500,000 (Winslow, R. Vol. 1, p. 479, lines 41–45; p. 480, lines 1, 29–32; Endicott, p. 577, lines 6–10).

From the Start Winslow Insisted that He would not Purchase Plant's Patents until Their Value had been Determined by an Expert Examination, and then only if They would be of Value to the Shoe Industry.

Winslow told Plant that he could form no opinion regarding the value of Plant's inventions until his experts had examined Plant's machines. He said to Plant that

> "it was the value of the patents to our customers and the trade, the art of making shoes, that I was interested in, and when I could know what he had, why, then I could know what I thought they were worth to me" (R. Vol. 1, p. 480, lines 4–6, 34–38).

Endicott testified that at this interview Winslow told Plant that

> "he could not consider the proposition at all until he knew the value, and he stated then that he meant the value to the advancing of the art of shoemaking" (R. Vol. 1, p. 577, lines 12–14).

At this interview Plant questioned whether the United Company's mechanical experts ought to see his machines, fearing that infringement suits might be brought as a result of such an examination. The interview was adjourned with the understanding that Plant would consult his attorneys in New York as to an examination by experts (Winslow, R. Vol. 1, p. 480, lines 6–9, 15–22).

Winslow Continues to Insist that He would not Purchase without an Examination and not unless Plant had Improvements that would be of Value to the Industry.

When the discussion was resumed on June 23, 1910, at a meeting arranged by Mr. Endicott, Plant said that he could not consent to the United Company's experts seeing his machines; that his New York attorneys did not agree to it. He threatened that if Winslow did not trade with him without seeing his machines he would publish advertisements which would attack the United Company and its methods of doing business and also

would publish letters from attorneys. At both interviews nothing but Plant's inventions and patents was discussed. The Shoe Company stock was not mentioned (Winslow, R. Vol. 1, p. 481, lines 4–46; Endicott, p. 577, lines 15–28; p. 586, lines 43–45; p. 587, lines 1–4). This interview was concluded by this statement to Plant by Winslow:—

> "I said that of course I could not consider trading with him without seeing his machines and I was not interested in what he had unless he had improvements that would be of value to our customers. I was very sorry, but I could not do any business" (R. Vol. 1, p. 481, lines 41–44).

The Interview on June 27.

At the next interview, arranged by Endicott, on June 27 Plant said that his price was now $6,500,000 and that it would be $7,000,000 the next week. Plant again indicated that he desired very much to sell his patents and inventions, but was very reluctant to have the United Company see his machines. He made a proposition that the United Company should give him a million dollars and two of its officers could then examine his machines. Of this proposition Winslow said:—

> "If we did not buy, the million dollars was to be forfeited to Mr. Plant, so that a look at his machines would have cost us a million dollars.
>
> "I did not accept that proposition."

Winslow repeated that he would not even consider Plant's offers without a thorough examination to determine the value of the inventions (Winslow, R. Vol. 1, p. 482, lines 1–32; Endicott, p. 587, lines 4–9).

Endicott then suggested that Messrs. Keith and Hanan, both shoe manufacturers and directors of the United Company, should examine the machines and decide whether it would be right for Winslow to pay a million dollars for the option in order to get an opportunity for his mechanical experts to examine the machines; but Keith and Hanan refused to accept this responsibility (Winslow, R. Vol. 1, p. 482, lines 33–45; p. 483, lines 1–2; Endicott, p. 577, lines 29–45; p. 578, lines 1–9).

Winslow again Breaks off Negotiations.

Winslow then notified Endicott that

> "in view of the fact that Mr. Plant would not allow us to have our experts examine his machines we should drop all negotiations" (Winslow, R. Vol. 1, p. 483, lines 11–12).

Endicott confirms this (Endicott, R. Vol. 1, p. 578, lines 10–15).

This ended Endicott's connection with the negotiations as Plant's representative. The next day he called upon Winslow, told him he believed the United Company ought to have Plant's patents for the benefit of the industry, stated that if he had been a director he would have been willing to take the responsibility which Keith and Hanan refused to take, and suggested that if the United Company wished to elect him a director he would be willing to share that responsibility and examine the machines with Keith and Hanan. He told Winslow that he was so strongly convinced that the United Company ought to have the Plant inventions for the benefit of its customers that he wanted to do everything he could to bring that about. This statement was based on the report of Endicott's experts, who had examined Plant's machines, that there were many things in them which when combined with the United Company's machines would make them more valuable (Winslow, R. Vol. 1, p. 483, lines 15–35; Endicott, R. Vol. 1, p. 578, lines 19–31; p. 585, lines 24–28).

In accordance with Mr. Endicott's suggestion he was elected a director of the United Company and he thereupon notified Plant that he could no longer act in Plant's interest and that Plant's agreement to pay him a commission was terminated (Winslow, R. Vol. 1, p. 479, lines 29–32; p. 483, lines 26–43; Endicott, p. 579, lines 3–13).

Endicott, Keith, and Hanan, with Endicott's practical men, then examined the Plant machines on July 5 and they reported that evening at a meeting of the officers and counsel of the United Company. Endicott was in favor of putting up the million dollars, and Keith and Hanan were against it (Winslow, R. Vol. 1, p. 483, lines 44–45; p. 484, lines 1–15; Endicott, p. 579, lines 28–32).

Winslow once more Breaks off Negotiations.

Winslow testified:—

> "What was decided then was to decline to purchase, without seeing the machines, having them fully examined by our experts, and a full report made to me by them as to the advantages that there might be in those machines."

That decision was communicated to Plant (Winslow, R. Vol. 1, p. 484, lines 16–21).

Plant Employs Smith to Effect a Sale.

Harry A. Smith, of Worcester, Mass., testified that he had frequently argued with Plant that his patents and the United Company's patents ought to be put together so that the trade could get their value and that he had offered his services as an intermediary in effecting a sale to the United Company (R. Vol. 1, p. 769, lines 1–8, 19–25; p. 770, lines 14–20; p. 771, lines 26–29).

On July 21, 1910, Plant telephoned Smith from New York and asked him to come to New York to see him. Smith went to New York and Plant told him that he had been negotiating with the United Company and that the negotiations had been broken off. Plant then suggested to Smith for the first time selling his interest in the shoe factory as well as his patents. Plant asked Smith to get him in touch with Mr. Barbour, vice-president of the United Company, and Mr. Herrick, one of its counsel (R. Vol. 1, p. 769, lines 26–45; p. 770, lines 1–13, 34–40).

Smith Gets Plant in Touch with Barbour, Vice-President of the United Company.

Accordingly Smith first arranged an interview with Barbour, and Plant spent six hours talking to Barbour about the value of his inventions. Smith testified that they also saw Barbour the next day and that Barbour then decided to come to Boston to take the matter up with the directors of the United Company (R. Vol. 1, p. 770, lines 21–33; p. 771, lines 1–4).

Smith Gets Plant in Touch with Herrick, Counsel for the United Company.

Smith went to Mr. Herrick's summer home and also to his office in Boston and asked him to meet Plant. Herrick told him he would meet Plant if Plant's counsel approved, and Smith arranged for a meeting between Plant and Herrick in the latter part of July. Plant told Herrick that he wished to sell what he had to the United Company. Plant still objected to an examination of his machines through fear of infringement suits (Herrick, R. Vol. 1, p. 602, lines 17–40; Smith, p. 771, lines 5–6).

Shortly after Plant asked Herrick to go out to his shoe factory and took Herrick over the factory. Plant was still unwilling to have an examination. Herrick testified:—

> "I told him that there could be no negotiations excepting on the most careful examination and that there could be no agreements whatever as to bringing any suits."

At this interview Plant said that "he was anxious to get out of business" and that he would like to sell his interest in the shoe business as well as his patents and inventions. He said that he would like to retire from business and

> "that he had always planned to so arrange himself that he would be free to sell out to the United Shoe Machinery Company" (Herrick, R. Vol. 1, p. 603, lines 1–13, 20–34).

Smith Sees Winslow.

Smith saw Winslow on the 6th or 8th of August. Winslow told him that if Plant's patents had value he would look at them for his company, but that he would never buy them until he had looked at them (Smith, R. Vol. 1, p. 771, lines 6–7; p. 772, lines 29–35).

Plant Asks Endicott to Arrange Another Meeting with Winslow.

Early in September Plant saw Endicott and told him that he would make one more throw of the dice if Endicott was willing to arrange a meeting for him with Winslow. Plant told Endicott that his price was $6,500,000, but that he would give

Endicott all that he got for it over $6,000,000. Endicott of course told him that he could not accept any commission. Plant did not say anything about selling his shoe company stock (Endicott, R. Vol. 1, p. 580, lines 3–19, 31–33).

The Meeting on September 13.

At Plant's request Endicott arranged a meeting on September 13. Plant, Winslow, Endicott, and Herrick were present. At that interview Winslow again told Plant that he would not consider any proposition or carry on any negotiations unless Plant would permit the United Company's experts to examine his machinery and ascertain the value of his inventions to the art of shoemaking, and that that was all he was interested in (Winslow, R. Vol. 1, p. 484, lines 26–35; Endicott, p. 580, lines 20–30). Herrick testified that Winslow told Plant

> "that there would be no consideration of that machinery without a careful examination by men who were competent to value what Mr. Plant had, and that there would have to be time enough for that, and that there would have to be a thorough examination,"

and that the United Company was ready to negotiate on the basis of the actual value of Plant's inventions, but only after an examination, and that if they couldn't have the examination they wouldn't deal at all (Herrick, R. Vol. 1, p. 604, lines 10–21, 41–44; p. 605, lines 1–2).

After a final statement by Winslow that he would have no further negotiations without an examination of Plant's machines, Plant consented to the examination on the understanding that no more suits for infringement of the United Company's patents should be filed for two weeks (Winslow, R. Vol. 1, p. 484, lines 35–45; p. 485, lines 1–6).

The Examination of Plant's Machines.

On September 14 and 15 Messrs. Winslow and Howe, with a committee of machinery experts and patent experts, went to the Plant shoe factory and examined the machines embodying Plant's

inventions. The experts continued their examination on the 16th. They reported to Mr. Winslow each night (Winslow, R. Vol. 1, p. 485, lines 4–14; p. 559, lines 34–36).

The Meeting on September 16.

Plant, Endicott, and Winslow met on September 16 after the examination by the experts. Plant then said that he wanted to get out of business altogether and offered to sell his patents and his stock in the Plant Shoe Company, 60 per cent. of its total capital stock, for $8,000,000 or $8,500,000. Winslow told him that that was an impossible figure and that that price didn't interest him. That ended that interview (Winslow, R. Vol. 1, p. 486, lines 1–44; Endicott, p. 580, lines 34–45; p. 581, lines 1–13).

The Meeting on September 20.

Plant asked Endicott to arrange another interview with Winslow. Endicott arranged one on September 20 at which Plant, Winslow, Herrick, and Plant's attorney Carr were present (Winslow, R. Vol. 1, p. 487, lines 1–10; Endicott, p. 581, lines 30–39; Herrick, p. 605, lines 34–37).

At this meeting Plant said again that "he wanted to get out of business entirely" and that "he did not want to embark in the shoe machinery business." He said to Herrick:—

> "I am sick of all this waiting. Everybody advises me to sell. I have talked with Mr. Whipple, he advises me to sell. I have talked with Mr. Brandeis, he advises me to sell. And everybody advises me to sell. I could keep on and make a lot of money, but I prefer to get out of the business and pay my debts and retire on my cash."

Plant finally offered to sell his patents and inventions and his stock in the Plant Shoe Company for $3,000,000 in cash and $1,500,000 in stock of the United Company at par. This offer was accepted by Winslow subject to approval by his executive committee (Winslow, R. Vol. 1, p. 487, lines 11–42; Herrick, p. 606, lines 7–33).

The Purchase is Made.

On the morning of September 22 a check for $500,000 on account was delivered to Plant's attorney. The agreements were then prepared and were signed during the night of that day (Winslow, R. Vol. 1, p. 488, lines 1–5; Herrick, p. 607, lines 21–39).

Throughout the Negotiations Mr. Winslow never Made any Offer to Plant.

Throughout these extended negotiations, begun by Plant and renewed by him several times after Winslow had definitely broken them off, Winslow never made any offer to Plant. He testified on cross-examination:—

> "I didn't make any proposition at any time, from the time I first met him until the time that we parted, of any sort, name, or description" (R. Vol. 1, p. 559, lines 16–18).

Mr. Herrick testified:—

> "There never was any offer made to Mr. Plant at any time during all the negotiations" (R. Vol. 1, p. 606, lines 36–37).

Finding of the District Court as to the Negotiations.

The District Court said of these negotiations (Dodge, J., R. Vol. 1, pp. 1142–3):—

> "There is uncontradicted evidence of declarations by Plant in 1909, that his intention was to equip these two other factories and his own with his new machines and then sell out to the United Company. That the effecting of such a sale, and not any actual competition in the market with machines then in use, was his real purpose is hardly left doubtful by the history of his subsequent negotiations with the defendants. These, set on foot by him and at first stopped by the defendants' unqualified rejection of his proposals, he persisted in renewing, through various intermediaries, until they resulted in the purchase above described. It appears without contradiction that Plant was for a time under agreement to pay an influential shoe manufacturer, whose assist-

ance he procured, $250,000 if he succeeded in bringing about the desired sale; also that he later offered, and ultimately had to pay a commission of five per cent. on the price obtained to another intermediary who undertook to put the transaction through for him.

"The evidence regarding Plant's negotiations with the defendants sufficiently proves that they were never sought by the defendants and that there was never any attempt on their part to get Plant to sell them his inventions or machines or anything else; but that on the contrary all the efforts towards such a purchase were made by him. The first overtures toward it came from him; he began them soon after he had put his machines into the Plant factory; they led to interviews, all of which he sought and at which his proposals were declined without encouragement to renew them. Nowhere in the evidence is any indication found that before Plant's overtures were thus made any purchase whatever from him had been suggested to or considered by the defendants."

Allegations in the Petition that Certain Shoe Manufacturers were Endeavoring to Acquire Plant's Patents and that Defendants Made the Purchase on that Account.

The petition alleges that on September 22, 1910, certain shoe manufacturers were in conference with Plant with a view to either purchasing an interest in his inventions or making some arrangement which would enable them to obtain machines for use in their factories; that defendants were advised of the purpose and intent of said manufacturers, knew that if they made an arrangement with Plant defendants' machines would be removed from their factories and competition would thus be created; and made the agreement for the Plant purchase in order to prevent such competition.

The evidence shows that on September 22, 1910, a number of shoe manufacturers, members of the Shoe Manufacturers' Alliance, were in Boston, having come to confer with Plant (R. Vol. 1, pp. 114–5).

There is absolutely no proof whatever in this record that these manufacturers were endeavoring to make any arrangements to obtain machines for use in their factories.

What these manufacturers really thought Plant had to sell is shown by the testimony of petitioner's witness McElroy, who

testified regarding the inspection of the Plant machines which he made for them in 1910:—

> "The object of that inspection was looking to buying or acquiring *the Plant Patents*. There were some Western manufacturers that contemplated this, and I was sent as an expert to look over the machinery and make a report" (italics ours) (R. Vol. 1, p. 189, lines 8–12).

Prior to this time Plant had been negotiating with the United Company for several months; he had agreed on September 13th that the United Company's experts might examine his machines and on September 20th had practically concluded the sale to the United Company. There is absolutely no evidence that the United Company knew of any negotiations with these shoe manufacturers until the sale to the United Company was practically concluded on September 20th.

Mr. Howe first heard the Western manufacturers were in Boston on the morning of September 23d. The United Company had paid $500,000 before that (R. Vol. 1, p. 688, lines 16–21).

On the evening of September 20th Plant told Winslow he should put up to the Western manufacturers a proposition which they could not accept (R. Vol. 1, p. 488, lines 18–21).

And he did (R. Vol. 1, p. 115, lines 17–21).

There is not the slightest evidence, therefore, that possible negotiations with these shoe manufacturers were known to the United Company prior to the practical consummation of the purchase, or in any way affected the United Company's action. Furthermore, the evidence shows that Plant desired to sell not only his patents but also his interest in the Plant Shoe Company and retire from business. The evidence shows that no such purchase was contemplated by the shoe manufacturers, nor does it appear that they were in a position to carry such transaction through. It is quite evident that Plant preferred and desired to sell to the United Company if such transaction could be consummated.

The District Court said with reference to these allegations (Dodge, J., R. Vol. 1, p. 1144):—

> "But the evidence fails to support these allegations. It does not charge the defendants with any knowledge, at the time they came to terms with Plant, of any negotiations

between him and the manufacturers referred to. No reference appears to have been made to them or their doings during the defendants' negotiations with Plant, and no reason is found to believe that apprehension lest he might conclude some arrangement with them induced in any degree the defendants' final agreement with him. Were it important, it might be added that so far as the evidence can be said to show anything regarding Plant's intentions toward them, it shows that he never really meant to enter into any arrangement with others if he could get the defendants to take off his hands everything which he desired to sell; and no purchase so extensive as this appears to have been at any time contemplated by the manufacturers mentioned in the petition."

9. MISSTATEMENTS AS TO FACTS IN MR. CHAPMAN'S DEPOSITION REGARDING INFRINGEMENT OF PLANT PATENTS BY UNITED COMPANY MACHINES.

In Mr. Chapman's deposition (R.Vol. 2, pp. 2836 (91–119)) controverting Mr. Howard's testimony that fifteen United Company machines infringed twenty of Plant's patents, in which Mr. Chapman took issue as to six only of those fifteen machines, Mr. Chapman misstated the facts as to the construction of the infringing mechanism of three of the six machines.

As to Loading and Attaching Machine—Model B: McKay Automatic Heel, Mr. Chapman admitted ignorance of the matters inquired about in Cross-Ints. 41 and 42 (R. Vol 2, p. 2836 (98)), which interrogatories were directed to the essence of the infringement set forth in Defendants' Exhibit 274, R. Vol. 5, p. 751. Compare his answer to Int. 20 (R. Vol. 2, p. 2836 (92)), as to which Mr. Browne comments, "Mr. Chapman is wrong as to the facts" (R. Vol. 2, p. 2836 (130), Int. 6).

Again, attention is called to a portion of his testimony regarding Indenting and Burnishing Machine: Goodyear Welt:—

> "*Cross-Int.* 96. Did it also comprise worm and worm wheel connections geared to and to rotate said table in any of its positions?
>
> "*Ans.* No.
>
> "*Cross-Int.* 97. What mechanism referred to in my last question did it lack?
>
> "*Ans.* All the mechanism stated by the question."

"*Cross-Int.* 100. And you feel as positive in this matter as you do with regard to your other statements which you have made as to machines which you examined?

"*Ans.* Yes" (R. Vol. 2, p. 2836 (109)).

Mr. Browne testified that the machine had the mechanism referred to in Cross-Int. 96, above quoted, "which Mr. Chapman evidently overlooked in his examination of this machine" (R. Vol. 2, p. 2836 (127)).

In his testimony in regard to Pulling-over Machine—Model B: Rex, Mr. Chapman was handed a copy of patent to Ashton, No. 1,030,763, June 25, 1912 (Defs.' Ex. 351, a physical exhibit), and was asked:—

"*Cross-Int.* 136. . . . whether or not it illustrates in the drawings and describes in the specification any features of the pulling-over machine examined by you and in regard to which you testified in your direct examination?

". . . (Objection not quoted.)

"*Ans.* I do not recognize in the patent anything of the construction of the machine which I examined as stated by me in my direct examination" (R. Vol. 2, pp. 2836 (117, 118)).

Mr. Browne testified that this Ashton patent showed in one of its figures substantially the infringing construction of the machine in question, and that "Mr. Chapman when he testified evidently had forgotten the construction of the Model B Rex machine" (R. Vol. 2, p. 2836 (124), Int. 4). Mr. Chapman also testified that he found a gauging device in that machine

"consisting of a pivoted, bent lever, having in one end an aperture through which had been thrust a nail" (R. Vol. 2, p. 2836 (117), Int. 134).

Mr. Browne stated,—

"This is not true of the Model B Rex machine" (R. Vol. 2, p. 2836 (124), Int. 4).

Thus the record shows that, although he was afforded "ample opportunity for the examination of all the machines" about which Mr. Howard testified (Stipulation, R. Vol. 2, p. 2836 (158)), Mr. Chapman did not, when he testified, remember the construction of the infringing parts of the machines, but nevertheless had no hesitation in making positive statements about them. It is

submitted that this evidence as to his superficial work casts a cloud upon all his testimony in this suit.

10. FINDING OF THE DISTRICT COURT AS TO THE REASONS FOR THE PLANT PURCHASE.

The record completely supports the conclusions which were reached by the District Court, after summarizing the evidence which we have reviewed:—

> "The above reasons, none of them open to any charge of illegality, seem to me to have been the really operative reasons which must have induced the defendants to enter into the Plant bargain upon the terms which he finally offered them. They appear so adequate as legitimate business reasons for doing this as in my opinion to leave no reasonable ground for holding, against the defendants' denial, that it was really a purchase to suppress competition. No such competition or prospect of competition at the time is proved as would justify such a conclusion. . . . The property acquired being proved to have been worth the amount paid, the argument that the defendants were so anxious to hold a monopoly as to be willing to pay $6,000,000, or any other large sum, in order to get rid of a competitor, or that this was done in pursuance of a general plan conceived in 1899, fails completely" (Dodge, J., R. Vol. 1, pp. 1145, 1146).

11. THE PRACTICAL IMPOSSIBILITY OF SEGREGATING THE PLANT INVENTIONS IS IN ITSELF STRONG EVIDENCE THAT THE PLANT PURCHASE WAS A NORMAL AND LAWFUL TRANSACTION.

We have seen (*supra*, pp. 503, 504, 507, 508, 511–514) that the Plant inventions have been assimilated into the United Company's machines and that the United Company has made improvements upon those inventions which are built upon and around them, interwoven with them. To take those inventions out of the United Company's machines would leave unworkable, worthless skeletons; there are no machines to take their places, for the machines which they superseded have been junked; and the United Company would have to develop new machines and build tens of thousands of them to take the places of the stripped machines. This ruthless surgery would set back the development of the industry a full decade.

It is respectfully submitted that this extraordinary situation

is in itself the strongest evidence that the Plant purchase was a normal and lawful step in the normal development of the business of a concern which is engaged in inventing, manufacturing, and putting out patented machines.

12. CONCLUSION AS TO THE PLANT PURCHASE.

It is established by the record and the findings of the District Court that Plant was not in competition with the United Company; that he did not desire or intend to go into the shoe machinery business; that his sole purpose was to sell his patents to the United Company so that their purchase was a mere purchase of inventions made for the express purpose of being so purchased and combined with the United Company's patents; that the machines which he had constructed and installed in his own shoe factory were crude, really only experimental, constantly breaking down, and making shoes by obsolete and very expensive methods; but that in those commercially unsuccessful machines Plant had incorporated some very valuable inventions which were capable of use in the United Company's superior machines to the great benefit of the industry; that both the machines of Plant and those of the United Company infringed a large number of patents owned by the other so that there would have been a great amount of litigation which would have resulted in chaotic and intolerable conditions; that the great benefit to the industry which would result from incorporating Plant's valuable inventions in the superior machines of the United Company and from the avoidance of the great amount of threatened litigation was the sole reason for the purchase of Plant's patents by the United Company; and that the Plant patents were worth more than the United Company paid for them.

The lawfulness of the Plant purchase can hardly be questioned. The purpose of the purchase was to enable the United Company to perfect its machines and avoid chaotic litigation. The transaction was, therefore, not unlawful because of the intent with which it was done. And obviously it was not inherently unlawful. Indeed, the evident advantages to the shoe machinery industry, and, consequently, to the shoe manufacturers, of combining the Plant patents with the United Company's patents,

were so obviously beneficial to the public generally and so normal and natural a transaction that, like the formation of the United Company considered in *United States* v. *Winslow*, supra, it was not only not inherently unlawful, but no intent could make it unlawful.

As we have stated, the Sherman Act is directed only against restraints which prejudice the public interests.

In *Nash* v. *United States*, 229 U. S. 373, the court said (p. 376):—

> "... only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade."

In *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, the court said (p. 174):—

> "In other words, founded upon broad conceptions of public policy, the prohibitions of the statute were enacted to prevent not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented."

In the present case, as we have clearly shown, had the Plant purchase not been made, the public would have been deprived of those machines which combined the latest and best improvements known to the art of shoe machinery, and shoe manufacturers would have been obliged to use far less efficient machines. A transaction which necessarily resulted in so great benefit to the industry, a result which could not otherwise have been accomplished, can clearly not be said to "prejudice the public interests" or produce "harm to the general public." On the contrary, such a transaction is one which public policy must necessarily favor from its self-evident advantage to the public, whatever the motive or intent which induced it. As such a transaction cannot result in "harm to the general public" or "prejudice the public interests," it is inherently lawful and cannot fall within the prohibitions of the Sherman Act.

If—which we deny—it could be contended that the transaction was not so beneficial to the public as to be necessarily

lawful, but that it was a transaction which unlawful purpose might bring within the prohibition of the statute, the record clearly shows that no unlawful purpose existed. Being entered into for the purpose of enabling the United Company to produce more efficient machines and to avoid chaotic patent litigation, which would not only have been very annoying and expensive, but would have resulted in preventing its putting out even as efficient machines as it was then manufacturing, the transaction was clearly a "normal" contract entered into for the purpose of "reasonably forwarding personal interest and developing trade." (*Standard Oil Co.* v. *United States*, supra.)

Can it possibly be contended that the purchase was not made for the direct purpose of acquiring and using the Plant patents and ending the existing and threatened patent litigation? We do not understand that the United States denies that these purposes existed. While the United States has attempted to minimize the value of the patents, it must admit that they were of great value and that they were bought to be used by the United Company and that they have been so used. The contention of the United States apparently is that the United Company feared that Plant might become a competitor, and that this was an additional inducement to make the purchase. The record clearly refutes this contention, showing that the officials of the United Company purchased at Plant's solicitation, that they would not purchase until after a thorough examination had convinced them that the patents would be of great value in increasing the efficiency of the United Company's machines, and that they realized the chaotic patent situation which existed and the intolerable conditions which would result. If it can be doubted that these were the sole purposes which actuated the transaction, it certainly cannot be questioned that Plant's patents were of great value, that the United Company desired to use them, and the most that can be contended is that possible competition by Plant was an added motive for the purchase. But if possible competition by Plant influenced the United Company, which we deny, this can only have been because the United Company believed Plant's patents to be so valuable that he would be able to offer machines attractive to customers which the United Company by reason of Plant's patent monopolies could not make. Plant had no established shoe machinery

business or good-will. He had no better or greater opportunity to compete with the United Company than any other one of thousands of American business men except in one respect, namely, his patents. If he could enter the shoe machinery business successfully, it would be solely because his patents enabled him to offer machines which the United Company was legally restrained from making. In other words, if the United Company feared competition, it was a competition which consisted in offering machines which the United Company could not manufacture, and, therefore, a competition which it could not meet on equal terms and which neither public policy nor the Sherman Act would prohibit it from meeting by the acquisition of the patents. In attempting to meet such competition, the United Company would be under a legal restraint, the restraint imposed by the lawful patent monopolies held by Plant. The Sherman Act was intended to prevent unnatural, abnormal restraint imposed on "the free flow of commerce." The removal of a restraint imposed by patent monopolies through the purchase of such monopolies cannot constitute the imposition of a restraint on the free flow of commerce such as the Sherman Act was designed to prohibit.

For a further discussion of the right to acquire patents see *supra*, pages 462–465.

VII.

THE CHARGE THAT THE UNITED COMPANY COMMITTED VARIOUS UNFAIR, OPPRESSIVE AND MONOPOLISTIC ACTS IS UNFOUNDED.

In Section VI of the petition (R. Vol. 1, p. 999) defendants are charged with having made various threats or committed various unfair and oppressive acts. No specific instances are set out in the petition, but a bill of particulars, setting forth the specific instances charged, was filed during the course of the trial (R. Vol. 1, p. 1075). The bill of particulars sets forth over fifty different alleged acts or threats. **As to at least thirty no evidence whatever was offered by the United States. This fact illustrates the unfounded character of the charges.**

Some instances consisted merely of requests by the United Company to lessees that they conform to the terms of their leases. In a few cases the United Company undertook to enforce such terms. In several instances these leases had been put out by the constituent companies prior to the formation of the United Company. In every such instance if there is criticism it must be with the terms of the lease and not with the request to observe or the enforcement of these terms.

Some instances consisted of alleged threatening statements of officers of the company made to other shoe machinery manufacturers as to what it would do. In no case was the alleged threatened action taken. These alleged threats are all disputed by the company and involve the credibility of witnesses and the truth or probability of their statements.

Practically all of the evidence introduced by the United States with respect to these alleged threats or acts comes from patent owners or competitors who have sought unsuccessfully to sell out their property to the United Company, or from lessees with whom the company has had a disagreement.

The number of instances referred to by the United States is surprisingly small, considering that the entire business life of the company has been examined and extraordinary efforts made to put in evidence all acts or remarks of the officials or agents of the company occurring over this extended period of time, as

to which any contention of unfairness or dissatisfaction could be made. The company has over 1,000 lessees with whom it is constantly in touch through its service men and with whom it is constantly dealing, making leases for new machines, taking back old machines, checking up royalties and furnishing service and new parts. Owing to the great variety of machines, of findings, and of supplies used in the shoe machinery business the United Company is constantly being asked to acquire new patents and businesses. For example, 493 different ideas, suggestions, and inventions have been submitted to the company by persons not employed by it as inventors, and have been declined (Defs.' Ex. 222, R. Vol. 5, p. 370). Over 75 different concerns have been offered for sale to the United Company and their purchase declined (Defs.' Ex. 233, R. Vol. 5, p. 527).

The District Court, after considering the facts in respect to such of these transactions as were relied on by the United States in argument, concluded as follows (R. Vol. 1, pp. 1152–3):—

> "The history of the proceedings in this case indicates that efforts which may fairly be described as extraordinary have been made to bring before the court, so far as possible, all sayings or doings of any of the numerous defendants or their representatives, during the period beginning with 1899 and ending with 1911, which might afford ground for charging them with oppressive, coercive, or like unfair conduct toward competitors of the United Company or the public. In view of the long period and wide fields thus searched, the numerous abandoned attempts to prove something of the kind above indicated, and the insignificant result of the evidence actually offered and finally relied on, the conclusion seems fully justified that the policy and methods pursued by the defendants and by the United Company have been, in general, above reproach in any of these respects."

In view of the District Court's finding and the complete failure of the United States to substantiate these charges, it hardly seems necessary to consider the evidence relating to them in detail; however, a detailed statement of the evidence is given in the Appendix (see Appendix, pp. 88–131) and the following summary inserted in the brief:—

1. The United States charged that the United Company removed its machines from Peter Tessier & Company's factory where competing machines were used.

The evidence shows that Tessier leased seven machines from the United Company. He obtained other machines to do his work and discontinued entirely the use of the United Company's machines except that he used the auxiliaries without paying anything for such use. The United Company therefore removed its machines which were not being used at all or were being used without payment (see Appendix, p. 88).

2. The United States charged that the United Company removed its machines from Bottomley's factory where competitors' machines were used.

The evidence showed that Bottomley had removed the United Company's machines from his factory and notified it that he would pay no further royalties on them. The United Company therefore merely removed machines which the lessee no longer desired to use or pay for (see Appendix, p. 90).

3. The United States charged that the United Company threatened to take back its machines from T. D. Barry Company in order to force the removal of competing machines.

The evidence showed that the T. D. Barry Company gave up the use of its Goodyear Welters, but continued to use Goodyear auxiliary machines without paying any royalty for them. The United Company, therefore, brought a replevin suit to take back its machines. The dispute was adjusted, and Barry retained the United Company's machines (see Appendix, p. 92).

4. The United States charged that the United Company threatened Curtis & Jones and caused them to remove from their factory other machinery.

The evidence shows that Curtis & Jones in 1897 had agreed with the old Goodyear Company to use its turn machines exclusively in consideration of a 50% reduction in royalties. They broke this agreement and their attention was called to it and they gave up the use of the other machines. The superintendent of the factory testified he made up his mind that the Goodyear machines were better and cheaper to operate and that the United Company's service was preferable (see Appendix, p. 94).

5. The United States charged that Hilliard & Tabor installed a Haverhill Turn Sewing Machine and the United Company threatened to make the terms of its lease covering its turn machines more onerous if the lessee used the Haverhill machine.

The evidence shows that Hilliard & Tabor had a Goodyear Turn

Machine and then installed a Haverhill machine, continuing to use the Goodyear auxiliaries without payment of royalty. After some months Mr. Hilliard happened to be at the United Company's office and his attention was called to the situation, and he was offered the initial payment form of lease if he wished to continue using the Haverhill machine (see Appendix, p. 97).

6. The United States charged that the Harsh & Edmonds Shoe Company desired to take a clicking machine from a competitor and was warned and threatened not to, and therefore took the United Company's machine.

It appears that the Harsh & Edmonds Shoe Company obtained a clicking machine from the Richardson Company. Mr. Harsh objected to the United Company's lease covering clicking machines. He testified that Mr. Willson, of the United Company, told him, or, as appeared on cross-examination, he thought intimated to him, that it would be better for him to cease his activity against the United Company and take things as they were. Mr. Willson pointed out to him that he already had another lease of the same character. Mr. Willson was dead at the time of the trial. Mr. Harsh took the United Company's machine, which he admitted was the only commercial machine in the market. He also admitted that Willson's advice was sound (see Appendix, p. 99).

7. The United States charged that a threat of like character was made to George A. Learned.

Mr. Learned testified he had Goodyear machines. He later obtained a Haverhill machine and claimed that Mr. Winslow told him he must pay on all the shoes he made or be driven out of business, and the least the United Company would do would be to take out its machines. This evidence was absolutely contradicted by Mr. Winslow and by Mr. Brown, who was present at the interview. Mr. Endicott testified that Learned later admitted he had been mistaken. No action was taken by the United Company, and Learned is still using the Haverhill machine (see Appendix, p. 101).

8. The United States charged that William Barbour, one of the directors of the United Company, made threatening statements to James N. Darrah, of the Standard Shoe Machinery Company, a competitor of the United Company.

Mr. Darrah testified Mr. Barbour told him he was making a

big mistake not to sell; that if the United Company could not buy out its competitors it crushed them; that he could not get any money to compete, as the United Company's influence was too great with the banks both in Boston and New York. Mr. Barbour absolutely denied making any such statements. Mr. Darrah was shown to be without financial responsibility or settled business (see Appendix, p. 103).

9. The United States charged that E. P. Hurd, of the United Company, threatened H. E. Cilley.

Mr. Cilley testified that he interviewed Mr. Hurd as to the sale of a leveling machine which Cilley had invented, and that Mr. Hurd said, "Cilley, you are thick; if you were offered $15,000 or $20,000 you ought to be well satisfied," and further told him that he could not do business except on the United Company's sufferance. It did not appear that Cilley was interfered with in any way. Cilley had been in litigation with the United Company since 1903 (see Appendix, p. 106).

10. The United States charged that Mr. Winslow threatened Charles H. Morse, who was endeavoring to market the Frechette Pegging Machine and a slugging machine.

Mr. Morse testified he called on Mr. Winslow about a purchase of his business. Mr. Winslow said, "You don't suppose we are going to let you put them on the market" (meaning Mr. Morse's machines). Mr. Winslow denied making such a statement. It further appeared probable that Mr. Morse had not seen Mr. Winslow since the United Company was formed, and that the conversation referred to, if it took place at all, occurred before the United Company was formed. It did not appear that Mr. Morse was interfered with in any way (see Appendix, p. 107).

11. The United States claimed that Mr. Winslow made threats to Messrs. Merrick and Luitweiler, who were engaged in manufacturing a lockstitch machine. The charge was not included in the bill of particulars. Messrs. Merrick and Luitweiler testified that they had a conversation with Mr. Winslow at his hotel in 1905, at which he stated in effect that he would not allow them to make a dollar, and that eventually their business would come around to him and he would take it. Mr. Winslow denied making any such statements to either of them. As bearing on the credibility of their evidence it should be noted

that Merrick and Luitweiler claimed that Mr. Sampson, of the United Company, solicited the conference. They admitted that they invited Sampson off for a sail and lunch on Merrick's yacht, and during the trip broached the subject of a sale of their patents and machines to the United Company. Mr. Sampson's testimony contradicted theirs and showed that they solicited the conference. Nothing ever came of the matter, nor is it contended that Mr. Winslow's threats, if made, were carried out (see Appendix, p. 108).

12. The United States charged that E. P. Hurd, of the United Company, threatened G. H. Clark and refused to let him have one of the United Company's machines to experiment with.

Mr. Clark testified he had invented a method for moulding or lasting shoes and put one of his machines in the Richardson factory; that he called on Mr. Hurd to get a lockstitch machine to put in the same factory and Mr. Hurd told him the United Company must protect its interests and not put one of its machines into a factory for Clark to experiment with (see Appendix, p. 110).

13. The United States charged that Kimball & Hadley, who manufactured needles and awls, were threatened by the United Company, and that in consequence they sold their business to the United Company.

Hadley testified that Bayley, an agent of the United Company, told him that he could not manufacture needles as cheap as the United Company, which could give them away if necessary. Mr. Bayley was in a sanitarium and could not testify. Mr. Hadley also testified that certain manufacturers had stated that the use of his needles and awls was in violation of the leases of the United Company. This testimony was absolutely denied by the manufacturers, and no lease of the United Company does contain such a provision. Hadley had been unsuccessful in litigation with the United Company and had been enjoined by the court (see Appendix, p. 111).

14. The United States charged that three operatives of the Plant factory were employed by Willson, general manager of the United Company, to organize a union of the employees at the factory and start a strike.

These three men testified they called on Mr. Willson, who agreed to pay them $2,000 apiece and their expenses if they

would organize the employees of the Plant factory and start a strike. They testified they spent $1,500 in entertaining the employees and giving them a good time. They testified their wages averaged about $15 a week, and this sum represented the savings of eleven or twelve years. They had no papers, receipts, or written evidence of any kind to support their story, claiming they had destroyed all their papers and the list of operatives' names. Their story was flatly contradicted by nine operatives in the Plant factory, who testified that they worked in the same room with the men who claimed they were so employed, and knew them well, and they had no knowledge of any union being organized or of any strike being attempted, and that no money was spent among the employees as testified to.

The testimony of these witnesses is incredible (see Appendix, p. 119). The District Court said of it (R. Vol. 1, p. 1152):—

> "Not only does the evidence of these three witnesses appear unworthy of belief in view of its improbability, its lack of corroboration, and the evidence tending to discredit it, but it is difficult to understand how the petitioner could seriously have expected the court to accept such testimony, or have considered itself justified in offering it."

15. The United States charged that in 1910 the agents of the United Company induced a former employee of the Plant Company to demonstrate one of the Plant machines.

This was not denied, but was a harmless performance (see Appendix, p. 119).

16. The United States charged that Mr. Winslow threatened C. S. Johnson and duplicated his machine.

Mr. Johnson testified that he was connected with a company which put out a leveling machine, that he agreed with Mr. Winslow upon a sale to the United Company of the machine, but the contract for purchase when prepared was not satisfactory to him and he declined to sign it. Mr. Winslow suggested he had better sign it because he was going to have the business anyway, or words to that effect, and that shortly afterwards the United Company put a similar machine on the market. Johnson admitted he had a grievance against the United Company and was hostile to it (Appendix, p. 123). Winslow denied any such conversation, and testified that the United Company had never interfered with Johnson's business.

17. The United States charged that Mr. Winslow threatened Frank L. Harmon, an inventor, and treated him unfairly in various ways.

Mr. Harmon testified he was developing some machine, and, having no business experience, he came to Mr. Winslow for information, who advised him that he was foolish to go into the machinery business with the small amount of capital he had. This conversation took place about twenty-five years before, and long previous to the formation of the United Company (see Appendix, p. 124).

18. The United States charged that Carlton & Hunt were using machines of the Haverhill Shoe Machinery Company and desired to obtain welt machines of the defendants, and were informed they would have to discontinue the use of the Haverhill machine or pay a prohibitive installation charge on their new machines.

The only evidence in support of this charge was the hearsay statement made by Harriman, an agent of the Haverhill Company, to the effect that Mr. Hunt had told him he could not get United Company's welt machines unless he discontinued using the Haverhill Turn Machine (see Appendix, p. 130).

19. The United States charged that one Webster was operating two Pettingill nailing machines, and because of this fact could not get pulling-over machines from the United Company without paying excessive installation charges, and he therefore removed the Pettingill machines.

Webster testified that the United Company offered him pulling-over machines without restrictions if he paid an initial payment or, as an alternative, offered him a restricted lease without the initial payment. The initial payment, he said, would cost him more than it would if he used the United Company's entire machinery (see Appendix, p. 131).

Charges as to Rebates.

The United States charged that the United Company granted rebates to manufacturers to effect an exclusive use of its machinery, (1) by making distribution of its stock to users of its Goodyear machines, and (2) by cancelling the royalty on the Gem Insole Machines to users of its other machinery.

1. On June 10, 1910, the United Company sent a circular letter to its lessees in which it stated that beginning January 1, 1910, it would create a fund by investing each year for three years in the common stock of the United Company a percentage increasing each year of the amounts received from lessees for the use of Goodyear Welting, Stitching, and Turn Sewing Machines in the United States. At the end of three years it agreed to distribute the entire amount of stock held in the fund among those lessees who used the Goodyear Welting, Stitching and Turn Sewing Machines, and who should have faithfully observed the covenants of their leases, each lessee to receive a share of the fund proportionate to the amounts paid by him for the use of such machines. It agreed that not less than 15% of the amount received from welting and stitching machines and 10% of the amount received from turn machines would be so invested (P.'s Ex. 146, R. Vol. 4, p. 1067).

This offer did not require an exclusive use of the United Company's machines, but merely proposed to return a portion of the royalties received from lessees who used Goodyear welting, stitching, or turn machinery if they observed the covenants of their leases which, of course, they were morally and legally required to do. It amounted merely to a reduction in the price charged for this machinery, such reduction to be represented by stock of the United Company. This was not unlawful.

Wilder v. *Corn Products Co.*, supra.

The Attorney-General was notified during the pendency of this suit that the United Company proposed to carry out this plan, and he offered no objection to it (R. Vol. 1, p. 979, and Defs.' Ex. 344, R. Vol. 5, p. 953).

2. On January 29, 1900, the executive committee of the United Company voted that a rebate be granted to exclusive users of the company's machines, such rebate to be made by quarterly payments of amounts equal to the sums paid by them respectively as royalty on the Gem Insole Machines during the quarter for which the rebate was made (R. Vol. 1, p. 351, line 39–p. 352, line 6).

The United Company after it was formed acquired the Gem Insole Machines, which had been put out previously for a royalty charge of one-half cent per pair (R. Vol. 1, p. 430, lines 11–13). This machine was used in the manufacture of Goodyear Welt

shoes. It was practically made, upon its acquisition, an auxiliary of the Welt Set. A number of these machines were already out on leases, and the machine was therefore put out by the United Company on a separate lease, but the royalty was repaid or credited to manufacturers who used the Goodyear Set of machines. It was necessary to have a general vote to apply to machines already out on lease as well as those which might be put out, and that was the purpose of the general vote (R. Vol. 1, p. 852, lines 33–41; p. 664, lines 31–36).

VIII.

THE UNITED COMPANY HAS NOT MADE EXORBITANT PROFITS AS CHARGED IN THE PETITION.

The petition charges that the United Company has made enormous and unreasonable profits (R. Vol. 1, p. 1026). This charge is without foundation.

The only purpose of this allegation is to support the charge that one object of the defendants' conspiracy or project was to "enhance the cost of said machines to users thereof" (R. Vol. 1, p. 997). As the record shows that the United Company has very materially reduced the cost to shoe manufacturers of their machines by removing initial payments, reducing, in certain cases, royalties and giving shoe manufacturers enormously improved machines, this charge of intent to enhance the cost of shoe machinery to shoe manufacturers is proved to be absolutely unfounded. If the economies and improvements introduced by the United Company have enabled it not only to reduce the cost to shoe manufacturers of their machines, but also to make large profits itself, this shows no illegal or unlawful purpose.

But the charge that the United Company has made unreasonable profits is without foundation.

The United States in support of this charge called Richard N. Morton, auditor of the United Company and of the United Shoe Machinery Corporation. His testimony showed that the earnings based on the net assets of the United Company and the United Corporation for the period from March 1, 1905, to March 1, 1911 (the period chosen by the United States), were 14.01% and the average rate per cent. of cash dividends to net assets was 7.10% (R. Vol. 1, pp. 359–360) (Defs.' Ex. 95, R. Vol. 5, p. 24).

Mr. Morton showed that the allegations in the petition that the United Company had made $45,314,261 in the period from March 1, 1905, to March 1, 1911, was due to erroneously combining the earnings of United Shoe Machinery Corporation and its subsidiary, the United Company, thus including a large part

of its earnings twice (R. Vol. 1, p. 360). The charge in the petition that these earnings were made on $20,000,000 of invested capital was not true (R. Vol. 1, p. 360). The net assets at all times during this period exceeded this amount and in 1910 amounted to $40,771,821.

In Mr. Morton's figures practically no value is placed on the patents owned by the United Company. The company has carried its patents during this period at only $400,000. The patents on the 150 new machines developed by the United Company, including the valuable patents on the pulling-over machine, which cost the United Company nearly $1,000,000 to develop, the clicking machine patents and numerous other valuable patents, including patents on thirty-nine machines which perform work previously done by hand, which have been invented and acquired by the United Company since its organization, have not been capitalized. If these patents were included in the assets at a fair valuation the percentage of profits would be greatly reduced.

The District Court found as follows with respect to this charge (R. Vol. 1, p. 1135):—

> "No support is found in the evidence, for the charge in the petition (Par. X) that 'enormous and unreasonable profits' had been made. . . . Nothing shown by the evidence warrants the conclusion that profits unreasonably out of proportion to the extremely large cost at which the business has been developed and is maintained, the great investment of capital it has required, and the enterprise, inventive skill, and business ability devoted to it, have been realized. Nor has it been made to appear that the charges made for the privilege of using the machines are exorbitant or unreasonable; especially in view of the great benefit to manufacturers using them, in lessening their cost of production."

IX.

FORMATION OF THE UNITED SHOE MACHINERY CORPORATION.

The petition charges (par. Ninth, R. Vol. 1, p. 1024) that the United Shoe Machinery Corporation was organized in 1905 and acquired practically all the stock of the United Company in order to provide means for distributing a portion of the accumulated surplus of the United Company and to secure better means for destroying competition and monopolizing commerce.

The United Shoe Machinery Corporation issued its preferred stock, share for share, for preferred stock of the United Company and issued 1½ shares of its common stock for each 1 share of the common stock of United Company (R. Vol. 1, p. 358, line 27 ff.).

The petition admits that the business of the United Shoe Machinery Corporation has been confined to holding the stock of the United Company (R. Vol. 1, p. 1025). No other evidence was introduced relating to the United Shoe Machinery Corporation. The charge that it was formed to restrain trade or monopolize more effectively is therefore shown to be without foundation.

X.

THE UNITED COMPANY HAS NO UNLAWFUL MONOPOLY OF SHOE MACHINERY. THIS FACT NECESSARILY DISPOSES OF THE PRESENT SUIT.

1. Introductory Statement.

The petition charges that the defendants in or prior to 1899 "determined to acquire a complete monopoly of the manufacture, sale and lease of shoe machinery" and that the various acts described in the petition were steps in carrying out this unlawful project (R. Vol. 1, p. 994). After setting forth the various acts charged it alleges that the defendants have thereby acquired a monopoly in shoe machinery (R. Vol. 1, p. 1027).

It is essential to the case of the United States that it prove the existence of this monopoly.

In the first place, there is no evidence of the unlawful plan or project charged in the petition or of any unlawful purpose unless it can be inferred from the acts of the defendants as proved in the record. If these acts during a period of nearly twelve years have not resulted in an illegal monopoly, it is obvious that they are not of a character to cause such result, and, therefore, cannot well give rise to any inference of an unlawful plan to obtain an illegal monopoly. An unlawful plan to accomplish an illegal result cannot be shown by proof of acts which are either not adapted to or cannot accomplish the result.

In the second place, the purpose of this suit is primarily (1) to have the United Company dissolved because it is an unlawful monopoly, and (2) to have the leases declared unlawful because they have created or aided in creating this unlawful monopoly. If the United Company is not an unlawful monopoly, it cannot be dissolved. If no unlawful monopoly exists, it is evident that the leases have had no unlawful effect, *i.e.*, they have not created or aided in the creation of an unlawful monopoly, and they, therefore, cannot be held unlawful on the ground that they have done so.

2. The United Company has not obtained a Monopoly of all Shoe Machinery as Charged in the Petition.

The District Court said with reference to this charge (R. Vol. 1, p. 1127):—

> "The restraint or monopoly alleged in the petition is restraint or monopoly of interstate commerce in 'any and all kinds of shoe machinery,' *i.e.*, in shoe machinery generally.
> "But it appeared early in the trial that no such charge could be proved, because neither the business of the component companies in 1899 nor that of the United Shoe Company from its beginning until the bill was filed related to 'all kinds of shoe machinery.' Both were always limited to certain kinds only. This was finally conceded. . . ."

There is a large field of shoe machinery not manufactured by the United Company at all, such as all the different machines for sewing the uppers of shoes (machines exceedingly important in the manufacture of a shoe), and many others.

For many years the United Company did not deal at all in the McKay Sewing Machine, which attaches the soles of 50% of all shoes made, and such machines were dealt in and supplied by many machinery men and can be made by any one, and even now the United Company manufactures only a special, improved McKay Sewing Machine, and McKay Sewing Machines are both sold and leased by it.

In addition there are manufacturers who, in competition with the United Company, furnish every kind of a machine needed in the manufacture of shoes. Of course such competitors do not manufacture machines exactly like the machines of the United Company, because these machines are made under patents and the United Company has a lawful monopoly of their manufacture.

The failure to prove the charge of monopoly in all shoe machinery is illustrated by the following facts:—

R. P. Hazzard, a shoe manufacturer, making Goodyear Welt shoes, with an output of 5,000 pairs a day (R. Vol. 1, p. 641, line 10), testified that he used in the Bottoming Department all the machines that the United Company produces and he could get (R. Vol. 1, p. 641, lines 26–28; p. 651, lines 10–13).

A complete list of the machines in his factory appears in Defendants' Exhibit 262 (R. Vol. 5, p. 707). It shows that Mr. Hazzard had a total of 746 machines in his factory, of which only 327, or less than 44%, were obtained from the United Company. Counting as United Company machines only those which cannot be bought (that is, excluding General Department machines, which can be bought outright or bought elsewhere), this list shows that Mr. Hazzard had only 296 United Company machines out of a total of 746 machines; in other words, that less than 40% were United Company machines. This list further shows that Mr. Hazzard had 258 machines in his stitching-rooms of which only 8 were obtained from the United Company.

Jonathan Brown & Sons manufacture McKay shoes, the class of shoes most largely made in the United States. Mr. Brown stated that he wished every machine in his factory was under the control of the United Company on account of its service (R. Vol. 1, p. 731, lines 3–12). He, therefore, took as many United Company machines as he could use. A list of the machines in his factory is given in Plaintiff's Exhibit 269 (R. Vol. 4, p. 1441). This list shows that out of a total of 424 machines only 128, or 30%, were obtained from the United Company. Excluding from the list of United Company machines General Department machines, which could be bought outright from the United Company, or bought elsewhere, the list shows that only 64 machines, or 15%, were United Company machines (R. Vol. 4, p. 1446). This list further shows that out of 191 machines in the stitching-rooms only 6 were obtained from the United Company.

Charles H. Jones was a member of the Shoe Manufacturers' Alliance, a witness for the United States, and a violent opponent of the United Company. His company, the Commonwealth Shoe and Leather Company, had an output of between 6,000 and 7,000 pairs a day, mainly men's welt shoes with a few pegged and Standard Screw shoes (R. Vol. 1, p. 105). A list of the machinery in the factory of this company is given in Plaintiff's Exhibit 279 (R. Vol. 4, p. 1557). This list shows a total of 1,311 machines, of which only 584, or 44%, were obtained from the United Company. Mr. Winslow showed, however, that Mr. Jones had included in this list as obtained from the United Company 73 hand tackers, which are not machines at all, but merely hand tools without power and similar to a hammer, and 41 attachments

placed on other machines (R. Vol. 1, p. 976). Deducting these 114 tools and attachments leaves only 470 machines obtained from the United Company out of a total of 1,197, or less than 40%. Deducting the 119 General Department machines which could be bought outright (R. Vol. 1, p. 976, lines 37–40), leaves only 351 machines obtained from the United Company, or less than 30%. This list further shows that out of 465 machines in the fitting-room only 8 were obtained from the United Company.

The International Shoe Co., one of the largest in the world, did not take more than 50% of its machines of the United Company (R. Vol. 1, p. 183, lines 37–42).

The machines manufactured by the constituent companies, as we have said, occupied a comparatively small portion of the entire shoe machinery field. As to the comparative size of this field, Mr. Winslow testified:—

> "The ratio of the machines of the constituent companies to all shoe machines in 1899 was 26 to 138; that is, in round numbers there were 26,000 of United Company machines and 112,000 of machines of other companies, a total of 138,000 in 1899" (R. Vol. 1, p. 452, lines 11–15.)

The machines of the Goodyear Company were used wholly for making welt and turn shoes. The manufacture of welt shoes increased enormously after 1899, namely, from 22,700,000 pairs out of a total of 172,786,000 pairs to 86,231,000 pairs out of a total of 278,916,000 pairs (Defs.' Ex. 215, R. Vol. 1, p. 424). The number of auxiliary machines also greatly increased. In 1899 only about 50% of the shoes made were lasted by machines, while to-day practically all shoes are so lasted. In spite of this, the percentage of machines of the kind previously put out by the constituent companies as compared with other machines increased very slightly. Mr. Winslow testified:—

> "On the nearest date to the beginning of this suit for which I was able to make a compilation there were 41,602 machines of the Goodyear, heeling, lasting, and metallic departments, compared with 181,000 of all kinds of machines, a ratio of 41 to 181. In this comparison I did not include lasting or metallic auxiliaries, because they are more devices than machines.
>
> "In round numbers the United Company's machines in 1899 were about one in every five and a quarter, and in

1910 about one in every four and a half" (R. Vol. 1, p. 452, lines 16–24).

Defendants' Exhibit 235 (R. Vol. 5, pp. 531–671) sets out each consecutive operation in the manufacture of eight different kinds of shoes most commonly made, viz.: Men's McKay sewed shoes, women's McKay sewed shoes, men's welt shoes, women's welt shoes, women's turn shoes, men's loose-nailed shoes, surface standard screwed shoes, and channel standard screwed shoes. It gives under the heading of each operation the name of the machine furnished by the United Company, where it furnishes the machine for performing the operation, and also the names of other concerns furnishing machines for performing the same operation. An examination of this list will show that for practically every operation performed by machines for which work the United Company furnishes a machine there is a competitor, and in most cases there are numerous competitors prepared to furnish machines for performing the same work. This list further shows that in the manufacture of a man's Goodyear Welt button shoe in a factory where the counters are made by the manufacturer, there are 157 different operations of which 44 are performed by hand leaving 113 different operations performed by machine. The United Company furnishes no machines for 35 of these operations. When the shoes have no buttons and the counters are not prepared by the manufacturer there are 94 machine operations, and the United Company furnishes no machines for 22 of these operations. The United Company has no machines for 35 operations which may be performed by machines in the manufacture of a woman's McKay button shoe.

Defendants' Exhibit 336 (R. Vol. 5, pp. 849–905) is a list of shoe machinery manufacturers or dealers setting out the machines they offer for sale taken from Defendants' Physical Exhibits 311 to 321, which consist of catalogues, letters, and advertisements of such manufacturers and dealers. It shows over 125 different manufacturers and dealers offering every kind of machine, a number of them offering complete lines of machines.

3. The United States of Record Limited its Charge to a Monopoly of Machines for Preparing and Attaching the Bottoms to the Uppers of Shoes, Eyeletting Machines and Clicking Machines.

The evidence having utterly failed to support the charge of a monopoly of all shoe machinery, the United States, as stated above (*supra*, pp. 11–13), admitted during the course of the trial that the United Company did not have a monopoly of all shoe machinery. It conceded of record that it limited its charge to a monopoly of

> "machines for preparing and attaching the bottoms to the uppers of boots and shoes, the eyeletting machines and the clicking machines" (R. Vol. 1, p. 839, lines 13–22).

This admission eliminates at once a large portion of the field of shoe machinery and practically restricts the charge made by the United States to a monopoly of machines of the kind manufactured by the constituent companies, namely, welt and turn machines, lasting machines, heeling machines, metallic fastening machines, and pegging machines, and, in addition, the following machines developed by the United Company after its formation, namely, clicking machines, eyeletting machines, and pulling-over machines, and a few of its General Department machines.

In considering the charge of a monopoly in this limited field we submit that the record shows:—

1. That the United Company has not an actual monopoly of these machines, but, on the contrary, that there are active competitors ready to furnish machines for performing any and all of the operations for which these machines furnished by the United Company are adapted;

2. That whatever portion of the field of shoe machinery the United Company enjoys is due, among other things, to the excellence of its machines, which are patented and cannot be manufactured by others,—in other words, to its lawful patent monopolies; to the excellence of its service rendered with its machines, which no other company renders to any satisfactory extent; to its satisfactory business methods and the reasonable terms it offers which have appealed to shoe manufacturers

(as Charles H. Jones, a witness for the United States said, "The terms which the Machinery Company have recently offered their patrons on certain lines of machinery are so liberal that the outsiders cannot compete" (P.'s Ex. 147, Vol. 4, p. 1074)); to the fact that the United Company has specialized in certain lines of machines, notably those for making Goodyear shoes, has instructed, encouraged, and assisted manufacturers in their manufacture and so has created almost entirely the market which they supply.

The constituent companies, due to the patents held by them, had more of the field of shoe machinery at the time of the formation of the United Company than the United Company now has. The United Company has therefore not acquired any monopoly of the machines which were manufactured by the constituent companies, but has merely continued the monopoly already lawfully acquired and held by the constituent companies under their patents.

4. Machines for Preparing and Attaching the Bottoms to the Uppers of Shoes, Eyeletting Machines and Clicking Machines can be obtained of Numerous Competitors of the United Company.

The record shows that shoe manufacturers do not take the United Company's machines of the classes enumerated above as to which the United States charges a monopoly because they cannot obtain machines for performing the same work elsewhere. There are competitors ready to furnish these machines to any manufacturer desiring them.

Mr. Winslow testified:—

> "Some of the companies which I have named, like the Hamel Company, Haverhill Shoe Machinery Company, and the R. H. Long Company, are larger than any shoe machinery companies doing business in the United States or anywhere else in 1898, except the three companies which came into the United Company; and they are better fitted to build machines and do build to-day a larger number of different kinds of machines than any concern in existence in 1899, including the three companies that went into the United Company. It is generally true of shoe machinery

manufacturers doing business just prior to the bringing of this suit, as compared with the outside manufacturers doing business in 1899, that they are larger and are capable of furnishing a more complete equipment to factories" (R. Vol. 1, p. 859, lines 22–34).

"The manufacture of shoe machinery does not require any particular kind of machine tools. The standard machine tools used in manufacturing all ordinary machines are the tools that are used in every factory making shoe machinery" (R. Vol. 1, p. 858, lines 25–29).

One of the most important machines used in the bottoming of shoes is the McKay Sewing Machine. This machine was used to attach the sole to the upper of nearly 40 % of the shoes made in 1910 (Defs.' Ex. 215, R. Vol. 1, p. 424). The United Company did not even manufacture this machine for a number of years after its formation nor until 1908. Shoe manufacturers have always been able to obtain it from any one of a large number of dealers in machinery. A list of seventeen American dealers and ten foreign dealers furnishing this machine is set out at R. Vol. 1, pp. 858–9.

Mr. Brown testified that there was no difficulty in buying all the McKay machines he wanted at any time (R. Vol. 1, p. 730, lines 18–22). He had thirteen of these machines, only three of which he had obtained from the United Company (R. Vol. 1, p. 730, lines 23–25). The United Company never in any way interfered with his buying McKay Sewing Machines elsewhere (R. Vol. 1, p. 730, lines 26–30).

In 1909 there were in the principal shoe manufacturing districts 1,488 McKay Sewing Machines, of which 308 were supplied by the United Company and 1,180 by others. In the Lynn District there were 59 McKay machines supplied by the United Company and 367 supplied by others (R. Vol. 1, p. 977, lines 16–31).

John Bulmer, witness for the United States, testified: "McKay Sewing Machines are to be had from about all the shoe manufacturers. They pass through our hands more or less frequently and we rebuild or repair them and furnish them to others. We have no difficulty in getting them at any time" (R. Vol. 1, p. 908, lines 38–41).

This is the case of the bottoming machine used to attach the sole on the type of shoes made in the largest quantities. It is

clear that there are a very large number of manufacturers and dealers ready to furnish the machine and the United Company has furnished only a small percentage of the total machines outstanding.

In respect to other machines of the type of which monopoly is charged, namely, machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines, Defendants' Exhibit 337 (R. Vol. 5, p. 906), compiled from the catalogues, letters, and advertisements of various shoe manufacturers, gives a list of manufacturers and dealers prepared to furnish these machines. Each machine is listed separately and the names of the concerns offering it are given.

Defendants' Exhibit 331 (R. Vol. 5, p. 838) gives a list of concerns putting out welt and turn machines and outsole stitching machines from 1899 to 1911.

Defendants' Exhibit 332 (R. Vol. 5, p. 843) gives a list of Goodyear auxiliary machines and machines which other machinery manufacturers offered for doing the same work.

These lists are too long to copy in full upon the brief. They show the very large number of shoe machinery manufacturers making these kinds of machines and the considerable number of competitors prepared to furnish each kind of machine. Some of these shoe manufacturers are prepared to furnish complete lines of shoe machinery.

C. A. Hamel, who took over the Duplessis Company in 1909, and the Duplessis Company from 1903 to 1909, have done a considerable business in shoe machinery. Hamel testified: "We have a complete set of machines for making turn shoes and a complete set of machines for making welt shoes" (R. Vol. 1, p. 327, lines 15–16). A list of the number of machines put out by the Duplessis Company and Hamel, as its successor, is given at R. Vol. 1, page 326. It shows that they have put out 148 welt and turn machines (86 in this country and 62 abroad); 61 rapid outsole stitchers (41 in this country and 20 abroad); 90 insole channelers (70 in this country and 20 abroad); 55 loose nailers (24 in this country and 31 abroad); and 35 sluggers (22 in this country and 13 abroad).

R. H. Long, through the R. H. Long Machinery Company, is prepared to furnish a complete line of machines (see Physical Exhibits, R. H. Long Machinery Company catalogues, Defs.' Ex.

72, Defs.' Ex. 73). J. J. Doidge, manager of the company, testified that the company was ready to supply a full line of machinery for welt or turn shoes (R. Vol. 1, p. 345, lines 43–44). The company has practically completed and is ready to furnish the trade with 450 outsole stitching machines, 30 welters, 25 lasting machines, and 4 or 5 heeling machines (R. Vol. 1, p. 345, lines 39–42). It can also supply metallic fastening machines (R. Vol. 1, p. 346, line 1).

The Haverhill Shoe Machinery Company offers a full line of machines.

Edwin A. Webster, a director of the company, testified —

> "We [the Haverhill Company] undertake to fill the requirements of a manufacturer whatever they are. We advertise that we furnish any manufacturer a full line of all kinds of shoe machinery, whether it is for welts or McKays, or turns or pegs or anything else. We are prepared to make good if our people that manufacture machines don't go back on us" (R. Vol. 1, p. 301, lines 4–9).

The Haverhill Company has put out about 25 heel nailing machines (R. Vol. 1, p. 291, lines 10–11); about 60 or 65 turn channeling machines (R. Vol. 1, p. 291, lines 35–36); and about 65 turn and welt machines of which 13 are in the company's own factories (R. Vol. 1, p. 292, lines 7–9), and various other machines (R. Vol. 1, pp. 291–2). The company has machines with 58 shoe manufacturers of whom 38 also use the United Company's machines (R. Vol. 1, p. 299, lines 4–7). It has five agents who solicit orders and keep the machines in repair (R. Vol. 1, p. 292, lines 40–42).

In addition there are several foreign firms prepared to furnish complete lines of machines. John Cavanaugh, a salesman of shoe machinery connected with the Boylston Manufacturing Company, and a witness for the United States, testified that the Standard Rotary Machine Company of England and Johnson of Paris are good-sized concerns and manufacture complete lines of machines. The Standard Engineering Company is ready to do business in the United States and he should say the other companies would do so (R. Vol. 1, p. 957, lines 31–40). The Atlas Company of Leipsic manufactures a complete line of machines for welt, turn, and McKay shoes (R. Vol. 1, p. 342, lines 8–9).

That shoe factories can be equipped without using United Company machines is admitted.

The Framingham Shoe Company, owned by R. H. Long, uses no United Company machines, nor does the Buffalo Shoe Company (R. Vol. 1, p. 30, lines 31–38).

Henry P. Guptill, a witness for the United States, whose factory has a capacity of 2,500 to 3,000 pairs of turn shoes a day, and is therefore a large factory, testified he used no United Company machines (R. Vol. 1, p. 290, lines 11–15, 24–25). Mr. Long testified that the Taylor Shoe Company of Lynn used no United Company machines (R. Vol. 1, p. 232, lines 29–31). Mr. Webster, of the Haverhill Shoe Machinery Company, testified he had machines with 58 shoe manufacturers, of whom only 38 also used United Company machines (R. Vol. 1, p. 299, lines 4–7), thus showing 20 shoe manufacturers not using United Company machines.

The Non-Royalty Shoe Company was organized by the Shoe Manufacturers' Alliance, which was opposed to the United Company, for the purpose of operating a factory without the use of United Company machines. Warren F. McElroy, a member of the Shoe Manufacturers' Alliance, equipped the factory. He obtained no machinery from the United Company, except one General Department creasing machine which he bought. A few machines he obtained from abroad. The factory was equipped to make welt shoes. According to Mr. McElroy's testimony, the Non-Royalty factory made a welt shoe which he considered a better shoe than the Goodyear Welt (R. Vol. 1, p. 194, lines 16–17). The factory was equipped to make 600 to 1,000 pairs a day (R. Vol. 1, p. 194, lines 21–22). The factory closed down in 1913 because of a fire (R. Vol. 1, p. 194, lines 17–18). At that time the machinery was offered for sale though the sale was postponed. A list of the machinery advertised for sale appears in Defs.' Ex. 42 (R. Vol. 5, p. 48).

It did not appear definitely how many shoe manufacturers there are in the United States. The United Company had 1,033 lessees who were shoe manufacturers during the year 1911 (R. Vol. 1, p. 26, lines 38–40). Mr. Donham testified that he did not know how many shoe manufacturers there were in the United States at that time, but should say there were somewhere between 1,300 and 1,500. The census for 1910 showed

somewhere in the neighborhood of 1,300 (R. Vol. 1, pp. 26–27), and the petition alleges there were in 1911 about 1,300 (R. Vol. 1, p. 991).

The District Court found that the defendants were not monopolists, saying (R. Vol. 1, p. 1135):—

> "There is no question that the above described development of the United Company's business has resulted in a very great commercial success. Its machines, as was the case with those produced by the component companies in 1899, have ever since been those which shoe manufacturers in general can use to the best advantage and therefore prefer. The increase in the number of its machines in the hands of users has been very large. Nor is there any question that of all the machines, of the kinds to which this case relates, in use when the petition was filed, those of the United Company constituted all but a very small proportion.
>
> "It is nevertheless true that, considering the whole field of machinery for stitching together the bottoms and uppers of shoes, there has all the time been free competition. The use of other machinery to accomplish the purpose has always been open to shoe manufacturers. **In that part of the field of trade in shoe machinery to which the case is now limited as above, the defendants have been not monopolists but competitors. Their only means for holding the field have been legitimate means,—better machines. Their specialization in machines for bottoming shoes, and not a monopoly of such machines, has been the cause of their success**" (BLACK LETTERS OURS).

5. The United Company Lawfully Occupies the Field it enjoys Under its Patents.

It is of the utmost importance to bear in mind that the United Company's machines are and always have been patented. The United Company, therefore, has a lawful monopoly of these machines. No one else can manufacture machines of this type, and there is a natural presumption that if they are generally or exclusively used this is due to their superiority over other types of machines if such exist and not to any illegal restraint of trade. As said of these machines, by this court, in *United States* v. *Winslow*, 227 U. S. 202, 217,—

> "The machines are patented, making them is a monopoly in any case, the exclusion of competitors from the use of

them is of the very essence of the right conferred by the patents, *Paper Bag Patent Case*, 210 U. S. 405, 429, and it may be assumed that the success of the several groups was due to their patents having been the best."

There is a vital difference between an industry concerned with the manufacture of unpatented goods or machines and an industry in which the product is dominated by patents. In a business free from patents, such as the tobacco or oil business, and the manufacture of cotton or woolen goods, the business is open to any one. It would be surprising to find a single manufacturer refining all the oil, making practically all the cigars, or cigarettes, or all the cotton or woolen goods used in the country. Instantly there would arise a suspicion, if not a presumption, of employment of illegal methods to obtain such a monopoly. Such presumption would be strengthened if it were found that such monopoly were obtained by combining a large number of concerns previously competing which could have continued to manufacture goods if left to operate independently. The same would be true in the case of an industry in which, though the product was patented, the patents covered minor parts or methods and had no important or dominating influence, so that a manufacturer could enter the business and compete without the use of patented inventions.

In an industry like the shoe machinery industry, however, in which patents dominate the entire situation the inference is quite different. It would be difficult to sell machinery of so old a type that the patents on it have expired. Such machinery would express the stage of development which machines had reached seventeen to twenty years previously, and as the art is comparatively young and has been constantly advancing such machines would be so far inferior to the latest patented machines that there would be little market for them. The manufacturer who can hope to engage in this industry successfully is one who has patents either better or as good as those of the manufacturer or manufacturers already in the field. Furthermore, even if a manufacturer holds such patents and is therefore able to enter the industry, he must maintain his position by the acquisition or development of new patented inventions, or his machines will rapidly become antiquated and will not be taken by shoe manufacturers. The rapid development of the industry,

the remarkable increase in efficiency every few years of improved machines makes this essential.

In such an industry dominated by patents either the inventions originally made completely control the industry and no other inventions are made, except improvements or additions to the original inventions, which are of value only in connection with the original inventions, and, therefore, the original inventors or their successors are the only persons who manufacture the patented product, or one manufacturer's patents are almost inevitably better than the patents held by any other manufacturer and his machines are therefore used almost exclusively. In such an industry, then, it is almost inevitable that one manufacturer will dominate the industry lawfully by reason of his patents until such time as the industry has developed to a point where the important inventions have all been made and the patents thereon have expired, and inventors must confine themselves to minor improvements and refinements which are not of vital importance. When that point is reached the industry will be open to all; prior to that time it is for practical purposes open only to those having the best patents. So long as it is dominated by patents the fact that the manufacturer who has the best patents produces the larger share of the product does not give rise to any presumption of illegal methods, but is natural and to be expected.

The United States points to the large proportion of the trade in shoe machinery held by the United Company and the fact that shoe manufacturers must turn to it if they wish the best machines as evidence of an unlawful monopoly. This is entirely unjustified. The right of an owner of patents to exclude all others from making use of his inventions and to draw to himself all trade in the patented articles and, as a consequence, to acquire a commanding position in the industry if no other patented articles are equally good is undoubted. This court in *United States* v. *Bell Telephone Company*, 167 U. S. 224, p. 250, said:—

> "Counsel seem to argue that one who has made an invention and thereupon applies for a patent therefor, occupies, as it were, the position of a quasi trustee for the public; that he is under a sort of moral obligation to see that the public acquires the right to the free use of that invention as soon as is conveniently possible. We dis-

> sent entirely from the thought thus urged. The inventor is one who has discovered something of value. It is his absolute property. He may withhold the knowledge of it from the public, and he may insist upon all the advantages and benefits which the statute promises to him who discloses to the public his invention. He does not make the law. He does not determine the measure of his rights. . . . As the law-making power has prescribed what the public will give, specified the terms and conditions of purchase, indicated the time and methods of determining the right of compensation, he on his part has an absolute legal right to avail himself of all the provisions thus made."

No case presenting facts in any way similar to the present has ever before been decided by this court under the Sherman Act, except the case of *United States* v. *Winslow*, supra, in which the formation of the United Company and its acquisition of the constituent companies holding patents which gave them a practical monopoly of the business was before this court and was held lawful. In no other case heretofore decided has the product which the defendant has been accused of monopolizing been protected by dominating patents which restricted competitors to the marketing of machines of a different and inferior type. In practically every case in which the monopoly of an industry has been charged such monopoly has been created by a combination of competing concerns, the combination of which was not necessary to enable the defendant to produce a satisfactory product. In the present case the United Company was a combination of non-competing concerns and its subsequent acquisitions have been mainly of small non-competing concerns of minor importance having little or no influence in the trade, acquired in order to enable the company to give its customers a broader line, or to acquire patents required to improve its own machines or to settle litigation. In all cases where such acquisitions were made there were left outstanding competitors (R. Vol. 1, p. 465, lines 20–23).

The presumptions and inferences applicable in other cases are inapplicable in the present case. The combination of non-competing concerns is lawful, no intent can make it unlawful, and it, therefore, can give rise to no unlawful inference (*United States* v. *Winslow*, supra). The defendants' patented machines are presumed to be the best of their kind (*United States* v. *Winslow*,

supra), and the fact that the United Company has a large portion of the business of furnishing shoe machinery is therefore natural and gives rise to no inference of unlawful methods.

The District Court said (R. Vol. 1, p. 1136):—

> "The business which the defendants have developed and established is not, and has never been, one in which everybody might freely engage. No one else could lawfully make or use machines containing improvements covered by the defendants' patents. Nor can it be said that the demand for such machines which they have supplied existed independently of the defendants; on the contrary, they have created it by the new methods of shoe manufacture which their improvements have educated and enabled manufacturers to follow. It cannot justly be said that the case is one in which a field of commerce normally belonging to all has been captured by a single concern. The principles applying in such cases cannot justly be applied here."

6. The Constituent Companies had Lawful Patent Monopolies of the Machines They manufactured. The United Company has not acquired Any New Monopoly in These Machines.

If previously to the formation of the United Company the constituent companies had supplied only a small portion of the machines of the kind they manufactured, and there had been competitors furnishing similar machines to a large portion of the shoe manufacturers, and if, after the formation of the United Company, such competitors had disappeared and the United Company had thus acquired all or the greater part of the trade, there might be a presumption or inference that such result was caused by illegal methods which would call for a careful scrutiny of the causes. Such, however, is not the fact. The constituent companies, at the time of the formation of the United Company, had as large, or a larger, portion of the trade in the machines they manufactured as the United Company now holds and this was due to the fact that these machines were the best and were protected by patents which prevented others from manufacturing them. The shoe machinery industry was new and the constituent companies, which held the only practical patents, had

created the industry, and, therefore, naturally had the greater part of the business.

The petition admits and alleges that the constituent companies had a lawful monopoly of the machines they manufactured. It sets out that the principal essential machines used in the manufacture of shoes are lasting machines, welt sewing and outsole stitching machines, heeling machines, and metallic fastening machines (R. Vol. 1, p. 991). It alleges that the principal concerns engaged in the business were the constituent companies (R. Vol. 1, p. 992). It alleges that the constituent companies were "manufacturing their machines and parts thereof under Letters Patent of the United States and of other countries" (R. Vol. 1, p. 993). It then alleges that the defendants, "not being satisfied with the benefit of lawful monopolies and rights belonging to them under Letters Patent of the United States and of other countries," formed an unlawful project to unlawfully expand their monopolies and rights (R. Vol. 1, p. 994). Finally it alleges that the United Company, by the acquisition of the constituent companies, "acquired control of the greater portion of the manufacture of, and trade and commerce in, the machines included in each and all of the groups of machines" mentioned (R. Vol. 1, p. 996).

In other words, the petition admits that the constituent companies had patents which gave them lawfully the greater part of the trade in lasting, welt sewing, and outsole stitching, metallic fastening, and heeling machines. This same fact is shown by the record.

As Charles A. Eaton testified:—

> "I haven't been looking about for other sources to go to to obtain my machines. I don't know of any other system of shoe machinery. This is the only system that is strong enough to commend itself at all. This system is the only one I ever had in mind; it is good enough for me" (R. Vol. 1, p. 755, lines 38–42).

There were other concerns putting out machines, but the constituent companies' machines were the best (R. Vol. 1, p. 532, lines 16–18, 29–32). The constituent companies' machines were doing about all the welting, outsole stitching, lasting, and metallic fastening that was being done in the United States (R. Vol. 1, p. 537, lines 32–37). No other company had put

out heeling machines for several years prior to 1899 and the McKay Company was putting out all of the heeling machines that were being made in the United States (R. Vol. 1, p. 851, lines 27–30).

The reason is obvious. The shoe machinery industry was of very recent origin. Previous to 1850 or 1860 all shoes were made almost entirely by hand (R. Vol. 1, p. 521, lines 15–16). Shoe machinery had only been gradually developed since that date, and, as we have shown, many important machines had not been invented in 1899. In respect to the machines put out by the constituent companies, their invention was new, and important improvements were constantly being made in them. The constituent companies held the patents under which they had originally been constructed; they were the ones most interested in developing and improving the machines and they, therefore, developed the machines, and held the patents on the new improvements. The constituent companies, therefore, had practically all the business as a result of these lawful patent monopolies.

To illustrate: The Goodyear machines were designed to make a welt shoe by machinery. Welt shoes had been made for many years previously, but always by hand. The system ran back to 1870 or 1868 (R. Vol. 1, p. 625, line 20). The Goodyear Company, however, revolutionized its machines about 1890 by the use of new inventions (R. Vol. 1, p. 678, lines 6–9). The auxiliary machines needed to make the system a practical success were only gradually developed and were still in process of development in 1899. The Goodyear Company in 1899 was still endeavoring to introduce its machines into general use. In 1899, after the formation of the United Company, only 22,700,000 pairs of welt shoes were made out of a total production of 172,786,000 shoes (R. Vol. 1, p. 424). The Goodyear shoe was in competition with the McKay shoe. In other words, the industry of making welt machinery had been created by the Goodyear Company; no one else had invented machines comparable to the Goodyear machines, so that inevitably the Goodyear Company, by reason of its patents, had practically all of this new field which it had created.

The lasting machine industry was more recent still. In 1890 very few shoes were lasted by machines except heavy brogans, which were, of course, limited in number and which were lasted

on the McKay & Copeland machine (R. Vol. 1, p. 401, lines 14–16). Shoe manufacturers at that time were sceptical as to the possibility of developing a lasting machine at all (R. Vol. 1, p. 401, lines 24–26). The industry dates from that period only nine years previous to the formation of the United Company. Even when the machines had become commercially useful the difficulty of introducing them, due to the opposition of operatives, the necessity of instructing operatives in the use of the machines, and the scepticism of shoe manufacturers was enormous (R. Vol. 1, pp. 401–3). In 1899 not more than 50% of the shoes made were lasted by machines (R. Vol. 1, p. 402, lines 14–18). Here again we find the lasting machine industry a new industry created by the Consolidated Company and only partially developed after some years of labor and inventions, and protected by patents. The fact that the Consolidated Company put out practically all of the lasting machines was no more remarkable than that the Bell Telephone Company, after the invention of the telephone, was the only concern engaged in making telephone instruments.

7. The Other Machines not manufactured by the Constituent Companies as to which Monopoly is charged were New Inventions developed by the United Company and protected by Lawful Patent Monopolies. Any Monopoly Acquired by the United Company in these Machines was due to the Fact the United Company created them and the Fact that they were Lawful Patent Monopolies.

The pulling-over machines were invented by the United Company and first put out in 1902. The pulling-over operation was previously done by hand exclusively (R. Vol. 1, p. 425, lines 33–34). Various auxiliary machines were developed later (R. Vol. 1, p. 12, lines 1–8). The first lease including auxiliaries was put out in 1905 (R. Vol. 1, p. 12, line 9). The pulling-over machine is a remarkable invention and an entirely new creation. Its development cost the United Company nearly $1,000,000 (R. Vol. 2, p. 2552). It had been in existence at the date the petition was filed only nine years (R. Vol. 2, p. 2542). It is protected by 19 patents (R. Vol. 2, p. 2573), and the auxiliary machines are protected by over 28 different patents (R. Vol.

2, pp. 2523–5, 2572–4. See pulling over system lease, P's. Ex. 39, R. Vol. 3, pp. 363, 364). The fact that no one else had developed or invented a different type of machine which was as satisfactory to shoe manufacturers and in general use is therefore not remarkable; on the contrary, it would be surprising if any one had done so.

The clicking machine was another remarkable invention developed by the Experimental Department of the United Company, which probably saves more money for the shoe manufacturer than any machine ever produced (R. Vol. 1, pp. 425–6). It was first made commercial in 1908 or 1909 and was then first leased (R. Vol. 1, p. 14, lines 30–33). The machine cuts out the uppers of shoes in such a way as to effect an enormous saving of leather; previously to its invention the shoe manufacturer generally cut the upper by a hand knife, resulting in a considerable loss of stock (R. Vol. 1, p. 426, lines 2–24).

Mr. Winslow testified:—

> "The clicking machine was another machine which was developed by the Experimental Department of our company and perhaps saves more money for the manufacturer than any other machine which has been produced" (R. Vol. 1, pp. 425–6, lines 43–44, 1–2).
>
> "Since my knowledge of the shoe art no machine has accomplished so much for the art as the clicking machine" (R. Vol. 1, p. 426, lines 19–20).

This machine had been put out less than three years before the present petition was brought. It is protected by 13 patents (R. Vol. 2, p. 2598). George Harsh, witness for the United States, testified that the United Company's clicking machine was the only commercial machine in the market (R. Vol. 1, p. 198, lines 30–32). It is obvious that the success it had was due to its merit and that the large trade in this machine which the United Company had was due to the lawful patent monopoly which prevented its manufacture by others.

The United Company's eyeletting machines were likewise patented machines developed by it (R. Vol. 1, p. 14, lines 21–23). The Duplex machine, which is the standard machine for regular work, was first put out in 1902 (R. Vol. 2, p. 2617). It is protected by twelve patents (R. Vol. 2, p. 2617). It is the only machine ever produced which inserts eyelets on both sides of the

shoe at once (R. Vol. 2, p. 2618). The Universal machine is another type likewise adopted in 1902 and it is now protected by five patents and one patent application (R. Vol. 2, p. 2636).

The above list includes all the machines as to which monopoly is charged by the United States, except in so far as such General Department machines may be included, which may come within the description of machines for preparing or attaching the sole to the upper. Some of these machines are used in preparing the bottoms of shoes. The United States, however, specified no General Department machines which it contended were included in its charge of monopoly. The United States introduced no evidence with respect to the comparative amount of business in General Department machines done by the United Company and other concerns, and no evidence was introduced showing that the United Company had any actual monopoly of such machines. There is absolutely no basis, therefore, in the record for charging any monopoly of them. General Department machines are sold outright. If, which does not appear, the United Company furnishes a considerable portion of any of these machines, it is presumably due to the excellence of the machines or the patents covering them.

Such General Department machines are manufactured by a large number of competitors of the United Company. A compilation from the testimony of machinery makers manufacturing and selling such machines will be found in the Appendix, pp. 132–156.

From the foregoing it appears that the constituent companies of the United Company, at the time of the formation of the United Company, furnished practically all the welt and turn machines, lasting machines, metallic fastening machines and heeling machines used in the country. The trade in these machines had only recently been created by inventions which made the machines possible, and the constituent companies held the best of the patents covering these inventions. Such monopoly as they had lawfully resulted from the patents. The United Company, therefore, did not acquire any new monopoly in these machines; it merely continued the lawful monopoly, if it can be called such, held by the constituent companies. The charge of the United States that the United Company acquired a monopoly is absolutely unfounded. The only possible con-

tention the United States could make is that the United Company maintained this monopoly by unlawful methods.

In respect to the pulling-over machines, clicking machines, and the eyeletting machines, it appears that they were developed by the United Company, that the United Company had a lawful and inevitable monopoly in these machines when first put out, because the United Company held strong patents covering them and no one else had invented any other machines to do the same work. Here again the original acquisition of the business by the United Company was unquestionably lawful, and the only possible contention that the United States can make is that these lawful patent monopolies have in some way been illegally maintained.

8. The United Company has Maintained the Business in Shoe Machinery which it Acquired, not by Unlawful Methods, but by Reason of the Excellence of its Patented Machines and the Service it Renders with Them.

We have shown above that the United Company lawfully acquired its business in the machines as to which a monopoly is charged. We submit the record shows that this business has been maintained by lawful methods.

The business was acquired by reason of the patented inventions held by the United Company and its constituent companies. The development of the machines since that date has been constant; the United Company has spent enormous sums in invention and development of machines and to-day the United Company has as strong if not stronger patents on its machines than it had in 1899 or has had at any time since. There is absolutely no evidence that other persons have invented better machines or equally good machines. If the United Company's patents in 1899 gave it most of the business in the machines which it manufactured, there is every reason that its patents should have enabled it to retain this business.

In addition, however, the United Company has developed a service in connection with its machines at enormous cost to itself, which has proved of the utmost importance to shoe manufacturers, which is given by no other shoe machinery company and which shoe manufacturers testified was vital. It has in no

instance increased its charges for machines; on the contrary, it has in certain instances reduced its royalties and it has removed the initial premiums charged in 1899. It has furnished new machines as they have been invented, free of charge, taking back the old machines, and it has added many important auxiliary machines without additional charge.

By these various means it has added enormously to the efficiency and usefulness of its machines. If owing to their excellence they were used almost entirely by shoe manufacturers in 1899, there is still more reason they should be so used to-day.

We submit that the United States has wholly failed to show that the United Company's continuance of the success of the constituent companies has been due to unlawful acts, or any unlawful plan on the part of the defendants to monopolize. Whatever view may be taken of the acts in evidence in this suit, whether any of them considered individually are deemed lawful or unlawful, the fact is clear from the record that the excellence of its patented machines which gave the constituent companies their success, coupled with the great improvement in the machines effected by the United Company, and the service it renders with them, is the cause of the success of the United Company to-day. The District Court so found, saying:—

> (R. Vol. 1, p. 1135.) "There is no question that the above described development of the United Company's business has resulted in a very great commercial success. Its machines, as was the case with those produced by the component companies in 1899, have ever since been those which shoe manufacturers in general can use to the best advantage and therefore prefer. The increase in the number of its machines in the hands of users has been very large. Nor is there any question that of all the machines, of the kinds to which this case relates, in use when the petition was filed, those of the United Company constituted all but a very small proportion."
>
> . . . . . .
>
> "If there is any sense in which the result attained as above can be called a 'monopoly,' it does not follow, in view of the circumstances shown, that the defendants have either restrained trade or been guilty of monopolizing, or attempting to monopolize, within the meaning of the act. Nor can I regard the case as one in which any presumption arises, from the fact that so large a proportion of the users of these machines use the defendants'—that the defendants

have committed any of the above forbidden acts in accomplishing the above result. The proof is too complete that it has been in fact reached by the use of methods entirely lawful, the leading features whereof are below indicated."

. . . . . .

(R. Vol. 1, p. 1137.) "That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question. It is not disputed that, when the petition was filed, its machines represented, in number and amount, the highest development ever reached in the art to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason."

. . . . . .

(R. Vol. 1, p. 1187.) "It is impossible to believe that the defendants' equipment is in so many shoe factories for any other substantial reason than the merits of what they have had to offer. To say that this is due, in any substantial degree, to the fact that its leases run beyond the terms of patents, or because of the exclusive use, prohibitive or cancellation clauses, rests largely, if not entirely, upon assumption. But that the business of these defendants rests upon the lease provisions objected to in such a substantial amount as to constitute any factor of independent force in securing or maintaining a monopoly does not appear."

XI.

RELIEF ASKED FOR BY THE UNITED STATES.

The Impossibility of Granting the Relief asked for by the United States without Irreparable Damage to the Public proves the Lawfulness of the United Company's Business.

The petition prays:—

1. That the United Company and the United Shoe Machinery Corporation "be dissolved and separated into such parts that no one of them will constitute a monopoly" (R. Vol. 1, pp. 1030–1); and

2. That the leases of the United Company containing like or similar provisions to those complained of be declared illegal and void and the defendants be enjoined from enforcing such provisions (R. Vol. 1, pp. 1029–30).

The petition prays for other incidental relief, but the foregoing is the primary and material relief requested.

1. A Separation of the United Company's Business would Irreparably Damage Shoe Manufacturers and the Public.

A division of the United Company's business could be attempted in only one of two different ways, *i.e.*, either (1) by dividing the business among two or more non-competing concerns or (2) by attempting to divide it among two or more competing concerns.

If the business were divided into its original component parts, that is, if the Goodyear business were set apart in one company, the lasting machine business in another company, the heeling and metallic machines in another company, and the new machines, such as the pulling-over machines, clicking machines, eyeletting machines, and General Department machines acquired since the formation of the United Company were set apart in still another company, we should have four non-competing companies. These companies could, unless enjoined, consolidate again, because it would be entirely lawful to do so as held in *United States* v. *Winslow*, supra.. No competition would be

created by such a division and no good would be accomplished; on the contrary, the public would lose the benefit of the increased efficiency which results from the consolidation in one company of these different machines, such as better service to shoe manufacturers, the maintenance of a large Experimental Department, wholesale prices, and reduction of expenses.

If an attempt were made to divide the business of the United Company into competing concerns, this could be attempted only by taking each machine separately and transferring to one concern a portion of the patents covering the machine and to another concern the remainder of the patents covering it. The United Company has not two or more machines of each type protected by distinct patents and capable of competing with each other if transferred to separate companies. It has a single machine of each type. In certain cases it has a new improved model and one or more old models, but in such cases the new model is not only superior to the old model, but it almost invariably embodies patents also embodied in the old models.

A division of the patents covering a machine between two concerns would, of course, make it impossible for either to manufacture the machine. Suppose, for example, the court should order that one-half the patents on the welter or pulling-over machine should be sold or disposed of. Neither the United Company, which retained half the patents, nor the vendee of the other half could make the welter or pulling-over machine as it is now manufactured and put out.

Nor would the result be better if the court should order that the acquisitions which the United States contends are improper should be disposed of. Take, for example, the Ideal machine and the Eppler machine. Both are now obsolete. Nobody wishes to use these machines to-day. A concern holding the patents on these machines would not manufacture them even if they could do so without infringing the United Company's patents. Take the Plant acquisition. A sale by the United Company of these patents would prevent its manufacturing the improved Model K Welter which is enormously more efficient than either the former Plant welter or the former United Company welter. The loss to the shoe manufacturer would amount to hundreds of dollars a year on each new machine. Such sale of the Plant patents would also mean that patents on twenty-six

machines now put out by the United Company would be transferred and either the United Company would have to give up the manufacture of these machines or it would have to remodel them materially to avoid infringement of the transferred patents, and thus make them far less efficient. On the other hand, it is extremely doubtful if the grantee of the patents would attempt to manufacture under them. If he did, he would, as we have shown, be unable to manufacture efficient machines which he could market, or he would necessarily infringe patents of the United Company which it is necessary should be combined with the Plant patents to make efficient machines.

The fact that the United Company's business cannot be separated without such consequences proves conclusively that its creation was inherently lawful and for the purpose of greater efficiency and to enable it to furnish more efficient machines.

The Sherman Act, as we have shown, is intended to prevent "not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented."

> *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, 174.

It may possibly be true that if the United Company's patents should be distributed among two concerns, neither of which held all the patents on one machine, and neither of which was therefore able to make the latest improved machines, competitors of the United Company would be benefited. Shoe manufacturers and the public generally, however, would be disastrously affected. The Sherman Act was never intended to produce such a result.

In *United States* v. *St. Louis Terminal*, 236 U. S. 194, the decree of the lower court in a suit under the Sherman Act enjoined the defendant company from doing a transportation business which originated and terminated on its own lines. This court held that the decree should be qualified so as to recognize the defendants' right to do such business (p. 205):—

> "Because not to so decide would lead inevitably to the conclusion that the decision of this court contemplated safeguarding one public interest by destroying another and in

effect proposed making the movement of transportation freer in some channels by absolutely obstructing all possibility of its flow in others."

2. To hold the Leases void would disastrously affect Shoe Manufacturers and the Public.

The United Company owns the leased machines. If the leases were held void, lessees would have no further right to use the leased machines held by them until they made a new agreement with the United Company permitting them to do so.

We have shown above that the provisions complained of are necessary to enable the United Company to furnish its machines on the present favorable terms. If the leases were held void the United Company would therefore be obliged to sell its machines outright or to lease them on far less favorable terms than at present. If it were willing to enter into new lease agreements with shoe manufacturers in respect to the machines they now hold, and it were enjoined from inserting in its leases provisions similar to those now used, it would inevitably be obliged to require a large initial payment in order to insure itself a fair return on the machines. The result, therefore, of declaring the leases void would be to compel shoe manufacturers to raise the capital necessary to obtain their machines and to make them take the machines on less favorable terms. Many shoe manufacturers who have entered business because they were able to get their equipment without initial expense might be unable to raise the capital necessary to retain their machines. The Sherman Act was not intended to produce such a result; it was enacted only to prevent such acts as prejudice the public interests.

3. The Leases cannot be declared Unlawful or the United Company enjoined from enforcing them, as the Lessees are not Parties to the Suit.

The lessees are as vitally interested in the legality of the leases as the United Company itself. Under these leases they hold a valuable equipment without capital expenditure on their part, paying a wholesale rate for a wholesale use as a series, and paying only as they use the machines and to the extent that

they use them. They are necessary parties to a suit which seeks to declare these leases void.

Minnesota v. *Northern Securities Co.*, 184 U. S. 199.
Gregory v. *Stetson*, 133 U. S. 579.
Shields v. *Barrow*, 17 How. 130.

In *Minnesota* v. *Northern Securities Co.*, supra, the court said (p. 235):—

> "The general rule in equity is that all persons materially interested, either legally or beneficially, in the subject-matter of a suit, are to be made parties to it, so that there may be a complete decree, which shall bind them all. By this means the court is enabled to make a complete decree between the parties, to prevent future litigation, by taking away the necessity of a multiplicity of suits, and to make it perfectly certain that no injustice is done, either to the parties before it, or to others who are interested in the subject-matter, by a decree which might otherwise be granted upon a partial view only of the real merits. When all the parties are before the court, the whole case may be seen; but it may not, where all the conflicting interests are not brought out upon the pleadings by the original parties thereto (Story's Eq. Plds. sec. 72).
>
> "The established practice of courts of equity to dismiss the plaintiff's bill if it appears that to grant the relief prayed for would injuriously affect persons materially interested in the subject-matter who are not made parties to the suit, is founded upon clear reasons, and may be enforced by the court, *sua sponte*, though not raised by the pleadings or suggested by the counsel. *Shields* v. *Barrow*, 17 How. 130. *Hipp* v. *Babin*, 19 How. 271, 278; *Parker* v. *Winnipiseogee Lake Cotton and Woolen Co.*, 2 Black, 545."

If it is impractical to make all the lessees parties, at least certain of the lessees should be made parties as representatives of the class.

Nor can the provisions of the leases be held illegal and the United Company be enjoined from enforcing them unless the lessees are parties. The provisions in the leases go to the essence of the contract; the leases would obviously not have been made on these terms if these provisions had not been employed. A decision that these provisions are void is therefore necessarily a decision that the leases themselves are void. Such a decision would therefore affect lessees to the same extent as a decision holding the leases themselves void.

XII.

CONCLUSION.

We submit:—

1. That the United States has wholly failed to prove any part of the charge made in the petition, namely, that the defendants, finding that the patents of the constituent companies under which they did the greater part of the business of the country in the principal essential shoe machines were about to expire, planned to extend their patent monopolies unlawfully by—

(*A*) Combining and acquiring all concerns engaged in the shoe machinery business, and then

(*B*) Refusing to sell or lease any of said so-called essential machines to a shoe manufacturer except on condition that he take from them practically all other machinery which he required, and that

(*C*) They thereby acquired an unlawful monopoly of all shoe machinery.

There is no evidence of any such plan, and the record shows conclusively that the defendants never did anything to carry out such a plan, for as the District Court found—

(*A*) They did not acquire all concerns engaged in the shoe business or attempt so to do.

(*B*) They did not refuse to lease the alleged essential machines except on condition that the shoe manufacturer take all other machines required by him from them. As the District Court found, this charge was wholly unfounded.

(*C*) They did not acquire an unlawful monopoly of all shoe machinery as the United States itself conceded during the course of the trial.

2. The United States attempted during the course of the trial to limit its charge to a charge that the defendants planned to extend their patent monopolies unlawfully by

(*A*) Combining and acquiring all concerns engaged in the business of manufacturing machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines and clicking machines, and

(*B*) Refusing to sell or lease any of the so-called essential machines to a shoe manufacturer except on condition that he take from them practically all other machines of the above named classes, and that

(*C*) The defendants carried out such plan and thereby acquired an unlawful monopoly of said classes of machinery.

There is equally no evidence of any such modified plan or of any monopoly obtained in pursuance of any such modified plan, for as the District Court found—

(*A*) The defendants did not acquire or attempt to acquire all concerns engaged in manufacturing shoe machinery of the above mentioned classes. On the contrary they expressly declined to purchase their largest competitors making such machines.

(*B*) They did not refuse to lease the so-called essential machines except on condition that the shoe manufacturer take all other machines from them. On the contrary the record shows that the United Company never required a shoe manufacturer leasing its so-called essential machines to take or use any other machines, and that the only clause employed in its leases at the time the petition was filed requiring any use whatsoever of its machines was the Full Capacity Clause which required only a use of the particular machines leased. It further shows that the United Company's so-called restricted leases not only did not require the lessee to agree to use other machines, but that they did not compel such a use in order to obtain the leased machines, since the lessee was offered alternative forms of leases without restrictions on terms as favorable, and in many cases more favorable than were offered him prior to the formation of the United Company.

(*C*) The record further shows, as the District Court found, that the defendants did not have an unlawful monopoly of machines of the above mentioned classes. On the

contrary it shows not only that there were a number of competitors, but that the business the defendants had in such machines was due to the fact that the United Company and its constituent companies had created such business by reason of their patented inventions; that their machines had always been the best in the market, and that their success was due to the excellence of the machines, the constant improvements made in them, the remarkable service rendered with them and the favorable terms offered lessees.

3. We further submit that the record utterly fails to justify any other charge of unlawful conduct or monopoly, even if such a charge had been made in the petition and it were therefore open to the United States.

The history of the development of the United Company and of its constituent companies is a remarkable history of the creation of a new industry. By constant efforts and intelligent experimentation conducted at great expense, it has produced what are unquestionably the best machines, and these machines are lawfully protected by patents so that others cannot manufacture them. Most of these machines when first put on the market were new creations doing work previously done by hand. Nearly all of the United Company's machines to-day are new machines or new models so improved as to constitute practically new machines, or are machines invented within a few years to do work previously done by hand. The United Company's success in furnishing these machines is as natural and lawful as was the success of the Bell Telephone Company as owner of the Bell patent in the telephone field.

In addition the United Company is furnishing its machines under a lease system whereby the lessee can obtain his machines with practically no initial cost, paying for them only as he has use for them, and under which he is permitted to share in the economies resulting from the combined use of the principal machines which are adapted for use together, and the United Company furnishes at great expense to itself and without charge to its lessees a service with its machines which shoe manufacturers testified was vital to the proper conduct of their business.

During a period in which the cost of nearly all supplies and

machinery has increased, the United Company has never increased its prices, but on the contrary has in numerous instances reduced them, and, in addition, for such prices it has furnished, not the machines put out in 1899, but greatly improved machines, and many additional auxiliary machines which save the shoe manufacturer more than the entire amount paid the United Company in royalties.

As the District Court found:—

> "That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question. It is not disputed that, when the petition was filed, its machines represented, in number and amount, the highest development ever reached in the art to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason" (R. Vol. 1, p. 1137).

The attempt of the United States to prove that the success of the United Company was not due to the above causes but to various unlawful means adopted in pursuance of a plan to monopolize failed utterly. The charges of the United States were made recklessly and without investigation. The petition is replete with allegations made without any foundation of fact whatsoever on which even to base a contention. Thus, for example, the allegation that the United Company discontinued the sale of machines; the allegation that the patents of the constituent companies were about to expire; the allegation that the leases required the lessee to covenant to use United Company's machines of the kind leased and all other kinds exclusively; the allegation that the United Company acquired various patents and held them without making any use of them, thus depriving the manufacturer and the public of the benefits arising therefrom; the allegation that exorbitant prices were charged for repair parts; and the allegation that the constituent companies were taken over for values far in excess of real worth, and numerous other allegations, were shown to have no foundation whatsoever, although the true facts would have been disclosed upon the

slightest investigation. The specifications of the United States with respect to the unfair acts alleged by it were shown to be equally unfounded. As to most of them, no evidence whatsoever was introduced, and as to the remainder the evidence showed an utter lack of foundation for the charges.

The District Court heard the witnesses in open court and thoroughly investigated the entire business history of the United Company. The facts on which its opinions are based are fully sustained by the record, and completely dispose of the contentions of the United States.

We respectfully submit that the decree of the District Court dismissing the bill should be affirmed.

FREDERICK P. FISH.
CHARLES F. CHOATE, Jr.
MALCOLM DONALD.

Office Supreme Court, U. S.
FILED
MAR 12 1917
JAMES D. MAHER
CLERK

Supreme Court of the United States

OCTOBER TERM, 1916

No. [redacted] 207

THE UNITED STATES,
Appellant,

v.

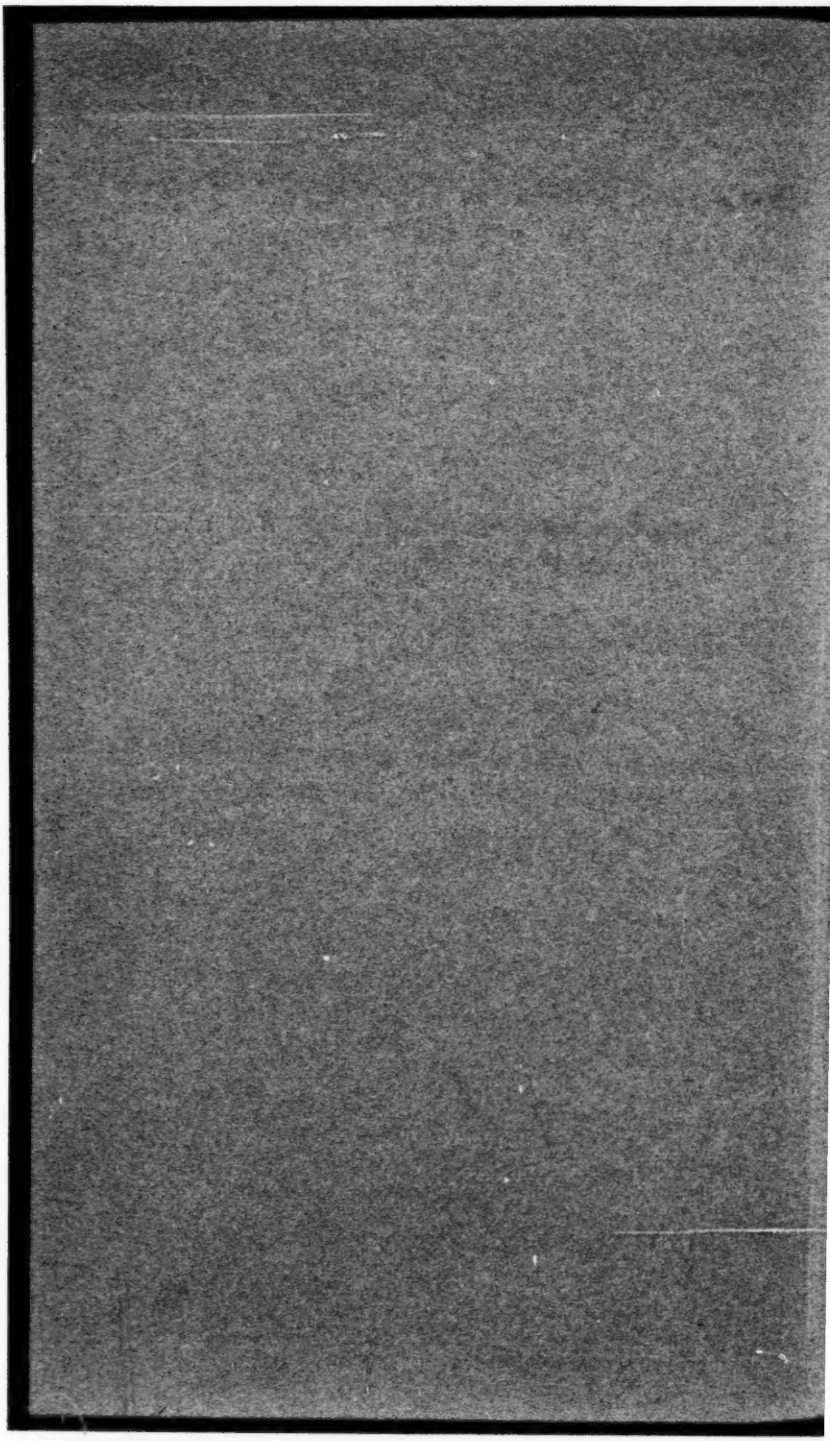
UNITED SHOE MACHINERY COMPANY,
OF NEW JERSEY, ET AL.,
Appellees.

APPENDIX

TO BRIEF OF UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL., Appellees.

FREDERICK P. FISH.
CHARLES F. CHOATE, Jr.
MALCOLM DONALD.

BOSTON
Press of Geo. H. Ellis Co.
1917



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OCTOBER TERM, 1916

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UNITED SHOE MACHINERY COMPANY
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TO BRIEF OF UNITED SHOE MACHINERY COMPANY
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MALCOLM DONALD.

BOSTON
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1917

I.

THE ACQUISITIONS.

[This section contains a discussion of each acquisition.]

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THE "ACQUISITIONS."

Detailed Statements of the Facts.

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Goddu Sons Metal Fastening Company.

This transaction took place March 1, 1899. (Pltff.'s Exh. 60, R. Vol. 3, p. 514.) The Goddu Sons Metal Fastening Company "had constructed a loose nailing machine, a slugging machine, a tacking machine, and a standard screw machine." Each of these machines was "in a state of development" and none of them was "in a condition to be placed in the hands of manufacturers for continuous operation." (Howard, R. Vol. 1, p. 41, lines 38–40; Winslow, R. Vol. 1, p. 436, lines 28–31.) The Goddu Sons Company had no machines whatever in the hands of customers and accordingly was not engaged in interstate or foreign trade or commerce. These four machines, which were all patented, were all metallic fastening machines. The Goddu Sons Company had no factory and the experimental work had been done in a small machine shop with a few tools in it adjoining the house of Louis Goddu, the father of the "Goddu Sons." (R. Vol. 1, p. 103, lines 35–45; p. 104, lines 1–7; p. 436, lines 2–3, 27–28, 34–36.)

Louis Goddu had been for a long time employed by the McKay Shoe Machinery Company and its predecessors, and his inventive work "had been very meritorious. It was the base of the McKay metallic machinery business." (Winslow, R. Vol. 1, p. 436, lines 15–19; Defts.' Exh. 101, R. Vol. 5, pp. 166, 168.) All of his sons had also been employed by the McKay Company and several years prior to the organization of the United Company had all left the employ of the McKay Company. (R. Vol. 1, p. 104, lines 8–10, 12–13.)

The negotiations for this transaction were opened by the Goddus.

> "Mr. Goddu, senior, came to me and wanted the transfer, . . . to have the United Company take this property, . . . wanted to relieve himself of the position that he was in." (Winslow, R. Vol. 1, p. 436, lines 4, 5, 10.)

Both Goddu, senior, and Van Wagenen had talked to Mr. Winslow about the situation before the United Company was organized. (R. Vol. 1, p. 436, lines 20–23.)

The United Company did not acquire anything whatever from the Goddu Sons Company. It acquired from Louis Goddu and his sons a majority of the stock of the Goddu Sons Company and a number of patents and applications for patents. (R. Vol. 1, p. 41, lines 31–34; p. 534, lines 27–28.) There were two reasons for this acquisition:

(1) It was claimed by officials of the McKay Shoe Machinery Company "that the inventions embodied in the machines of the Goddu Sons Company had been made by Louis Goddu, the father," who had agreed to assign his inventions to the McKay Metallic Fastening Association, a predecessor of the McKay Company, by his employment contracts which were still in force and under which he had been paid continuously, and was still being paid, for his exclusive services. Suit had been brought on those contracts "to compel the transfer of these inventions" which were in the Goddu Company's machines to the McKay Company. (Winslow, R. Vol. 1, p. 436, lines 42–44; Howard, R. Vol. 2, p. 2071, Ints. 1578, 1579; Defts.' Exh. 104, R. Vol. 5, pp. 245–252.)

The bill of complaint in that suit, which is Defendants' Exhibit 104 (R. Vol. 5, p. 243), reviewed the history of Louis Goddu's relations with the McKay Company, including his declaration that he would assign no more inventions (pp. 245–252), set forth that none of the sons had made any inventions while in the employ of the McKay Company (p. 253) and charged that Louis Goddu, his sons and Albert Van Wagenen, also formerly employed by the McKay Company, conspired to have Louis Goddu invent metallic machines, communicate such inventions to his sons and permit them to apply for patents upon the machines and transfer such patents to the Goddu Company (pp. 253–262).

Counsel of the highest standing, Mr. Louis D. Brandeis, appeared for the McKay Company in this suit (R. Vol. 5, p. 264).

The endless trouble which the McKay Company had had with Louis Goddu and threats that he had made are further set forth in the affidavit of James W. Brooks (Defts.' Exh. 101, R. Vol. 5, p. 161), prepared for use in the proposed infringement suits. Among illuminating facts developed by the evidence in the

pending suit which are recited in this affidavit, it appears that Louis Goddu, the father, had contributed $40,000 to the Goddu Sons' enterprise (p. 187) and that he had been working with his sons continuously for several years (pp. 183, 184).

Mr. Winslow testified:

> "I knew Mr. Goddu, senior, quite well and believed personally that the patents then standing in his and his sons' names, and those that had been transferred to the Goddu Company, belonged in reality to the McKay Company." (R. Vol. 1, p. 435, lines 43–45; p. 436, lines 1–2; Defts.' Exh. 231, R. Vol. 5, p. 447.)

That is, by this acquisition Mr. Winslow was securing control for the United Company of inventions and patents and applications for patents which he believed already belonged to the United Company, as successor of the McKay Company.

(2) There was very serious litigation existing and threatened between the parties. The pending suit which had been brought on the Louis Goddu contracts had been running for some time before the formation of the United Company, had been "very vigorously contested" and "a very large amount" of testimony had been taken, and the claims of the McKay Company had been developed and substantiated before the acquisition. (R. Vol. 1, p. 104, lines 14–24; R. Vol. 2, p. 2082, Cr. Ints. 1618–1620; Defts.' Exh. 275, R. Vol. 5, p. 755.)

In addition to this pending suit the McKay Company had—

> "caused to be prepared bills of complaint and affidavits to accompany motions for preliminary injunctions in suits for infringements of its patents by all of the machines of the Goddu Sons Metal Fastening Company." (Howard, R. Vol. 2, pp. 2077, 2078, Ints. 1609–1611; Defts.' Exh. 275, R. Vol. 5, p. 755.)

A number of affidavits, including one by Joseph P. Livermore, and a bill of complaint had been printed prior to the formation of the United Company and printed copies constitute Defendants' Exhibit 101. According to Mr. Livermore's affidavit, the Goddu Sons' loose nailer infringed six of the McKay Company's patents; its screw machine infringed two of the McKay Company's patents; its slugging machine infringed two of the McKay Company's patents, and its string nailer infringed three of the

McKay Company's patents. (Defts.' Exh. 275, R. Vol. 5, p. 756.)

Mr. Winslow testified:

> "I very much desired to start the United Company free from all serious litigation. I was aware of the fact that there was serious litigation existing between the McKay Company and the Goddus."
>
> "I was very glad to get rid of the situation which meant I didn't know how much litigation and how much time it would require from me, and to get that whole matter cleaned up and clear the litigation."
>
> "I had had considerable experience in that sort of litigation."
>
> "*Q.* Did you acquire the Goddu Sons Company for the sake of getting rid of any competition?
>
> "*A.* I did not." (R. Vol. 1, p. 435, lines 40–43; p. 436, lines 10–14; p. 437, lines 6–10.)

The practical reasons why the Goddu machines could not be manufactured and put out without *entire reconstruction* were set forth by defendants' expert Howard with detailed explanations. In July, 1898, Mr. Howard spent a week in examining the Goddu Sons' machines, making drawings and notes. (R. Vol. 2, p. 2070, Int. 1577; pp. 2088, 2089, Cr. Int. 1660; p. 2099, Cr. Int. 1666.)

Moreover, even if the machines had been practical, "the United Company couldn't have developed those machines if they wanted to" because "they were stopped by the action of the minority stockholders of the Goddu Company." (Winslow, R. Vol. 1, p. 534, lines 20–26.)

It should also be noted that after the acquisition all but one of the Goddu Company's machines infringed patents of the United Company acquired from the Goddu Sons individually, which did not expire until 1915 and 1917. (Defts.' Exh. 275, R. Vol. 5, pp. 756, 757.)

As to this transaction it was held by the District Court:

> "the metallic fastening machines acquired by purchase of a controlling interest in the company were none of them in the hands of users; their then state of development does not appear to have been such as made them capable of commercial use, whatever the merit of the inventive ideas they sought to embody; nor is the evidence sufficient for a belief

that without reconstruction, radical in character, anyone could have used them as competing machines." (Dodge, J., R. Vol. 1, p. 1140.)

Pearson & Bennion, Ltd.

This transaction took place June 8, 1899. (Ptlff.'s Exh. 61, R. Vol. 3, p. 525.) The reason for this purchase and the disposition of the acquired business after the purchase were summarized by Mr. Winslow as follows (R. Vol. 1, p. 420, lines 21–33):

> "Our agent in England for the Lasting Machine Company was Pearson & Bennion. They made or manufactured no machines that were made or manufactured by either of the companies which came together to form the United Shoe Machinery Company. They did make a few general department machines in England. Their principal business, probably eighty per cent of it, was the business they did as the agent for our lasting machine. We took their business, put our business with it and formed the British United Company. They entered our employ, and Mr. Bennion was made the general manager of that business. That was the reason; it was just putting in corporate form what had previously existed, only he was made the manager of all the business of these three companies."

As stated by Mr. Winslow: "The agreement of 1899 with Pearson & Bennion was in reality a consolidation of the foreign business of the United Company in England with Pearson and Bennion's business, and not a purchase." (Defts.' Exh. 231, R. Vol. 5, p. 450.) Among the assets acquired was a new factory. (R. Vol. 3, p. 530.)

From Mr. Winslow's testimony, above quoted, that the few machines which Pearson & Bennion made were of the general department type, it is clear that Pearson & Bennion were in no way competing with the United Company since the United Company had no general department machines at that time. While the record does not name the Pearson & Bennion machines, they were presumably of the types used by English manufacturers, somewhat different from those used in this country. They were being manufactured under patents. (R. Vol. 1, p. 53, lines 3–5; R. Vol. 2, pp. 2787, 2788, Cr. Ints. 432, 433; R. Vol. 3, p. 527.)

Boot & Shoe Sole Laying Company.

This acquisition is not referred to in its proper chronological order in the petition. The date alleged, May 25, 1901, is the date of the bill of sale formally transferring the company's property. (Pltff.'s Exh. 90, R. Vol. 3, p. 366.) A majority of the stock of this company was acquired by the United Company in June, 1899. (R. Vol. 1, p. 457, lines 30–31; Defts.' Exh. 275, R. Vol. 5, p. 763.) Accordingly this acquisition will be discussed here in its proper chronological relation to other acquisitions.

The Boot & Shoe Sole Laying Company was manufacturing and putting out a patented sole-laying machine known as the Boston sole layer. It was doing a very small business. It owned no real estate and contracted with outside parties for such machines as it had built. (R. Vol. 1, p. 54, lines 5–7; p. 99, lines 41, 43–45; R. Vol. 2, p. 2054, Ints. 1489, 1490; Defts.' Exh. 231, R. Vol. 5, p. 450.)

The United Company did not have a satisfactory sole-laying machine. They "had an inferior machine of different type," the rotary sole layer, "which was only adapted for large factories" and "which was very unsatisfactory because it was continually breaking down, particularly on men's shoes." (R. Vol. 1, p. 54, lines 20–21; Defts.' Exhs. 231, R. Vol. 5, p. 450, and 275, R. Vol. 5, p. 763.)

A further reason for this acquisition was that the United Company had "produced and desired to use the pressing form for sole laying machines shown and described in its patent 694,367 Mar. 4, 1902, Gifford (application filed Apr. 20, 1900)," but this form infringed a patent owned by the Boot & Shoe Sole Laying Company. (Howard, Defts.' Exh. 275, R. Vol. 5, p. 763; R. Vol. 1, p. 665, lines 1–3.) After this acquisition—

> "the United Company discarded the Rotary Sole Layer and adopted as its standard commercial machine the sole layer of the Boot and Shoe Laying Machine Company, using on that machine the pressing form of Gifford patent No. 694,367. This machine, combining the best features of the rotary machine and the machine of the Boot and Shoe Sole Laying Company, has been much improved by a number of inventions made from time to time, and in the various stages of its development it has ever since been and is

today the standard sole laying machine of the United Company." (Howard, Defts.' Exh. 275, R. Vol. 5, p. 763; R. Vol. 2, p. 2050, Ints. 1467, 1468.)

The Corrugated Wire Fastening Company.

This transaction took place June 30, 1899. (Pltff.'s Exh. 62, R. Vol. 3, p. 530.) With regard to the Corrugated Wire Fastening Company, Mr. Howard testified that at the time of the purchase it—

> "had one machine, a tacking machine, and was doing a very small business in supplying wire for that machine. I believe that they had not put out any of the machines for some years because it was completely out of date. It was a very old machine." (Howard, R. Vol. 1, p. 42, lines 12–17.)
>
> "The only business that was left when the Corrugated Company was acquired was the supplying of wire and spare parts for the machine. They had not done any business in the way of supplying machines for some time, and there was no longer any demand for the machines, so that no business was done and no business could be done with that machine." (Howard, R. Vol. 1, p. 42, lines 28–33.)

This company "was purchased in 1899 for $12,750 at the earnest solicitation of the owners, their business having become unprofitable. At the price we paid we thought we could get out of it with a small profit." (Winslow, R. Vol. 1, p. 464, lines 20–23.)

The Corrugated Wire Fastening Company—

> "Owned no real estate. Leased a small room on South Street, Boston, where it employed two or three men." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 475.)

After the purchase—

> "The United Company continued to supply wire and parts for those machines. They have parts in stock today." (Howard, R. Vol. 1, p. 42, lines 33–35.)

The business of the Corrugated Company was characterized by the District Court as "making wire and spare parts for use

in an obsolete metallic-fastening machine." (Dodge, J., R. Vol. 1, p. 1138.)

Breach Manufacturing Company.

This transaction took place July 31, 1899. (Pltff.'s Exh. 63, R. Vol. 3, p. 531.) All that the United Company acquired from the Breach Manufacturing Company was an exclusive license under certain patents on a machine—

> "which was intended for cutting soles out of a side or strip of leather by a reciprocating knife which moved up and down through the stock as it went around." (Howard, R. Vol. 1, p. 42, lines 44–45; p. 43, line 1; R. Vol. 2, p. 2067, Int. 1559.)

At that time the United Company had no machine for cutting out soles. (R. Vol. 1, p. 43, lines 13–16, 22–24.)

The United Company paid the Breach Company $10,000 for an exclusive license under the Breach patents in the hope that a successful machine to cut the uppers of shoes (*i.e.*, to do the work done by the clicking machine invented some eight years later) would be developed under those patents. (Defts.' Exh. 231, R. Vol. 5, p. 467.)

Mr. Howard testified:

> "The United Company took Breach into its employ and for several years made strenuous efforts to develop something practical out of that machine. Breach worked on the machine during that period and spent a great deal of money, but finally came to a point where he could apparently do nothing more, and at that stage the machine was an entire failure as a commercial machine." (R. Vol. 1, p. 43, lines 16–22.)

Also—

> "The United Company built experimental machines and put them out on trial but could not interest manufacturers to use them." (R. Vol. 2, p. 2068, Int. 1562.)

"Every possible assistance" was given to Breach by the United Company in the endeavor to make commercial the ideas embodied in his inventions, and that work was continued for some two years. (R. Vol. 2, p. 2084, Cr. Ints. 1635, 1636.)

> "In this endeavor the United Company expended about $30,000 and then gave up the attempt." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 467; Howard, R. Vol. 2, p. 2100, Int. 1668.)

An important reason for the commercial failure of the Breach inventions was stated by Mr. Howard to be that—

> "Shortly before the time of the acquisition of the Breach patents, sole-rounding machines of the so-called Stanley and Julian type were introduced, which used a wooden pattern instead of a metal pattern such as had been previously used in sole-rounding machines, and as was used in the Breach machine. That pattern cost but a small fraction of the cost of the metal pattern, and was a very great improvement because it obviated the necessity of lubricating the edge of the pattern, which had always presented a serious difficulty." (R. Vol. 2, p. 2085, Cr. Int. 1641.)

Mr. Howard also said "the United Company offered to turn back the patents to the Breach Company, and I believe it did so." (R. Vol. 1, p. 43, lines 9–10.)

It should be noted that by this transaction the United Company acquired only an exclusive license under certain patents; it acquired no tangible property of any description. (R. Vol. 3, p. 531.)

Peter A. Coupal and William Gordon.

This transaction took place August 1, 1899. (Pltff.'s Exhs. 64–66, R. Vol. 3, pp. 535, 537, 538.) Coupal and Gordon were running a machine shop and doing a general machine shop business, "not particularly relating to shoe machinery." They had one or two unimportant machines and an experimental "Basting Machine" which infringed a patent of the United Company. (Howard, R. Vol. 1, p. 43, lines 27–35; p. 103, lines 25–26; Defts.' Exh. 275, R. Vol. 5, p. 757.)

> "The United Company was not engaged in putting out or manufacturing such machines as Coupal and Gordon were making and putting out, or machines for performing the same work or similar." (Howard, R. Vol. 1, p. 43, lines 36–39.)

The United Company acquired certain patents from Coupal and Gordon, but this transaction was primarily an employment contract. Coupal and Gordon were both "very skilled mechanics" and "were in the employ of the Goodyear Company prior to, and at the time of, the organization of the United Company and the United Company desired to obtain all their time free from outside matters." Gordon agreed to enter the employ of the company in a managerial capacity and remained in the company's service until his death in 1912. Coupal agreed to enter the employ of the company, but "only remained in the company's service a few months." (R. Vol. 1, p. 103, lines 22–24, 28–29; Pltff.'s Exhs. 64, 65, R. Vol. 3, pp. 535, 537; Defts.' Exh. 231, R. Vol. 5, p. 472.)

The size of their business and relative importance of their machines is indicated by the consideration of this transaction, which was $10,799.25,—the value of their inventory quoted in Plaintiff's Exhibit 66, pp. 539–563. No real estate was acquired. (Defts.' Exh. 231, R. Vol. 5, p. 472.)

> "Soon after the purchase the machinery was removed to one of the United Company's factories and the business was continued in conjunction with the other business of the company." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 472.)

Timothy A. Breshanan; Boston Shoe Tool Company.

This transaction took place August 16, 1899. (Pltff.'s Exh. 67, R. Vol. 3, p. 563.) The Boston Shoe Tool Company, which was Bresnahan's Company,—

> "was manufacturing and selling a patented edge trimming machine and a rotary edge setter, and was also making and selling forepart and shank cutters for use on the edge trimming machine, and edge setting irons for use on the rotary edge setter. The rotary edge setter was adapted only for the cheapest kind of work and never used on any other work. It could not be used with profit on any other kind of work. . . . Every edge trimming machine has a forepart cutter for trimming the sole around the forepart and a shank cutter for trimming the sole in the shank. . . . The finish or shine that the edge has when the shoe is new is given to it by the edge setting operation, and the tool which operates upon the shoe in this operation is known as an edge setting

iron. . . . At the time of this acquisition the United Company had no machines for doing the work of either of the two machines acquired from the Boston Shoe Tool Company and it was not manufacturing any edge cutters or any edge setting irons." (Howard, R. Vol. 1, p. 43, lines 40–45; p. 44, lines 1–23.)

The United Company acquired the Boston Shoe Tool Company's factory and the patents on its cutter and its edge trimming machine. (R. Vol. 1, p. 103, lines 19–21; Defts.' Exh. 231, R. Vol. 5, p. 460.)

> "The business was continued at the same plant for a considerable period of time. Subsequently, for convenience and economy of manufacture, the business was transferred to the Beverly Factory, where the United Company has ever since continued and increased the business." (Winslow Defts.' Exh. 231, R. Vol. 5, p. 460.)

In regard to the covenant quoted in the petition (R. Vol. 1, p. 1003) Mr. Howe testified as to the reasons why the covenant was in this particular form. (R. Vol. 1, p. 692, lines 34–44; p. 693, lines 1–6.)

Edwin T. Freeman.

This transaction took place October 9, 1899. (Pltff.'s Exh. 68, R. Vol. 3, p. 569.) Edwin T. Freeman had constructed an experimental slugging machine (R. Vol. 1, p. 44, lines 24–29; Defts.' Exh. 275, R. Vol. 5, p. 757; operation explained R. Vol. 2, p. 2464) which was patented. (R. Vol. 1, p. 103, lines 15–18.) He had no factory and was doing no business. He "had not put out any machines at all" (R. Vol. 1, p. 849, line 15; Defts.' Exh. 231, R. Vol. 5, p. 467); accordingly he was not engaged in interstate or foreign trade or commerce.

At the time of this acquisition the United Company was developing an improved standard screw machine, which later became Screw Machine, Model B, Rapid Standard, which infringed one of Freeman's patents. There was an interference in the

Patent Office between an application for reissue of that Freeman patent and the application on this standard screw machine which the United Company was developing. (Defts.' Exh. 275, R. Vol. 5, p. 758.)

On the other hand, the Freeman machine infringed one of the United Company's patents and after January 21, 1902, would have infringed another patent granted on that date. These infringements could not have been avoided without entirely reconstructing the Freeman machine to omit from it valuable inventions, on account of which the United Company purchased the Freeman patents. Furthermore, an important mechanism, without which Freeman's machine could not have been a commercial success, had been necessarily omitted from the Freeman machine because it was broadly covered by two of the United Company's patents. (Defts.' Exh. 275, R. Vol. 5, pp. 757, 758.)

This acquisition cleared up these serious patent complications and enabled the United Company to improve its slugging machine and to avoid infringement of the Freeman patents. (Defts.' Exh. 231, R. Vol. 5, p. 467.)

Since the purchase, inventions claimed in the patents assigned by Freeman have been embodied in three different types of machines which the United Company has built and put out; namely, Nailing Machine, No. 2 Loose; Slugging Machine, No. 5; Screw Machine, Model B, Rapid Standard. (R. Vol. 2, pp. 2066, 2067, Ints. 1554, 1557; pp. 2090, 2091, Int. 1662.)

George W. Freeman.

This transaction took place October 10, 1899. (Pltff.'s Exh. 69. R. Vol. 3, p. 573.) George W. Freeman is the son of Edwin T. Freeman, from whom certain patents were purchased in 1899, as above explained. "Nothing was acquired by the United Company from George W. Freeman." (R. Vol. 1, p. 44, lines 42–43.) Consequently the statement in the petition (R. Vol. 1, p. 1003) that the United Company acquired the interests of George W. Freeman relating to shoe machinery is absolutely erroneous. He had been engaged with his father in work upon his father's experimental machine and the acquisition of his father's patents left him without a job.

"As this transaction left the son, George W., without a job, his father asked the company to take the son into its employ for at least one year at a compensation of $800."

"Freeman has remained continuously in the employ of the company as a roadman and now receives $1200 per year. He has never made or assigned any inventions to the company." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 472.)

Mr. Winslow explained this employment contract as follows:

"It was undoubtedly in view of the fact that he had been associated with his father in experimental work, and on account of the possibility of his setting up some claim to the inventions assigned by his father, that the covenants in regard to competition and future inventions were made a part of the contract for employment of George W. Freeman." (Defts.' Exh. 231, R. Vol. 5, pp. 472, 473.)

Mr. Winslow's explanation is supplemented by Mr. Howard's testimony:

"The agreement was made with him at that time simply because he was his father's son and had been engaged with his father in work upon his father's machine. It not infrequently happens that a son may be responsible for some of the inventing in a case like that. It was a matter of precaution." (R. Vol. 1, p. 44, line 45; p. 45, lines 1–4.)

Albert G. Brewer.

This transaction took place October 11, 1899. (Pltff.'s Exh. 70, R. Vol. 3, p. 575.) Brewer had built one experimental heel breasting machine of the automatic type, which was covered by a pending patent application. A heel breasting machine is used to trim the front end of a heel. At that time the United Company was not putting out any heel breasting machine but was experimenting on a machine in which the knife was driven through the heel by power. (R. Vol. 1, p. 45, lines 7–29; p. 103, lines 12–14.)

"Prior to February, 1899, all heel breasting was done by foot power machines . . . all the power required for forcing the knife through the successive layers of stock in the heel being applied by the operator through the treadle." (Howard, R. Vol. 2, pp. 2472, 2473.)

Owing to the fact that "all heels vary in height, even the heels of shoes which are intended to be substantially alike," no power operated machine had yet been produced—

> "which could deal successfully with the problem of cutting just enough to sever completely the surplus stock and, at the same time, not cut far enough to deface the shank of the sole." (Howard, R. Vol. 2, p. 2473.)

Mr. Howard further testified (R. Vol. 1, p. 45, lines 34–37):

> "The Brewer patent covered a better, a more sensitive, mechanism than we had for stopping the knife properly when it reached the shank, to prevent cutting into and possibly cutting through the shank."

The United Company's experimental machine did not become a commercial success until "after the invention which we acquired from Brewer had been embodied in our machine." (Howard, R. Vol. 1, p. 45, lines 14–16.)

On the other hand, the Brewer experimental machine infringed fourteen claims of the United Company's broad Heys patent on mechanism for automatically stopping the knife. (R. Vol. 1, p. 45, lines 27–28; Defts.' Exh. 275, R. Vol. 5, p. 758.) As stated by Mr. Howard: "in my opinion Brewer could not have built a power heel-breasting machine without infringing that patent." (Defts.' Exh. 275, R. Vol. 5, p. 758.) After the purchase "approximately 700" machines incorporating the Brewer inventions were put out by the United Company (R. Vol. 2, p. 2066), and "That machine, with some modifications, is still being manufactured and put out by the United Company." (Howard, R. Vol. 2, p. 2065, Int. 1548; p. 2090, Int. 1662.)

The one experimental machine which Brewer had constructed was turned over by him to the United Company with his patent application. (Pltff.'s Exh. 70, R. Vol. 3, p. 576.) It follows, therefore, that Brewer was not engaged in interstate or foreign trade or commerce. No manufacturing plant of any kind was acquired. (Defts.' Exh. 231, R. Vol. 5, p. 467.)

Globe Shoe Tool Company.

This transaction took place October 24, 1899. (Pltff.'s Exhs. 71–73, R. Vol. 3, pp. 577, 580, 583.) The Globe Shoe Tool Company was a co-partnership, H. M. Loomer being one of the partners. It was engaged in the business of manufacturing and selling forepart cutters and edge irons, which are tools, not machines. It was acquired at the earnest solicitation of the partners and because the United Company desired to obtain the services of Mr. Loomer as the head of its department for manufacturing such tools. (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 460.)

The agreement between Loomer and the United Company (Pltff.'s Exh. 72, R. Vol. 3, p. 581) provides for the employment of Loomer by the United Company and recites that that had been agreed upon "as an inducement to the United Company to take over said business and to purchase the property and assets of said partnership."

On the other hand, the Globe Shoe Tool Company was infringing two patents of the United Company. (Defts.' Exh. 275, R. Vol. 5, p. 759.)

The Globe Company owned no real estate but leased floor space:

> "Soon after its acquisition the business was transferred to the factory of the Boston Shoe Tool Company in South Boston." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 460.)

After the Boston Shoe Tool Company and the Globe Shoe Tool Company acquisitions, very large reductions were made in the prices of the tools acquired, as follows:

> "The price of the heel cutter with blades in January, 1899, was $3.25; we reduced the price on March 1, 1900, to $2.25. In January, 1899, the price of the blades alone was $2; on March 1, 1900, we reduced the price for the blades alone to $1. The price of forepart and shank cutters in January, 1899, was thirty-five cents each, in small quantities, and twenty-five cents each in quantities of 100; on March 1, 1900, we reduced the price to twenty-five cents each in any quantity. The price of edge irons in January, 1899, was fifty cents; on March 1, 1900, we reduced the price to twenty-five cents." (Winslow, R. Vol. 1, p. 479, lines 10–19.)

John Ritchie Company and John Ritchie.

This transaction took place November 2, 1899. "The John Ritchie Company was a concern manufacturing shoes," located at Quebec, Canada. (R. Vol. 1, p. 46, lines 19–20; Pltff.'s Exh. 74, R. Vol. 3, p. 585.) This transaction was explained by Mr. Howard as follows:

> "They had manufactured, prior to the date in question, one old standard screw machine, so called, that being the type of machine which preceded the rapid standard screw machine, the greatly improved machine then in use for that kind of work. I think that machine was not being used by the John Ritchie Company, but had been sold by them. They had not built, and so far as I know did not contemplate building, any more machines, but they were making wire for use on standard screw machines. They were selling that wire to lessees of the United Company, who were obligated by their leases to buy wire from the United Company.
>
> "It has sometimes happened that the United Company will find that a dishonest lessee, who has agreed to buy wire from the United Company, in payment of royalty for the use of a metallic machine, or, to be more specific, a standard screw machine, will buy wire from another concern at a lower price and use it on the United Company's standard screw machine. That was exactly what was happening in Canada. The John Ritchie Company were making and selling standard screw wire to lessees of the United Company, which, of course, was not getting any return whatever for the use of its machines during the period that the Ritchie wire was being used in them. The purpose of this transaction was to eliminate that dishonest situation in Canada." (R. Vol. 1, p. 46, lines 20–42.)

Mr. Winslow stated that—

> "The reason for this contract and purchase was to prevent manufacturers who held Metallic Machinery under lease from the United Company . . . , violating their leases and contracts by purchasing material from Ritchie." (Defts.' Exh. 231, R. Vol. 5, p. 474.)

Mr. Winslow further stated:

> "No existing competition, or business, was interfered with by this contract. . . . No real estate acquired; only help

employed two or three boys." (Defts.' Exh. 231, R. Vol. 5, p. 476.)

The United Company agreed to pay the Ritchie Company $750 per annum with the right to cancel this annual payment at any time by paying $15,000. (Defts.' Exh. 231, R. Vol. 5, p. 476.)

Seaver Process Lasting Company.

This transaction took place January 13, 1900. (Pltff.'s Exh. 75, R. Vol. 3, p. 591.) The most important reason for this purchase was that the Seaver Company had patents which stood in the way of the development of the United Company's pulling-over machine. The experimental pulling-over machine of the Seaver Company, which "could be used for pulling over uppers, but it was slower than hand work," and the experimental pulling-over machine of the United Company each embodied a mechanism believed to be indispensable to a successful pulling-over machine. If the Seaver Company obtained a patent on this mechanism the United Company would be prevented from putting out commercially its pulling-over machine upon which already there had been an expenditure of hundreds of thousands of dollars. Both the experimental pulling-over machine of the Seaver Company and its lasting machine were patented. On the other hand, there were pending suits for infringement of two of the United Company's patents by the Seaver lasting machine. (R. Vol. 1, p. 47, lines 9–11; p. 103, lines 5–10; p. 456, lines 34–37; p. 849, lines 24–29; R. Vol. 2, pp. 2086, 2087; Defts.' Exhs. 231, R. Vol. 5, p. 447, and 275, pp. 759, 760.)

The Seaver Company was in debt to E. B. Seaver, a majority stockholder, for more than the amount paid by the United Company. (Pltff.'s Exh. 75, R. Vol. 3, p. 591.) The Seaver Company was insolvent and unable to pay its debts; it had only six employees and its business had fallen to pieces, and it is obvious that the company could have offered no competition either then or later that would have been more than negligible. The purchase was made at the earnest solicitation of Mr. Seaver, to remove the patent complications which stood in the way of the development of the United Company's pulling-over machine and to settle the existing litigation. (R. Vol. 1, p. 456, lines 28–39; p. 849, lines

24–29; Defts.' Exhs. 231, R. Vol. 5, pp. 447, 448, and 275, pp. 759, 760.)

The pulling-over machine inventions acquired from the Seaver Company have been embodied in all pulling-over machines put out by the United Company "and the mechanism embodying those features is of the utmost importance in that machine." (Howard, R. Vol. 2, p. 2086, Cr. Ints. 1650, 1653.) It was a combination of the Seaver inventions and those upon which the United Company inventors were working that resulted in the present commercial pulling-over machine, in the development of which nearly a million dollars was spent. (R. Vol. 2, pp. 2086, 2087, 2552.)

The lasting machine inventions did not prove as useful as was expected. In all respects the United Company's lasting machines were superior and there was no demand for the Seaver lasting machine. (R. Vol. 2, p. 2087, Cr. Ints. 1654, 1655.)

No real estate was acquired from the Seaver Company; it did its business in a leased room. (Defts.' Exh. 231, R. Vol. 5, p. 447.) Plaintiff's Exhibit 75 (R. Vol. 3, p. 591) recites that "the said Seaver Company is insolvent and is unable to continue its business or to pay its debts."

Erastus E. Winkley and Benjamin Phillips.

This transaction took place March 16, 1900. (Pltff.'s Exh. 77, R. Vol. 3, p. 615.) By the agreement with Winkley and Phillips, the United Company simply—

> "exercised the option which had previously existed between the Goodyear Company and Winkley and Phillips to take the exclusive right to the use of certain patents which had been transferred by Winkley and Phillips in 1898 to the Goodyear Company"

and under which they had reserved certain rights which were the subject-matter of this transaction. (Defts.' Exh. 231, R. Vol. 5, p. 467.)

Winkley and Phillips were not engaged in manufacturing anything. "No manufacturing plant of any kind was acquired." (Defts.' Exh. 231, R. Vol. 5, p. 468.) Mr. Winkley is an inventor and Mr. Phillips is a patent lawyer. (R. Vol. 1, p. 102, lines 38–39.)

> "They did not have any going machine. Winkley and Phillips were associated with the United Company, and this was a friendly arrangement by which the United Company acquired the right to use the inventions of their patents in its machine." (Howard, R. Vol. 1, p. 48, lines 5–9.)

These patents were named by Mr. Howard. (R. Vol. 1, p. 48, lines 5–9; R. Vol. 2, p. 2062, Int. 1532.) No machinery was acquired from Winkley and Phillips. (R. Vol. 1, p. 48, lines 3–5.)

The patented inventions acquired from Winkley and Phillips were embodied by the United Company in the Atlas Leveling Machine which is adapted peculiarly for use on McKay shoes. (R. Vol. 2, p. 2584.)

The United Company had no machine which could be used for leveling McKay shoes, while, on the other hand, the Atlas Leveling Machine cannot be used for leveling welt or turn shoes. The practical reasons why these different kinds of shoes require entirely different types of machines were pointed out in detail by Mr. Howard. (R. Vol. 1, p. 102, lines 14–34; R. Vol. 2, pp. 2576–2579, Int. 106.) The importance of the inventions of the Winkley and Phillips patents was fully explained by Mr. Howard in his discussion of "Leveling Machine: Atlas." (R. Vol. 2, p. 2584 *et seq.*)

Since this acquisition—

> "the inventions acquired from Winkley and Phillips were experimented upon and developed, with the addition of other inventions, into a machine which was suitable for commercial use, and was put out for commercial use." (Howard, R. Vol. 2, p. 2062, Int. 1530.)

The United Company has since continuously supplied this machine to the trade and has put out about 500 machines. (R. Vol. 2, p. 2084, Cr. Ints. 1631–1634.)

Stanley Manufacturing Company.

By this transaction, which took place March 19, 1900, the United Company acquired simply certain machines, parts and supplies which the Stanley Company had on hand at Frankfurt, Germany. This appears plainly from the agreement (Pltff.'s Exh. 78, R. Vol. 3, p. 620), which provides:—

> "That the said United Company shall purchase from the said Stanley Company, the stock of machines, parts and supplies which it now has on hand at Frankfurt, Germany, and in transit to Frankfurt, and all accounts and bills owing to said Stanley Manufacturing Company in Germany."

For these parts the United Company paid cost prices with certain deductions. (R. Vol. 3, p. 620.)

The Stanley Company was putting out miscellaneous general department machines, the most important of which was a McKay sewing machine. "The United Company was then putting out no machine for doing the work of any one of those machines." (Howard, R. Vol. 1, p. 48, lines 19–21, 26–27; Winslow, Defts.' Exh. 231, R. Vol. 5, p. 451.)

As stated by Mr. Winslow (Defts.' Exh. 231, R. Vol. 5, p. 451):

> "The store in Germany acted as the agent for the McKay Shoe Machinery Company in handling its McKay Heeling and Metallic Machines and parts, and this purchase amounted only to the acquirement of the selling agency for the goods manufactured by the Stanley Company in the United States."
>
> "The reason for the purchase was that the United Company was establishing its own German Company and the local manager for the Stanley Company's business in Germany was sick, or had just died, and the Stanley Company desired to have the United Company take over its store and stock of goods and act as agents for the Stanley Company, if the United Company was going to do its own business in Germany.
>
> "The contract, therefore, amounted simply to an agency contract, and that in itself necessitated the purchasing of the stock that the Stanley Company had in Frankfurt."

The agreement contained a covenant—

> "that the said United Company shall use its best endeavors to sell in foreign countries, machines made by the said Stanley Company . . ."

and provided that in case the United Company should discontinue the purchase from the Stanley Company and sale—

> "of any of the machines, parts or supplies made by the said Stanley Company . . . the said Stanley Company may then and thereafter sell such machines, parts or supplies thus discontinued to any and all persons without respect to the country to which they are to be sent.

"That the said Stanley Company may advertise and create and maintain in all proper business ways a demand for its machines in any and all countries in the world." (Pltff.'s Exh. 78, R. Vol. 3, pp. 621, 622.)

Lincoln Sewing Machine Company.

Contrary to the statement in the petition, the United Company by its agreement with the Lincoln Company, April 6, 1900 (Pltff.'s Exh. 80, R. Vol. 3, p. 628), did not acquire the business of the Lincoln Company, nor did it acquire anything new whatsoever. (R. Vol. 1, p. 49, lines 36–37.) As is clear from the plain terms of the agreement, it was entered into simply for the purpose of canceling an obligation arising from a previous contract made in 1897 (Pltff.'s Exh. 79, R. Vol. 3, p. 623) between the Lincoln Company and the Goodyear Shoe Machinery Company, whereby the Goodyear Company was to pay a sum of money to the Lincoln Company each year for forty-nine years. Mr. Winslow testified to this effect. (R. Vol. 1, p. 464, lines 9–13; see also Howard, R. Vol. 1, p. 49, lines 22–35.) The reason for canceling the original obligation was "to avoid the necessity for maintaining the Goodyear Company as a separate organization and to transfer the Goodyear Company's property to the United Company." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 471.)

The original agreement between the Lincoln Company and the Goodyear Company (Pltff.'s Exh. 79, R. Vol. 3, p. 623) effected the transfer of patent rights. (R. Vol. 2, pp. 2063, 2064, Ints. 1537–1539.)

Boston Fast Color Eyelet Company.

This transaction took place June 30, 1900. (Pltff.'s Exh. 81, R. Vol. 3, p. 630.) As stated in the petition, this company was engaged in the manufacture and sale of "eyelets covered with celluloid." These eyelets are known as "fast color eyelets" and the Boston Company had a registered trademark, "Fast Color." The Boston Company owned patents on the eyelet, the dies for making the eyelet, and the method of covering the eyelet. The celluloid covering makes the eyelet expensive so that it has never been used except on the better grades of shoes and never at any

time on more than ten per cent. of the shoes made. Its advantage is that it never wears down to the metal. (R. Vol. 1, p. 50, lines 40–45; p. 51, lines 1–5; p. 98, lines 26–27; R. Vol. 2, p. 2053, Int. 1487.)

Prior to this acquisition neither the United Company nor any of its associate companies was engaged in the manufacture of eyelets or of machinery for making them (R. Vol. 1, p. 50, lines 10–13), and—

> "The United Company could not extend its field to include the manufacturing and marketing of fast color eyelets without acquiring the broad patents owned by the Boston Fast Color Eyelet Company which dominated that field." (Defts.' Exh. 275, R. Vol. 5, p. 760.)

The business of the Boston Fast Color Eyelet Company was continued by the United Fast Color Eyelet Company, thus preserving the name "Fast Color." "That name was a very valuable asset" which "had designated this type of eyelet since it was invented." Since the acquisition, the fast color eyelet has been improved in ways that have made it possible to reduce its price and many new sizes have been made. (Howard, R. Vol. 1, p. 50, lines 17–18; p. 99, lines 31–32, 36–37.)

The Boston Fast Color Eyelet Company owned no real estate and did no manufacturing; their eyelets were manufactured by other parties under contract. (Defts.' Exh. 231, R. Vol. 5, p. 461.)

Enamel Eyelet Company.

This transaction took place June 30, 1900. (Pltff.'s Exh. 83, R. Vol. 3, p. 645.) The Enamel Eyelet Company was owned by the same people who owned the Boston Fast Color Eyelet Company, and this acquisition was "a part of the same transaction by which the stock of the Boston Fast Color Eyelet Company was acquired." The Enamel Company was attempting unsuccessfully to manufacture the type of eyelet known as the "enamel eyelet." "There was no competition whatever between the Boston Company and the Enamel Company." The differences in the constructions of the enamel eyelet and the fast color eyelet and in their fields are pointed out by Mr. Howard. (Howard,

R. Vol. 1, p. 51, lines 28–29; p. 98, lines 28–45; p. 99, lines 1–10, 13–18; Defts.' Exh. 275, R. Vol. 5, p. 760; Winslow, R. Vol. 1, p. 462, lines 13–14.)

At the time of this acquisition neither the United Company nor any of its associate companies was engaged in the manufacture of eyelets (R. Vol. 1, p. 50, lines 10–12), and—

> "had it not acquired control of the Enamel Company the United Company could not have entered the enamel eyelet field without subjecting itself to the liability of suit under the Enamel Company's design patent 24,867, November 12, 1895, Kempshall. The Enamel Company had brought and vigorously prosecuted suit on that patent against John C. Rhodes." (Howard, Defts.' Exh. 275, R. Vol. 5, p. 760.)

By this acquisition the United Company made substantial progress in clearing up the patent situation in the enamel eyelet field. It proved, however, that the United Company had otherwise made no progress in the way of entering the enamel eyelet field; for although these people "knew well how to make fast color eyelets they did not know how to make enamel eyelets and were not producing a satisfactory enamel eyelet. We had to junk a large supply we had on hand which we couldn't get rid of." But the United Company continued to supply the Enamel Company's eyelets so far as there was any demand, and "if manufacturers would buy them, we should be glad to sell them." (Howard, R. Vol. 1, p. 99, lines 13–18, 25–30.)

The division of the preferred stock issued in payment for the Boston Fast Color Eyelet Company and the Enamel Eyelet Company, as stated in the petition, was purely arbitrary, and at the request of the common owners of the two companies.

No real estate was acquired in this transaction. The Enamel Company did no manufacturing but had their eyelets made by others. (Defts.' Exh. 231, R. Vol. 5, p. 461.)

Ross-Moyer Manufacturing Company.

This transaction took place September 20, 1900. (Pltff.'s Exh. 87, R. Vol. 3, p. 658.) The Ross-Moyer Company had stores in Chicago and Cincinnati. It leased floor space in Cincinnati and employed thirty-five men. It had been in business for many years, and was putting out nineteen machines of "what are now known as the general department type." The patents

on these machines were named by Mr. Howard. (Howard, R. Vol. 1, p. 52, lines 40–43; p. 100, lines 31–41; p. 101, lines 16–30; Winslow, R. Vol. 1, p. 408, lines 23–24; p. 459, line 7; Defts.' Exh. 231, R. Vol. 5, p. 451.)

With a single exception the United Company had no machines for doing the work of the machines acquired from the Ross-Moyer Company. (R. Vol. 1, p. 101, lines 12–15.)

"The acquisition of these machines was the first step toward the creation of the United Company's general department," and the machines acquired were the foundation of its general department. (Howard, R. Vol. 1, p. 53, lines 3–5; p. 100, lines 42–43.)

Another reason for this acquisition was the desire of the United Company to establish its own agencies in Cincinnati and Chicago, and to do this without taking away from the Ross-Moyer Company the business which it had been carrying on for many years as agent for the McKay Shoe Machinery Company and the Consolidated & McKay Lasting Machine Company (R. Vol. 1, p. 409, lines 2–5, 11–13; p. 418, lines 38–40), and which it was still carrying on for the United Company. The value and nature of the service rendered by the United Company are fully discussed elsewhere, and need not be dwelt upon at this time. The importance of having its service headquarters, supplies of parts, and material for all of its machines in one place in each trade centre and of having the service, supplies of parts, and materials for its machines entirely in its own control is obvious. The disadvantages of duplications of service, supply depots, and corps of "traveling mechanics and instructors" visiting the same factories, traveling to the same places, and carrying parts to the same places under conditions such as existed prior to 1899 are pointed out by Mr. Winslow. (R. Vol. 1, p. 408, lines 7–44; p. 409; p. 410, lines 1–16.) Accordingly—

> "The United Shoe Machinery Company desired to establish its own stores and offices in each one of the shoe manufacturing centres, for the purpose of furnishing a better service in connection with its machines than had heretofore been possible by each of the separate companies, and to carry a proper supply of spare parts and material used in its machines." (Defts.' Exh. 231, R. Vol. 5, p. 452.)

Mr. Ross "at once took up the question with us as to where they would fit into the new company." Of course, when the

concerns which had been agents for the old companies learned of the United Company's intention to establish its own headquarters they were much concerned. "In all of these cases the moving motive in making these arrangements was from Mr. Ross in the Ross-Moyer, and Smith, and representatives of the Krieg estate, who wanted in the rearrangement to make the best arrangements for themselves." (Winslow, R. Vol. 1, p. 418, lines 36–45; p. 419, lines 42–44; p. 420, lines 1–2.)

Mr. Winslow further stated:

> "these concerns would necessarily lose the business which they had done acting as agents for the various companies, and it formed such a large portion of their whole business that they desired to have the United Company take over all their business relating to shoe machinery, or supplies, when the United Company was ready to establish its own offices."
>
> "An additional reason for the purchase of Ross-Moyer was to secure the services of Mr. Samuel Ross, who had long been associated with the McKay Company and was an experienced shoe machinery man and well liked by the trade. The United Company desired to secure his services to represent their interests throughout the middle west." (Defts.' Exh. 231, R. Vol. 5, p. 453.)

This led to "the employment of Mr. Ross as the western agent of the company, in charge of all the western offices." He "was our general agent in the West until two or three weeks ago, when he died." (Winslow, R. Vol. 1, p. 419, lines 5–6, 10–12.) Plaintiff's Exhibit 87 (R. Vol. 3, p. 658) is the employment agreement made with Mr. Ross.

Mr. Winslow testified (R. Vol. 1, p. 419, lines 7–10):

> "There was absolutely nothing more in our doing that than our purpose of doing the square thing by Mr. Ross. They had been connected with the McKay Company and the Lasting Company for years; part of our own family, so to speak."

Since this purchase, the business has been carried on by the Ross-Moyer Manufacturing Company, all the machines of the Ross-Moyer Company being put into the United Company's General Department and sold. The United Company did not raise the prices or limit the sale or manufacture of these machines. "The only thing that happened regarding those machines was that we made them better than the Ross-Moyer. The trade

was benefited in that respect." Also, the Ross-Moyer Company was made a depot for spare parts and the headquarters of the United Company's repair force for the Cincinnati and Chicago districts. (R. Vol. 1, p. 53, lines 8–9; p. 95, lines 28–35; p. 100, lines 42–44; p. 101, lines 1–2, 8–11; Winslow, R. Vol. 1, p. 459, lines 15–24.)

Bay State International Shoe Machinery Company.

This transaction took place January 30, 1901. (Pltff.'s Exh. 86, R. Vol. 3, p. 655.) This company was organized to do foreign business and did not do any business in the United States, its only business being in England. (R. Vol. 1, p. 52, lines 18–20; p. 101, lines 34–35.) It had put out about ten sets of its machines in England. (R. Vol. 2, p. 2059, Int. 1519.) It owned no real estate and did no manufacturing business. Its machines were manufactured in Montreal, Canada; none whatever in this country. Its machines were covered by English and French patents. They were a welter, stitcher and rough rounder, which were distinctly inferior to the United Company's machines and were very different in construction. (R. Vol. 1, p. 52, lines 20–21; p. 101, lines 31–33; R. Vol. 2, p. 2059, Ints. 1517–1518; p. 2085, Cr. Ints. 1642–1644; Defts.' Exh. 231, R. Vol. 5, p. 448.)

Since this company was not organized to do business between Great Britain and the United States, did no such business, and did no business in the United States, obviously this acquisition has absolutely no bearing upon this case.

Machines of the Bay State International Shoe Machinery Company infringed claims of two of the United Company's English patents. The United Company owned continental patents corresponding to those two English patents. (Defts.' Exh. 275, R. Vol. 5, p. 761.)

The purchase was made "at the earnest solicitation of the people who were interested, who were also customers, shoe manufacturers, and customers of the United Company," because it was believed to be "the cheapest way to settle and dispose of the litigation." "This was a purchase of foreign patents," and the consideration was $25,000 in preferred stock of the United Company. (Winslow, R. Vol. 1, p. 457, lines 21–26; Defts.' Exh. 231, R. Vol. 5, p. 448.)

Swain-Fuller Manufacturing Company.

This transaction took place February 2, 1901. (Pltff.'s Exh. 88, R. Vol. 3, p. 660.) The Swain-Fuller Company was doing "a very small business." (R. Vol. 1, p. 53, line 18.) "They owned no real estate; they leased a small amount of floor space in Boston; employed less than ten men." (Winslow, R. Vol. 1, p. 459, lines 25–27.) Its principal business was manufacturing and putting out a machine of the "General Department" type known as the "Star Leveling Machine" for turn shoes, which was patented. (R. Vol. 1, p. 53, line 18; p. 100, lines 22–24; R. Vol. 2, pp. 2054, 2055, Int. 1491.)

> "The Star machine was a very light machine and was adapted and used only for leveling turn shoes, which, owing to the fact that they have but one sole, require and will stand a less degree of pressure than other types of shoes." (Howard, R. Vol. 2, p. 2063, Int. 1533.)

Prior to this acquisition the United Company was not putting out any leveling machine adapted for use on turn shoes. "It would be impossible to use any machine that the United Company then had on turn shoes." On the other hand, "the Star machine could not be used with commercial profit on other work. It was too light and exerted too light a pressure for Goodyear work." (Howard, R. Vol. 1, p. 53, lines 20–24.)

An important reason for this acquisition was the desire of the United Company to obtain a leveling machine adapted for leveling turn shoes, which it had not had before. (Defts.' Exh. 275, R. Vol. 5, p. 761.)

Another important reason for this acquisition was that the United Company had produced and desired to use a sole pressing form for sole laying machines, shown and described in Gifford patent No. 694,367, which infringed a patent owned by the Swain-Fuller Company. (Defts.' Exh. 275, R. Vol. 5, p. 761.)

Mr. Winslow stated: "This property was acquired at the solicitation of Mr. Fuller, who was the principal owner and desired to go out of shoe machinery business." (Defts.' Exh. 231, R. Vol. 5, p. 454.) Mr. Winslow also testified: "We did not seek the Swain Fuller Company; they sought us." (R. Vol. 1, p. 459, line 34.) The importance of the transaction is indicated by the amount paid,—$13,201.92. (Defts.' Exh. 231, R. Vol. 5, p. 455.)

After the purchase, the Star Leveling Machine was manufactured and put out by the United Company and was its standard machine for leveling turn shoes. (R. Vol. 2, p. 2055, Ints. 1493, 1494; Defts.' Exh. 275, R. Vol. 5, p. 761.) Also the United Company used on its commercial sole-laying machine, the one which it had previously acquired from the Boot & Shoe Sole Laying Company, the pressing form of the Gifford patent, which, as above explained, had infringed a patent owned by the Swain-Fuller Company. (Defts.' Exh. 275, R. Vol. 5, p. 763.)

Globe Sewing Machine Company.

This transaction took place February 15, 1901. (Pltff.'s Exh. 89, R. Vol. 3, p. 662.) The Globe Sewing Machine Company—

> "were attempting to use the same machine for sewing the welt to the upper and insole and for stitching the outsole to the welt. They had a lockstitch machine for both operations, and used some attachments for one operation and other attachments for the other."

It was not successful. They also had an experimental rough rounder. All of these machines were patented. (Howard, R. Vol. 1, p. 109, lines 5–21; p. 104, lines 33–37; p. 528, lines 7–8; R. Vol. 2, p. 2002, Int. 1234.) Mr. Winslow testified:

> "The purchase was not one that the United Company sought, but was made at the earnest solicitation of Mr. Mellen Bray, to whom the Globe Company owed a very large sum of money. He wanted to get rid of having anything to do with the company, and came to me personally and besought me to acquire his interest. They owned no real estate and did no manufacturing. Such as they had done they had contracted outside." (Winslow, R. Vol. 1, p. 457, lines 5–12.)

The Globe Company owed Bray $86,984. (R. Vol. 3, p. 665.) The United Company paid $20,000 in its preferred stock for a majority of the stock of the Globe Company. (Defts.' Exh. 231, R. Vol. 5, p. 448; R. Vol. 1, p. 457, lines 13–18.)

As explained by Mr. Howard in full detail, many of the patented features of the Globe lockstitch welter gave that machine marked superiority over the lockstitch welter which the United

Company had just begun to put out. (R. Vol. 2, pp. 2004, 2005, Ints. 1241, 1242.)

On the other hand, all the Globe Company's machines infringed patents owned by the United Company. There were pending one infringement suit brought by the United Company against the Globe Company and five suits against users of the Globe Company's machines. (Defts.' Exh. 275, R. Vol. 5, p. 762.)

By this acquisition the United Company acquired control of the patents of the Globe Company which stood in the way of development by the United Company of its lockstitch welter, settled the existing patent litigation and avoided further patent litigation.

In explaining why the inventions of the Globe Company's patents were not adopted by the United Company, Mr. Howard testified:

> "These two features of superiority, together with others of less striking importance, would undoubtedly have been adopted in the United Company's lockstitch welting machine had it not been for the fact that shortly after the acquisition of the Globe Company's patents shoe manufacturers decided that they did not desire to sew the inseam by a lockstitch, and they refused to use lockstitch welters. In the year ending March 1, 1902, we put out only nine lockstitch welters, and six were returned; in the year ending March 1, 1904, we did not put out any machines, and five were returned. By 'any machines' I mean of course lockstitch welting machines." (R. Vol. 2, p. 2005, Int. 1242.)

In Mr. Howard's detailed discussion of the United Company's lockstitch welting machine, known as "Sewing Machine: Goodyear Universal Inseam," he explained that manufacturers "found that it was impossible to secure the tight inseam, which is indispensable in the inseam of a welt shoe." (R. Vol. 2, p. 2251, Int. 11.)

In view of the facts above stated and particularly in view of the large indebtedness of the Globe Company stated in Plaintiff's Exhibit 89 (R. Vol. 3, p. 665), as amounting to $92,075.69, it is perfectly clear that the Globe Company did not offer even potential competition to the United Company and that this transaction is of no importance.

J. C. Rhodes & Company.

This transaction took place June 19, 1901. (Pltff.'s Exh. 91, R. Vol. 3, p. 668.) "This company was an old, established eyelet-making concern" which "owned its own real estate and factory at New Bedford, Mass., employing about one hundred and sixteen men." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 461.) They manufactured "a patented enamel eyelet, which was the one in general use at that time." (Howard, R. Vol. 1, p. 51, lines 41–42; p. 98, lines 16–17.)

Their patent No. 565,091, August 4, 1896, contained—

> "broad claims to an enamel eyelet so constructed as to prevent breaking of the enamel coating by the pressure exerted in the eyelet setting operation."
>
> "Otherwise the flange would bend in the setting operation and the enamel would crack. That feature has never been dispensed with in any enamel eyelet which was commercially satisfactory." (Howard, Defts.' Exh. 275, R. Vol. 5, p. 764; R. Vol. 1, p. 98, lines 42–44.)

The United Company had previously acquired the stock of the Enamel Eyelet Company, but—

> "Both the Rhodes eyelet and the Enamel eyelet were patented, and as a matter of fact each company was infringing the other's patent. The Enamel Company's eyelet was never a commercial success." (Howard, R. Vol. 1, p. 51, lines 43–44; p. 52, lines 1–2.)

A suit had been brought by J. C. Rhodes & Company against "a user of the enamel eyelet put out by the Enamel Eyelet Company." (Howard, R. Vol. 2, p. 2080, Int. 1615.) On the other hand: "The Enamel Eyelet Company had brought and was vigorously prosecuting a suit against John C. Rhodes for infringement of its design patent 24,867, November 12, 1895, Kempshall." (Howard, Defts.' Exh. 275, R. Vol. 5, p. 763.)

By this acquisition the United Company accomplished three important objects: (1) It cleared up a complicated patent situation. If the eyelet of the Enamel Company had been commercially satisfactory, the United Company could not have put it out without infringing the Rhodes patent. (2) The United Company was able to put out a commercially satisfactory enamel eyelet without infringing the broad Rhodes patent. (3) It was

able for the first time to procure satisfactory metal blanks for its fast color eyelets. "Prior to that time those blanks, which had been procured from different sources, had not been satisfactory." (Howard, Defts.' Exh. 275, R. Vol. 5, p. 764; R. Vol. 1, p. 591, lines 31–33.)

With this acquisition the United Company really entered the enamel eyelet field for the first time. As explained in discussing the Enamel Eyelet Company,—

> "they did not know how to make enamel eyelets and were not producing a satisfactory enamel eyelet. We had to junk a large supply we had on hand, which we couldn't get rid of." (Howard, R. Vol. 1, p. 99, lines 15–18.)

The United Company was at that time engaged in the manufacture of fast color eyelets, but the fast color eyelet—

> "was much more expensive than the enamel eyelet and was used only on the highest grade of shoes, never at any time on more than ten per cent of the shoes made."

The celluloid covering on the flange of the fast color eyelet makes it expensive, so that it has never been used except in the better grades of shoes. (Howard, R. Vol. 1, p. 50, lines 41–45; p. 51, lines 1–5.)

The enamel eyelet comprises a metal eyelet having a flange of the contour desired for the finished eyelet, which flange is coated with enamel, while in the fast color eyelet the flange merely serves to anchor the thick celluloid covering. The enamel eyelet is much less expensive and the enamel wears off after a time so that the eyelet has a brassy appearance and accordingly enamel eyelets are used only on the cheaper grades of shoes. There was no competition between fast color eyelets and enamel eyelets. (R. Vol. 1, p. 51, lines 6–13; p. 98, lines 28–45; p. 99, lines 19–21.)

The business of J. C. Rhodes & Company was continued by J. C. Rhodes & Company, Inc. Since the purchase, the factory facilities have been increased by building a large new factory. (Defts.' Exh. 231, R. Vol. 5, p. 461.)

The United Company continued to sell the Rhodes eyelets at the same prices at which they had been sold by the Rhodes Company,—

> "and in addition furnished the eyeletting machines in which the eyelets were used without charge to our cus-

> tomers, with no increase whatever in the prices; but the eyelets were sold to anyone, whether they used our machines or not." (Winslow, R. Vol. 1, p. 463, lines 39–43.)

Also the Rhodes eyelet has been much improved and "many new sizes have been made which were not made in 1901." (Howard, R. Vol. 1, p. 99, lines 36–39.)

Morley Button Manufacturing Company.

This transaction took place on December 14, 1901. (Pltff.'s Exh. 92, R. Vol. 3, p. 675.)

> "The Morley Button Manufacturing Company was primarily a button manufacturing company, manufacturing and selling buttons. In addition to this button business it was engaged in the business of manufacturing and selling a patented enamel eyelet. . . . The United Company acquired only the eyelet business of the Morley Company, and that company is now engaged in the business of manufacturing and selling buttons and similar articles as before." (Howard, R. Vol. 1, p. 54, lines 30–39.)

"The United Company acquired no real estate or manufacturing plant with this purchase . . . the eyelet business was a very small part of its total business." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 462.) The novel patented feature of the Morley eyelet was that the enamel coating did not extend down inside of the barrel.

> "This was different from both the Rhodes and Enamel Company eyelets. It was claimed that it was objectionable to have the enamel inside the barrel. They made the eyelet by a secret process and by a secret formula." (Howard, R. Vol. 1, p. 99, lines 6–10.)

By the process followed in making the Rhodes eyelet the inside of the barrel was covered with enamel.

Although the Rhodes and Morley eyelets were of different types, the Morley eyelet embodied the broadly patented feature of the Rhodes eyelet. (R. Vol. 1, p. 98, lines 40–42; p. 99, line 4.) At the time of this acquisition there were pending two suits brought by J. C. Rhodes & Company, Inc., against the Morley Company on Rhodes patent No. 565,091, August 4, 1896, and Kempshall design patent No. 24,867, November 12, 1895. (R.

Vol. 2, p. 2080, Int. 1615.) One of the considerations stated in the agreement for the sale of the Morley Company's business and patents was a covenant by the United Company that it would cause these two suits to be dismissed without costs and cause J. C. Rhodes & Company, Inc., to release the Morley Company from all claims for damages or profits on account of the infringement of the patents in suit. Another consideration was a further covenant that the Morley Company should be licensed under these two patents to manufacture eyelets in process to fill the orders which it had on hand. (R. Vol. 3, pp. 677, 678; R. Vol. 2, p. 2081.)

Mr. Winslow stated:

> "This purchase was made in 1901 as the best method of settling the litigation . . . and was believed to be a fair and equitable settlement of the existing situation, and by it the Rhodes Company acquired certain patents on eyelets which were valuable to it." (Defts.' Exh. 231, R. Vol. 5, p. 462.)

The price paid was $31,000, for which the United Company obtained one patent and one application for a patent, and machinery, for making the Morley eyelets, etc., inventoried at $17,541.99. (R. Vol. 3, pp. 676, 677, 681.)

The Morley eyelet was used on a cheaper grade of shoes than the Rhodes eyelet, but, after the acquisition, manufacturers demanded the superior Rhodes eyelet for all grades of cheaper shoes and the demand for the inferior Morley eyelet was so small that it was supplied from the stock on hand, but so far as there was any demand for Morley eyelets the United Company has supplied them. (Howard, R. Vol. 1, p. 99, lines 23–24, 28–30.)

Oliver A. Miller.

This transaction took place February 15, 1902. (Pltff.'s Exh. 93–95, R. Vol. 3, pp. 683, 687, 690.) Miller was engaged in the manufacture of treeing machines, and tree legs and tree feet that are used on, and are parts of, treeing machines, which are used in all factories for cleaning and blacking shoes before they are packed. (R. Vol. 1, p. 464, lines 29–34; p. 97, lines 42–45.)

Mr. Winslow testified:

> "We had no such machines. We were not in competition, not in the slightest degree." (R. Vol. 1, p. 464, lines 37–38.)

Mr. Howard testified:

> "This was absolutely a new branch for the United Company. It had nothing of the sort before." (R. Vol. 1, p. 98, lines 3–4.)

The purchase was made by the United Company "entirely for the purpose of extending its business." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 476.) Miller's treeing machines, tree legs and tree feet were patented. (R. Vol. 1, p. 98, lines 5–8.)

Miller had become involved in financial difficulties, needed money and wished to sell; "he came to us and wanted to dispose of the business," negotiations being opened through Frank Hannigan, his manager. (Winslow, R. Vol. 1, p. 464, lines 35–37; Defts.' Exh. 231, R. Vol. 5, p. 476.)

> "The reputation of the Miller machines and the Miller business was high, and we found that we could secure the manager of that business, who had been with Mr. Miller for a great many years, to continue as manager for us, and we finally accepted the company and continued that business." (Winslow, R. Vol. 1, p. 464, lines 38–43.)

The Miller treeing machine business "has been continued by the O. A. Miller Treeing Machine Company, of which Mr. Hannigan, a minority stockholder, is manager" (Howard, R. Vol. 1, p. 55, lines 14–16), in the factory which was acquired from Miller, and which has been largely extended. The business has increased, 125 men are now employed there; Miller employed 65 men. (R. Vol. 1, p. 465, lines 3–7; Defts.' Exh. 231, R. Vol. 5, p. 476.)

Marlboro Awl & Needle Company.

This transaction took place June 30, 1902. (Pltff.'s Exhs. 96–97, R. Vol. 4, pp. 693, 703.) This company owned no real estate, leased floor space in Marlboro and employed twelve men. (Defts.' Exh. 231, R. Vol. 5, p. 462.) It manufactured needles, awls and rawhide mallets. (R. Vol. 1, p. 467, lines 3–7; R. Vol. 5,

p. 476.) The needles were for use in the McKay sewing machine; the awls were chiefly "hand awls, such as cobblers use for shoe repairing"; the mallets were rawhide mallets "used by shoe makers and cobblers." (Howard, R. Vol. 1, p. 97, lines 27–41.) Neither the United Company nor any of its subsidiary companies was manufacturing needles of any kind, hand awls or rawhide mallets. (R. Vol. 1, p. 55, lines 36–39.)

A small company was formed called the United Awl and Needle Company and the Marlboro Company's business has been continued by the United Awl and Needle Company at its factory at West Medway, where it has employed twenty-eight or thirty men. (R. Vol. 1, p. 55, lines 41–43; Defts.' Exh. 231, R. Vol. 5, p. 462.)

The unimportance of this transaction is indicated by the facts above stated and by the amount of the consideration, $16,300 in preferred stock of the United Awl and Needle Company. (Defts.' Exh. 231, R. Vol. 5, p. 462.)

The T. A. Norris Machine Company.

This transaction is not named in its proper chronological order in the petition. (R. Vol. 1, p. 1011.) It took place July 1, 1902 (Pltff.'s Exh. 102, R. Vol. 4, p. 734),—not in March, 1903, as stated in the petition.

The T. A. Norris Machine Company had no real estate, but operated a small machine shop in Brockton, employing about ten men, in which they did general machine shop work. "It was really a repair shop." (Winslow, R. Vol. 1, p. 460, lines 7–10.) Their business was chiefly in second-hand machines, or, as Mr. Gregg puts it, "I think this company was more of a dealer than anything else," but they had manufactured for them six simple, minor machines. (R. Vol. 1, p. 59, lines 19–23, 26–27; p. 93, lines 39–45; p. 460, lines 9–10.)

The United Company had no machines for performing the operations of any of the six machines acquired from the Norris Company or even for doing similar work. (R. Vol. 1, p. 59, lines 28–38; p. 94, lines 1–28.)

The machine shop of the Norris Company was located in a building owned by T. A. Norris personally, in which building the

United Company had its Brockton headquarters and repair shop, which it held under lease from Norris.

Mr. Winslow testified:

> "This purchase was made upon the basis of the inventory, $11,526.78, and at the solicitation of Mr. Norris, who was heavily interested in real estate and wanted to retire from any machinery business." (R. Vol. 1, p. 460, lines 14–17; Defts.' Exh. 231, R. Vol. 5, p. 456.)

As to the reasons for this purchase,—

(1) Mr. Winslow testified: "We wanted to increase our space in his building, and this business arrangement was made." (R. Vol. 1, p. 460, lines 17–18; R. Vol. 5, p. 456.)

(2) The United Company extended its line of machines by adding to it the six "General Department" machines acquired from the Norris Company.

(3) "Lasting machine parts were carried by The T. A. Norris Machine Company." (Winslow, R. Vol. 5, p. 453.) Consistently with its policy of having under its own control the supply of parts and the furnishing of service for its machines, as explained in the Ross-Moyer discussion (*supra*, pp. 26–27), it was important for the United Company to continue this agency itself and in this instance, as in the other similar transactions, a fair adjustment of the situation was to take over the business of its former agent.

Since the purchase the United Company has continued putting out all the machines which it acquired from the Norris Company, and has operated the Norris machine shop as a repair shop. (Defts.' Exh. 231, R. Vol. 5, p. 456.)

American Sole Laying Machine Company.

This transaction took place September 25, 1902. (Pltff.'s Exh. 98, R. Vol. 4, p. 705.) The chief business of the American Sole Laying Machine Company was putting out a two-form laying machine which they were manufacturing under a license from the Tripp Giant Leveler Company under "the famous Cutcheon patent." (Howard, R. Vol. 1, p. 56, lines 15–18; p. 96, lines 33–34.)

> "That machine had right and left forms and operated on a pair of shoes, rights and lefts, at one time, one being under pressure while the operator was putting the other into position to go into the machine." (Howard, R. Vol. 1, p. 96, lines 29–33.)

The American Company also owned patents on their machine which prevented the United Company from adopting a satisfactory pad. (R. Vol. 1, p. 96, lines 43–45; p. 97, lines 20–26.) It "owned no real estate and did no manufacturing. Contracted with outside parties for such machines as it had built." This company was purchased for $5200 at the solicitation of Mr. Fuller, "who was the principal owner and desired to spend his time in the South." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 475.) The agreement sets forth that "Fuller is the owner of a majority of the capital stock" and that "Fuller controls the actions of said company." (Pltff.'s Exh. 98, R. Vol. 4, p. 705.) Mr. Fuller had also been the principal owner and treasurer of the Swain-Fuller Manufacturing Company, which had previously sold out its business to the United Company. (Defts.' Exh. 231, R. Vol. 5, p. 455; Pltff.'s Exh. 88, R. Vol. 3, p. 661.)

> "The standard commercial machine of the United Company at that time was the machine which it had acquired from the Boot and Shoe Sole Laying Company . . . but that was a one-form or single machine." (Howard, Defts.' Exh. 275, R. Vol. 5, p. 765.)

Mr. Howard further testified:

> "We desired to turn this single machine into a double machine and we were able to do that after this transaction, in which we acquired the license which the American Company had under the Cutcheon patent. Counsel advised us that this license was assignable." (R. Vol. 1, p. 56, lines 25–29; p. 96, lines 38–40.)

This license was also needed by the United Company to enable it to develop the Atlas leveling machine. (Defts.' Exh. 231, R. Vol. 5, p. 475.)

The Cutcheon patent had been sustained by the Court of Appeals in the First Circuit (Defts.' Exh. 275, R. Vol. 5, p. 765)

and petitioner's expert, Mr. Chapman, described this patent as a pioneer and basic patent. (R. Vol. 2, pp. 2813, 2814, Int. 15.)

> "After this acquisition we incorporated in the machine which we got from the Boot & Shoe Sole Laying Company, the inventions acquired from the American Company, particularly the two-form construction and the pad invention. In other words, we got the method of sole laying from the Boot & Shoe Sole Laying Company, and we got the double application of that method from the American Company.
>
> "By combining the inventions embodied in two machines we made a better machine than either. The new machine has right and left forms and operates twice as fast as the single machine which we had previously been putting out." (Howard, R. Vol. 1, p. 97, lines 6–16.)

That machine "has been placed with our customers in very large numbers." (Howard, R. Vol. 1, p. 97, lines 18–19.) Also the United Company has "put out fifty sole-laying machines substantially the same as the machines which had been put out by the American Sole Laying Company" and "The United Company continued putting out these machines so long as there was any demand for them from shoe manufacturers." (Howard, R. Vol. 2, p. 2098.)

William J. Young.

That no tangible property was acquired from William J. Young by this transaction is clear from the agreement with him made October 1, 1902 (Pltff.'s Exh. 99, R. Vol. 4, p. 713), and from the record. "No manufacturing plant of any kind was acquired." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 468.) The only property acquired was "Young's English and German patents under which our foreign companies had agencies" and under which they were putting out Young's heel-compressing machine (Howard, R. Vol. 1, p. 57, lines 13–17; p. 95, lines 44–45), and for these patents the United Company paid $14,000. (R. Vol. 4, p. 717.)

> "At this time our foreign companies had been putting out Young's machines for a number of years. They had been agents for his machine." (Howard, R. Vol. 1, p. 57, lines 15–17.)

Neither the United Company nor any of its affiliated companies was putting out in Europe any heel-compressing machine other than Young's, and "The United Company had not shipped a heel-compressing machine to England or Germany, the countries where Young's patents were taken, for a period of over ten years." (Howard, R. Vol. 1, p. 57, lines 17–20; p. 96, lines 18–19.)

> "The machine which we had before this was an old machine, very much inferior to Young's, which was of comparatively recent invention. He preceded us by two or three years in inventing a modern, satisfactory, high-speed heel-compressing machine." (Howard, R. Vol. 1, p. 96, lines 23–27.)

An important reason for this transaction is thus stated by Mr. Howard:

> "Under the requirements of the German patent law it was necessary, in order to maintain Young's German patent, to manufacture his machine in Germany right after this time, and Young had no facilities for manufacturing machines in Germany, while the United Company had a factory." (R. Vol. 1, p. 57, lines 21–25; p. 96, lines 5–9.)

In view of the situation just stated by Mr. Howard, this transaction was mutually advantageous. As agent for Young the United Company had established a business with his machine and it was the only machine which it was putting out in Europe. Failure to maintain the German patent would make this machine public property in Germany. On the other hand, if Young had not sold his German patent and had failed to manufacture under it, the patent would have become worthless.

From the standpoint of the United Company another reason for this transaction was that "as the machines made by Young were not well made, customers had complained regarding their quality." (Defts.' Exh. 231, R. Vol. 5, p. 468.) After acquisition of the patents the United Company could remedy this by making the machines itself.

After acquiring the German patent the United Company began to manufacture in Germany and marketed the machines there. Young continued to put out this machine in the United States and he has put it out ever since in competition with the United

Company. As witness for the petitioner, Young testified that he has put out over 300 of these machines. Young also testified that his business has been growing and names over a dozen different types of machines which his company is putting out, many of which have been put out in large numbers. (R. Vol. 1, p. 96, lines 9–11, 13–17; pp. 942, 943.)

The George A. Smith Machinery Company.

This transaction took place November 20, 1902. (Pltff.'s Exh. 100, R. Vol. 4, p. 721.) The George A. Smith Machinery Company had a store in Philadelphia. It owned no real estate and did no manufacturing. It employed one man repairing second-hand machinery. (Defts.' Exh. 231, R. Vol. 5, p. 451.) The only machine which the Smith Company was putting out was the hand-operated boss spring heel scarfing machine, which was patented. (R. Vol. 1, p. 58, lines 3–5; p. 95, lines 36–39.) This machine was manufactured for the Smith Company in outside machine shops. (Defts.' Exh. 231, R. Vol. 5, p. 451.)

The United Company was not putting out a machine for doing work similar to that of the Smith Company's machine. (R. Vol. 1, p. 58, lines 5–6.) After the acquisition, the United Company sold this machine through its General Department and it is still being supplied to customers. (R. Vol. 1, p. 95, lines 42–43.)

A controlling reason for the acquisition of the Smith Company was the desire of the United Company to establish its own agency in Philadelphia and to do this without injustice to the Smith Company or to Mr. Smith, who was the majority stockholder of the Smith Company, as set forth in Plaintiff's Exhibit 100. (R. Vol. 4, p. 721.)

> "The George A. Smith Machinery Company was agent for the United Company machines, except the Goodyear machines, as it had previously, before the formation of the United Company, been agent for all the predecessors of the United Company except the Goodyear Company. That business was taken over by the United Company." (Howard, R. Vol. 1, p. 57, lines 42–44; p. 58, lines 1–3.)

Like the Ross-Moyer Manufacturing Company, the Smith Company had been the agent in Philadelphia for the McKay

Shoe Machinery Company and the Consolidated & McKay Lasting Machine Company, carrying in stock spare parts for all the machines of those companies and the wire used in the machines of the McKay Company and after the formation of the United Company it had continued in the same relation to the United Company. (Defts.' Exh. 231, R. Vol. 5, pp. 452, 453; Vol. 1, p. 419, lines 13–17.)

Mr. Winslow testified:

> "When Mr. Smith found that we were going to unify this service and bring it all under one head, he wanted we should buy him out, and we did acquire his business." (Winslow, R. Vol. 1, p. 419, lines 17–20; p. 418, lines 36–38.)

The United Company's reasons for desiring to establish an agency in Philadelphia and the importance of so doing were the same as in the case of the Ross-Moyer Company (Defts.' Exh. 231, R. Vol. 5, p. 453), and have already been explained in the discussion of that company (*supra*, pp. 26–27).

The United Company continued the business of The George A. Smith Machinery Company except the cut soles and findings business, which was excepted from the transaction, on the premises which had been occupied by the Smith Company in Philadelphia and established the headquarters of its repair force there and carried there its supplies of machine parts and materials for use on the machines. (R. Vol. 1, p. 95, lines 18–35.) The consideration for this transaction was $38,790.79, the inventory value of the property acquired. (Defts.' Exh. 231, R. Vol. 5, p. 451.)

George W. Emerson & Company.

This transaction took place December 18, 1902. George W. Emerson & Company, a co-partnership (Pltff.'s Exh. 101, R. Vol. 4, p. 725), owned no real estate, leased two floors in a factory building in Lynn, and employed about thirty-five men. (R. Vol. 1, p. 460, lines 3–5.) Their principal business was "manufacturing and supplying lasts and forms for sole leveling machines of the 'Giant' type." They were also putting out a patented power spring heel scarfer, a patented heel-burnishing

machine, and a tip scourer. (Howard, R. Vol. 1, p. 58, lines 24–38, 44–45; p. 94, lines 29–44.)

The United Company had no tip scourer and no power operated spring heel scarfer and it was developing a leveling machine on which lasts and forms are used. (R. Vol. 1, p. 58, lines 22–24; p. 59, lines 3–10; p. 94, lines 29–31; p. 95, line 1.) The patented heel-burnishing machine which the Emerson concern was putting out was of "a different type" and performed its operation in an entirely different way from the United Company's machine, which was also patented. Some manufacturers preferred and insisted upon having one type of machine, while other manufacturers preferred and insisted upon having the other type. (R. Vol. 1, p. 58, lines 39–45; p. 59, lines 1–2; p. 95, lines 4–11.)

There were three important reasons for this acquisition:

(1) The United Company extended its line by adding a tip scourer, a power operated spring heel scarfer, and a new type of heel burnisher which some manufacturers preferred. It also secured a source of supply for the lasts and forms which had to be used upon the leveling machine which it was developing.

(2) "We desired to obtain the services of William R. Sampson, who was the active man with Emerson and who today occupies with our company a very prominent position and has been with us ever since." (Winslow, R. Vol. 1, p. 459, lines 41–44.)

(3) "To compose certain litigation then pending between the Xpedite Company and the Emerson Company for infringement of the Xpedite patents." (Winslow, R. Vol. 1, p. 460, lines 1–3.)

As to (3) the Emerson heel-finishing machine infringed eleven claims of two patents of the United-Xpedite Finishing Company, one of which is "one of the most important patents on that machine." (Defts.' Exh. 275, R. Vol. 5, p. 766.)

Mr. Winslow testified:

> "This property was acquired at the earnest solicitation of George W. Emerson, who was interested in a trout farm on Cape Cod and desired to retire from the shoe machinery business. . . The amount paid was based upon the inventory of the Emerson Company." (R. Vol. 1, p. 459, lines 35–40.)

Since this acquisition the business of the Emerson concern has been continued by the United Company in its several departments and the machines acquired have all been supplied to customers. (R. Vol. 1, p. 59, lines 12–13; p. 94, lines 37–38; p. 95, lines 1–3, 9–11.)

Mr. Sampson was for several years the head of the General Department and was then promoted to the executive offices. (R. Vol. 1, p. 95, lines 12–17.)

W. W. Cross & Company, Incorporated.

This transaction took place February 18, 1903. (Pltff.'s Exh. 103, R. Vol. 4, p. 744.) This corporation was formed to take over the business owned by W. B. Cross, including his real estate and factory. (Defts.' Exh. 231, R. Vol. 5, p. 463.) He did not manufacture shoe machinery, but nails and tacks for use in the manufacture of shoes. (R. Vol. 1, p. 60, lines 1–2.)

The United Company was not engaged in the manufacture of nails and tacks. (R. Vol. 1, p. 60, lines 3–5.) The Consolidated & McKay Lasting Machine Company had obtained from Cross substantially all of its tacks, "many tons every week," these tacks being made particularly for the lasting machines put out by the Consolidated & McKay Company; and the United Company, in continuing to put out those machines, obtained its tacks from the same source. (R. Vol. 1, p. 93, lines 31–38; Defts.' Exh. 231, R. Vol. 5, p. 463.)

Mr. Cross was very closely associated with the United Company, which was the only large customer that he had and which took nearly his entire output. (R. Vol. 1, p. 462, lines 28–34; p. 93, lines 35–36.) The demand for tacks by the customers of the United Company grew to such proportions that it became a problem how to obtain a sufficient supply (R. Vol. 1, p. 672, lines 6–12), since Mr. Cross was not willing, without some assurance as to the future, to put up the capital necessary for such an enlargement of his output for the accommodation of a single customer. (R. Vol. 1, p. 462, lines 30–32.)

> "We simply acquired that business to be able to supply our lasting machine customers with tacks." (Howard, R. Vol. 1, p. 93, lines 36–38.)

The agreement (Pltff.'s Exh. 103, R. Vol. 4, p. 744) was entered into "for the purpose of enabling the Cross Company to extend their business and fix permanently the relations between the company and W. B. Cross." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 463.)

Since the acquisition the United Company has continued to buy its tacks from W. W. Cross & Company, Inc., and the business has so increased that it now employs 317 men; it then employed about forty men. (R. Vol. 1, p. 462, lines 33–34.) However, that company by no means occupies this field exclusively. The Atlas Tack Company, in which the United Company has no interest, "is the largest manufacturer of tacks in this country." (Winslow, R. Vol. 1, p. 472, lines 39–41.)

J. K. Krieg & Company.

This transaction took place May 6, 1903. (Pltff.'s Exh. 104, R. Vol. 4, p. 746.) J. K. Krieg & Company was a copartnership doing business in New York. They owned no real estate and had a small machine shop above their store where they employed four men and one boy, who were engaged principally in rebuilding old machines and repairing machines used in other lines of manufacturing, but who when not so engaged were employed in building the few machines which Krieg put out. (Defts.' Exh. 231, R. Vol. 5, p. 452.)

Krieg had been local agent for the United Company and its predecessors for parts and supplies for all the machines except the Goodyear machines, and the Krieg store was the headquarters for the United Company's men. J. K. Krieg had died and his business was being carried on by his estate. Mr. Winslow testified:

> "We dealt with that situation in this way: We acquired that part of the J. K. Krieg business, which related directly to the business that was done with shoe manufacturers. The younger Krieg retained the business that had to do with retailers." (R. Vol. 1, p. 419, lines 31–42.)

One of the three machines which Krieg put out was a patented heel seat rounding machine especially constructed for rounding heel seats of Goodyear shoes. The only machine the United Com-

pany had for this operation was an edge-trimming machine provided with a larger cutter than was used for edge-trimming. This edge trimming machine effected the trimming operation by chewing up the surplus stock into dust while the Krieg machine cut off the surplus stock so that the scraps cut off could be sold or utilized either for scrap leather or for manufacturing pieced heels, thus effecting a substantial and therefore important economy. (R. Vol. 1, p. 60, lines 28–34; p. 92, lines 31–45; p. 93, lines 1–10; Vol. 2, p. 2045, Ints. 1446–1448.)

Krieg also had manufactured by other parties and was putting out a Louis heel-scarfing machine for cutting from the grain side of the outsole a strip of leather to be bent up over the undercut breast surface of a Louis heel, a wood heel, used in a particular type of woman's shoe. The United Company had no machine capable of performing the operation of that machine. Krieg also had an embossing machine for stamping names or trademarks on upper linings. (R. Vol. 1, p. 60, lines 35–41; p. 93, lines 11–28.)

By this transaction the United Company acquired machines which it did not have before and was thus extending its line.

But the more important reason for this acquisition had to do with the desire of the United Company to establish its own headquarters for its local repair men in the New York district and to take under its own control the carrying and supplying of spare parts for its machines to manufacturers in the New York district just as it had previously done in other parts of the country by the acquisition of the Ross-Moyer Manufacturing Company and The George A. Smith Machinery Company. The importance of this policy, both to the United Company and to the trade, and the general reasons why the United Company in establishing its own agencies acquired the properties of the concerns which had previously been its agents are fully explained in the discussion of the acquisition of the Ross-Moyer Manufacturing Company (*supra*, pp. 26–27).

Mr. Winslow testified:

> "In all of these cases the moving motive in making these arrangements was from Mr. Ross in the Ross-Moyer and Smith, and representatives of the Krieg estate, who wanted in the rearrangement to make the best arrangements for

themselves." (R. Vol. 1, p. 419, lines 42–44; p. 420, lines 1–2.)

The amount paid for this business was $97,056.52 (Defts.' Exh. 231, R. Vol. 5, p. 451), which was the inventory value of the property "less proper deductions therefrom" for depreciation and for unsalable goods. (Pltff.'s Exh. 104, R. Vol. 4, p. 749.)

After this acquisition the United Company used the Krieg store in New York as headquarters of its repair force, furnishing "very much better service," and kept there a complete line of parts and supplies for all its machines. The United Company also continued putting out the new machines which it had acquired from J. K. Krieg & Company. (R. Vol. 1, p. 95, lines 30–35; p. 60, lines 32–34; p. 93, lines 19–21, 29–30.)

Joseph P. Curtis.

By this transaction, which took place Oct. 20, 1903, the United Company acquired certain patent rights and nothing more. Curtis assigned two pending applications to the United Company. Curtis did not transfer his one experimental machine. (Pltff.'s Exh. 106, R. Vol. 4, p. 754; R. Vol. 1, p. 92, lines 21–22.) These patent rights related to a machine for cementing a piece of fabric to an upper. The United Company had no machine for use in performing this operation nor any machine that could be used for this work, "which required a machine of an entirely different type and entirely different organization from any we had."

On the other hand, the Curtis machine could not be used for the same purpose as any machine of the United Company. (R. Vol. 1, p. 61, lines 10–18; p. 92, lines 4–12.)

The consideration in this transaction was "$500 cash and a royalty of $10 on each machine embodying the inventions." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 468.)

The United Company subsequently obtained Letters Patent upon an application filed by Curtis and did all that it could to make the machine a commercial success, putting out in all about forty-five machines constructed according to that patent. The machines, however, did not prove to be a practical success, since the operation performed was not satisfactory. Most of the

machines which were put out were returned. (R. Vol. 1, p. 92, lines 13–20; Vol. 2, p. 2045, Int. 1445.) Moreover, "the Peerless Machine Company, under patents owned by them, were able to produce a better machine and have done the larger part of this business." (Winslow, Defts.' Exh. 231, R. Vol. 5, pp. 468, 469.)

Fred H. Perry.

The agreement with Fred H. Perry, which was merely an employment contract, was made January 1, 1904. (Pltff.'s Exh. 107, R. Vol. 4, p. 758.) No property of any kind was acquired from Mr. Perry. He had entered the employment of the company as a machinist, at wages of thirty-four cents an hour, less than four years before the date of the contract referred to in the petition. He was given the opportunity in 1903 "at his own urgent request" to enter the inventive department of the company and demonstrate whatever inventive ability he might possess, and was paid $30 a week for the first eighteen months of this employment. Mr. Perry developed into a "very successful inventor," and has made some very important inventions for the company. He is still employed by the company and his salary has been materially increased several times, and on January 1, 1911, was raised to $4,000 a year. The important inventions that he has made have been embodied in commercial machines which have been given immediately to the trade and have been put out in large numbers. Among these machines are the present commercial Rounding and Channeling Machine, Model E, Goodyear Universal, and Jointing Machine, Goodyear, the importance and value of which are explained in detail by Mr. Howard. (R. Vol. 1, p. 91, lines 18–40; Vol. 2, pp. 2309 *et seq.*; 2611 *et seq.*; Defts.' Exh. 231, R. Vol. 5, p. 473.)

Joseph W. Leary.

The agreement with Joseph W. Leary made January 1, 1904, was primarily an employment contract. (Pltff.'s Exh. 109, R. Vol. 4, p. 769.) The very small business which he was doing was insignificant. He did no manufacturing of any kind, employed no men, and had no factory. He was engaged principally in

retailing, in a small way, cements and blackings such as are used in the manufacture of shoes and are supplied by "hundreds of dealers." He also dealt in a very small way in second-hand sewing machines for sewing together the parts of an upper before the bottoming room operations, but dealt in no new machines except the Amazeen machine which he sold for the United Company. (R. Vol. 1, p. 62, lines 1–11; p. 91, lines 1–8; Defts.' Exh. 231, R. Vol. 5, p. 473.)

In connection with his small local sale business in Lynn, Leary was an agent for the Amazeen skiving machine which was being put out by the United Company. "He was an extremely capable salesman and mechanic, thoroughly familiar with the Amazeen machine, and unusually successful in selling it." His activities with reference to the machine were, however, in view of the local character of his business, entirely centered in Lynn, and the principal reason for entering into the contract of employment with him was to obtain his services in selling the machine in a much wider field. (Howard, R. Vol. 1, p. 91, lines 9–17; Defts.' Exh. 231, R. Vol. 5, p. 474.)

> "Mr. Leary stated that he would like to enter the employ of the United Company if the company would buy his stock of cement and second-hand machinery, and the company paid him $3052 for the small stock that he had on hand." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 474.)

Leary is still employed by the United Company as an agent for the Amazeen machine. (R. Vol. 1, p. 91, lines 16–17.)

The F. G. Farnham Brush Manufacturing Co.

This transaction took place January 23, 1904. (Pltff.'s Exh. 109, R. Vol. 4, p. 769.) The Farnham Company was a small concern employing only six men. It leased floor space in a small factory in Honesdale, Pa. Almost its entire business was in putting out patented Tampico brushes for the cut glass trade, but it also put out a few patented brushes for the shoe trade and it put out the sleeves, collars, hubs and fillers that are necessary parts of such brushes. Brushes are used in the shoe trade for cleaning and polishing only. (R. Vol. 1, p. 62, lines 30–44; p. 89, lines 42–44; p. 90, lines 1–9, 36–39; R. Vol. 2, p. 2045, Int. 1444; Defts.' Exh. 231, R. Vol. 5, p. 464.)

The United Company was putting out shoe brushes, sleeves, hubs and collars that it obtained from S. A. Felton & Son Company, in which the United Company has a half interest, but the United Company did no business in Tampico brushes. (R. Vol. 1, p. 62, lines 34–36; Defts.' Exh. 231, R. Vol. 5, p. 462.)

The important reason for this purchase was that the Farnham brush was much superior to the Felton brush.

> "The Farnham brush was very superior to our old brush, the Felton brush, with which we had been having great difficulty because the bristles were constantly coming out. For several years we had been having complaints all the time that the bristles would not stay in the brush. In this respect the Farnham brush was much superior to our old brush." (Howard, R. Vol. 1, p. 90, lines 15–20.)

The Farnham Company had patents on its brush, brush section and a combined brush and hub; and the United Company wished to obtain these patents in order to furnish a better brush to the shoe trade. (R. Vol. 1, p. 90, lines 36–39; Defts.' Exh. 231, R. Vol. 5, p. 464.)

The Farnham Company was poorly located geographically for dealing with the shoe trade and desired to sell out; the purchase was made "at the earnest solicitation of the officials of the Farnham Company" for $25,915.32. (R. Vol. 1, p. 90, lines 7–9; Winslow, Defts.' Exh. 231, R. Vol. 5, p. 464.)

After the purchase, the Farnham "business was continued at Honesdale for nearly a year and was then removed to the factory of S. A. Felton & Son Company, where the business has been continued." The business in brushes for the cut glass trade was continued and is still being carried on. The Farnham shoe brushes were supplied in considerable quantities for a time on account of its superiority to the old brush, "but it was more expensive, so that the demand for it has not been as great as it otherwise would have been." (Howard, R. Vol. 1, p. 90, lines 10–22; Defts.' Exh. 231, R. Vol. 5, p. 464.) Mr. Howard testified:

> "After we acquired the Farnham brush we made use of the general idea of the Farnham brush and produced an improved brush of this same general type, with the addition of valuable improvements which completely overcame the difficulties which we had had before. . . . That construction

afforded a complete solution of the difficulty which had been troubling us for several years." (R. Vol. 1, p. 90, lines 23–31.)

This improved brush, which is very satisfactory, is the one the United Company is now principally putting out. (R. Vol. 1, p. 90, lines 39–45.)

American Glue Company.

This transaction was merely a contract entered into May 2, 1904 (Pltff.'s Exh. 110, R. Vol. 4, p. 796) for the exclusive agency for the American Glue Company's sandpaper in the shoe trade:

> "The American Glue Company transaction was merely a contract, terminable on three months' notice, relating to sand-paper in the shoe trade—not in other trades." (Winslow, R. Vol. 1, p. 462, lines 39–41.)
>
> "It is agreed, however, that either party shall have the right to terminate this agreement by a three months' notice in writing delivered to the other of said parties, and in case such notice shall be given, then this agreement shall, at the end of the said three months, terminate." (Pltff.'s Exh. 110, R. Vol. 4, p. 798.)

As stated by Mr. Winslow (R. Vol. 1, p. 472, lines 30–33):

> "The American Glue Company wanted us to take over their molded sandpaper business, which is a part that especially applies to shoe making and does not include their entire business;"

but the United Company took only an agency for the United States and Canada such as it already had abroad, and "The United Company has no interest whatever in the American Glue Company." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 464; Howard, R. Vol. 1, p. 89, lines 35–36.)

> "The United Company made no goods of a similar character, but has marketed a large amount of goods for the American Glue Company under this contract." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 464.)
>
> "Sandpaper is used in the manufacture of shoes for the operations known as scouring and buffing. The general object of each operation is the same—to smooth up the

particular part of the shoe on which the operation takes place.

"Prior to this agreement the United Company was agent for the American Glue Company abroad, and it had bought from the American Glue Company the sandpaper which it furnished to customers in this country. This agreement did not change the trade relations of the parties in the least. After making the agreement the United Company continued to furnish the same sandpaper to customers as liberally as before." (Howard, R. Vol. 1, p. 89, lines 31–41.)

Zachary Taylor French.

This transaction took place January 1, 1904. (Pltff.'s Exh. 111, R. Vol. 4, p. 803.) Zachary Taylor French owned no real estate and no manufacturing plant was acquired. Contrary to the allegation in the petition (R. Vol. 1, p. 1014), "French had no business of his own, but had been for thirty years in the employ of the Goodyear Company, or its predecessors." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 471.)

This transaction was thus explained by Mr. Howard:

"Mr. French had for a great many years been in the employ of the United Company and its predecessor, the Goodyear Company, as an inventor, and later as superintendent of the Goodyear factory on Albany Street in Boston. His inventions were covered by a number of royalty agreements. He did not wish to move to Beverly when the plant there was opened about this time, and therefore desired to leave the employ of the company. A settlement was made of the royalties which would become due under his various contracts; and the agreement of plaintiff's Exhibit 111 incorporates the settlement which was made at that time." (R. Vol. 1, p. 63, lines 30–40.)

"It had been the practice of the Goodyear Company to make royalty agreements with him from time to time which provided for payments for his inventions by way of royalties." (R. Vol. 1, p. 89, lines 25–27.)

Mr. Winslow testified that the agreement was made—

"to commute obligations existing prior to 1899 under royalty contracts for the right to manufacture under patents." (R. Vol. 1, p. 464, lines 9–14.)

"Reason for agreement to assign future inventions and not to compete with the United Company for ten years, was

because French desired to leave the company's employ and to have his royalty contracts (which were entirely dependent upon the number of machines that might be put out) placed upon a definite basis of annual payment." (Defts.' Exh. 231, R. Vol. 5, p. 471.)

The consideration was the United Company's agreement to pay $15,000 in annual instalments of $1500 each. (Pltff.'s Exh. 111, R. Vol. 4, p. 810.)

Kimball and Hadley.

This transaction took place June 11, 1904. (Pltff.'s Exh. 112, R. Vol. 4, p. 814.) Kimball and Hadley were a copartnership. They leased small floor space in Lynn and employed two men and two boys. Their principal business was the manufacture of Goodyear needles, *i.e.*, the curved needles used on Goodyear welters and stitchers. (R. Vol. 1, p. 64, lines 10–12; Defts.' Exh. 231, R. Vol. 5, p. 464.)

The United Company was not making Goodyear needles. (R. Vol. 1, p. 64, lines 15–16.) Petitioner's witness Hadley testified to the same effect:

> "They obtained their Goodyear needles from the Smith Company in New Haven, Connecticut, and from the Excelsior Needle Company, of Torrington, Connecticut.
>
> "*Q.* But so far as you know they didn't make any of their own?
>
> "*A.* No. . . .
>
> "*Q.* You just told me they didn't manufacture any Goodyear needles.
>
> "*A.* They didn't." (R. Vol. 1, p. 310, lines 33–37; p. 311, lines 5–7.)

By this acquisition the United Company was merely extending its field to include the manufacture of Goodyear needles. The United Company has continued to manufacture Goodyear needles and to supply them at the same prices that had been charged by Kimball and Hadley. (R. Vol. 1, p. 64, lines 21–22; Defts.' Exh. 231, R. Vol. 5, p. 465.)

That this transaction was entirely negligible is proved by Mr. Hadley's testimony to the effect that at least two other concerns were engaged in the business of making Goodyear needles, by

the size of the concern as above indicated, and by the amounts of the purchase price, $4750, and Hadley's original asking price, $5000. (Hadley, R. Vol. 1, p. 310, lines 33–35; p. 311, lines 13–14.)

After this transaction Kimball and Hadley again engaged in the needle business despite their covenant to keep out of that business for fifteen years (Pltff.'s Exh. 112, R. Vol. 4, p. 815), and in a suit to enforce the terms of their agreement with the United Company they were enjoined from continuing the business. (Hadley, R. Vol. 1, p. 311, lines 15–20.) The decision of the Supreme Court of Massachusetts affirming the granting of this injunction is reported in 193 Mass. 351.

Arnold Machine & Supply Company (William B. Arnold).

This transaction took place June 28, 1904. (Pltff.'s Exh. 113, R. Vol. 4, p. 816.) The Arnold Machine & Supply Company was engaged in manufacturing a patented machine for applying cement to an insole for the purpose of securing a reinforcing strip of canvas to it in the process of making what is known as the Gem insole, of which Defendants' Exhibit 17 is a sample. The Arnold Company had put out only seven machines. This machine and two patents were all that was acquired by this transaction and the consideration was "$500 and royalties to be paid on machines when put out." (R. Vol. 1, p. 64, lines 39–46; p. 88, lines 20–30; Winslow, Defts.' Exh. 231, R. Vol. 5, p. 469.)

"It had never been the practice before this machine was invented to apply cement to the insole rather than to the canvas." The United Company had no machine which could possibly be used for performing the operation of the Arnold machine which had to be specially constructed for the purpose for which it was intended. "What had been used before was not a cementing machine; it was merely a cement pot through which the canvas was drawn on its way to the table, where it was cut off and applied to a piece of leather." (Howard, R. Vol. 1, p. 64, line 46; p. 65, lines 1–14; p. 92, lines 7–12.)

The Arnold machine was a very satisfactory one; but immediately after the purchase by the United Company demand for the machine entirely ceased for the reason that the process of pre-

paring the Gem insole was entirely revolutionized by the production of—.

> "a new type of reinforcing canvas which was introduced about this time by concerns other than the United Company. That canvas was sold to manufacturers with the cement already on it, and it was steamed and heated and then stuck right on the sole. There were three concerns engaged in preparing and selling this new type of reinforcing canvas and it entirely revolutionized the prior processes of making Gem insoles. This new process was subsequently used instead of the cementing machine and entirely superseded it." (Howard, R. Vol. 1, p. 88, lines 31–43.)

Leopold J. Courteau.

This transaction took place October 1, 1904. (Pltff.'s Exh. 115, R. Vol. 4, p. 826.) The United Company acquired from Leopold J. Courteau an invention; nothing more. As shown by the agreement, it did not even acquire title to the experimental machine in which Courteau had embodied his invention. The consideration was an agreement "to pay royalty of 10 per cent of the selling price until $1000 had been paid," and this agreement was conditional upon the United Company obtaining Letters Patent of the United States if its patent solicitors were of the opinion that such patent "can be obtained giving any substantial protection." (R. Vol. 1, p. 87, lines 35–37; Winslow, Defts.' Exh. 231, R. Vol. 5, p. 469; Pltff.'s Exh. 115, R. Vol. 4, p. 827.)

The object of this invention was "a mechanism for holding the linings of shoes during the process of pasting the outer [upper] leather to the lining." This cementing operation is performed to a limited extent on some kinds of shoes, and the work had previously been done by hand. The United Company had no machine for performing this operation. (R. Vol. 1, p. 66, lines 10–12; p. 87, lines 30–37; R. Vol. 4, p. 826.)

An application for United States patent upon Courteau's invention was filed, and a patent was subsequently issued upon this application. (R. Vol. 1, p. 87, lines 35–37; R. Vol. 2, p. 2043, Int. 1438.)

The United Company was entirely unable to produce a prac-

ticable machine embodying the Courteau invention. Mr. Howard testified:

> "Nothing ever came of this agreement. We were unable after the most strenuous efforts to make a practicable machine. During our experiments Courteau was often consulted and finally confessed himself that he saw no way to make the machine practicable." (R. Vol. 1, p. 66, lines 12–16.)

And again:

> "We made a very determined effort to make it practicable. Our inventors who were working upon it had frequent conferences with Courteau, and finally, when they were convinced that it was utterly impracticable, they made a final appeal to Courteau to see whether he could make any suggestions which would remedy the situation, and he was unable to do so. The concern with which Courteau was connected, which under the agreement was entitled to have machines at cost [see Pltff.'s Exh. 115, R. Vol. 4, p. 829], considered the machines worthless and refused to take any machines. We did the best we could with it but could not develop anything out of it, and it was given up." (R. Vol. 1, p. 87, lines 39–45; p. 88, lines 1–4.)

Booth Brothers (1904 Agreement).

By this transaction, which took place October, 25, 1904, the United Company acquired a vamp-perforating machine referred to in the agreement of Plaintiff's Exhibit 114 (R. Vol. 4, p. 822) as "the experimental machine," and the patent on that machine; it acquired no plant or shop. (R. Vol. 1, p. 88, lines 5–6; Defts.' Exh. 231, R. Vol. 5, p. 469.)

The consideration in this transaction was $2,400 in cash and $7,600 to be paid in royalties. (Defts.' Exh. 231, R. Vol. 5, p. 469; Pltff.'s Exh. 114, R. Vol. 4, p. 823.)

The Booth machine was designed for ornamenting uppers or parts of uppers. The United Company had no vamp-perforating machine nor any machine which could be used for perforating vamps. (R. Vol. 1, p. 65, lines 31–42; p. 88, lines 6–16; R. Vol. 2, p. 2044, Int. 1439; Defts.' Exh. 231, R. Vol. 5, p. 469.)

The acquisition of this patent enabled the United Company to extend its line to include a vamp-perforating machine.

This machine has been sold by the United Company through its General Department in large numbers and the business in it was very largely developed after the United Company acquired it. (R. Vol. 1, p. 88, lines 17–20.)

Brockton Supply Company.

As shown by Plaintiff's Exhibit 116 (R. Vol. 4, p. 831), by this transaction, which took place November 1, 1905, the United Company acquired from the Brockton Supply Company, a co-partnership, two patents covering a machine for pulling lasting tacks. At this time the United Company had no commercial tack-pulling machine; "it was developing one, but had put none out." (Howard, R. Vol. 1, p. 66, lines 24–26; p. 87, lines 3–6, 25.)

The United Company's experimental machine infringed two claims of one of the patents owned by the Brockton Supply Company. On the other hand, the Brockton Company's machine infringed seven claims of two applications owned by the United Company. (R. Vol. 1, p. 66, lines 26–27; p. 87, lines 25–27; R. Vol. 2, p. 2043, Ints. 1436, 1437; Defts.' Exh. 275, R. Vol. 5, p. 767.)

This situation created a patent deadlock which was removed by common ownership of the two groups of patents. Furthermore, the firm members of the Brockton Supply Company had had a serious disagreement and desired to liquidate their business. Also Mr. Campbell, one of the partners, was anxious to go out of business. They had already sold a part of their business to another concern, and "Campbell had suggested to Nichols that he (Nichols) see if they could not sell the rest of their business to the United Company, which Nichols did," and the United Company was willing to make this acquisition, as it "had not been able up to that time to produce a tack-pulling machine." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 477; Howard, R. Vol. 1, p. 66, lines 28–29.)

After this acquisition the United Company put out to a considerable extent the machine acquired from the Brockton Supply Company, but Mr. Howard testified that—

> "the most important use which we made of the inventions was to incorporate them in our experimental tack pulling and resetting machine, particularly the feature covered by

claims of those patents which that machine had infringed. That machine was for use on Goodyear shoes and not only pulled the lasting tacks but drove the lighter tacks, called slivers, which hold the upper in place until after the welt has been sewed on. . . . Previously it had always been the practice to drive those slivers by hand. This new tack pulling and resetting machine of ours, in which we incorporated the inventions claimed in the patents acquired from the Brockton Supply Company, was the first machine in the art for performing the two operations at once. . . . After the acquisition we combined their inventions and ours in our machine and furnished it to customers in large numbers." (R. Vol. 1, p. 87, lines 8–15, 19–24, 27–29.)

Smith Lacing Machine Company.

This transaction took place January 31, 1906. (Pltff.'s Exhs. 117, 118, R. Vol. 4, pp. 834, 840.) The Smith Lacing Machine Company owned no real estate and did no manufacturing. (Defts.' Exh. 231, R. Vol. 5, p. 477.)

The Smith Company had produced an entirely new machine for lacing uppers.

"The lacing machine is a wonderful machine, embodying a large number of patented inventions for automatically lacing and tying the opposed eyelets, of a shoe upper, preparatory to the lasting operation, for the purpose of maintaining the edges at just the right distance apart during the lasting and subsequent operations. . . .

"Prior to this the practice had been for girls to insert strings through the eyelets and tie the ends of the string. This was handwork. . . . The United Company had no machine for performing this operation or for the purpose of holding together the tops of the uppers of shoes." (Howard, R. Vol. 1, p. 67, lines 3–8, 13–15, 18–20.)

This machine "was not really on a commercial basis" and the nith Company "had placed none upon the market." (Howard, Vol. 1, p. 86, lines 31–32; Winslow, Defts.' Exh. 231, R. Vol. p. 477.)

The Smith machine infringed many allowed claims in a pend- g application owned by the United Company. The machine of at application, however, "was only experimental, and was

never used commercially" for reasons explained by Mr. Howard. (R. Vol. 2, p. 2601 *et seq.*)

On the other hand, the essential organization for a successful lacing machine was—

> "broadly covered by the claims of a patent owned by the Smith Company, which also owned other patents containing broad claims to many features of the machine which were found indispensable for a commercially successful machine.
>
> "This situation resulted in a deadlock since neither the United Company nor the Smith Lacing Company was able to put out a commercial lacing machine without infringing a patent or patents owned by the other." (Howard, Defts.' Exh. 275, R. Vol. 5, pp. 767, 768.)

Mr. Winslow testified that after the acquisition "we developed the lacing machine, till to-day it is used in pretty nearly every factory where they manufacture lace shoes." (R. Vol. 1, p. 463, lines 13–15.)

> "The Smith Company had intended to charge an initial payment and royalty for the use of the machine. The United Company furnished these machines to their customers without initial payment and at one-half the royalty that the Smith Company had intended to charge." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 478.)

Up to March 1, 1913, the United Company had put out 1415 lacing machines. One of these machines will take care of as many shoes as from four to seven welt-sewing machines. (R. Vol. 2, p. 2605, Int. 112.)

The consideration in this transaction was a payment of $50,000 in cash and $67,500 to be paid in royalties. "This payment was completed within three years." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 477.)

Metallic Heel and Counter Company.

This transaction took place January 31, 1906. (Pltff.'s Exh. 119, R. Vol. 4, p. 843.) The Metallic Heel and Counter Company owned no real estate, leased floor space, employed about seventy men, and manufactured metallic heels and counters. (Defts.' Exh. 231, R. Vol. 5, p. 465.)

"The United Company acquired from the Metallic Heel and Counter Company patented machines used in the manufacture of a patented metallic heel and counter. This was used on very heavy shoes worn by miners, quarrymen, and others engaged in work of that character" (Howard, R. Vol. 1, p. 67, lines 30–34; p. 86, lines 38–44); (a shoe with metallic heel and counter is Defendants' Exhibit 20).

"The Metallic Heel & Counter Company manufactured patented metallic heels and counters to go outside of shoes for miners' work or heavy outdoor work of that sort." (Winslow, R. Vol. 1, p. 462, lines 44–45; p. 463, line 1.)

The United Company did not manufacture any metallic heels and counters and had no machinery that could be used for that purpose. (R. Vol. 1, p. 67, lines 36–39; Defts.' Exh. 231, R. Vol. 5, p. 465.)

Important reasons for this acquisition were the following:

(1) The United Company extended its business by entering a new field.

(2) "A very substantial reason for acquiring this company and the Smith Lacing Machine Company was to secure the undivided services of George Warren, J. B. Hadaway, and William Gordon, who were already in the employ of the United Company in other matters. Messrs. Warren and Hadaway are members of the United Company's Experimental Committee." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 465.)

"The men who were interested in that company,—particularly two of them,—were men whom we used in our own business and consulted as experts. One of them was Mr. Warren." (Winslow, R. Vol. 1, p. 463, lines 3–6.)

Mr. Warren, a mechanical engineer, one of defendants' expert witnesses in this suit, has been engaged in "designing and overseeing the manufacture of shoe machinery" for the United Company. (Warren, R. Vol. 1, p. 785, lines 7–10.)

(3) "The parties interested in the Smith Lacing Machine Company and the Metallic Heel & Counter Company were the same. We had to buy them both in order to get either." (Howard, R. Vol. 1, p. 86, lines 35–37.)

"When we acquired that machine they wanted us to take over their whole enterprise, including the Heel & Counter

Company, which was really the machine shop." (Winslow, R. Vol. 1, p. 463, lines 9–11.)

"It was impossible to purchase the Smith Lacing Machine Company without acquiring this business." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 465.)

Since the acquisition the United Company has supplied to the trade the metallic heel and counter in very considerable quantities and has a separate department at Beverly for manufacturing them, which is busy all the time. (R. Vol. 1, p. 86, lines 44–45; p. 87, lines 1–2.)

The consideration for this acquisition was $52,320.24 in cash and $67,500 in royalties payable on account of the lacing machine acquired from the Smith Lacing Machine Company; that is, the payment of more than half the consideration depended upon the commercial success of the Smith Lacing Machine. (Defts.' Exh. 231, R. Vol. 5, p. 465; Pltff.'s Exh. 119, R. Vol. 4, p. 845.)

Zotique Beaudry.

This transaction took place September 4, 1906. (Pltff.'s Exh. 120, R. Vol. 4, p. 850.) Zotique Beaudry, as petitioner's witness, testified: "I am in the shoe machinery business, inventing and manufacturing." Mr. Winslow testified: "Beaudry was and is today a manufacturer of edge setters." (R. Vol. 1, p. 328, lines 42–43; p. 473, lines 3–4.) That business was not acquired.

By this transaction the United Company acquired an "experimental heel-burnishing machine, which had not been even tried out in any shoe factory," and the patents on that machine, and no other property whatever. The patents were acquired on account of and were assigned to the United-Xpedite Finishing Company, a majority of the capital stock of which is owned by the United Company. (Howard, Defts.' Exh. 275, R. Vol. 5, p. 768; R. Vol. 1, p. 68, lines 7–9; p. 86, lines 16–21.)

"At this time the United-Xpedite Company had a heel burnishing machine, but the Beaudry inventions covered appliances which could be added to the Xpedite machines corresponding to which the Xpedite Company had nothing at all. The Beaudry inventions, covered by several patent applications, embodied an entirely new idea." (Howard, R. Vol. 1, p. 68, lines 9–14.)

Mr. Winslow stated: "that it was believed at the time that it would enable the United-Xpedite Company to improve its machines very materially. Beaudry had been the original inventor of the machine put out by the Xpedite Company." (Defts.' Exh. 231, R. Vol. 5, p. 469; Beaudry, R. Vol. 1, p. 329, lines 1–3.)

Litigation was avoided by this acquisition. Beaudry's experimental machine infringed nine claims of a patent owned by the United-Xpedite Finishing Company. (Defts.' Exh. 275, R. Vol. 5, p. 768.)

Mr. Howard testified: "At the time we acquired the invention we thought very highly of it, as evidenced by the price that we paid for it." (R. Vol. 1, p. 86, lines 1–2.) The consideration was $12,500. (Defts.' Exh. 231, R. Vol. 5, p. 469.)

Mr. Howard testified that after the acquisition:

> "We constructed several experimental machines. . . . We tried in all sorts of ways to make it practicable, but the extreme inconvenience to which the operator would be put by a machine so organized finally condemned it as entirely impracticable." (R. Vol. 1, p. 86, lines 2–15.)

Mr. Winslow stated: "As a result of a great many experiments made after the purchase of the patents, this money was wasted." (Defts.' Exh. 231, R. Vol. 5, p. 469.)

Booth Brothers (entire business).

This transaction took place November 1, 1907. (Pltff.'s Exhs. 121–124, R. Vol. 4, pp. 856, 861, 862, 867.) This concern was "a partnership composed of Quentin W. Booth and Irving E. Booth. They owned no real estate but leased floor space in Rochester, New York, and employed about twenty-two men. The purchase was made in 1907 for $71,284.20." (Winslow, R. Vol. 1, p. 460, lines 21–25.)

At this time Booth Brothers were putting out patented machines of four types. (R. Vol. 1, p. 68, lines 35–45; p. 69, lines 1–8; p. 84, lines 12–15; p. 85, lines 1–27; R. Vol. 2, p. 2519, Int. 96.) One of these machines was the patented impression stitch-burnishing machine for burnishing impression stitches on the upper face of the welt of a welt shoe. This machine was much superior to the machine which the United Company was at-

tempting to use for the same work, but it infringed claims in a pending patent application owned by the United Company on which a patent was subsequently granted. The United Company's machine was not successful and after this transaction the United Company substituted the Booth machine for that work. (R. Vol. 1, p. 85, lines 1–14; Defts.' Exh. 275, R. Vol. 5, p. 766.)

Another Booth patented machine was a fudge edge making machine for making imitation stitches on the upper face of the sole edge and simultaneously setting or burnishing the edge of the sole. The United Company had no machine for doing the work of this machine. (R. Vol. 1, p. 84, lines 12–23.)

Booth Brothers were also putting out patented upper beading machines for beating down the seams after parts of uppers have been sewed together. These were better machines than the United Company's machine, which was satisfactory only on heavy work, and the United Company as agents had sold many of the Booth machines. (R. Vol. 1, p. 84, lines 35–45; Defts.' Exh. 231, R. Vol. 5, p. 457.)

They also had two types of wheeling machines which were used to define the imitation stitch on the upper face of a welt shoe preparatory to the stitch burnishing operation. Both of these machines infringed the United Company's patents. The United Company's wheeling machine was adapted for use only on McKay shoes, while the Booth machines, as stated, were used on welt shoes. (R. Vol. 1, p. 84, lines 24–34; Defts.' Exh. 275, R. Vol. 5, p. 765.)

Booth Brothers were also putting out "a simple contrivance, really a support for the shoe" known as an "Upper Shaping Machine" for holding the uppers of cloth-topped shoes while they were being cleaned. There was a small demand for it, and the United Company had nothing of the kind. (Howard, R. Vol. 1, p. 85, lines 15–21; p. 69, lines 13–14.)

The reasons for this acquisition were as follows:

(1) As above explained, the United Company had either no machines or inferior machines for performing the operations of the Booth Brothers' machines and the Booth Brothers' machines were patented.

> "The Company felt that it could add these particular machines to its line of machines to advantage to its customers and to itself, as an ordinary business transaction;

and also utilize the services of Irving E. Booth, who was a very capable man in that line of endeavor." (Winslow, R. Vol. 1, p. 460, lines 28–32.)

(2) This business was acquired at the solicitation of Booth Brothers.

> "The reason given by them for soliciting the United Company to purchase their business was that Quentin W. Booth wished to retire from business and Irving E. Booth did not care to attempt to run the business alone, but did not wish to retire."

The United Company, "were persuaded to make this purchase." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 457.)

(3) Three of the principal machines put out by Booth Brothers infringed claims of a patent and an application owned by the United Company. (Defts.' Exh. 275, R. Vol. 5, pp. 766, 767.)

After the purchase, a corporation was formed, of which Irving E. Booth was made the manager; the manufacture of the Booth machines was continued at the Booth factory, and through the Booth Company the United Company continued to put out in large numbers the machines which had previously been manufactured by Booth Brothers. (R. Vol. 1, p. 85, lines 28–35; p. 460, lines 33–37; Defts.' Exh. 231, R. Vol. 5, p. 457.)

Richardson Shoe Machinery Company.

This transaction took place December 1, 1908. (Pltff.'s Exh. 125, R. Vol. 4, p. 871.) The Richardson Company "owned no real estate; operated no factory. Contracted with outside parties to build its machines." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 478.) The only machine which the Richardson Company put out was "a greatly improved McKay sewing machine; that is, a McKay sewing machine which had been adapted to do better work with greater speed by their inventions." This machine was patented. (Howard, R. Vol. 1, p. 70, lines 6–9; p. 83, lines 5–8.)

The United Company was putting out the old McKay sewing machine and also a new one called the Model B in this country, but not abroad. It was putting out the Richardson machine abroad. (R. Vol. 1, p. 70, lines 10–15; p. 82, lines 29–33.) That

old machine was the "original McKay sewing machine which had been developed by Gordon McKay" and which the United Company was rebuilding and selling. Very few old style machines were being manufactured because there were plenty of second-hand ones to be had and the patents on the machine had expired long before. (Winslow, R. Vol. 1, p. 564, lines 23–24, 44–45; Howe, p. 680, lines 24–35.) Moreover, numerous other concerns supplied McKay sewing machines and in 1909, the year following the acquisition, there were 1488 old style McKay sewing machines in use in the United States and 308 Model B and Richardson machines, that is, nearly five times as many old machines; so that these two companies had made relatively little impression in this field. (R. Vol. 1, p. 565, lines 23–27; p. 977, lines 16–26.)

Neither the Richardson nor the Model B machines could possibly be used for sewing welt shoes. (R. Vol. 1, p. 83, lines 16–28.)

The reasons for this acquisition were as follows:

(1) The United Company's Model B machine infringed one of the Richardson Company's patents. A claim of one of these patents "clearly covered a very important feature of the Model B machine." (Howard, R. Vol. 1, p. 83, lines 9–13; Defts.' Exh. 275, R. Vol. 5, p. 768.)

Mr. Winslow stated:

> "Although the United Company had endeavored to avoid the infringement of all patents owned by the Richardson Company, this machine still infringed broad claim 16 of patent No. 710,613." (Defts.' Exh. 231, R. Vol. 5, p. 478.)

(2) "The work of the Richardson machine was a great deal better." "European manufacturers demanded the Richardson machine and would not have our machine." (Howard, R. Vol. 1, p. 70, lines 12–13; p. 82, lines 35–36.)

(3) "It was believed a better machine than either of the two could be constructed by the use of patents owned by both parties." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 479.)

> "We could not develop our machine without combining it with the Richardson machine, and the result of combining the patented inventions of both machines was to produce a better machine than either company alone could develop." (Howard, R. Vol. 1, p. 83, lines 11–15.)

(4) John H. Richardson, manager of the Richardson Company, initiated negotiations and stated that "he himself would like to come with the United Company," realizing that with only one machine as a business "the Richardson Company would not be able to make much of a success of its business." Also Mr. Rice, one of the largest stockholders, who is a shoe manufacturer, "wanted to get out of the shoe machinery business entirely." (Winslow, Defts.' Exh. 231, R. Vol. 5, pp. 470, 479.)

Since this acquisition the United Company has continued to put out both the Richardson machine and the Model B machine "as desired by the trade." (Winslow, R. Vol. 1, p. 565, lines 20–22, 37; Defts.' Exh. 231, R. Vol. 5, p. 479; Howard, R. Vol. 2, p. 2039, Ints. 1407, 1408.)

Further:

> "After the Richardson machine was obtained the United Company immediately put several inventors to work with instructions to combine, each in his own way, the best features of the two machines. The experimenting was carried on very aggressively."

As a result a machine was produced which is "far superior to either the Richardson machine or our Model B machine," and—

> "in its organization and its appearance it more nearly resembles the Richardson machine than it does the Model B. In this new machine many valuable improvements have been made by the United Company's inventors which could not have been embodied in a commercial machine and made available to shoe manufacturers had there not been common ownership of the United Company's patents and the Richardson Company's patents." (Howard, R. Vol. 1, p. 82, lines 39–45; p. 83, lines 1–4; Defts.' Exh. 275, R. Vol. 5, p. 769.)

Again, improvements broadly claimed in two of the Richardson Company's patents have been embodied in the United Company's new outsole stitching machine, Lockstitch Machine—Model M: Goodyear Outsole Rapid. (Defts.' Exh. 275, R. Vol. 5, p. 768; R. Vol. 2, pp. 2297–2299.)

The petition states that the Richardson Company was "engaged in the manufacture, sale and shipment in interstate commerce of . . . machines known to the trade as 'clicking machines.'" (R. Vol. 1, p. 1017.) This is a misstatement. The Richardson

Company had never made or sold a clicking machine. Through a contract with the Essex Machine Company it had a one-half interest in an experimental clicking machine which was being constructed by that company. "The machine has never at any time become commercial" and clearly amounts to nothing in this suit, since such interest as the Richardson Company had was not available to enable it to put the machine on the market. "It is controlled by an outside concern." Furthermore, if the machine had been commercial and if the Richardson Company had had such control of it as to be able to put it out, it could not have manufactured or sold this machine without infringing thirty-seven claims of one of the United Company's patents and thirteen claims of two pending applications on which patents were granted subsequently to this acquisition. (Howard, R. Vol. 1, p. 70, lines 17–23; Defts.' Exh. 275, R. Vol. 5, p. 769; Winslow, Defts.' Exh. 231, R. Vol. 5, p. 479; Pltff.'s Exh. 125, R. Vol. 4, p. 883.)

John H. Richardson.

The agreement with Richardson made December 1, 1908 (Pltff.'s Exh. 126, R. Vol. 4, p. 887) was simply an employment contract. "Richardson had been the general manager of the Richardson Company and was not satisfied with his position." He "had been influential in bringing about the sale of that company to the United" Company and simultaneously with that sale he entered the employ of the United Company. (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 474.)

Since "Richardson was an inventor having executive ability" he promised to be a very useful and valuable man to the United Company and hence "it seemed proper to safeguard the company" by means of such an employment contract, if the company "expected to gradually promote Mr. Richardson to an important position in its executive forces." In fact, "he is at present in charge of the general department of the United Company and his salary has been repeatedly raised." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 474.)

Carver Cotton Gin Company.

By this transaction which took place April 30, 1908 (Pltff.'s Exh. 127, R. Vol. 4, p. 893) the United Company acquired no

real estate or manufacturing plant. The Carver Cotton Gin Company was engaged in the business of making cotton gins and "the manufacture of any shoe machinery with them was entirely a side line." (Winslow, R. Vol. 1, p. 460, lines 42–43; Defts.' Exh. 231, R. Vol. 5, p. 457.)

> "They had got into it accidentally through having manufactured at one time or another machines on contract for parties who did not have shops of their own." (Howard, R. Vol. 1, p. 81, lines 27–29.)

Mr. Winslow testified:

> "As to the Carver Cotton Gin Company, we really got from them some jigs and tools, a small stock of parts, a few machines, all of which were in what is known as the general department." (R. Vol. 1, p. 460, lines 38–40.)

These General Department machines which the Carver Company was putting out were the Acme leveling machine, a vamp-skiving machine, a leatherboard skiver, a counter-dividing machine, and a patented machine for finishing the top-lifts of heels known as the "Adams top-piece sanding machine." The United Company had no machines for performing the operations performed by any of these Carver machines. (R. Vol. 1, p. 70, lines 32–45; p. 71, lines 1–15; p. 81, lines 30–44; p. 82, lines 1–23.)

The Acme leveling machine "is used on freak shoes and samples, where the size and shape change with almost every shoe," because, "after leveling a shoe of one kind, it could take a shoe of an absolutely different size and shape and operate upon it without any adjustment at all."

It was not adapted for regular use on welt shoes "because it is extremely slow as compared with the automatic leveler, and the work which it does is not equal to the work of that machine." It could not be used on either turn or McKay shoes. (Howard, R. Vol. 1, p. 70, lines 37–45; p. 81, lines 32–37; R. Vol. 2, p. 2034.)

On the other hand, the United Company's machine, "the Goodyear automatic leveling machine, which is the machine in general use for leveling welt shoes, must be adjusted for every variation in size or shape of last. The automatic leveler is so very much faster and does so much better work than the Acme

that it is almost universally used for the regular work going through the factory."

> "It was by far the best machine in existence for the regular work of a factory, but where every shoe that came to the machine was of a different size and shape it would take a great deal of time to effect the necessary adjustments between each shoe. Accordingly these two machines occupied quite different fields." (Howard, R. Vol. 2, p. 2034; R. Vol. 1, p. 81, lines 40–44.)

By this acquisition the United Company extended its line by adding machines which perform operations for which it previously had no machines and it obtained the special tools and patterns for manufacturing those machines. For some years the United Company had been purchasing Acme leveling machines from the Carver Company and putting them out. (R. Vol. 2, pp. 2032–2033, Ints. 1373–1376; Defts.' Exh. 231, R. Vol. 5, p. 458.)

Mr. Winslow testified:

> "This purchase was made at the solicitation of Mr. Hobart, the treasurer of the Carver Cotton Gin Company.... Their regular business had increased so that they had either got to add on to their factory or else dispose of some part of their business, and this portion of their business had been decreasing, and the price paid did not really cover the value of the tools plus the parts of machines." (R. Vol. 1, p. 460, lines 41–45; p. 461, lines 1–4.)

As further stated by Mr. Winslow:

> "The United Company had always been on friendly terms with the Carver Cotton Gin Company and had sold such machines as they made when desired by the trade, and the price paid (the total consideration was $16,883.79) above the inventory value for the machines on hand was less than it could have duplicated the patterns, tools, etc., which the Carver Cotton Gin Company desired to sell." (Defts.' Exh. 231, R. Vol. 5, p. 458.)

Since this acquisition the United Company has continued the manufacture of the Carver Company machines at its Beverly factory and has put them out in large numbers. (R. Vol. 2,

pp. 2033, 2035, Ints. 1375–1377, 1390; Defts.' Exh. 231, R. Vol. 5, p. 458.)

Harry L. Rice and Fred LaChapelle.

This transaction took place January 20, 1909. (Pltff.'s Exh. 128, R. Vol. 4, p. 898.) "No manufacturing plant of any kind was acquired." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 470.)

Mr. Howard testified:

> "The United Company acquired an experimental welting machine embodying a patented invention radically new. This machine put an extra thread on the single-thread side of the chain stitch formed by the machine. . . . That was entirely new. The purpose was to strengthen the 'between substance' " as it is called. (R. Vol. 1, p. 71, lines 30–38.)
>
> "When we acquired the LaChapelle device he had made only one machine, which was experimental and far from being commercial." (R. Vol. 1, p. 81, lines 13–15.)

The machine was protected by several applications upon which patents have since been granted. (R. Vol. 1, p. 81, lines 6–12; R. Vol. 2, p. 2031, Ints. 1367–1369.)

The consideration in this transaction was $11,500. (Defts.' Exh. 231, R. Vol. 5, p. 470.)

The reasons for this acquisition were:

(1) "In addition to strengthening the stitch it was believed, that by this invention an economy could be effected by using a thinner and less expensive insole than could be used with the present commercial type of welting machine which puts only one thread inside the channel." (Howard, R. Vol. 1, p. 81, lines 19–23.)

(2) Mr. Rice, a large shoe manufacturer, who was an officer of and one of the two largest stockholders in the Richardson Shoe Machinery Company (Pltff.'s Exh. 125, R. Vol. 4, p. 871; Defts.' Exh. 231, R. Vol. 5, p. 478)—

> "made it a condition of the purchase of the Richardson machine that the United Company should take over his rights in these inventions at a reasonable price because 'he wanted to get out of the shoe machinery business entirely.'" (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 470.)

Mr. Howard testified:

> "We have been working on it since we acquired it and have tried it out several times in a shoe factory, but it is not yet commercial. We are still at work with the purpose of developing it into a commercial machine." "It takes a long time to develop one of these machines." (R. Vol. 1, p. 81, lines 15–18; p. 72, lines 3–4.)

Ellis Lacer Company.

This transaction took place February 1, 1910. (Pltff.'s Exh. 129, R. Vol. 4, p. 905.) The Ellis Lacer Company was engaged in the business of manufacturing by patented machinery patented wire lacers for temporarily securing together the opposed eyeletted edges of shoe uppers to keep those edges at a proper distance apart during the lasting and subsequent operations. The Ellis lacer was the first lacer that had ever been used commercially. This company owned no real estate but leased floor space. (R. Vol. 1, p. 72, lines 23–35; p. 80, lines 40–42; R. Vol. 2, pp. 2028, 2029, 2030, Ints. 1351, 1357, 1358; Defts.' Exh. 231, R. Vol. 5, p. 466.)

Before this purchase the United Company never had put out any wire lacers, although prior to 1899 a company controlled by a predecessor of the United Company had attempted to develop and market a wire lacer, but "this device had not been successful, and attempts to market it had been discontinued before 1899." (Howard, R. Vol. 1, p. 72, lines 32–33; Defts.' Exh. 275, R. Vol. 5, p. 770.)

The United Company could not put out a commercially satisfactory lacer without infringing the Ellis Company's patents because essential features of such a lacer were covered by broad claims in those patents. (Defts.' Exh. 275, R. Vol. 5, p. 771.)

On the other hand, the United Company controlled several antedating patents. Twenty-nine claims of those patents were infringed by the Ellis lacers and completely dominated them. As a result of this patent deadlock "each company's patents if held valid and sustained would have prevented the other company from putting out lacers for commercial use." (Howard, R. Vol. 1, p. 81, lines 4–5; Defts.' Exh. 275, R. Vol. 5, p. 771; Winslow, Defts.' Exh. 231, R. Vol. 5, p. 466.) Obviously, therefore, the United Company could not enter this new field

without acquiring the patents of the Ellis Company, and the object of this purchase was to enable the United Company to go into this business without infringement.

The Ellis Company was notified of its infringement of the United Company's patents and opened negotiations which resulted in this acquisition. By this transaction no shoe machines whatever were acquired.

> "The only machinery acquired was a machine for making the wire lacer in our own factory. We did not sell or lease this machine, but furnished the product of the machine to the shoe manufacturers." (Howard, R. Vol. 1, p. 72, lines 27–31; Defts.' Exh. 275, R. Vol. 5, p. 771.)

Since this purchase the Ellis lacers have been manufactured and sold in large numbers by the United Company. These lacers have, at all times, been fully protected by ten patents obtained from the Ellis Company or maturing on applications of the Ellis Company, the oldest of which was granted in 1901. (R. Vol. 1, p. 72, line 33; Vol. 2, pp. 2029, 2030, Ints. 1356–1358.)

The Wentworth Company.

This transaction took place February 3, 1910. (Pltff.'s Exh. 130, R. Vol. 4, p. 913.) The Wentworth Company "owned no real estate. Leased floor space in a building in Cincinnati, Ohio, and employed about twelve men." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 449.)

The Wentworth Company was putting out two patented machines, a heel seat beating machine and a shank sticking machine. (R. Vol. 1, p. 73, lines 4–17; p. 80, lines 26–28, 34–38; R. Vol. 2, p. 2026, Ints. 1342–1344.)

The Wentworth heel seat beating machine flattened the heel down by rubbing it with a yielding tool but did not beat the heel. The United Company had a machine of an entirely different type "which flattened the heel by hammer blows." That machine was discarded after the Wentworth acquisition. (R. Vol. 1, p. 73, lines 18–26.)

The Wentworth shank sticking machine performed an operation which had been a hand operation before the introduction of that machine. The United Company did not have a com-

mercial shank sticking machine and "it was experimenting on one with difficulty, because the Wentworth Company had a patent on theirs." (Howard, R. Vol. 1, p. 73, lines, 29–34; p. 80, lines 28–31.)

The Wentworth heel seat beating machine infringed twenty-three claims of a patent owned by the United-Xpedite Finishing Company (controlled by the United Shoe Machinery Company) and a suit brought on those claims had been prosecuted to final hearing and the claims were held to be valid and infringed. This machine also infringed thirteen claims of another patent owned by the United Company upon which a successful suit had been brought.

> "The patents upon which these two suits were brought covered indispensable features of the Wentworth machine and The Wentworth Company could no longer put out their heel seat beating machine." (Howard, Defts.' Exh. 275, R. Vol. 5, p. 772; R. Vol. 1, p. 73, lines 27–28.)

Also the Wentworth shank sticking machine infringed three claims of a patent owned by the United Company. (Defts.' Exh. 275, R. Vol. 5, p. 772.)

Mr. Winslow testified that "prior to the decision of the litigation the Wentworth Company had approached the United Company many times to dispose of their business," and stated that "immediately after the decision they asked to open the negotiations with the United Company, which finally resulted in the purchase." He also testified:

> "A great many of the Wentworth machines that had been put out were in the hands of our lessees, and as the easiest way of disposing of that whole question it seemed to be better to make a trade with the Wentworth Company and settle the litigation." (R. Vol. 1, p. 458, lines 3–9; Defts.' Exh. 231, R. Vol. 5, p. 449.)

After the acquisition the Wentworth machines were manufactured at the United Company's Beverly factory, "from which factory the machines and parts have been supplied by the United Company." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 449.) Mr. Howard testified that in further developing the United Company's shank sticking machine "the United Company eventually combined the best features of its experimental ma-

chine and the best features of the Wentworth machine in the machine which it is now putting out." That machine has been put out in large numbers. (R. Vol. 1, p. 73, lines 31–34; R. Vol. 2, p. 2027, Int. 1348.)

B. F. Sturtevant Company.

This transaction took place February 23, 1910. (Pltff.'s Exh. 131, R. Vol. 4, p. 928.) The B. F. Sturtevant Company "owned real estate at Conway, N.H., where it operated a factory for the manufacture of peg wood and wood shanks. Number of men employed about twelve." The amount paid for the property, including "all the real estate . . . the mill site, the mill building, the storage buildings, and all other buildings" (Pltff.'s Exh. 131, R. Vol. 4, p. 928) was $52,185.94; this price being based upon the inventory. "No machines that are used in the manufacture of shoes were obtained in this transaction." (Defts.' Exh. 231, R: Vol. 5, p. 466; Howard, R. Vol. 1, p. 74, lines 4–5.)

The object of this purchase was to obtain a permanent and assured source of supply of manufactured strips of peg wood for use on the pegging machines put out by the United Company, and of wooden shanks for shoes, both of which articles were supplied by the United Company to its customers. The United Company never had been engaged in the manufacture of peg-wood or wooden shanks, but had previously obtained its supply entirely from the Sturtevant Company, which was one of several manufacturers that were engaged in the peg-wood business. This business of the Sturtevant Company has been continued by the United Company at the same place with substantially the same number of men employed, and customers have been furnished with the Sturtevant products just as before. (R. Vol. 1, p. 73, lines 43–44; p. 74, lines 1–2; p. 80, lines 14–25; R. Vol. 2, p. 2046, Int. 1452; p. 2060, Int. 1521; Defts.' Exh. 231, R. Vol. 5, p. 466.)

Adam H. Prenzel.

The transaction with Adam H. Prenzel, who is a shoe manufacturer at Halifax, Pa., took place November 22, 1910. (R. Vol. 2, pp. 2024, 2025, Ints. 1329, 1335; Pltff.'s Exh. 143, R. Vol. 4, p. 1046.) Mr. Howard testified:

"By that agreement the United Company acquired several machines which Prenzel had invented for use in producing a novel patented spring heel shoe, entirely different from any spring heel shoe ever before known. . . . The numerous Prenzel inventions related to turn shoes and for the first time made it possible to sew the sole to the upper all the way around and produce a satisfactory product. . . . Spring heel shoes are turn shoes."

"It also acquired a machine for use in producing an infant's shoe, known as a 'cack.' . . . That machine was used, after the shoe had been finished, to press down the heel end of the sole so as to form a little heel, and at the same time it pressed in a heel seat piece to fill the space made by pressing down the heel end of the sole." (R. Vol. 1, p. 75, lines 43–45; p. 76, lines 1–18.)

These were the only machines acquired from Prenzel. The patents acquired from Prenzel covered not only the machines for making these two novel shoes, but also covered the shoes themselves and the processes employed in manufacturing them. (R. Vol. 1, p. 76, lines 19–20; R. Vol. 2, pp. 2023, 2024, Ints. 1328, 1330.)

Mr. Howard further testified:

"The United Company had no machines for performing the special operations which were performed by the machines secured from Prenzel. It puts those machines out now and they are used by manufacturers." (R. Vol. 1, p. 76, lines 20–23.)

One of the machines "which Prenzel was using in the manufacture of his improved turn shoe infringed two allowed claims of an application owned by the United Company," upon which the patent was granted in September, 1911, and still another improvement which Prenzel had made was incorporated in a machine covered by "several patents owned by the United Company." (Howard, R. Vol. 2, pp. 2327–2329; Defts.' Exh. 275, R. Vol. 5, pp. 772, 773.)

By this acquisition the United Company extended its line of machines and was enabled to supply its customers new machines for making new products.

M. V. Bresnahan & Company.

This transaction took place December 19, 1910. As stated in Plaintiff's Exhibit 144 (R. Vol. 4, p. 1053), M. V. Bresnahan & Company was a copartnership and the property of the concern enumerated in Schedule A of that exhibit comprises personal property only.

They had a patented experimental lasting machine which had not yet reached a commercial stage. They also had "a heel-burnishing machine embodying a novel patented device for spraying the wax on the heel-burnishing tool." That machine infringed two patents controlled by the United Company. (Howard, R. Vol. 1, p. 77, lines 1–6, 17–18, 22–23; p. 79, lines 36–38, 42–44; Defts.' Exh. 275, R. Vol. 5, p. 773.)

The United Company did not have any machines which would accomplish the results secured by the inventions embodied in the Bresnahan machines.

Mr. Howard testified:

> "The United Company was making lasting machines and heel burnishing machines, but they did not accomplish the same results as the Bresnahan machines, because they did not have the patented inventions that were in the Bresnahan machines. The Bresnahan lasting machine was only experimental.
>
> "The United Company is experimenting with machines constructed under both patents acquired from Bresnahan, but has not yet put out any machines. There has not been time yet to make the machines commercial. The United Company has an experimental lasting machine running, embodying the inventions acquired from Bresnahan." (R. Vol. 1, p. 77, lines 18–29.)
>
> "The Bresnahan experimental lasting machine was not being marketed at the time by Bresnahan and he was only trying it out. It had not yet reached the commercial stage.
>
> "The Bresnahan improvement on the heel burnishing machine related to the application of the wax. The United Company went to work to make that improvement commercial and give it to its customers. There was a patent application pending on this invention, and the United Company had nothing that would do what the mechanism embodying this invention would do." (R. Vol. 1, p. 79, lines 36–44.)

Another important object of this transaction was the composing of a great amount of litigation. Mr. Howard testified:

> "The transaction further involved the settlement of a large number of suits which had been pending for many years between the United Company and Bresnahan's concern in the earlier days before he sold out his interests to Plant." (R. Vol. 1, p. 77, lines 7–10.)
>
> "There had been a large number of suits, as many as eight or ten, between Bresnahan and the United Company which had been pending for a number of years, nearly all suits for infringements of patents. That litigation was all pending at the time of this acquisition." (R. Vol. 1, p. 79, lines 31–35.)

In addition to the infringement suits (R. Vol. 2, p. 2023, Ints. 1325, 1326) there were pending four suits brought by Bresnahan or the Bresnahan Shoe Machinery Company against the United Company in the Superior Court for Suffolk County, Massachusetts. (Defts.' Exh. 275, R. Vol. 5, p. 774.)

> "When Bresnahan sold his interest in the Bresnahan Shoe Machinery Company to Thomas G. Plant in January, 1906, the Bresnahan Company transferred to Bresnahan and Heys, who together owned all the stock of the Bresnahan Company, all interests under this litigation in the state courts between the United Company and the Bresnahan Company." (Howard, Defts.' Exh. 275, R. Vol. 5, pp. 773, 774.)

By Section 6 of the agreement relating to this transaction the vendors released and discharged the United Company from all actions, causes of action, claims and demands, etc., "whether brought in their names or in the names of any of them, or in the name of the Bresnahan Shoe Machinery Company or in the name of M. V. Bresnahan & Co., or otherwise." (Pltff.'s Exh. 144, R. Vol. 4, p. 1058.)

The agreement for the purchase provided that all of the three partners should enter the employ of the United Company.

Charles P. Stanbon & Company.

This transaction took place April 22, 1911. (Pltff.'s Exh. 145, R. Vol. 4, p. 1065.) Charles P. Stanbon was manufacturing shoe machinery in Lynn, doing business under the name and style of

Charles P. Stanbon & Company. Stanbon and Thomas G. Plant (Manufacturers' Machine Company) had made an agreement. (Pltff.'s Exh. 132, "Exhibit D," R. Vol. 4, p. 972.) Plant had made it a condition of the sale of his patents to the United Company that the United Company should assume, and the United Company agreed to assume,—

> "all agreements, obligations and liabilities of said Plant and of said Manufacturers' Machine Company under said existing contracts between said Plant or said Manufacturers' Machine Company and Charles P. Stanbon. . . ." (Pltff.'s Exh. 132, R. Vol. 4, pp. 932, 933, 935.)

Mr. Winslow testified:

> "We gave only the inventory value of the properties, and only because Mr. Stanbon was under option to Mr. Plant. Mr. Plant made it, as I remember it, a requisite of the arrangement that we should take Stanbon's property and then left it with Mr. Stanbon to agree whether he would turn in his property or not." (R. Vol. 1, p. 558, lines 34–39.)

Mr. Howard testified:

> "This Stanbon transaction was carrying out the contract which Plant had made with Stanbon and which the United Company had assumed." (R. Vol. 1, p. 79, lines 27–29.)

Stanbon had three important patented machines. "The most valuable thing acquired by the United Company in this transaction was a channel cementing machine, constructed particularly for cementing the channels of the soles of McKay sewed shoes" and "not adapted for use on other kinds of shoes." This machine was patented. (Howard, R. Vol. 1, p. 77, lines 38–41; p. 78, lines 36–37; R. Vol. 2, p. 2019, Int. 1304.)

Stanbon also had "a very valuable folding machine" which was "of a radically new character." Patent applications were pending on this machine. (Howard, R. Vol. 1, p. 78, lines 3–8; Defts.' Exh. 275, R. Vol. 5, p. 776.)

Stanbon also had a perforating machine which "was really adapted for doing embossing work . . . ornamenting rather than perforating." (Howard, R. Vol. 1, p. 79, lines 6–8.)

These Stanbon machines which were all of General Department types, were all covered by patents or pending applications. (R. Vol. 1, p. 79, lines 25–26; R. Vol. 2, p. 2022, Ints. 1318–1321.)

The United Company had a channel cementer which was inferior to Stanbon's and unsatisfactory because the United Company could not use the patented improvements which were on Stanbon's machines, as will be explained later. (R. Vol. 1, p. 78, lines 1–2, 38–45; p. 79, lines 1–2.)

"The United Company had no folding machine of any description." (Howard, R. Vol. 1, p. 79, lines 15–16.)

The United Company had the "Booth Perforating Machine" but "these two machines have distinct fields owing to radical differences in their organizations." The Booth machine "is far more accurate on curved work. . . . The Stanbon machine on the other hand is very much faster and is therefore much better adapted for substantially straight-edge work" and "has unlimited capacity as to spacing." In Defendants' Exhibit 100, a sample of work done on the Stanbon machine, the spacing is "more than double the maximum spacing permissible on the Booth perforator." Also as above explained the Stanbon machine was adapted for doing embossing work, while the United Company's machine was not. (Howard, R. Vol. 1, p. 79, lines 6–10; R. Vol. 2, pp. 2020, 2021, Int. 1311.)

By this transaction the United Company carried out the agreement with Plant as to his contract with Stanbon, quoted at the beginning of this discussion.

The United Company also extended its line by adding a folding machine, which enabled it for the first time to enter the folding machine field. It acquired a satisfactory channel cementing machine which it did not have before because it could not use Stanbon's patented improvements, and it acquired a perforating machine better adapted than its own for certain classes of work and capable of doing some work which its perforator could not do.

This acquisition also cleared up a serious patent complication.

> "Prior to the Stanbon acquisition, both the United Company and Stanbon had been developing an improved folding machine of a radically new character. Both machines incorporated substantially the same improvements"

and two interferences involving applications owned by the two parties had been declared.

> "The issues were so broad that the party that won the interference could undoubtedly prevent the other party

from putting out any machine of this character." (Howard, Defts.' Exh. 275, R. Vol. 5, p. 776.)

Also, Stanbon's channel cementer infringed a patent owned by the United Company while, on the other hand, the United Company could not use Stanbon's valuable improvements because—

> "The United Company had been in interference with Stanbon in the Patent Office and had lost before the Court of Appeals, the tribunal of last resort." (Howard, R. Vol. 1, p. 77, lines 43–45; Defts.' Exh. 275, R. Vol. 5, p. 776.)

Several other instances of infringements and interferences are set forth in detail by Mr. Howard. (Defts.' Exh. 275, R. Vol. 5, pp. 775, 777.)

After the acquisition of the Stanbon business the United Company put out the Stanbon Channel Cementer "immediately" and "in large numbers," and it has put out the Stanbon Perforating Machine. Stanbon's folding machine was "only experimental, had not been put out, and was a long way from a commercial machine when we took it." The United Company has "seldom worked more vigorously upon a machine than we have upon that one," and when Mr. Howard testified in January, 1914, he stated that the United Company "has put out in large numbers folding machines embodying the Stanbon inventions." (Howard, R. Vol. 1, p. 79, lines 4–5, 10–12, 16–18, 23–24; Defts.' Exh. 275, R. Vol. 5, p. 776.)

MISSTATEMENTS MADE IN THE PETITION AS TO THE COVENANTS TAKEN FROM VENDORS.

In its statement of the alleged facts regarding the acquisitions (R. Vol. 1, pp. 999–1023) the petition purports to state the substance of the agreements and the covenants contained in the agreements entered into in connection with the respective transactions. Many of these statements are entirely inaccurate and grossly exaggerate the nature and scope of the covenants.

These statements are inexcusably unfair; the United States had the original, executed agreements continuously in their possession for months prior to the filing of the petition. (R. Vol. 1, p. 37, lines 15–20; p. 78, lines 24–29.)

Some of the most glaring misstatements will now be pointed out.

John Ritchie and John Ritchie Company.

The petition charges that—

(1) The United Company "acquired all of the *business* of" this concern "relating to the *manufacture*" of certain specified shoe machines (italics ours).

(2) The vendors agreed that they would not engage "in *any business* in competition with" said United Company (italics ours). (R. Vol. 1, p. 1004.)

Mr. Gregg made statements to the same effect during the trial. (R. Vol. 1, p. 40, lines 6–14; p. 46, lines 6–9.)

The facts shown by the record are:

(1) The Ritchie Company was not in the business of *manufacturing machines* as alleged but was engaged in the manufacture of *boots and shoes*. It had one machine for the manufacture of *wire*. (R. Vol. 1, p. 46, lines 15–30; Vol. 3, pp. 586, 587, 589, par. 5; Vol. 5, p. 475.)

(2) The covenant against competition did not cover "*any business*," but *only* business relating to "wire fastening shoe machinery, or machines for making the same, or parts thereof," or wire, "or other fastening materials" (italics ours). (R. Vol. 3, p. 586.)

Erastus E. Winkley and Benjamin Phillips.

The petition sets forth—

> "The vendors, for the same consideration, agreed to convey to defendants all inventions or improvements in sole-leveling machines which they should thereafter make *or acquire*" (italics ours). (R. Vol. 1, pp. 1005–1006.)

There is absolutely no support in the agreement for these last two words "*or acquire.*" (R. Vol. 3, pp. 618, 619, par. 7.)

Mr. Gregg made the same erroneous statement during the trial. (R. Vol. 1, p. 40, lines 25–28.)

Lincoln Sewing Machine Company.

The petition charges that defendants—

> "acquired the *business* of Lincoln Sewing Machine Company . . . *engaged* in the manufacture, sale, lease, and shipment in interstate commerce, of sewing machines designed and used for the manufacture of boots and shoes" (italics ours). (R. Vol. 1, p. 1006.)

The petitioner's own exhibits show that the Lincoln Company had *gone out of business in 1897*, when it sold all its property to the Goodyear Shoe Machinery Company, so that there remained simply "certain payments and obligations on the part of the Goodyear Company to be made or performed to or toward the Lincoln Company." (R. Vol. 3, pp. 623, 629.)

These undisputed facts are also clearly set forth in the record. (R. Vol. 1, p. 49, lines 25–37; Vol. 5, pp. 470, 471).

Boston Fast Color Eyelet Company.

In the agreement relating to this transaction the covenant against competition was *limited to covered eyelets*, the subject-matter of the transaction. (R. Vol. 3, pp. 636, 637.)

In the statement of the petition *this important limitation is omitted.* (R. Vol. 1, p. 1007.)

Enamel Eyelet Company.

The petition sets forth that—

> "The vendors and each of them also agreed that they would not, for a period of 15 years, engage in any *business in competition* with defendants" (italics ours). (R. Vol. 1, p. 1007.)

That covenant was in fact limited to *enamel eyelet* business, the subject-matter of this transaction. (R. Vol. 3, pp. 647, 648.)

William J. Young.

In its statement of the covenant relative to competition (R. Vol. 1, p. 1010) the petition *omits entirely the limitation* in that covenant to "machinery or devices intended or adapted for use in any way in the manufacture or preparation of *heels*" (italics ours). (R. Vol. 4, p. 717.)

Again, in its statement of the covenant to assign future inventions relating to such machines (R. Vol. 1, p. 1010) the petition omits the limitation to "*countries other than the United States and the Dominion of Canada*" (italics ours). (R. Vol. 4, p. 714.)

J. K. Krieg & Company.

The statement in the petition regarding the covenant in the agreement with this concern includes—

> "all such supplies to be purchased from defendants." (R. Vol. 1, p. 1012.)

The agreement contains no such provision. (R. Vol. 4, p. 746.)

Joseph W. Leary.

The petition states that the vendor—

> "agreed to *convey* to the vendee and its successors *all inventions and improvements* which the vendor should make or acquire within ten years from the date of the termination of such employment by said United Company" (italics ours.) (R. Vol. 1, p. 1013.)

The fact is that Leary made no covenant whatever to convey any inventions or improvements. (R. Vol. 4, p. 765.) On the other hand, the agreement provided that—

> "The said Leary shall not be required to disclose his secret formulæ for making cements, blacking or stains." (R. Vol. 4, p. 768.)

Mr. Gregg made substantially the same erroneous statement during the trial. (R. Vol. 1, p. 61, lines 37–41.)

The F. G. Farnham Brush Manufacturing Co.

The petition states that—

> "The vendors agreed that they would not engage, directly or indirectly, or in any way assist in *any competition*, . . . for a period of 15 years" (italics ours). (R. Vol. 1, p. 1013.)

In fact, the covenant was *limited to* "*brushes* or parts or supplies therefor" (italics ours). (R. Vol. 4, p. 774.)

Mr. Gregg made the same erroneous statement during the trial. (R. Vol. 1, p. 62, lines 20–24.)

Zotique Beaudry.

The statement in the petition as to Beaudry's covenant to disclose future inventions relating to heel burnishing machinery (R. Vol. 1, p. 1016) *omits the limitation* to the period of fifteen years. (R. Vol. 4, pp. 851, 852.)

Richardson Shoe Machinery Company.

The petition alleges that the vendors agreed that they would not for a period of ten years "compete with the *business* carried on by defendants" (R. Vol. 1, p. 1017) and Mr. Fowler made the same broad allegation during the trial, but, on being corrected, admitted that the agreement was *limited* to "*McKay sewing*" and "*clicking*" machines (italics ours). (R. Vol. 1, p. 69, lines 27–31; Vol. 4, pp. 875, 876.)

Harry L. Rice and Fred LaChapelle.

The petition states that the vendors covenanted to assign all inventions, etc.—

> "relating to any methods, machinery, mechanisms, tools, or devices intended for use *in the manufacture of boots and shoes*" (italics ours);

and that the vendors also covenanted—

> "that neither of them would, directly or indirectly, engage in *any business* which would interfere or compete *with the business of defendants*" (italics ours). (R. Vol. 1, pp. 1018, 1019.)

Both these covenants were in fact *limited* to methods, machinery, etc., adapted—

> "for use in attaching in whole or in part the welts, outsoles, or insoles of welted or turned footwear." (R. Vol. 4, pp. 889–901.)

The same erroneous statement was made by Mr. Fowler during the trial. (R. Vol. 1, p. 71, lines 21–28.)

Ellis Lacer Company.

The petition sets forth that the vendors covenanted that—

(1) "They would not, directly, or indirectly, engage in *any business in competition* with defendants, and that"

(2) "they would convey to defendants, without additional consideration, *all inventions* and letters patent of the United States and of *all* other countries which they or either of them might make or acquire at any time within five years" (italics ours). (R. Vol. 1, p. 1019.)

Both statements are grossly exaggerated. Both covenants were strictly limited to the subject-matter of this transaction.

(1) The covenant against competition was limited to machinery, devices, etc., "useful for or adapted to the purpose for which *Ellis lacers* are designed," and it was limited to a period of *five years* (italics ours). (R. Vol. 4, p. 908.)

(2) The covenant to convey future inventions and patents within five years was limited to the *Western Hemisphere* and to

inventions "adapted to the purpose for which *Ellis lacers* are designed" (italics ours). (R. Vol. 4, p. 908, par. 6.)

Mr. Fowler made similar erroneous statements during the trial. (R. Vol. 1, p. 72, lines 14–20.)

The Wentworth Company.

The petition states that the covenant against competition covered—

> "*any* machinery or devices that would *in any way compete* or interfere with the business of said United Shoe Machinery Company" (italics ours). (R. Vol. 1, p. 1019.)

This covenant was in fact *limited* to—

> "any machinery or devices of any kind *heretofore dealt in*, exploited, manufactured, or built (whether in the form of a model, experimental or commercial machine or device) or originated *by or for the said The Wentworth Company*" (italics ours). (R. Vol. 4, p. 918.)

Adam H. Prenzel.

The petition states that Prenzel agreed to assign inventions and Letters Patent which he should *thereafter* acquire, relating to the class of machines covered by the agreement. (R. Vol. 1, p. 1022.)

The covenant was in fact *limited in time* by the expiration of the patent assigned or to be obtained upon any application assigned which should last expire. (R. Vol. 4, p. 1048.)

Mr. Fowler made the same erroneous statement during the trial. (R. Vol. 1, p. 75, lines 38–41.)

THE EVIDENCE RELATING TO THE CHARGES OF UNFAIR, OPPRESSIVE AND MONOPOLISTIC ACTS OF THE DEFENDANTS SPECIFIED IN THE PETITIONER'S BILL OF PARTICULARS.

In Section VI of the petition (R. Vol. 1, p. 999) defendants are charged with having made various threats or committed various unfair and oppressive acts. No specific instances are set out in the petition, but a bill of particulars, setting forth the specific instances charged, was filed during the course of the trial. (R. Vol. 1, p. 1075.) The bill of particulars sets forth over fifty different alleged acts or threats.

As to the majority of these instances as stated below the United States introduced no evidence at all.

The evidence relating to these charges is set forth below.

1. Tessier.

In the bill of particulars it is claimed that the United Company removed its leased machinery from the factory of Peter Tessier & Company of Haverhill, Mass., where a Duplessis turn sewing machine was being operated. (R. Vol. 1, p. 1076 (1).)

Peter Tessier for the United States said that he had been engaged in the shoe manufacturing business at Haverhill, that he used a Goodyear sewing machine for a time, that he installed a Duplessis sewing machine, that Octave Paquette, the agent of the United Company in Haverhill, came to him and presented a letter signed by the United Shoe Machinery Company, per S. W. Winslow, president (see Plaintiff's Exhibit 158), which letter read as follows:—

> "You are hereby notified that in the exercise of our rights in the premises we have elected to terminate all leases and licenses which have heretofore been granted to you covering machinery belonging to us, including herein specifically the following leases and licenses, viz:
> Metallic Department lease and license, No. 803, dated April 6, 1901.
> Metallic Department lease and license, No. 803A, dated January 4, 1904.
> Goodyear Department lease and license, No. 5486, dated December 18, 1902;

and to terminate all right and privilege to use any of the machines belonging to us which have heretofore been delivered into your possession. The said leases and licenses and said rights and privileges are accordingly hereby terminated, revoked and annulled, and we hereby forbid you to use or to permit the use by any other person of said machines or any of them hereafter, or to further use any of the patented inventions embodied in said machines, and which by said leases and licenses you are authorized to use.

"And we do further hereby demand that you forthwith deliver to us at our factory in Boston, Massachusetts, in accordance with your undertaking and agreement, all such machines, including therein specifically the machines designated by name and number as follows, viz:—

Grip Slugging Machine	No. 777
Universal Slugging Machine	2022
Knife Grinder	5571
Goodyear Welt and Turn Shoe Machine	417
Goodyear Turn Channelers	742 and 2125
Goodyear Moulding Machine	293"

The witness testified that this comprised all the machines of the United Company in use in his factory at that time; that he had machines that took the place of them and could get from the Duplessis Company machines for performing similar work; that he could get all those machines from the Duplessis Company that he had from the United Company for performing similar work. (R. Vol. 1, p. 282, lines 20–30.)

On cross-examination Tessier said that he had the Duplessis machines in his factory at the time the United machines were taken out. (R. Vol. 1, p. 282, lines 32–33.)

The United States agreed that these machines were taken out on a replevin writ brought by Louis D. Brandeis' office. (R. Vol. 1, p. 282, line 34.)

Mr. Winslow, the president of the United Company, testified that he sent the notice set out above to Tessier because Tessier had abandoned the use of the company's welt and turn sewing machines and had put in their place Duplessis turn sewing machines. He sent the notice canceling his leases, but as a matter of fact it did not interfere with Tessier going on with his business in the slightest degree; Tessier simply was not using the United machines, and the defendant took them out. (R. Vol. 1, p. 448, lines 11–18.)

Elmer P. Howe testified: "Peter Tessier also put in some Duplessis machines and it was really violating our lease in the most flagrant way by using our machines to prepare or to finish the work that was done on the Duplessis machines. Furthermore, when his attention was called to the violation of the lease I think he gave up his Goodyear machines without the necessity of actually prosecuting a replevin suit against him"; he had already provided himself with others. (R. Vol. 1, p. 668, lines 15–23.)

The court will observe that in the list of machines mentioned in Plaintiff's Exhibit 158, the Goodyear turn channelers and the Goodyear moulding machines were auxiliaries for which no royalty was paid, but which were limited to use with the principal machines, the welt and turn machines; that what Tessier had done was to use the Duplessis machine for the work of the Goodyear welt and turn machines and then finish the work on the Goodyear auxiliaries without paying for their use; that this was a violation of the condition of Tessier's lease. There was no evidence whatever of any threat made by the United Company or any agent.

2. Bottomley.

In the bill of particulars it is claimed that the United Company removed its leased machines from the factory of Ernest Bottomley & Company of Haverhill, Mass., where a Duplessis welt and turn machine was being operated. (R. Vol. 1, p. 1076 (2).)

Ernest Bottomley testified: That he was a manufacturer of McKay shoes; that he was engaged in 1903 in the manufacture of turn shoes; that he had some machines from the United Company and some from the Duplessis Company. From the Duplessis Company he had the turn machine, the loose nailer, slugger, tacker and stitching machines. From the United Company, the only one he could remember was a sole rounder. He had had a Goodyear stitching machine. When he took the Duplessis machines he stopped using Goodyear machines. Colonel King, of the United Company, came to him and had a conversation with him the substance of which was that he would have to use either the United Company machines or the Duplessis machines, with the result that he continued to use the Duplessis

machines, and the United Company took its machines away. (R. Vol. 1, p. 284, lines 24–36.)

On cross-examination he said that he had first installed Goodyear machines for doing turn work; he had taken one or more turn sewing machines and some of the auxiliaries that went with them; and that the royalty paid for the use of the turn sewing machines and the auxiliaries was kept track of by the indicator on the sewing machine, which was the principal machine. After he had had these for a while he took turn sewing machines from the Duplessis Company, and stopped using the turn sewing machines obtained from the Goodyear Company. He then notified the United Company that they—Bottomley & Company—would not pay any more royalties for shoes sewn on the Goodyear machines. (R. Vol. 1, p. 285, lines 27–35, and Defendants' Exhibit 74.)

Bottomley testified: "I understood I should choose between the Goodyear and Duplessis machines, that I was free to choose whichever of those I liked. I considered it and made a free choice. As a business probabillty if I was running shoes through the Duplessis machines I wouldn't use the Goodyear machines." (R. Vol. 1, p. 287, lines 3–8.)

Mr. Winslow testified: "Bottomley had served notice on us that he would not use our machines and would not pay any further royalty. He was using machines which he had also declined to sign the leases of. They had been leased previously to other parties." (R. Vol. 1, p. 448, lines 20–24.)

There was no other evidence as to what machines were removed from the Bottomley factory.

Neither case shows misrepresentation or threat, but simply the justifiable exercise of a plain right, which was resorted to, not to coerce a manufacturer but to protect the company's revenue.

3. The Case of Mark J. Worthley, Thomas G. Plant Company, A. Garside & Sons, Joseph Caunt, A. E. Little Company.

The United States charged the defendants or their agents threatened to remove under the terms of their leases their machines which were being operated by the above-named parties because said individuals and firms were operating in their fac-

tories machines obtained from the Standard Shoe Machinery Company. (R. Vol. 1, p. 1076 (1).)

There was no evidence whatever in support of this allegation. Darrah was the only witness who made any reference to these matters. (R. Vol. 1, pp. 334, 335.)

4. C. B. Lancaster Shoe Company.

The United States claimed: "In 1902 or shortly prior thereto C. B. Lancaster Shoe Company of Keene, New Hampshire, installed on trial in its factory a tackless lasting machine manufactured by the Tackless Shoe Machinery Company, whereupon the defendant the United Shoe Machinery Company gave notice that if such machine was not returned forthwith, it would remove all of its machinery with which the factory of said Lancaster Shoe Company was almost entirely equipped, and as a result thereof said tackless lasting machine was returned and not purchased or leased." (R. Vol. 1, p. 1076 (2).)

There was no evidence whatever in support of this allegation.

5. Nutt & Pratt.

The United States charged that the United Shoe Machinery Company threatened to remove its leased machinery from Nutt & Pratt of Natick, Mass., because said Nutt & Pratt had installed a tackless lasting machine obtained from the Tackless Shoe Machinery Company. (R. Vol. 1, p. 1076 (3).)

No evidence whatever was offered in support of this allegation.

6. T. D. Barry Shoe Company.

The United States charged that "The defendants threatened to take back their machines under the terms of their leases and thereby force manufacturers to remove competing machines which had already been installed in the following instances (R. Vol. 1, p. 1076 (c)):—

"They so threatened the T. D. Barry Shoe Company at Brockton, Massachusetts, in or about the spring or summer of 1900, and brought a proceeding to remove from said company's factory welting, stitching, heeling, lasting, slugging, insole channeling and other machines, and thus compelled said company to remove a system of machines of like character, except

slugging and channeling machines which Barry & Company had obtained from the Standard Shoe Machinery Company." (R. Vol. 1, p. 1077 (1).)

In support of this charge the United States called William A. Hogan, who testified he was part owner and treasurer of the T. D. Barry Company and had been with them for twenty-five years; that the company thirteen or fourteen years ago had machines from the Standard Shoe Machinery Company. He was not sure whether this was before or after the United Company was formed, but at the time he was using United Shoe machines and Standard Shoe Machinery Company machines. They had from the Standard Company a laster, welter, stitcher, welt beater and sole-layer, and machines performing similar work from the United Company; that on a certain afternoon a deputy sheriff served papers on him that they were going to take out some of the United Shoe Machinery Company's machines; that he stopped him by threatening to shoot him; that he went to the Superior Court in Boston and got an injunction against the company; that the injunction was dissolved, and he then agreed to stop using the Standard machines, and the Standard machines were removed from the factory. That prior to the claim of the sheriff he had no conversation with any representative of the United Company that he could remember. He could not say whether the United machines were actually removed or not. (R. Vol. 1, p. 222.)

On cross-examination he said that the T. D. Barry Company had leased some machines from the old Goodyear Company before the United Company was formed, including welting machines, stitching machines, and some auxiliary machines that he used with them. They had then introduced into the factory some standard welting, stitching and lasting machines, and did their welting and stitching on the Standard machines and used the Goodyear machines for the auxiliary work for those machines, so that they were getting Goodyear auxiliary machines for nothing and using them on shoes that were welted and stitched on the Standard machines. In that situation the United Company brought a replevin writ to get back its own property, and the witness sought to interfere with the officer by showing a revolver. Presently Mr. Barry, who had been in Europe, came home and the whole affair was straightened out. (R. Vol. 1, p. 223, lines 12–42.)

Elmer P. Howe testified that T. D. Barry Company were using Goodyear auxiliary machines with regard to which the United Company had no opportunity to determine the extent of use, and therefore had no means of collecting royalty. That is, they were using Goodyear auxiliary machines to prepare and finish the work which was sewn and stitched on Standard welt and turn sewing machines and Standard stitching machines. (R. Vol. 1, p. 667, line 44 *et seq.*)

This was another instance where because of the fact that the use of auxiliaries in the Goodyear department was paid for only through and by the royalty measured or recorded by the principal machines, the shoe manufacturer was unfairly treating the United Company by using its auxiliaries in connection with some other persons' principal machines, and therefore getting the use of the auxiliary machines for nothing.

7. Curtis & Jones.

The United States charged that the defendants likewise threatened Curtis & Jones, and caused them to remove from their factory a full line of machines which they had leased from the Duplessis Shoe Machinery Company. (R. Vol. 1, p. 1077 (2).)

In support of this allegation the United States called Thomas H. Shinn, who testified that he was superintendent of the Curtis & Jones factory; that that firm formerly had two factories, one at Hamburg and one at Reading (Pa.). In the Hamburg factory they used the Lincoln sewing machine made by the Campbell Company, but did not use at that factory any machinery of the United Company except loose nailers and possibly eyeletting machines; but later they combined the Hamburg and Reading factories in one building at Reading and moved the Hamburg plant to the new Reading plant. That at the Reading plant before the removal they had had a full line of Goodyear machinery from the United Company for making turned shoes; that about the time of removal they bought three Duplessis sewing machines and installed them together with the Lincoln machines in the Reading factory, which was built on a hollow square. When at the Hamburg plant they had had metallic machines of the United Company no objection was made by the United Company to the use of the Lincoln sewing machines, beyond calling attention to the merits of their own system and

trying to persuade the company to dispose of the Lincoln machines and put in Goodyears.

After the removal to Reading, Mr. Clark, the Philadelphia district manager of the United Company, called upon the witness and stated that the company had broken its leases by starting Duplessis machines in connection with Goodyear machines. Colonel King called later but said nothing about the continued use of the United machines, if Curtis & Jones continued to use the independent machinery, but the local agent, Mr. Clark, said that the United Company would remove all their leased machines unless Curtis & Jones discontinued the use of the independent machines. An arrangement was then made that Curtis & Jones should turn over to the United Company the independent machines, for which they would pay the cost, and replace them with Goodyear machines. (R. Vol. 1, pp. 363–365.)

The witness said he could probably have duplicated any of these machines which they had from the United Company, except the loose nailing machines. This change to machinery of the United Company apparently increased the cost of doing work one-half a cent a pair. (R. Vol. 1, p. 366, lines 13–34.)

On cross-examination he testified that when the change was made from Hamburg to Reading they built an entirely new building, and abandoned the old Reading factory and moved both of the old factories to the new one, with the idea of centralizing their business in one factory, with one office and running it as one factory. The factory happened to be built on four sides of a square to get light, but there was no separation of one side from any other side; it was open right around the square.

At the Hamburg factory, where they were using the United Company's loose nailer, they were using any sewing machines that they wanted to, without any interference of the United Company, on the same shoes. When they moved into the new factory they put all their sewing machines and stitching machines on one floor in the making-room, so that the Goodyear and Duplessis machines were practically side by side. The Lincoln machines were on the same floor, on the other side of the building, but still in the same making-room. (R. Vol. 1, p. 367, lines 13–41.)

Witness further testified "Up to that time, I think, whatever turn machinery we had we had from the old Goodyear Com-

pany and whatever agreements we had were agreements made with that company." (R. Vol. 1, p. 368, lines 3–6.)

The witness was then shown a lease dated June 3, 1892, from the Goodyear Shoe Machinery Company, and another lease dated 1897, also from the Goodyear Shoe Machinery Company, covering the Goodyear turn machines both principal and auxiliary which Curtis & Jones had.

To these leases was attached a rider reading as follows:—

> "The lessor hereby agrees that the rent and royalty to be paid by the lessee for children's turned shoes made after January 1, 1897, shall be one cent per pair instead of two cents per pair as provided in the schedule of section third of said lease; on condition, however, that the lessee while he retains possession of any machine leased to him by the lessor shall not without the consent in writing of the lessor use or allow to be used in his factory any sewing machine for uniting soles of turned shoes to their uppers which is not leased to him by the lessor."

This was executed October 7, 1897, by the Goodyear Company and Curtis & Jones Company (R. Vol. 1, p. 368); the leases to which this rider was attached were Defendants' Exhibits 96 and 97.

The witness said that the introduction of the Duplessis machines was in violation of this agreement, and that he could suggest no reason why they should not live up to their agreement. (R. Vol. 1, p. 369, lines 16–24.)

Prior to 1902 Curtis & Jones had held their loose nailer on terms by which they could use it with machinery of anybody else they wanted to. In 1901 they learned that the United Company was offering its metallic machine on a different form of lease which had been agreed upon between it and the Shoe Manufacturers' Association. Curtis & Jones wanted to change over to that new form of lease, and on January 17, 1902, Curtis & Jones wrote asking to have their leases changed over to that new form. (R. Vol. 1, p. 369, line 45 *et seq.*)

This change was made of their own volition; they had considered the advantages of the two situations and of their own accord wrote asking to have their lease changed. (R. Vol. 1, p. 370, lines 17–45, see Defendants' Exhibit 98.)

With reference to the change from the Lincoln and the Dup-

lessis machines to the Goodyear, he said he had given attention to the arguments presented by the Goodyear people upon the advantages of their machinery; that he knew the Goodyear machines were doing good work; that he got no service in taking care of the Lincoln machines from anybody—he had to take care of them himself, and had to send from Reading, Pa., to Haverhill, Mass., for parts, while the United Company had its depot in Philadelphia, fifty-eight miles from Reading, and reached by telephone or telegraph; that this was pretty convenient and was a consideration with him; that frequently the United Company's men came down and looked at the machines and instructed operators and that was a great convenience; that the Duplessis Company didn't have any agents nearer than Boston, and to get parts they would have to send to Canada. That he made comparisons between the quality of the work produced on the Goodyear machines and on the other machines, and became satisfied that the Goodyear machines were doing better work, and, in his opinion, the arrangement as to care, supplying of parts and promptness of service was very much on the side of the Goodyear. (R. Vol. 1, p. 371, line 41 *et seq.*)

In his testimony on direct with reference to the increased cost of making shoes, he mentioned that the difference of one-half a cent was the difference in the royalty, but that was without giving consideration to the economies resulting from the use of the Goodyear machines, which amounted to considerable. In his opinion, the United Shoe Machinery Company machines would be the cheapest; considering the service, the trouble and the worry he would have with the other machines the United Company machines would be the cheapest. (R. Vol. 1, p. 373, line 20—p. 374, line 17.)

This does not support the charge made by the United States that the company threatened Curtis & Jones and caused them to remove the Duplessis machines by any unfair method. Curtis & Jones had obtained and were enjoying a special concession from the old Goodyear Company and were asked to live up to their agreement.

8. Hilliard & Tabor.

The United States claimed that Hilliard and Tabor, who had United Shoe Machinery Company machines, installed a turn sew-

ing machine of the Haverhill Shoe Machinery Company, and that the defendant by its president pointed out that this machine was being operated in violation of the United Company's leases and threatened to change the terms of said leases and to make them more onerous if such Haverhill machines were purchased and installed. (R. Vol. 1, p. 1077 (d).)

In support of this claim the United States called Frank R. Hilliard, who testified that he manufactured women's welts, turns and McKays, having an output of four thousand pairs a day. In 1899 he was using in his factory machines of the Goodyear Shoe Machinery Company and the National nailer. About a year and a half prior to the giving of his testimony (June, 1913), he attempted to install a turn sewing machine of the Haverhill Shoe Machinery Company. After he had been running it about four or five months he was on one occasion at the office of the United Company and Mr. Winslow stated that we were using that machine contrary to our lease and that we would either have to change the lease and the contract with the United Company or stop using the Haverhill machine. The Haverhill machine did satisfactory work. He had it on trial but he had made no arrangement with the Haverhill Company at that time. They had offered it on royalty or on purchase. Mr. Winslow's objection partially caused him to return the Haverhill machine. The other reasons were that the machine was in on trial and he had not come to any absolute conclusion in regard to the matter. (R. Vol. 1, p. 282, line 39 *et seq.*)

On cross-examination he said that he had had the Goodyear machine for making turn shoes four to six months before he talked with Winslow, without any protest or objection. He had occasion to go to the United Company's office and happened to meet Mr. Winslow. Mr. Winslow called his attention to the fact that he had this machine in operation and asked him if he had noticed the provisions of his lease under which he had the Goodyear machine. The witness allowed that he had noticed the provisions and was running the machines contrary to the lease, which was a lease on which he had paid no initial premium. He got the United Company machine and paid for it according to the extent to which he used it. He had auxiliary machines with it and was using the auxiliary machines with the Haverhill machine. The effect of what he was doing was this: he took the

Haverhill machine on trial and used the Goodyear auxiliaries with it, for which use he did not pay a copper to the United Company. Winslow called his attention to this and the witness said it was true. Winslow said if he wanted to use the Haverhill machine he could change his lease and take another form, and he offered to give the witness that form of lease. The witness took the matter under consideration and decided he would rather keep the form of lease he had than change over his lease and use the Haverhill machine. There was no threat of coercion or compulsion. Everything was perfectly courteous and business like, and it was left for the witness to decide which he preferred. The election was his own choice and was satisfactory to him. (R. Vol. 1, p. 283, line 28—p. 284, line 5.)

The witness further testified: "The change which was to be made, provided we retained the Haverhill machine, was that we were to pay for the machines which we had. He did not say anything about paying an installation charge for the machine. . . . He did not fix the price for the machines; just said that he would have to change the leases." (R. Vol. 1, p. 284, lines 8–11, 18, 19.)

This was all the evidence in support of the above charge.

9. Harsh-Edmonds Shoe Company.

The United States charged that in 1909 the Harsh-Edmonds Shoe Company desired to lease clicking machines but on account of the burdensome conditions of the leases of the United Company, made an effort to obtain them from other parties. Shortly thereafter Mr. Harsh was sent for by the general manager of the United Company and warned and threatened by him with reference to making further effort to procure such machines elsewhere, and was caused thereby to take clicking machines from the United Company. (R. Vol. 1, p. 1077 (e).)

In support of this charge the United States called George R. Harsh, who testified that he used clicking machines obtained from the United Company; that he bought one machine from the Richardson Shoe Machinery Company and had tried to have them made in Milwaukee, but without success; that he had a conversation with one Willson, general manager of the United Company, in 1908 or 1909; that subsequently he was in Boston.

Willson left word that he would like to see him. The witness called on him and Willson said it would be better for him if he ceased his activity against the United Company and took things as they were. "He called my attention to the fact that there was a condition of a similar nature to the feature of the clicking machine lease I was objecting to in another lease of another machine, the metallic department lease as I remember it." The witness made no further attempts to get clicking machines elsewhere than of the United Company. He was a stockholder in the Boylston Shoe Machinery Company, to supply his own business with machinery. (R. Vol. 1, p. 196, lines 4–34.)

On cross-examination he said that he went into business in 1906; that he applied to the United Company for machines and took bottoming room machinery on the non-initial premium lease; machinery for other rooms he obtained elsewhere. He was not clear whether he had obtained the Richardson machine before or after he had talked with Willson. He went to Willson's office. Willson's greeting was courteous. He was a man of exceedingly kindly and courteous personality. Something was said with reference to a clicking machine, and the conversation turned to the fact that the witness was looking for a clicking machine. Willson told him the United Company manufactured one. Something was said which brought the conversation around to discussing the kind of leases which the witness had, and this presented the situation of the witness being a customer of the company. The witness said something to the effect that he objected to taking the company's clicking machine lease, and Willson pointed out that in the form of lease the witness had there was the same or a similar provision. The witness had not appreciated this fact before. Willson presented this by way of argument to meet the witness' objection, and did it perfectly fairly and quietly. When he had done that he urged the witness to take the United Company's clicking machine. The United Company's clicking machine was the only commercial machine in the market. The witness was a general customer of the United Company and it was giving service with its machines. No other company that he knew of was giving service with reference to clicking machines. Mr. Willson's advice to the witness seemed to be sound and the witness adopted it. He could not suggest any reason why as a practical business matter it was not sound, and it certainly has proved to be sound.

The witness further testified: "We used the Richardson machine only a short time. It was not commercially practicable and that was why we gave it up." (R. Vol. 1, pp. 196–199.)

This was all the evidence offered in support of this complaint.

10. Witherell & Dobbins.

The United States claimed that Witherell & Dobbins contemplated the manufacture of welt shoes, and in the spring of 1911 were threatened by the United Company or its agents that if they continued to operate machines of competitors the United Company would exact from Witherell & Dobbins installation charges on machines used in the manufacture of welt shoes which were exorbitant in comparison with those made to manufacturers not operating competing machines. (R. Vol. 1, p. 1077 (f).)

There was no evidence to support this charge.

11. George A. Learned.

The United States claimed that George A. Learned was engaged in the manufacture of turn shoes and contemplated entering upon the mar facture of welt shoes. "A threat of like character" was made by the defendant company or its agents. (R. Vol. 1, p. 1078 (g).)

In support of this claim the United States called George A. Learned, who testified that he had been using United Company's machines for fastening soles to uppers. In June, 1911, he installed some machines of the Haverhill Shoe Machinery Company for the same purpose. He testified that in August, 1911, the defendant's president informed him that he was violating a clause of his lease which provided that he should pay three-quarters of a cent a pair royalty on every pair of shoes stitched, whether by the United Company's machine or the Haverhill machine, and that the United Company intended to collect the royalty and 6 per cent interest. Mr. Winslow said that he would either have to pay that or they would drive him out of business, and that the least he would do would be to take out all the United Company's machines. (R. Vol. 1, pp. 313–314.)

Learned was contradicted in this testimony by Mr. Winslow who specifically denied all the statements alleged to have been

made to Learned by him with reference to driving Learned out of business or taking out the machines of the United Company. (R. Vol. 1, pp. 515–517.)

Edwin P. Brown, who was present at the time the conversation occurred, also contradicted Learned. (R. Vol. 1, pp. 715–716.)

Henry B. Endicott, who heard that Learned was making statements with reference to this alleged conversation, brought him to Mr. Winslow's office and testified that when Learned was there he admitted that he had been mistaken. (R. Vol. 1, pp. 582–583.)

Edwin P. Brown was also present at the second conversation and corroborated Mr. Endicott, stating that Mr. Learned in the course of conversation admitted that he was mistaken, and that, as he remembered it, Learned then agreed to write a letter of apology to Mr. Winslow. (R. Vol. 1, p. 717, lines 29–45.)

Subsequent to the conversation, on August 28, 1911, Mr. Brown in accordance with Mr. Learned's request, submitted a list of machines with the terms upon which the defendant would furnish them for Learned's use. (R. Vol. 1, p. 316, lines 13–18, and Defendants' Exhibit 86.) Several letters passed between Mr. Learned and Mr. Winslow on the subject. (See Defendants' Exhibits 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 and 254.)

The United Company has never at any time taken any machines out of Learned's factory or done anything to interfere with his business or attempted to put him out of business. He has substantially all the machines of the United Company that he had when the correspondence and conversations took place, and is using the defendant's auxiliaries and some of its general department machines to make shoes in connection with the use of the Haverhill Company's machines without paying any royalty on the machines of the United Company. (R. Vol. 1, p. 516, lines 24–32.) The fact was that Learned had the Goodyear department turn sewing machine and some auxiliary machines and was using the Goodyear auxiliaries in connection with the Haverhill Company turn sewing machine, so that he was using the United Company's auxiliaries and paying no royalty for their use. (R. Vol. 1, p. 515, lines 24–29.) He was offered the independent form of lease for these machines if he desired to use them. (R. Vol. 1, p. 515, lines 38–41.)

12. Harry H. Wentworth.

The United States claimed that in June, 1911, Harry H. Wentworth determined to install a heeling machine manufactured by the Haverhill Shoe Machinery Company, but was induced not to install said machine by representations upon the part of the United Company or its agents that if he should do so the United Company would increase its installation charges upon future orders for machines. (R. Vol. 1, p. 1078 (h).)

There was no evidence in support of this charge.

13. Alleged Threat to Enter Shoe Business.

The United States claimed that in certain conferences in St. Louis, in February, 1911, and in Boston, in May, 1911, between Mr. Winslow and Johnson, Florsheim, Rand and Selz and others, Winslow threatened that the United Company would enter upon the shoe manufacturing business, this threat being made in connection with efforts being made by the manufacturers to secure a modification of the leases of the United Company. (R. Vol. 1, p. 1078 (i).)

There was no evidence to support this allegation and it was denied by Florsheim, a witness for the United States. (R. Vol. 1, p. 162, lines 9–14.)

14. Alleged Threats by William Barbour.

Under the general head of "Threats to use financial resources and power of combination to ruin competitors," the United States claimed that William Barbour in conversation with James N. Darrah, an officer of the Standard Shoe Machinery Company, made certain threats as follows: "'Well, you are making a big mistake because we always try to be nice to people,—we offer to buy them at first, and then we crush. You can not do anything because we control the banking influences, both in New York and Boston, and you would not be able to get any money. You won't put in your machines because we have the shoe manufacturers in a state of terror. I own a million dollars of that stock and we can't afford to have any competition. My investment is liable to be jeopardized, and we can't afford to have any competition against the United Shoe Machinery Company. We have the field and we are going to retain that field.'" It was claimed that

Barbour also said on another occasion to Darrah, when Darrah suggested that he was going back into the shoe machinery business, "'You would make a big mistake because you would never get in. We would never let you in or anyone else. You will never have a chance to get in. You will never be able to place your machinery with shoe manufacturers. You can't find any customers.'" (R. Vol. 1, p. 1078 (a).)

The United States called James N. Darrah in support of this claim, who testified that he met Mr. Barbour at the office of John R. Dos Passos in New York in April, 1900, who introduced him to Mr. Barbour. That Barbour said he had a large investment in the stock of the United Company and did not propose to have it jeopardized. (R. Vol. 1, p. 333, lines 33–35.) Barbour said: "'I think you are making a big mistake if you don't sell .... We always try to buy out competitors and if we can't buy them out we force them out.'" (R. Vol. 1, p. 334, lines 4–8.) Barbour also said: "'Where are you going to get your money? You can't get any money to compete against the United Shoe Machinery Company. You can't get any banks to back you up. Our influence both in Boston and in New York is so great that you can't do anything.'" (R. Vol. 1, p. 334, lines 20–24.) Darrah said that he subsequently met Barbour in 1905 and suggested that he thought of going into the shoe machinery business, and Barbour laughed and said it would be a big mistake. (R. Vol. 1, p. 335, lines 35–39.)

On cross-examination Darrah testified that he was in the real estate business; that he hadn't any office; that he was at the time of his testimony going through bankruptcy; that before he went into the real estate business he was in a stock-broking business; he was not a member of the stock exchange but dealt in unlisted securities; he did that for about three years; for two years he was out of business. (R. Vol. 1, pp. 335–337.)

Barbour testified with reference to Darrah: "I met the man, but I never made such a statement at all. There was no threat or intimidation at all by language used by me in my conversation with him. There was no suggestion that I regarded him as a competitor who would jeopardize our interests, or that if he did not sell out we would force him out." (R. Vol. 1, p. 860, lines 38–40.)

The United States did not call Dos Passos as a witness at all.

Upon this charge the District Court found:

> "The only 'threats' which Barbour is charged with making are testified to by James N. Darrah, vice-president in 1900 of the Standard Shoe Machinery Company. According to Darrah, Barbour, at a talk in New York in April of 1900, tried to get him to sell out stock in his company by telling him, in substance, that if competitors of the United Company could not be bought out, they would be forced out. Barbour has denied that any such conversation took place. Darrah's evidence was not corroborated; and there is no proof that his concern, though it went out of business in 1901, was ever forced out or crushed by the defendants." (Dodge, J., R. Vol. 1, p. 1148.)

15. Richard H. Long.

The United States charged that in 1908 Richard H. Long was engaged in the shoe machinery business in competition with the United Company; that he endeavored to arrange a line of credit with the Chapin National Bank, of Springfield, but was prevented from doing so by the United Company; that he was offered a credit with the New England National Bank but was refused through the same influence. (R. Vol. 1, p. 1079 (b).)

There was no evidence whatever to support this charge. Long's testimony will be found. (R. Vol. 1, pp. 244–246.)

16. J. S. Holt.

In the bill of particulars it is claimed that about 1908 one Bayley, an officer of high rank in United Shoe Machinery Company, stated to J. S. Holt for the purpose of intimidating said Holt that R. H. Long would be ruined and driven from business by the United Company unless he ceased trying to compete, and that the same fate would befall any other who tried to enter the shoe machinery industry; that the said company would make every effort to ruin Long by destroying his credit and possessed such strong banking connections that it would be able to prevent Long from obtaining capital to continue operations. (R. Vol. 1, p. 1079 (c).)

There was no evidence whatever offered to support this charge. Holt's testimony will be found R. Vol. 1, pp. 280, 281.

17. Harry E. Cilley.

The United States claimed that Harry E. Cilley was told by E. P. Hurd of the United Company in 1901, that he could not do any business except by sufferance of the United Company; that the company did not care for the common law or the Sherman Law, and various other talk of a similar character. (R. Vol. 1, p. 1079 (d).)

In support of this the United States called Harry E. Cilley, who testified that he had invented a leveling machine and that he called on Mr. Hurd, who asked him if he had a proposition to make; that Hurd said, "'Cilley, you are thick; if you were offered fifteen or twenty thousand dollars I think under the circumstances you ought to be well satisfied.'" Cilley replied that this was outrageous. He testified that Hurd also said that the United Company was not an eleemosynary institution and that Cilley could not do business except on its sufferance. (R. Vol. 1, pp. 279–280.)

On cross-examination Cilley said that he had been in litigation with the United Company since 1903 and had been preparing himself to testify in that case. (R. Vol. 1, p. 280, lines 14–24.) It was evident from the character of Cilley's examination that the testimony of the witness was not reliable.

On this charge the District Court found as follows (Dodge, J., R. Vol. 1, p. 1149):

> "Mr. Hurd is charged, in the testimony of Harry E. Cilley, with having said to him in 1901, during a conference with respect to a possible sale of his business to the United Company: 'You can't do any business except on our sufferance and you can't get a new dollar for an old one.' It appears that Cilley's business at the time consisted in building a sole-leveling machine, that he was not satisfied with an amount suggested by Mr. Hurd as a proper price for it, told Mr. Hurd he considered it 'outrageous,' and never renewed the negotiations. Neither the business of this witness nor the remarks testified to, if made, can fairly be regarded as of any serious importance, in view of all the circumstances shown."

18. Tower Brothers.

The United States charged that Tower Brothers, engaged in business in making shoe machinery, were greatly injured by

their employees being taken away by the United Company and that the United Company threatened to drive Tower Brothers out of business. (R. Vol. 1, p. 1080 (e).)

There was no evidence whatever to support this charge, although John M. Tower of Tower Brothers appeared as a witness for the United States. (R. Vol. 1, pp. 907–908.)

19. Charles H. Morse.

The United States charged that Charles H. Morse in 1903 was endeavoring to market the Frechette pegging machine and a slugging machine for doing similar work; that Morse called on Mr. Winslow and Mr. Winslow said to him, "You don't suppose we are going to let you continue placing that machine upon the market." (R. Vol. 1, p. 1080 (f).)

In support of this charge the United States called Charles H. Morse, who testified that he called upon Mr. Winslow somewhere about 1901 or 1902, he thought—he could not tell exactly—and talked with Mr. Winslow about a purchase of his business; that Mr. Winslow said, "You don't suppose we are going to allow you put them on the market," meaning machines which Morse was manufacturing.

It further appears from the testimony of Morse that he continued in business until 1906 when he sold out to Samuel H. Nichols of Brockton, Mass. (R. Vol. 1, p. 338, lines 38–39.)

Winslow testified that he had no recollection whatever of making any such statement to Mr. Morse; that he had met Mr. Morse in the corridor of the Court House when Morse testified, and went up and shook hands with him and asked him how many years it had been since they had met, and Morse placed the date back of 1899, and didn't remember to have met Winslow since the formation of the United Company, so if he had ever had any conversation with Morse it must have been prior to the organization of the United Company. (R. Vol. 1, p. 518, line 38 *et seq.*)

In respect to this charge the District Court found as follows:

> "Mr. Winslow is charged, in testimony by Charles H. Morse, with having said to him at some time in 1901 or 1902: 'You don't suppose we are going to allow you to put them on the market,'—referring to certain pegging machines then being made by the Fifield Company with which Morse was connected. Morse, on his own testimony, was then negotiating with Winslow about a sale of the Fifield

> Company business to the United Company, but they failed to agree as to price. Its business was sold in 1906, but not to the United Company. There is nothing to prove that the United Company ever interfered with the marketing of this machine." (Dodge, J., R. Vol. 1, p. 1148, lines 23–32.)

20. The Merrick-Luitweiler Controversy.

The United States claimed that Mr. Winslow made threats to Messrs. Merrick and Luitweiler who were engaged in manufacturing a lock-stitch machine. This charge was not included in the bill of particulars.

Frank W. Merrick testified that in the summer of 1905 he had a conversation with Mr. Winslow at the Touraine Hotel with reference to a sale of the business of the Union Lockstitch Company, at which Mr. Winslow stated in effect that he would not allow Merrick and Luitweiler to make any money and that eventually their business would come around to him and he would take it. (R. Vol. 1, p. 200, line 21 *et seq.*) Luitweiler testified to the same effect. (R. Vol. 1, p. 208.)

Merrick testified under cross-examination that upon this occasion he could make no objection to Mr. Winslow's treatment of him, but that it was a "business bluff." (R. Vol. 1, p. 205, lines 35–41.) He commented upon it as follows:

> "I was not bluffed by what he said. It didn't influence my conduct. It might have frightened me a little. Up to that time the straight needle machine was the only thing we had developed. We have not been interfered with in marketing it except by ordinary methods of competition." (R. Vol. 1, p. 206, lines 11–15.)

Taken at its face value, the testimony of the witnesses for the United States would show only that Mr. Winslow made the statement referred to as a "business bluff"; that it was recognized as a bluff; that it did not influence the conduct of Merrick; and that it was not followed up by any interference with Merrick's business.

Mr. Winslow, however, specifically denied ever making any such statement to either Merrick or Luitweiler (R. Vol. 1, pp. 517, 518), and all the probabilities of the case support this denial. Merrick claimed that Sampson, who was employed by the United Company, arranged the conference with Mr. Winslow. (R.

Vol. 1, p. 200, lines 25, 26.) It appears, however, that before the conference Merrick had asked a mutual friend, Mr. Buck, to bring Sampson to him, had invited Sampson aboard his yacht and had taken him to the Hull Yacht Club as his guest. When Merrick had Sampson out on the yacht he talked with him about his (Merrick's) company and the enterprise in which he was engaged. (R. Vol. 1, p. 204, lines 5–25.) Merrick's machines were then in an experimental state, and Merrick testified: "We didn't get anywhere with Sampson. He didn't have anything to say." (R. Vol. 1, p. 204, lines 26, 27.)

Sampson testified that Mr. Buck called on him, showed him a sample of stitching and said it was done on a new machine which Merrick had brought out; that Merrick had several machines he would like to sell and would like to get employment with the United Company. Within a few days, Buck came and invited Sampson off on Merrick's yacht. Sampson declined to go and Buck came back a few days later and urged him to go. While on the yacht Luitweiler asked if he could meet Mr. Willson, general manager of the company, and pursuant to this request the meeting with Mr. Winslow came about. (R. Vol. 1, pp. 615, 616.)

Both Merrick and Luitweiler admitted that at a later interview Mr. Connor of the United Company stated positively that he would not consider buying their business on a competitive basis. (R. Vol. 1, p. 210, lines 2–5.) It seems quite obvious what sort of solicitation on the part of Merrick and Luitweiler would have called forth such a statement on the part of Connor.

In respect to this charge the District Court found as follows:

> "Mr. Winslow is also charged, in testimony given by Merrick and Luitweiler, president and treasurer of the Union Lock Stitch Company, then developing machines not yet put on the market, with having told them in 1905, while attempting to persuade them to sell out to the defendants, that they would not be allowed to make any money; that the United Company would build their machines; that their business would come round to it and be taken by it, and that it was cheaper to kill competitors than to acquire them. The alleged statements are denied by Winslow. The business referred to is one never acquired by the defendants, nor is any interference whatever with this business shown. This was admitted, and the

testimony of the two witnesses named is that they have put out 350 to 400 of the machines in question." (Dodge, J., R. Vol. 1, p. 1149, lines 1–13.)

21. George H. Clark.

The United States claimed that George H. Clark had invented a method of molding or lasting a shoe and stitching the seam on the last, and that he endeavored to introduce this method into various shoe factories; that he visited the United Company and talked with Edward P. Hurd regarding the purchase, lease or rental of a Goodyear rapid lock-stitch machine for use in shoe factories; that Hurd told him: "'Our policy is to stick the knife in deep to the hilt in the case of anyone interfering with our system, and surely your method does interfere. We will never let you have a machine or have one used in any factory where you or your method may be found, for you to experiment with.'" (R. Vol. 1, p. 1081 (g).)

In support of this charge the United States called George H. Clark, who testified that he was an inventor and had invented a method for molding or lasting shoes, and that he had put a machine for this purpose in the Richardson factory in Reading; that he called on Mr. Hurd to see if he could get a lock-stitch machine to put in the Richardson factory; that Hurd replied: "You mean well, but it is against our policy to put a machine in whereby it is going to interfere with our welt system, and we have to put the knife and protect our interests. . . . I won't put any one of our rapid stitching machines into any factory where you are to experiment with." (R. Vol. 1, pp. 306–307.)

On cross-examination Clark said that his machine was in the Richardson factory for experimental purposes—had been there perhaps four months—and that he went to Hurd to get a machine to use with his experimental machine, and that Hurd told him he wouldn't put one of his stitching machines in a factory for the witness to experiment with, and said: "'Clark, I will tell you what we must do; we have got to protect our own interests. We must protect ourselves on this method that you have of this flexible welt shoe of yours which jeopardizes our welt system. . . . I don't think it is wise for us to help you out and put a machine in where you are to experiment with.'" (R. Vol. 1, pp. 307–308.)

22. The Kimball & Hadley Case.

The United States claimed that Kimball & Hadley were manufacturing needles, awls and drivers in competition with the United Company; that the United Company notified shoe manufacturers if they purchased needles and awls of Kimball & Hadley the United Company would withdraw its machines, and that Martin, an employee of the United Company, told Hadley the United Company would have his business sooner or later, and that Bayley, an employee of the United Company, told Hadley that if necessary the United Company would give its needles away in order to destroy their business; and in fear that their business would be destroyed Kimball & Hadley sold to the United Company. (R. Vol. 1, p. 1081 (h).)

In support of this charge the United States called Irving A. Hadley, who testified that he was a lawyer and prior to 1904 engaged in making awls and Goodyear needles; that he called on Mr. Bayley, the agent of the defendants, who inquired of him the price at which he was selling needles. He said: "'We can manufacture needles and sell them as cheap as the United Shoe Machinery Company.'" And Bayley said: "'Oh, no, you can't; we can give them away if necessary.'" (R. Vol. 1, pp. 308–309.)

On cross-examination Hadley admitted that he knew at the time of the alleged conversation with Bayley that the United Company did not manufacture any Goodyear needles. (R. Vol. 1, p. 311, lines 3–10.)

This was all the evidence offered in support of the charge. It appeared that Bayley was in a sanitarium and could not be called to contradict Hadley's testimony. (R. Vol. 1, p. 309, lines 39–40.) But Hadley also testified that in 1904 he had trouble in making sales of needles and awls to shoe manufacturers, and specified the factories of E. E. Taylor, T. D. Barry & Company, Churchill & Alden and Rice & Hutchins, as places where he had called. (R. Vol. 1, p. 308, lines 28–31.) He testified that these manufacturers stated that the using of their needles and awls was in violation of the leases of the United Company, and if they took these awls and needles the United Company would take the machines from their factories. (R. Vol. 1, p. 308, lines 31–33.)

The defendants offered the evidence of John F. Belcher, who

had charge of the purchasing at Churchill & Alden's in 1904. He testified that he talked with Hadley about using his awls and needles and never made any such statement as Hadley had described. (R. Vol. 1, p. 746, lines 20–34.)

On cross-examination the witness further stated: "During my conversation with Mr. Hadley nothing at all was said about the leases which we had with the United Company. I am positive that the United Company was not mentioned." (R. Vol. 1, page 746, lines 36–38.)

Defendants also called Arlon S. Roberts, superintendent of the E. E. Taylor Company, who had charge of the purchasing of supplies for that company in 1904. He knew Hadley and had talked with him about purchasing awls and needles. He denied that he had ever made any such statement as Hadley had testified to. (R. Vol. 1, pp. 746–747.)

Defendants also called William A. Hogan, who testified that he was connected with the T. D. Barry Company; that he knew Hadley and talked with him about awls and needles; that he never made any statement to Hadley such as Hadley had testified. (R. Vol. 1, pp. 747–748.)

Defendants also called James J. Tierney, connected with E. E. Taylor & Company, and having charge of the purchase of awls and needles. He testified that he knew Hadley and positively contradicted Hadley's testimony. (R. Vol. 1, p. 760.)

Defendants called William O. Bryant, who testified that he was connected with the E. E. Taylor Company; that he knew Hadley, and that he had to do with the purchase of awls and needles. He also contradicted Hadley and testified that he had never made any such statement to him and that he had bought awls and needles of Hadley every time he came to him until he went out of business. (R. Vol. 1, pp. 760–761.)

Hadley further admitted under cross-examination: "We sold out in 1904. The United Company afterwards brought suit in equity for violating the terms of our agreement and entering into business again, which we had agreed not to do for a number of years, but had done in breach of our agreement. The Supreme Court of Massachusetts found that we had violated our agreement and granted an injunction against us." (R. Vol. 1, p. 311, lines 14–20.)

In respect to this charge the District Court found as follows:

> "Bayley, a department manager for the United Company, is charged, in testimony given by Irving A. Hadley, then representing Kimball & Hadley, manufacturers of awls and needles, with having said to him in January, 1904, in answer to a claim by him that Kimball & Hadley could sell needles as cheap as the United Company, that the United Company could give them away if necessary.
>
> "It does not seem possible to attach any serious importance, for any purpose, to the remark, if made, even if anything said at the interview can be supposed to have had reference to a possible purchase by the defendants of the Kimball & Hadley business. Bayley was in a sanitarium, unable to testify, at the trial. Further testimony from Hadley, however, that certain factories had refused needles offered them by him for fear of controversy with the United Company was contradicted by the managers he mentioned. The business of Kimball & Hadley was one of those acquired by the United Company, but it was not acquired until the following June. It consisted in making Goodyear needles, which, at the time of the acquisition, the United Company was not making at all. An attempt by Kimball & Hadley, in litigation with the United Company some time afterward, to prove that threats and intimidation had been used in acquiring their business wholly failed. (See *United Co.* v. *Kimball*, 193 Mass. 351.)" (Dodge, J., R. Vol. 1, p. 1149.)

23. Samuel A. Krewson.

The United States claimed that the defendants entered into negotiations with Samuel A. Krewson, an inventor of machinery, with a view to purchasing his inventions; that Krewson had a talk with E. P. Hurd of the United Company, and that Hurd said that the United Company could make scouring wheels and put them out cheaper than Krewson, and said, "We do it to drive little fellows like you out of business,"—and other statements to the same effect. (R. Vol. 1, p. 1081 (i).)

No evidence whatever was offered in support of this charge.

24. Alleged Acquisition of Patents and Suppression of Inventions.

The United States charged that the United Company had systematically and for the purpose of preventing others from

making practical use of various patented devices, acquired patents and suppressed or failed to make practical use thereof; also that by threats or alleged infringement had prevented the manufacture of unpatented machines. (R. Vol. 1, p. 1082 (a-b).)

No evidence whatever was offered in support of these charges and they are disproved by the testimony of defendants' witnesses. Mr. Winslow testified, "The United Company has suppressed absolutely no machines, no inventions and no improvements." (R. Vol. 1, p. 433, lines 27–28.)

Mr. Howe testified, "The United Shoe Machinery Company has never suppressed an invention that it thought could be worked out to make a commercial machine which would benefit the lessees. . . . I have never known of a single patent which had prospective value when embodied in machinery being laid on the shelf or suppressed." (R. Vol. 1, p. 671, lines 18–20, 23–25.)

In respect to these charges the District Court found as follows:

> "Nor has there been any evidence sufficient to show a practice followed by the defendants of buying up patented inventions to hold in disuse. This charge also is one not insisted upon in argument." (Dodge, J., R. Vol. 1, p. 1147, lines 8–10.)

25. Charge as to Rebates upon Gem Flexible Insole Machines.

In the bill of particulars it is claimed that the defendants granted to exclusive users of their leased machinery rebates of amounts equal to the sums paid by them respectively as royalty on Gem flexible insole machines for the purpose of effecting exclusive use of defendants' machinery.

The vote by the directors of the United Shoe Machinery Company of January 29, 1900, was as follows:

> "That a rebate be granted to exclusive users of the machines leased or controlled by this company and its subsidiary companies, and to such other manufacturers upon such special terms as the general manager may consider expedient; said rebate to be made by quarterly payments to the manufacturers of the amounts equal to the sums paid by them respectively as royalty on the Gem flexible insole machines during the quarter for which the rebate is made." (R. Vol. 1, p. 351, line 43 *et seq.*)

With reference to this matter Mr. Winslow testified as follows:

> "It was almost immediately after the United Company was formed and after we had acquired possession of the Gem Insole Company that we decided to turn back to the manufacturer the royalty on the Gem insole machine. As to why the Gem insole machine was not put in as an auxiliary machine rather than putting it out on a separate lease, I don't know unless it was because a lot of Gem insole machinery was put out on leases of the Gem Insole Company and it was simpler to keep up those old leases and return the royalty to the lessees." (R. Vol. 1, p. 682, lines 21–34.)

Mr. Howe testified as follows:

> "After the United Company was formed it acquired the Gem insole machines, which previously had been put out on a royalty, and after that paid back the royalty to all manufacturers who used the Goodyear principal machines entirely. So that in effect Gem insole machines were made auxiliary machines to build up the Goodyear welt system." (R. Vol. 1, p. 664, lines 31–35.)

In respect to this charge the District Court found as follows:

> "The vote of 1900 was that royalties on the Gem Insole machines be rebated to exclusive users of the company's machines. It appears that having acquired the Gem Company, which had machines in use under lease at the time at a royalty of one-half cent per pair, the United Company added the machine to its Goodyear auxiliary set, and to users of such sets paid back the one-half cent per pair in order to leave the rate upon the entire auxiliary set the same as before it included the Gem machine." (Dodge, J., R. Vol. 1, p. 1147, lines 18–25.)

The court further found that this act on the part of the United Company cannot "be said to answer to the terms in which the charge of offering and granting rebates is made." That the act was inspired by the purpose of giving exclusive users of the company's machines an unfair advantage over those who did not or had that effect "cannot be said to have been proved, and the charge is not believed to require further notice. It would seem to have been suggested by those cases relating to railroads wherein 'rebate' has acquired an obnoxious signification." (Dodge, J., R. Vol. 1, p. 1147, lines 33–41.)

26. Charge as to Rebates upon Goodyear Machines.

In the bill of particulars it is claimed that defendants, for the purpose of effecting exclusive use of their machinery, granted a rebate of not less than 15% of the royalties received from leases of certain Goodyear machines. (R. Vol. 1, p. 1083 (b).)

The circular letter of June 10, 1910, upon which this charge was based appears as Plaintiff's Exhibit 146. (R. Vol. 4, p. 1067.) This letter first calls attention to the services rendered by the United Company to its lessees in the way of improved machines, reduction of installation charges, reductions in royalties, furnishing auxiliary machines, establishment of branch offices, etc. The plan complained of is then announced as follows:

> "Benefits of a character similar to those enumerated have marked the course of the Company from the very beginning; but it has never been its purpose to confine within limits determined in advance, its ability to enhance the prosperity of the trade. Always recognizing that it has a common interest with its lessees and that its prosperity depends upon theirs, it has long had in contemplation the following plan, which, now that the elimination of initial charges has been effected, it is prepared to put into operation—a plan which is in conformity with its established policy and which it believes will result in the expansion of its own business through the increased business of its customers.
>
> "Beginning with January 1, 1910, the Company will create a fund by investing each year, for three years, in the common stock of the United Shoe Machinery Corporation a percentage, increasing each year, of the amounts received from its lessees for the use of its Goodyear Welting, Goodyear Stitching and Goodyear Turn Sewing Machines in the United States, and will add to that fund from time to time the dividends which shall have been paid in the meantime upon such stock, or shares of the common stock of the Corporation purchased with such dividends. At the end of three years from that date it will distribute the entire amount of stock held in the fund among those lessees who use the Goodyear Welting, Goodyear Stitching and Goodyear Turn Sewing Machines in the United States and who shall have faithfully observed the covenants of their leases; each lessee of these classes of machines to receive a share of the entire fund proportionate to the amounts paid by him for the use of such machines."

This offer did not require an exclusive use of the United Company's machines, but merely proposed to return a portion of the royalties received from lessee's machines who used Goodyear welting, stitching or turn machinery if they observed the covenants of their leases, which, of course, they were legally required to do. It, therefore, amounted merely to a reduction in the royalties charged for this machinery, such reduction to be represented by stock of the United Company instead of by a cash reduction.

This proposal was called to the attention of the Department of Justice and prior to the distribution made to the manufacturers Mr. Choate, in behalf of the United Company, called the matter to the attention of the Attorney General of the United States in the following letter:

"CHOATE, HALL & STEWART,

BOSTON, MASS., Feb. 7, 1913.

Hon. GEORGE W. WICKERSHAM,

Attorney-General, Department of Justice, Washington, D.C.

My Dear Mr. Wickersham: In 1910 the United Shoe Machinery Company advised its lessees that it proposed to put in effect a plan by which a certain proportion of the royalties should be invested in stock of the corporation, and at the end of a fixed term be distributed to lessees of the Goodyear welting and stitching and turn-sewing machines, who had in all respects observed the obligations of their leases. The period covered by this plan expired December 31, 1912, and the company proposes to make a distribution on or about March 1st, as it is bound to do by its agreement with the customers. This plan was, I think, fully called to the attention of Mr. Gregg while he was here examining the affairs of the company and as I read the bill in equity filed by the United States against the company, it does not seem that any complaint is made upon this ground. Under these circumstances the Company proposes to make the distribution provided for in that plan on the first day of March, or as soon as possible thereafter; and has desired me to call the matter to your attention that the plan may not be carried out without the knowledge of your department.

I send you herewith a copy of the circular of June 10th, 1910, which describes the plan.

Very truly yours,

CHAS. F. CHOATE, Jr."

(R. Vol. 1, pp. 979, 980.)

In response to this letter, no acknowledgment, answer or objection of any kind was received. (R. Vol. 1, p. 980, lines 23–24.)

In respect to this matter and the Gem insole rebates above discussed the District Court found as follows:

> "Neither of these acts on the company's part can be said to answer to the terms in which the charge of offering and granting rebates is made. That either act was inspired by the purpose of giving exclusive users of the company's machines an unfair advantage over those who did not, or that either had that effect, cannot be said to have been proved, and the charge is not believed to require further notice. It would seem to have been suggested by those cases relating to railroads wherein 'rebate' has acquired an obnoxious signification." (Dodge, J., R. Vol. 1, p. 1147, lines 33–41.)

27. Alleged Purchases of Competitors' Business at Exorbitant Prices.

The United States charged that the defendants had purchased the businesses of competitors and prospective competitors to eliminate competition, paying therefor, in many instances, exorbitant prices. (R. Vol. 1, p. 1083 (a).)

It having been shown that no competitors in the proper sense of that term were purchased, this charge necessarily fails.

Furthermore the United States failed to introduce in respect to any of the acquisitions, any evidence as to the value of the property purchased. In most cases the price paid was small, and in no case was there the slightest evidence that it was exorbitant.

In respect to this charge the District Court found as follows:

> "An allegation in the petition that the business of many competitors was bought at exorbitant prices fails of support in the evidence relating to any specified instance of acquisition among those thus far considered [all except the Plant

acquisition]. As to them, indeed, no claim of the kind seems to be seriously urged." (Dodge, J., R. Vol. 1, p. 1142, lines 1–5.)

The court then considered the acquisition of the Plant property and further held as follows:

> "The charge that competitors have been bought out at 'exorbitant prices' is found not established in the case of the Plant acquisition, as has just been stated. Nor is evidence found sufficient to establish it in the case of any one of the numerous minor acquisitions specified in the petition. It has not been insisted on in argument that this charge is proved as to any one of them." (Dodge, J., R. Vol. 1, p. 1147, lines 1–7.)

28. Alleged Attempt to Cause a Strike at Plant's Shoe Factory.

The United States claimed that Morrison, Ross and Sochat were employed by Charles Willson, the general manager of the United Company, to organize the employees and start a strike at the Thomas G. Plant factory in June, 1910. (R. Vol. 1, p. 1083 (1).)

Morrison testified that at the suggestion of one Johnson, he called on Willson with Ross and Sochat, that Mr. Willson's offer was that "if we would organize the place and get him all the information we could for so-and-so machine (*sic*) he would pay us two thousand dollars cash and our expenses, and he would see that we got a job." (R. Vol. 1, p. 346, lines 27–43.)

Morrison further testified: "We tried to organize the Plant factory and got something like three hundred members." (R. Vol. 1, p. 346, lines 43, 44.) "There was no attempt to strike, only to form an organization." (R. Vol. 1, p. 347, lines 12, 13.)

Ross and Sochat told substantially the same story except that Sochat testified that Willson said he would pay one thousand dollars and expenses. (R. Vol. 1, p. 350, lines 33, 34.)

Ross testified that they spent $1,500 in entertaining the employees and giving them a good time. That this $1,500 was contributed—$500 by Morrison, $600 by Ross and $400 by Sochat (R. Vol. 1, p. 349, lines 11–18); that their pay averaged $15 per week and that his contribution of $600 represented the savings of eleven or twelve years. (R. Vol. 1, p. 349, lines 11–41.)

They had no papers or receipts or written evidence of any kind to support this story, claiming that they had destroyed all their papers, including receipts and the list of three hundred names. (R. Vol. 1, p. 350, lines 5–20.)

This story was flatly contradicted by the following witnesses called by the defendants:—

Albert Harrison. (R. Vol. 1, p. 728 *et seq.*)
Cross Johnson. (R. Vol. 1, pp. 761–762.)
Benjamin Epstein. (R. Vol. 1, pp. 762–763.)
Arthur F. Crouch. (R. Vol. 1, p. 763.)
Charles F. Connor. (R. Vol. 1, p. 764.)
Samuel Pearlman. (R. Vol. 1, pp. 764–765.)
Joseph Beaudreau. (R. Vol. 1, pp. 765–766.)
Charles Wiedman. (R. Vol. 1, p. 766.)
Harry Johnson. (R. Vol. 1, p. 767.)

These men testified that they worked with Morrison, Ross and Sochat in the same room in the Plant factory, and knew them well, and were about with them in and out of the factory; that they had no knowledge of any Union being organized by the three witnesses for the United States, or of any strike being attempted. To their knowledge no money was spent among the employees for entertainments or for any other purpose, and that they never heard of the United Shoe Machinery Company making any attempt to stir up trouble in the Plant factory; that the whole story was simply this: that Mr. Plant had introduced some new lasting machines into his factory and that he increased the wages of the toe lasters. The operation of these machines was slower than the operation of the machines previously used, consequently the men earned less money. Mr. Plant increased the wages of the men operating these machines but did not increase the wages of the men who worked in the pulling-over operation connected with the lasting; that these latter formed a committee consisting of Morrison, Harrison, Epstein and Murphy, and went to Mr. Plant and asked for an increase of pay; that the increase was granted and there was no trouble whatsoever.

Mr. Winslow testified that some time in June, 1910, Willson told him that three Armenians came to him and asked him to assist them to start a strike in the Plant factory, and he, Winslow, instructed Willson to have nothing to do with them, and, so

far as he, Winslow, knew, the United Company paid no money whatsoever for any such purpose. (R. Vol. 1, p. 507, lines 30–44.)

Upon this charge the District Court found as follows:

> "The only evidence to show that Willson ever gave any such directions or assurances came from three witnesses, employees at the Plant factory in June and July, 1910, who gave their testimony in person before the court. No one else was present, according to their statements, at the various interviews they described between Willson and themselves during the two months just referred to. Willson having died in 1911, and before these charges were made, no direct contradiction was possible of their statements as to what was said by him to them.
>
> "He told them, according to their testimony, that if they would organize a strike at the factory and give him all the information they could about the Plant machines he would pay their expenses, get them jobs, and pay them also $2000 in cash (according to two of them)—$1000 (according to the other).
>
> "Willson never did pay them any money, as they all agreed. But their testimony was that they got about 300 men into an organization and spent about $1500 of their own money in doing so, mainly in entertaining the men who joined. According to their further statements, $600 was contributed by one of them, $500 by another, and $400 by a third; their wages at the time were $15 per week; these sums were the savings of eleven or twelve years; accounts, lists and vouchers containing details of their doings and expenditures, were kept, but all of these were either surrendered to Willson or destroyed by them. No written evidence of any kind was offered in support of their story.
>
> "It appeared that there was some prospect of trouble between Plant and the employees at the factory at the beginning of June, 1910, but, after meeting a committee with regard to an increase of pay asked for, Plant granted it and no strike or other trouble ever occurred. There was no proof whatever that he ever employed detectives to watch the three witnesses in question, or that any attempt by them at organizing a strike ever came to his knowledge.
>
> "The testimony of these three men was not corroborated by any others of the then employees at the factory. On the contrary, several of them, shown to have had ample opportunity for knowing the facts had there been any such organization attempted as testified to, denied any knowledge of such organization or of any such preparation for a strike.

"Winslow, president of the United Company, testified that Willson had told him, in June, 1910, that three Armenians had been to him asking that he furnish them with money to start a strike in the Plant factory, and that his instructions to Willson thereupon were to have nothing to do with them. No money of the United Company was ever paid out for any such purpose.

"Not only does the evidence of these three witnesses appear unworthy of belief in view of its improbability, its lack of corroboration, and the evidence tending to discredit it, but it is difficult to understand how the petitioner could seriously have expected the court to accept such testimony, or have considered itself justified in offering it." (Dodge, J., R. Vol. 1, p. 1151, line 30–p. 1152, line 34.)

29. Solomon N. Cutter.

The United States also claimed that the United Company had employed one Solomon N. Cutter to enter the employ of the Standard Shoe Machinery Company and obtain information as to its condition. (R. Vol. 1, p. 1084 (1).)

There was no evidence to support this charge. (Cutter's testimony will be found R. Vol. 1, p. 332.)

30. Harlow Shoe Finishing Machine Company.

The United States claimed that the Harlow Shoe Finishing Machine Company was engaged in manufacturing burnishing machines in competition with the Xpedite Company, and that in 1911 George H. Harlow, the president of the Harlow Company, was taken into the employ of the United Company. (R. Vol. 1, p. 1084 (2).)

There was no evidence to support this charge, although Edwin E. Bartlett of the Harlow Shoe Finishing Machine Company appeared as a witness for the United States. (R. Vol. 1, p. 942.)

31. Demonstration of Plant Lasting Machine.

The United States claimed that in 1910 agents of the United Company induced a former laster of the Plant Shoe Company to demonstrate a lasting machine. (R. Vol. 1, p. 1084 (3).)

This was not denied, but seemed to be a perfectly harmless performance.

32. Reece Buttonhole Machine Company.

The United States claimed that the Reece Buttonhole Company was engaged in the manufacture of buttonhole machinery; that the United Company in order to injure it induced two of its employees to enter the employ of the United Company. (R. Vol. 1, p. 1084 (4).)

There was no evidence in support of this charge.

33. Charles P. Stanbon.

The United States charged that Charles P. Stanbon was engaged in making stock-fitting machinery in competition with the United Company, and that to force said Stanbon to sell out the United Company induced certain of his employees to leave Stanbon and enter the employ of the United Company. (R. Vol. 1, p. 1085 (5).)

No evidence was offered in support of this charge.

34. Charles S. Johnson.

The United States claimed that one Charles S. Johnson was engaged in the manufacture of the Tripp Giant leveler; that Winslow, president of the defendant company, negotiated with said Johnson for the acquisition of his business; that a contract was prepared which differed from Johnson's proposition and Johnson refused to sign it; that thereupon Winslow said to Johnson: "'Johnson, you had better sign that contract. We are going to have your business anyway'"; and that six months thereafter the United Company began to manufacture machines which were duplicates of the Tripp Giant leveler. (R. Vol. 1, p. 1085 (1).)

In support of this charge the United States called Charles S. Johnson, who testified that he was connected with the Tripp Giant Leveller Company which put out a machine for leveling the bottoms of shoes; that in 1901 or 1902 he had a conference with Mr. Winslow and they came to a verbal agreement as to the acquisition of the company's business by the United Company; that a contract was prepared which was not satisfactory to Johnson and that he refused to sign it, and as he was going out Mr. Winslow suggested that he had better sign it because he was going to have their business anyway, or words to that effect; Johnson said: "I wouldn't say those were the absolute words, but that was the gist of the remark he made to me"; that shortly

after the United Company put a machine on the market substantially similar to the Tripp Giant leveler. (R. Vol. 1, pp. 304–305.)

On cross-examination Johnson said that there was an effort made by those in control of the Tripp Company to have the United Company buy the Tripp Company; that witness himself talked with Winslow for the purpose of selling it; that some verbal understanding was arrived at; that a paper was prepared which the witness thought did not embody all the terms of the oral agreement; that the meeting with Winslow was perfectly friendly and Winslow was courteous but businesslike (R. Vol. 1, p. 305, lines 21–33); that this was eleven years ago; that a Mr. Kelliher for the United States had been to see him about this matter and said in substance that he was employed by the United States to go around and see whom he could find who had complaints to make against the United Shoe Machinery Company, and inquired of the witness in substance whether he had any grievance; that he had a grievance against the United Company, and that he had written articles for trade papers hostile to it. (R. Vol. 1, p. 305, line 36 *et seq.*)

Upon this charge the District Court found as follows:

> "Mr. Winslow is also charged, in testimony given by Charles S. Johnson, with having said to him during negotiations in 1902 or 1903, regarding a sale of the Tripp Giant leveler, in which he was interested, to the United Company: 'You had better sign that contract because we are going to have your business any way.' But the negotiations did not result in a sale, and the Tripp Company's business, though sold out in 1905, was not acquired by the United Company. Not long after, according to Johnson's testimony, the United Company put on the market machines considered by him to be substantially the same as the Tripp Giant leveler, but there is no other indication of any interference with the Tripp Company or its business by the defendants." (Dodge, J., R. Vol. 1, p. 1148, lines 33–34.)

35. Frank L. Harmon.

The United States charged that Frank L. Harmon was an inventor of various shoe machines; that in 1905 Mr. Winslow was endeavoring to purchase Harmon's inventions, and told

Harmon he would see to it that Harmon didn't get any more money to work with; that he didn't have to buy Harmon's machine,—that he could have it if he cared for it and Harmon couldn't prevent it; that the United Company manufactured and leased machines infringing Harmon's patents without giving Harmon any compensation; that one H. A. Woodbury furnished Harmon money for experimenting, and negotiated with the United Company in the sale of Harmon's patent; that Woodbury assigned the patent to the company relying on representations that if the machine worked the company would pay a substantial sum; that the company tested the machine, which worked perfectly, but the company refused to pay any consideration for it. (R. Vol. 1, p. 1086 (2).)

In support of this charge the United States called Frank L. Harmon, who testified that he was developing some machines; that the witness [illegible] practical business ability and came to Mr. Winslow with the idea of getting information; that Winslow gave him some very good advice, to the effect that he was foolish to try to go into the machinery business with little capital; that all the companies were coming together to build their machinery on a large scale, and that he thought the witness would lose his time and money. Harmon said the substance of the conversation was that he could not compete with millions of dollars with a few thousands of dollars in the manufacture of machinery. (R. Vol. 1, p. 276.)

On cross-examination the witness said that this conversation occurred before the United Company came into existence. (R. Vol. 1, p. 277, lines 10–11.)

No evidence whatever was offered by the United States, other than this, in support of the Harmon allegation.

36. Euclid I. LaChapelle.

The United States charged that Euclid I. LaChapelle had invented an appliance for holding the uppers to soles during the sewing operation, and also an improvement on the pulling-over machine, and improvements on other machines; that the United Company took LaChapelle into its employ, representing that it would pay him a reasonable consideration for his invention; that subsequently LaChapelle was discharged and the United Com-

pany had perfected his inventions and placed them in operation without any consideration. (R. Vol. 1, p. 1086 (3).)

No evidence whatever was offered in support of this charge.

37. Nathaniel Sparks.

The United States charged that Nathaniel Sparks invented a heel-compressing machine and assigned it to William J. Young; that the United Company induced Sparks to make an affidavit denying that he had ever invented such a machine. (R. Vol. 1, p. 1087 (4).)

No evidence whatever was offered in support of this charge.

38. T. J. Edwards.

The United States charged that T. J. Edwards was engaged in the business of cutting stamps to be used in stamping shoes; that he was requested by the United Company to compile a catalogue of his stamp cuts; that he compiled such a catalogue but received no orders from the United Company, and that the United Company issued a catalogue which included those cuts furnished by Edwards, and that this catalogue ruined Edwards' business. (R. Vol. 1, p. 1087 (5).)

No evidence was offered in support of this charge.

39. Fortuna Machine Company.

The United States charged that the Fortuna Machine Company made a skiving machine; that the United Company also makes a skiving machine, closely resembling that of the Fortuna Company, which it represents to be a Fortuna machine, and discourages manufacturers from using the Fortuna machine, pretending that it is inferior. (R. Vol. 1, p. 1087 (6).)

No evidence was offered in support of this charge, although G. H. Diehl, Jr., president of the Fortuna Company since 1903, appeared as a witness for the United States. (R. Vol. 1, pp. 910–911.)

40. George E. Rollins.

The United States charged that George E. Rollins invented certain machines, and that after they were demonstrated to be a

success the United Company without any right put out a similar machine infringing Rollins' patents, and placed the same on the market in competition with Rollins' machines and destroyed the value thereof. (R. Vol. 1, p. 1087 (7).)

No evidence was offered in support of this charge.

41. A. McDowell.

The United States claimed that A. McDowell invented a spring heel shaver and negotiated with the United Company for its sale; that the United Company presently produced machines embodying the patented features of the McDowell machines and therefore destroyed the value of the same. (R. Vol. 1, p. 1087 (8).)

No evidence was offered in support of this charge, although V. H. McDowell, son of A. McDowell, appeared as a witness for the United States and testified that he was familiar with the machines put out by his father. (R. Vol. 1, p. 909.)

42. Charles L. Clifford.

The United States claimed that the defendants rendered a bill to Charles L. Clifford for royalties on shoes sewed on a Haverhill turn sewing machine. (R. Vol. 1, p. 1088 (1).)

In support of this charge they offered the evidence of Charles L. Clifford, whose evidence was excluded by the court. (R. Vol. 1, p. 362.)

43. Fred J. Thompson.

The United States claimed that in 1903 or 1904 one Fred J. Thompson was using two stitching machines of the Duplessis Company; that he later installed machinery of the United Company and was obliged to pay royalties to the United Company for all shoes manufactured by the Duplessis machinery. (R. Vol. 1, p. 1088 (2).)

No evidence was offered in support of this charge.

44. Alleged Wrongful Exaction of Return Charges.

The United States claimed that the defendants wrongfully exacted return charges from shoe manufacturers on leased ma-

chinery in instances where such charges did not properly apply. (R. Vol. 1, p. 1088 (e).)

No evidence was offered in support of this charge.

45. Alleged Arbitrary Increase of Charges.

The United States claimed that the defendants had arbitrarily increased the installation, return and other charges on machinery operated by manufacturers who operated machinery of competitors. (R. Vol. 1, p. 1088 (f).)

There was no evidence to support the charge.

46. Dodge Shoe Company.

The United States claimed that the N. D. Dodge Shoe Company were using Haverhill Shoe Machinery Company machines, but were forced to discontinue their use when they went to the United Company for welt machines; the United Company refused to put in welt machines unless Dodge paid what would be a fair price for the machines when installed, "and yet which gave them no equity in the machines, and they must then pay the same royalties as others who made no initial payment. The United Company required them not only to discontinue the use of the sewing machines, but the channeling machines also." (R. Vol. 1, p. 1088 (1).)

No evidence was offered to support these charges. On the contrary, William G. Dodge testified as follows: "I got the Haverhill machines in October or November, 1911, but I have not got them now. . . . I discontinued the use of the Haverhill machines after three or four months because the United Company installed some machines that we felt were more efficient." (R. Vol. 1, p. 354.) Further on cross-examination the witness testified: "It was while we were waiting for the new Model G machines. . . . As soon as the Model G was ready we installed it and discontinued the use of the Haverhill machines." (R. Vol. 1, p. 355, lines 12–24.)

47. Alleged Sales Below Cost.

The United States claimed that the defendants have offered or granted special terms and prices to shoe manufacturers on ma-

chinery, parts and supplies, at times below cost, to induce them to withdraw their business from competitors. (R. Vol. 1, p. 1089 (g).)

There was no evidence to support this charge.

48. E. P. Reed Company.

The United States charged that in 1900 E. P. Reed Company were using machines of the Standard Shoe Machinery Company; that defendants offered to install their machines free of charge if the Reed Company would discontinue the use of Standard machines. (R. Vol. 1, p. 1089 (1).)

No evidence was offered in support of this charge.

49. Alleged Refusal to Furnish Machinery, etc.

The United States charged that the defendants have refused or delayed unnecessarily in furnishing machinery parts or supplies to shoe manufacturers also operating machinery furnished by competitors or owned by said shoe manufacturers. (R. Vol. 1, p. 1089 (h).)

No evidence was offered in support of this charge, except the evidence of Richard H. Long, which has been discussed in the brief, which was shown to be unreliable and which was contradicted by the evidence of Col. King, Mrs. Hewitt and Mr. Batchelder. (See Brief for Appellees, p. 164.)

50. Alleged Threats to Remove Machinery.

The United States charged that the defendants have threatened to remove their leased machinery from factories wherein supplies purchased from competitors have been used. (R. Vol. 1, p. 1089 (i).)

There was no evidence to support this charge, unless it was found in the testimony of Irving A. Hadley, which has already been discussed, which testimony was contradicted by the testimony of Belcher, Roberts, Tierney and others. (*Supra*, pp. 111-112.)

51. Alleged Refusal to Furnish Individual Machines.

The United States charged that the defendants have refused to furnish individual machines to shoe manufacturers operating ma-

chinery of competitors, such refusals being either absolute or modified by demands for prohibitive installation charges. (R. Vol. 1, p. 1089 (j).)

No evidence whatever was offered of any absolute refusal by the United Company to furnish machines under these conditions. Indeed, the testimony of Edwin A. Webster, a witness for the United States, showed that the United Company was constantly furnishing machines to be used in connection with machines of other manufacturers.

Webster, a director of the Haverhill Shoe Machinery Company, testified as follows: "Our machinery is being used side by side with the United machinery in thirty-eight factories, producing the same product. Sometimes a manufacturer will use our turn sewing machine and the United Company's heeling apparatus and sometimes he will use our heeling apparatus and the United Company's turn sewing machines, or will mix them up on some other plan." (R. Vol. 1, p. 299, lines 32–37.) (See also Plaintiff's Exhibit 161, showing machines of the Haverhill Shoe Machinery Company used in connection with machines of the United Shoe Machinery Company.)

The defendants have always been ready to supply machines of all kinds to be used in connection with machines of any other manufacturer upon the same installation charges which prevailed prior to the organization of the United Company. (R. Vol. 1, p. 514, lines 11–43, and Defendants' Exhibit 40.) Where a lessee desired an independent lease, the initial premium was always the same or a less sum than had been required before the United Company was formed.

52. Carleton & Hunt.

The United States charged that Carleton & Hunt were using machines of the Haverhill Shoe Machinery Company and desired to obtain welt machines of the defendants, and were informed by the defendants that they would have to discontinue the use of the Haverhill machinery before the defendants' machinery would be installed, or pay an installation charge which was prohibitive. (R. Vol. 1, p. 1089 (1).)

The only evidence offered in support of this charge was the hearsay statement made by Louis H. Harriman (R. Vol. 1, p.

320, lines 1–6) to the effect that Mr. Hunt had told him that he had tried to get a set of United machines for making welt shoes from the United Company, and that he could not get them unless he discontinued using the Haverhill turn sewing machine.

53. Ira J. Webster.

The United States charged that in June, 1912, one Webster had been operating two Pettingill nailing machines, which he owned outright, and that he desired to obtain from the defendants a pulling-over machine; that because he was operating independent machinery the defendants demanded excessive installation charges; that he was unable to make satisfactory arrangements with the defendants and the Pettingill machines had been removed from his factory. (R. Vol. 1, p. 1089 (2).)

In support of this charge the United States called Ira J. Webster, who testified that he had Pettingill nailing machines; that he applied to the United Company for pulling-over and toe-capping machines; that no objection was made to furnishing him with them; that an installation price was to be paid if the machines were used with the Pettingill nailer that would cost more than if he used their entire machinery. He did not remember what this charge was. (R. Vol. 1, p. 362.)

On cross-examination he said that before he made his application he used some of the machinery of the United Company and also a Pettingill nailer from the Haverhill Company. Referring to agents of the United Company he further testified: "They offered me two alternatives; they said they would furnish me with the toe-capper and puller-over if I would pay an installation charge and a royalty on them, or they would furnish me a full line of machinery at wholesale rates, cheap. That is all there is about that transaction. I don't remember what the installation charge was." (R. Vol. 1, p. 363, lines 4–13.)

TESTIMONY OF COMPETING SHOE MACHINERY MANUFACTURERS CALLED BY THE UNITED STATES AS TO CONCERNS COMPETING WITH THE UNITED COMPANY.

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THE TESTIMONY OF COMPETING SHOE MACHINERY MANUFACTURERS AND THEIR REPRESENTATIVES, CALLED BY THE UNITED STATES IN PRESENTING ITS DIRECT CASE, PROVES THAT THERE ARE MANY AND SUBSTANTIAL CONCERNS OTHER THAN THE UNITED COMPANY ACTUALLY FURNISHING SHOE MANUFACTURERS WITH MACHINES.

In addition to the evidence which the defendants introduced, including various exhibits, catalogues of shoe machinery manufacturers, etc., as well as the testimony of Mr. Winslow, the following testimony was given by witnesses for the United States establishing the fact that a large number of concerns in addition to the United Company are, in fact, in the market supplying shoe machinery to the trade.

Duplessis Shoe Machinery Company.
Hamel Shoe Machinery Company.

Chas. A. Hamel, vice-president of the Hamel Shoe Machinery Company, the successor of the Duplessis Shoe Machinery Company, testified that the Duplessis Company began business at Haverhill in 1903 and it and Hamel, as its successor, have carried

on business since without interruption, having sold twenty or more types of machines used for bottoming shoes in the United States to the extent of between 400 and 450 separate machines, not counting the practically equal number sold abroad, and including 86 welt and turn machines, 41 stitchers, 70 insole channelers, 24 loose nailers, and 22 sluggers. (R. Vol. 1, p. 326.) Hamel named four other shoe machinery concerns which the Hamel Company had taken over and stated that that company manufactured at Haverhill, in addition to the machines made at Lynn, ten different types of machines, including welt and turn sewing machines and outsole lockstitch machines and also leveling, molding and various metallic fastening machines. He said that his concern employs "from sixty to sixty-five men at both our shops." (R. Vol. 1, p. 944, lines 44–45; p. 945, lines 1–42.) Summing up, he said: "We have a complete set of machines for making turn shoes and a complete set of machines for making welt shoes"; also "a complete set of metallic fastening machines for either a welt or McKay shoe." (R. Vol. 1, p. 327, lines 15–19.)

Hamel testified that Mr. Sullivan of the Singer Sewing Machine Company had become the treasurer of the Hamel Company. (R. Vol. 1, p. 945, lines 34–40.)

Thomas C. Rowen, the president of the Hamel Company, named a dozen types of machines, including buffing, breasting and scouring machines, manufactured at Lynn where he said "thirty-five or forty men" were employed and added that "our principal business is with shoe manufacturers. We do not do any business with shoe repair men." (R. Vol. 1, p. 946, lines 2–20.)

Catalogues of both the Duplessis and Hamel Companies are contained in Defendants' Physical Exhibit 321 and either Mr. Hamel or Mr. Rowen testified to manufacturing each of the machines appearing in the Hamel catalogue. (R. Vol. 1, p. 946, lines 21–26.)

Haverhill Shoe Machinery Company.

Edwin A. Webster, an inventor, and a director of the Haverhill Shoe Machinery Company, connected therewith since its formation in 1907, testified:

> "The Haverhill Shoe Machinery Company manufactures turn channel machines for turn soles, welt innersole lip turner, welt groover and beveler, welt beaters, turn sewers and welters, heel-nailing machines, heel-attaching machines, heel-trimming machines, heel-seat keying machines, keyer or beader, and turned sole-molding machines" (R. Vol. 1, p. 291, lines 1–6);

also "heel breasting machines." "We handle but do not build the Webster leveler." (R. Vol. 1, p. 298, line 42; p. 299, lines 2–3.) He testified further that his company were agents for lasting machines, rapid outsole stitchers, loose nailers and sluggers—metallic fastening machines. "We handle the Hamel machine for slugging heels and one turn machine." Some lasting and slugging machines are obtained from Gimson & Company and the Standard Rotary Company, of England. (R. Vol. 1, p. 298, lines 1–10, 44–45; p. 300, lines 40–45; p. 301, lines 1–3.)

In discussing certain of these machines more in detail, Mr. Webster testified that the Haverhill Company had put on the market 25 heel nailing machines ("Pettingill" type—R. Vol. 1, p. 302, lines 1–2), 65 welt and turn machines, and 60 or 65 turn channeling machines with 12 to 15 in stock. He admitted that the turn molding machine, of which they had put out 40 or 50, is "a copy of the Goodyear machine" and that their turn channeling machine and welt innersole turner and welt beater correspond to machines put out by the United Company "for performing the same kind of work" (R. Vol. 1, pp. 291–292).

Summarizing, he said: "We have machines with fifty-eight manufacturers, of whom thirty-eight also use United machines" side by side with Haverhill machines. (R. Vol. 1, p. 299, lines 5–7, 32–45.)

> "We advertise that we furnish any manufacturer a full line of all kinds of shoe machinery, whether it is for welts or McKays, or turns or pegs, or anything else. We are prepared to make good if our people that manufacture machines don't go back on us." (R. Vol. 1, p. 301, lines 5–9; see also p. 298, lines 13–15.)

Mr. Louis H. Harriman, treasurer of the Haverhill Company and having "general oversight of its business" (R. Vol. 1, p.

317, line 45; p. 318, lines 2–3), furnished a long list comprising five different groups of "Past and Present Users of Machines of the Haverhill Shoe Mchy. Co." In connection with the machines sold to the Criterion Shoe Co., Beverly, Mass., the list contains this note: "A line of Welt machinery independent of U. S. M. Co. including Welter from Haverhill Co." (Pltff.'s Exh. 161, R. Vol. 4, pp. 1118–1122.)

R. H. Long Machinery Company.

Richard H. Long, treasurer of the R. H. Long Machinery Company (R. Vol. 2, p. 2135, Cr. Ints. 51–53), testified:

> "We manufacture machines for lasting and welting and stitching—sole stitching—leveling, heeling, some metallic fastening machines, and a number of others" (R. Vol. 1, p. 232, lines 4–6),

comprising fifty types in all, for the manufacture of welt shoes. (R. Vol. 1, p. 271, lines 10–15; Defts.' Physical Exhs. 72, 73, *i.e.*, catalogues of the Long Company.) Among the machines which he had actually sold he named "sole welting, stitching, some metallic machines" bought by "Mr. Taylor, of the Taylor Shoe Company, of Lynn," who is using no machinery of the United Company. (R. Vol. 1, p. 232, lines 23–31.)

Long stated that he had sold fifty to one hundred welters, stitchers "and some other machines" "to shoe manufacturers," in addition to machines sold "to cobblers—shoe repairers." (R. Vol. 1, p. 233, lines 8–14.) He stated further that he had on hand three or four hundred "rapid outsole lock-stitch machines," briefly referred to as stitchers, thirty or forty welting machines, twenty to twenty-five or more lasting machines and three or four heeling machines, not including metallic fastening machines being built and not including machines which he was actually using in his own factory. (R. Vol. 1, p. 274, lines 36–45; p. 275, lines 1–5.)

Long stated that since 1907, when he fitted up his own factory with machines procured from concerns other than the United Company, he had been making shoes entirely without United Company machines (R. Vol. 1, p. 231, lines 23–43; p. 232, lines 7–13), his daily capacity being "five or six thousand pairs . . . almost exclusively" welts (R. Vol. 1, p. 224, lines 39–44).

John J. Doidge, general manager of the Long Company, testifying a week later, confirmed generally the above statements of Mr. Long, but stated, "We have practically completed four hundred and fifty out-sole stitching machines"—copied exactly, except for patented parts, from the old Goodyear machines. (R. Vol. 1, p. 345, lines 6–14, 39–40.) This is a larger number than that set by Long. Among the many other machines which Doidge named as being made by the Long Company were innersole and outersole machines, welt machines, sole laying and leveling machines, heeling and lasting machines. He said:

> "We do not make all the machines shown in our catalogue. We are getting ready to make about all. Some auxiliary machines we buy from others. We have had as many as seventy-five employees, at present about eighteen. There are three buildings to our factory" (R. Vol. 1, p. 346, lines 16–20),

and he summed up with the statement: "We are ready to supply a full line of machinery for welt and turn shoes and we so advertise" (R. Vol. 1, p. 345, lines 43–44; Defts.' Physical Exhs. 72, 73).

Boylston Manufacturing Company.

George W. Maloy of Boston, who has for five or six years been "in charge of the sales department of the Boylston Manufacturing Company," testified:

> "We make power treeing machines, hand treeing stand, Julian rounder, Union edge setter, Webster buffer, Webster cleaner, Globe heel scourer, heel-finishing machine of hot wax type, and heel-blacking machine. That is all. The heel-blacking machine and the heel-finishing machine have been put out recently. They are adapted to all kinds of shoes. They are sold outright, except the power treers which are put out on royalty. Many are sold to customers of the United Company all over the country, I suppose." (R. Vol. 1, p. 302, lines 16–25.)
>
> "We have placed bottoming machines in the factories on trial but never tried to sell or lease any. We placed them in our own factory at Fair Haven and in a factory at Pepperill run by the Buffalo Shoe Company." (R. Vol. 1, p. 301, lines 29–32.)

Mr. Maloy affirmed that "we are offering all of the machinery named in" the Boylston catalogue. (R. Vol. 1, p. 302, lines 38–39; Defts.' Physical Exh. 76.)

From his knowledge as to parties making shoe machinery in the United States, he further testified:

> "Welting machines are put out by the Hamel Shoe Machinery Company, of Haverhill, the Haverhill Shoe Machinery Company, R. H. Long Company, of South Framingham, Champion Shoe Machinery Company, of St. Louis, and Victor Shoe Machinery Company, of Boston. I believe the two last confine their business to repairers and do not furnish machines to shoe makers. Outsole stitchers are made by R. H. Long & Company and Union Lockstitch Company of East Boston. . . . The Haverhill Shoe Machinery Company puts out the Pettingill heeler. . . . Long has a loose nailer." (R. Vol. 1, p. 301, lines 35–43; p. 302, lines 1–3.)

John F. Cavanaugh of Ashland, Mass., "salesman of shoe machinery connected with the Boylston Manufacturing Company," which had taken over the Flagg Manufacturing Company in 1904, and called by the United States in rebuttal, testified that the Boylston Company had put out lasting, pulling-over, slugging and heel finishing or blacking machines, referring specifically to about forty heel-finishing machines which had been placed in five localities, east and west. He also mentioned a large number of foreign concerns in the shoe machinery business including several "good-sized concerns" some of which "manufacture complete lines of shoe machinery" and at least two of which, he stated, were "ready to do business in the United States." (R. Vol. 1, pp. 954–957.)

Charles S. Johnson of Lynn, now connected with the Boylston Manufacturing Company, testified that it absorbed the Tripp Giant Leveler Company in 1905 and that the Tripp Company "made several types of levelers for leveling the bottoms of shoes of all kinds." "We had several machines; direct pressure leveler; rolling pressure leveler, called Giant leveler; and an improvement on it, the new Giant leveler. Our new Giant leveler sold for $350." (R. Vol. 1, p. 304, lines 29–33; p. 305, lines 6–9, lines 14–20.)

F. A. Brackett, formerly employed by the Boylston Manu-

facturing Company at Fairhaven, testified: "They had two welting machines which were manufactured by the Boylston Manufacturing Company." "We had no machines obtained from the United Company. We got them all elsewhere, and we made welt shoes without any machines from the United Company." (R. Vol. 1, p. 951, lines 11–18, 29–32.)

Harrie A. Ballard testified that he had gotten out a stitching machine and a welt machine which had been used in 1907 at Fairhaven. (R. Vol. 1, p. 958, lines 3–4, 35–40.)

Jackson Johnson, a member of the "Shoe Manufacturers' Alliance" and president of the International Shoe Company, which is financially interested in the Boylston Company, testified that the "Boylston Company contemplates making a full line of shoe machines." (R. Vol. 1, p. 170, lines 31–35; p. 171, lines 19–23.)

Union Lockstitch Company.

Frank W. Merrick of Boston, president of the Union Lockstitch Company, testified:

> "That company is located in East Boston and manufactures shoe machinery. We manufacture a straight needle lockstitch machine for saddlery and shoe work and a curved-needle stitching machine for shoe work. We make a lock-stitch welt machine, a sole-fitting machine, lasting machines, and two metallic fastening machines, used in connection with lasting operations. I have been building shoe machinery for thirty-two years, mostly stitching machinery. I have built the Merrick stitching machine, used almost exclusively on upper fitting; the Puritan machine used both on upper fitting and sole stitching and also harness and saddlery work; and a small chain-stitch machine, called the Rapid machine, for a similar class of work. After that I followed with the lock-stitch harness machine, which is a straight needle, waxed-thread stitching machine that can be used for certain kinds of sole stitching, and then with the curved-needle machine, designed expressly for stitching outsoles, both welted and McKay welt and McKay fair stitch shoes. It will do fair stitching on any type of shoe. At present we are putting the straight-needle lock-stitch machine on the market. We have between three hundred and fifty and four hundred lock-stitch machines out. We first engaged in the manu-

> facture of the lock-stitch machine in 1904. We sell those machines outright at seven hundred and fifty dollars, five off in thirty days. The machines are all over the United States. About seventy-five of the straight-needle machines are in shoe factories and the balance were placed among harness and saddlery people. We are attempting to market the curved-needle machines, of which three have been sold to shoe factories." (R. Vol. 1, p. 199, lines 9–37.)

One other has been sold while three others have been completed and a dozen nearly assembled. (R. Vol. 1, p. 199, lines 39–40; p. 207, lines 5–6.)

> "Our straight-needle machine was ready for the market about 1907, the curved-needle machine about 1909. . . .
>
> "The United Company has a curved-needle machine for doing similar work to ours. The Campbell-Bosworth Company has a machine for doing work similar to our straight-needle machine." (R. Vol. 1, p. 201, lines 13–20.)

Geo. R. Harsh of Milwaukee, a shoe manufacturer, testified: "We formerly used the Goodyear out-sole stitcher to stitch the two soles of a nailed shoe together before nailing them to the upper. We substituted the Union lock-stitch machine for that operation." "The Union lock-stitch machine is better and more rapid for that purpose." (R. Vol. 1, p. 195, lines 34–37; lines 23–24.) Other shoe manufacturers referred to this machine (see R. Vol. 1, p. 160, lines 14–15; p. 216, lines 39–40).

Peerless Machinery Company.

Lorenze Muther of Newton testified that the Peerless Machinery Company—

> "manufactures shoe machinery, principally what is called stitching-room machinery; *i.e.*, eyelet-setting machines, skiving machines, hook-setting machines, perforating machines, sanding machines, pasting machines, cementing machines, folding machines, button-sewing machines, and a tip press belonging to the finishing-room department of the factory. We have both tip press and tip perforating machines. Similar machines are put out and sold outright by the general department of the United Company." (R. Vol. 1, p. 303, lines 1–12.)

"Our machines relate to work on uppers of shoes, except the sanding machine which finishes or roughs the sole before it is put on the shoe. . . . We publish a catalogue." (R. Vol. 1, p. 303, lines 23–27.)

He referred to different concerns making eyelets and particularly to the Atlas Tack Company which "makes various kinds of eyelets for shoes," stating:

"We sell more Atlas than United eyelets, and our customers are altogether shoe manufacturers. . . . Our machines are sold to shoe manufacturers who use other machines obtained from the United Company. That company has machines for performing similar operations. Our machines and theirs are sometimes used side by side in the same factory." (R. Vol. 1, p. 303, lines 15–17; p. 304, lines 2–7, 10–13.)

George Knight testified:

"The Peerless Company is making and supplying the eyeletting machines, which we formerly made, in quite large quantities. They are used by shoe manufacturers." (R. Vol. 1, p. 903, lines 37–39.)

Atlas Works.

Alex Stone of New York, formerly "export manager for the Atlas Works at Leipsic, Germany," testified:

"My concern makes a complete line of shoe machinery, including welters and stitchers, heeling machines and lasting machines." "They are prepared to furnish a complete line of shoe machinery for welt, McKay, and turn shoes." "The Atlas factory employs three hundred men in Leipsic. It has a capacity of three of each of the principal machines a week, so that each week they could furnish three equipments." (R. Vol. 1, p. 339, lines 40–44; p. 340, lines 9–11; p. 342, lines 8–9; p. 343, lines 41–43.)

"I first attempted to install machinery for the Atlas Works in this country in December, 1910." "I offered to equip the Roberts, Johnson & Rand factory with a complete equipment for McKay, welt, and turn shoes, except a few minor machines" which could be bought from "other people." "I offered to equip the Hamilton-Brown Company with our full line. I offered to sell the machines out-

right." (R. Vol. 1, p. 340, lines 3–9; p. 342, lines 16–20, 43–44; p. 343, lines 1–2.)

"I sold machines to nail wooden heels on shoes of the turn variety to Evans in Wakefield, and Guptil in Haverhill. Those were the only two machines I sold in the six weeks I was here." (R. Vol. 1, p. 341, lines 21–23.)

An Atlas catalogue will be found as Defendants' Physical Exhibit 319.

Seelye Manufacturing Company.

Nelson H. Seelye of Winchester, Mass., testified that he manufactures—

"machines which, used in connection with dies, cut out material such as leather, cloth, rubber, etc. I have been in that business since 1889. The company was first called the Hawkins Machinery Company," later becoming the Seelye Manufacturing Company (Defts.' Exh. 336, R. Vol. 5, p. 891), "and made beam die presses or dinking machines for dieing out the soles of shoes, among other things. The machine for cutting the upper is the clicking machine. We were engaged in that business when the United Company was formed. We sold from fifty to one hundred per year to shoe manufacturers up to that time. We continued to place on the market our machines after the formation of the United Company." (R. Vol. 1, p. 327, lines 30–40.)

"The United Company offered its machines for sale at the same price as ours, and it also offered them on an annual rental of fifteen dollars. We never tried to rent any of our machines, but adhered to our old plan of one basis, sale only." (R. Vol. 1, p. 328, lines 18–21.)

THE TESTIMONY OF COMPETING SHOE MACHINERY MANUFACTURERS, CALLED BY THE UNITED STATES IN REBUTTAL, PROVES THAT THERE ARE IN THE FIELD MANY CONCERNS ACTUALLY BUILDING AND PUTTING OUT SHOE MACHINERY IN COMPETITION WITH THE UNITED COMPANY.

Among the large number of shoe machinery manufacturers and dealers who testified for the United States in rebuttal the testimony of the following will now be referred to briefly, and for convenience they will be taken up, as a rule, in the order in which their testimony appears in the record since they were called at about the same time and in reply to the testimony of William R. Sampson, witness for defendants, who produced, in addition to a number of loose catalogues (Defts.' Physical Exhs. 312–320), two large portfolios, one of which (Defts.' Physical Exh. 321)—

> "comprises letters, catalogues, and advertisements of different machines that are offered for sale and advertised in this country by manufacturers of shoe machinery. There are 116 manufacturers represented. . . . All of these concerns are still engaged in business." (R. Vol. 1, p. 836, lines 33–42.)

The other portfolio (Defts.' Physical Exh. 311) comprises additional catalogues of competing shoe machinery manufacturers. (R. Vol. 1, p. 836, lines 43–44; p. 837, lines 1–3.) All of these exhibits are indexed in Defts.' Exh. 336, R. Vol. 5, pp. 849–905. In the same connection, Mr. Sampson furnished a "list of machines offered by shoe machinery manufacturers and dealers other than United Shoe Machinery Company for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, dieing-out machines and clicking machines." (Defts.' Exh. 337, R. Vol. 5, pp. 906–935.)

As we shall now proceed to point out in detail, practically all of the machines of the manufacturers and dealers referred to below are in competition with similar machines of the United Company.

Edwin B. Stimpson & Son.

Edwin B. Stimpson of Brooklyn, a manufacturer of machinery for forty years, testified: "we can supply strip cutters" which can be used "to cut strips of welt." (R. Vol. 1, p. 882, line 38; p. 884, lines 3–12.) Other witnesses testified that "by an adjustment of the knives" a strip cutter can "be converted into a machine for flexing, and it has been so used. It is sometimes known as an insole flexer." (R. Vol. 1, p. 885, lines 43–44; p. 886, line 1; p. 890, lines 23–25.) Stimpson finally stated that the only machines "which I have placed with shoe manufacturers within the last five years are the pinking and perforating machines, which are used for ornamental perforations." (R. Vol. 1, p. 884, lines 15–19.)

All of these machines are in direct competition with machines of the United Company. (Defts.' Exhs. 227, 232, R. Vol. 5, pp. 425, 426, 482, 483, 498.)

Edward E. Spencer & Company.

Edward E. Spencer, Jr., of New York testified that the Spencer Company did a business in shoe machinery and accessories, building "channeling, rolling, splitting, impresssion stitch, buffing, and eyeleting machines"; also strip cutters. (R. Vol. 1, p. 885, lines 1–6.)

Mr. Spencer also testified that "John D. Randall & Company of Cincinnati put out machines for harness trade. The only machines put out by them which could be used in the shoe trade were strip cutters." (R. Vol. 1, p. 885, lines 17–19.)

All of these machines are in direct competition with machines of the United Company. (Defts.' Exhs. 227, 228, 246, R. Vol. 5, pp. 425, 437, 684, 685, 689.)

L. L. Barber & Company.

William L. Barber testified that his father had been in "business continuously" from 1859 to 1911, the name of the concern being L. L. Barber & Company.

> "The machines which we made which could be used in the manufacture of shoes were presses, dies for perforating

toe caps, and perforating machines for perforating uppers, and some smaller attachments which were used upon Singer sewing machines for stitching uppers." (R. Vol. 1, p. 887, lines 7–26.)

The United Company also puts out machines of these several classes with the exception of the attachment for the Singer machine. (Defts.' Exhs. 227, 232, 246, R. Vol. 5, pp. 427, 482, 483, 687.)

Leslie L. Hartwell.

Leslie L. Hartwell of Revere, superintendent for A. G. Walton & Company, testified: "I have put out a few machines which can be used in manufacturing shoes. They were a grooving machine, a sanding machine, a heel-building machine, and a counter-dividing machine." "Each of my machines had something to do with the bottom before it was attached to the upper." "I made some of the heel-building machines for our own concern and then sold the rights to manufacture them to the Young Machinery Company." "The machine is used by heel manufacturers, and by shoe manufacturers who make their heels. It is the universal heel-building machine today." (R. Vol. 1, p. 887, lines 43–44; p. 888, lines 1–27.)

All of the machines above mentioned are in direct competition with machines of the United Company. (Defts.' Exhs. 227, 228, 232, 246, R. Vol. 5, pp. 426, 434, 508, 685, 688.)

J. S. Wheeler & Company.

Joshua S. Wheeler of Winthrop, "principal owner of the business of J. S. Wheeler & Company," testified that that concern makes welt cutting, counter-dividing and other new machines. "We also rebuild shoe machinery" such as "vamp machines," "sole cutters," "National stitchers" and "Puritan stitchers." (R. Vol. 1, p. 889, lines 42–44; p. 890, lines 1–17.)

All of these machines are in direct competition with machines of the United Company. (Defts.' Exhs. 227, 228, 232, R. Vol. 5, pp. 425, 426, 435, 526; also Vol. 2, p. 2244.)

Puritan Manufacturing Company.

John H. Lingley of Brockton, manager of the Puritan Mfg. Company, after mentioning a half-dozen types of machines sold by his company, said:

> "Our welt-seaming machine attaches a McKay welt to the sole before it is laid. Our Puritan fair-stitching machine and our vamp-welt-seaming machine are used in the operation of attaching the sole to the upper. All the machines mentioned are sold to shoe manufacturers." (R. Vol. 1, p. 892, lines 4–9.)
>
> "We sell a good many Puritan fair-stitch machines, and have probably sold around a thousand since we first went into business in 1892 or 1894." (R. Vol. 1, p. 891, lines 36–38.)

The stitchers which the United Company puts out in the Goodyear Department compete with these machines of the Puritan Company in attaching soles to welts. (Defts.' Exhs. 228, 232, 235, R. Vol. 5, pp. 439, 505, 556.)

Victor Shoe Machinery Company.

L. E. Johnson, of the Victor Company, testified that in four or five months they have delivered "thirty-two lock-stitch machines to small shoe manufacturers." (R. Vol. 1, p. 893, line 24.)

> "We have been putting out a rough rounder and channeler longer than that. It is a machine intended to perform an operation on the sole of a shoe, for completing the work of attaching the sole to the upper." (R. Vol. 1, p. 894, lines 6–12.)

He referred to five or six other machines put out by his company and some similar machines put out by the Champion Shoe Machinery Company or the Universal Shoe Machinery Company and the Specialty Shoe Machinery Company, all of Missouri. Some of these machines were intended for the "repair trade," but some were for the "shoe factory trade" and "could be used on a new shoe" (R. Vol. 1, pp. 893–895). Among the machines put out by these companies, he mentioned "a lock-stitch machine" and "a welt machine." (R. Vol. 1, p. 893, lines 40–42; see also p. 921, lines 17–22.)

All of these machines are in direct competition with machines of the United Company. (Defts.' Exh. 232, R. Vol. 5, pp. 512, 513, 515, 516.)

George Knight & Company.

George Knight of Brockton stated that his concern had "put out a power gang eyeletting machine" and also makes—

> "tip-perforating presses (models E, F, & G), hand, foot, and power tip-punching machines, vamp creasers, feather edgers, lip turners, and K and K cementing machines. We do make all of these. We have made heel shaving, lining sticking, and heel building machines in the [about 29] years I have been in business." (R. Vol. 1, p. 902, lines 40–41; p. 903, lines 28–33.)

The United Company puts out machines in direct competition with all of these Knight machines. (Defts.' Exhs. 227, 228, 232, 235, 246, R. Vol. 5, pp. 427, 431, 483, 494, 497, 498, 500, 503, 527, 634, 684.)

Kimball Brothers & Sprague.

Fred S. Sprague, of Kimball Brothers & Sprague, Brockton, testified that they "make a welt laying machine" and "sell it to shoe manufacturers." (R. Vol. 1, p. 904, lines 1–7.)

The United Company has two competing models of welt laying machine. (Defts.' Exh. 232, R. Vol. 5, p. 507.)

Thomas Bostock.

Thomas Bostock of Brockton named ten different machines which he was

> "making right along," each performing "an operation which is either preparing or finishing the bottom of the shoe before or after it is attached to the upper, or getting the upper ready for attachment to the sole." (R. Vol. 1, p. 905.)
>
> "We have put out as many as one hundred heel building machines a year," mostly to shoe manufacturers. (R. Vol. 1, p. 904, lines 42–43; p. 905, lines 36–40.)

The machines which he named comprise, in addition to the heel building machine, a "toe softener, a heel gouger, a cap

(tap) cutter, a spring heel scarfer, a rand turner, a rand chopper, a welt slasher, a rand cutter, and a box toe press."

The United Company has machines which directly compete with practically all of these Bostock machines. (Defts.' Exh. 232, R. Vol. 5, pp. 497, 498, 504–510.)

Carlson Brothers.

Carl A. Carlson of Brockton testified: "We make a toe softening machine used for softening the box of the shoe before it is lasted. . . . They are used altogether by shoe manufacturers." (R. Vol. 1, p. 906, lines 1–7.)

The United Company puts out a machine for the same purpose. (Defts.' Exh. 232, R. Vol. 5, pp. 509, 510.)

Albert G. Brewer.

Albert G. Brewer of Natick testified: "I make a McKay welt-slashing machine, which I sell to shoe manufacturers." (R. Vol. 1, p. 907, lines 13–16.)

The United Company puts out a machine for the same purpose. (Defts.' Exh. 232, R. Vol. 5, p. 506.)

Tower Brothers.

John M. Tower of Tower Bros., Hudson, Mass., named eight machines made and put out by his concern which "all have to do with finishing the sole or the heel after it is attached to the upper" and also two more "for dieing out the sole."

The names of these ten machines as given by Mr. Tower follow: "high-speed buffer, beveling machine, edge trimmer, edge scourer, stamping machine, heel trimmer, rotary edge setter, power stripping machine," "vamp cutter," "dieing-out" machine. (R. Vol. 1, p. 908, lines 10–17.)

All of these machines are in direct competition with machines of the United Company. (Defts.' Exhs. 228, 232, R. Vol. 5, pp. 434, 480, 481, 496, 501, 521–526.)

J. S. Holt Co. (Inc.).

John Bulmer of Boston, superintendent of the Holt Company, testified that his "company is engaged in the business of second-hand shoe machinery." He stated we "rebuild" McKay sewing machines. (R. Vol. 1, p. 908, lines 19–41.)

The United Company is one of the many concerns putting out McKay sewing machines. (R. Vol. 1, p. 858, lines 35–45; p. 859, lines 1–21.)

Union Special Machine Company.

Alonzo H. Hatch, New England manager for the Union Special Machine Company, stated that most of his company's machines were used "for performing operations for preparing the upper for the lasting operation," but that they had an "overedge machine" and a "butting machine" "used for preparing an imitation Gem insole" and that they had "fitted up one machine especially for making a corded welt." (R. Vol. 1, p. 909, lines 25–37; p. 910, lines 8–10.)

While the United Company does not compete with the Union Special Company with respect to machines for sewing uppers, it does have various machines for preparing Gem insoles and for making welts. (R. Vol. 2, pp. 2243, 2247.)

Shawmut Machinery Company.

Frank P. Emerson of the Shawmut Machinery Company, of Boston, testified that his company made and put out to shoe manufacturers a McKay sewing machine of improved design as well as a vamp and lining cementing machine, a power hammer, a tip scouring machine, and a seam rubber. (R. Vol. 1, p. 910.)

All of these machines are in direct competition with machines of the United Company. (R. Vol. 1, p. 858, lines 35–45; p. 859, lines 1–21; Defts.' Exh. 232, R. Vol. 5, pp. 482, 483, 484, 490, 527.)

Fortuna Machine Company.

George H. Diehl, Jr., of New York City, president of the Fortuna Machine Company organized in 1903, testified that

they "manufacture skiving machines for skiving the uppers, vamps, and all parts of shoes." (R. Vol. 1, p. 910, lines 44–46; p. 911, lines 1–3.)

The United Company puts out two similar machines in direct competition with the Fortuna machine. (Defts.' Exh. 232, R. Vol. 5, pp. 481, 509.)

Brockton Heel Company.

Wendell P. Bosworth, connected with the Brockton Heel Company, testified that they "supply shoe manufacturers with a heel-log building machine" and also a sanding machine. (R. Vol. 1, p. 911, lines 21–34.)

The United Company puts out heel building machines but not heel-log building machines. It also puts out sanding machines. (Defts.' Exh. 246, R. Vol. 5, pp. 684, 688.)

Stewart Brothers.

J. Hammond Stewart of Lynn, "connected with Stewart Brothers, who have been manufacturing counter machinery for approximately twenty years," which machinery "is used for making and adjusting molded counters to the last," named and described five different machines which they build. (R. Vol. 1, p. 912, lines 8–14, 33–34.)

The United Company puts out several counter skiving machines which compete with Stewart machines (Defts.' Exh. 232, R. Vol. 5, p. 508), but does not have a complete line of counter machinery.

Keighley Company.

Leopold C. Tappey testified that during the year 1911, the Keighley Company, of New Jersey, "made a cleaning machine, a finishing machine, a polishing machine, and an inseam trimmer." (R. Vol. 1, p. 912, lines 38–43; p. 913, line 1.)

All these machines are in direct competition with machines of the United Company or of the Xpedite Company. (Defts.' Exh. 232, R. Vol. 5, pp. 513, 524–526.)

C. S. Pierce Company.

Eben W. Thomas, treasurer of C. S. Pierce Company, testified that they market a machine used for skiving upper leather. (R. Vol. 1, p. 913, lines 26–32.)

The United Company puts out two machines of this character. (Defts.' Exh. 232, R. Vol. 5, p. 481.)

Beckman Machine Company.

Aaron Beckman of Lynn, connected with the Beckman Machine Company, testified that he had put out a heel finishing machine and a heel beading machine. (R. Vol. 1, p. 926, lines 1–12.)

The United Company, through the Xpedite Company, puts out one machine for performing both of these operations and also puts out directly two other heel beading machines. (Defts.' Exh. 232, R. Vol. 5, p. 524.)

Beckwith Box Toe Company.

Harry H. Beckwith of Boston testified that the Beckwith Company, which had been in business ten years, had put out about two hundred machines used to soften the box toes in the lasting operation during the past two years and that the United Company "has a machine for performing a similar operation." (R. Vol. 1, p. 926, lines 25–33.)

The machine of the United Company referred to is put out in two models. (Defts.' Exh. 232, R. Vol. 5, p. 510.)

Boston Machine Works Company.

Harry I. Illingworth, manager of the Boston Machine Works Company, testified: "We manufacture shoe machinery, special machinery, and tools," specifying seventeen types of machines which they put upon the market as follows:

> "We make the Monarch and the Boston beading machines for beading the tops of shoes, the Julian cementing machine, used for cementing the soles of shoes, and the New York fold cementing machine, used for cementing the edges of

skived leather before folding. We have put out during the last ten years seven or eight hundred Julian cementing machines. They have gone to shoe manufacturers. We make folding machines, the Booth folding machine, used for folding the edges of the upper; the Boston machine, for similar work of a heavier character; a foot-power machine for small pieces, such as backstays; and a vamp machine, which is a special machine for folding the vamp. We make the Rochester lacing machine for lacing the upper to give the proper opening before being lasted, and marking machines for marking leather; a lining pricking machine; a snipping machine, used for snipping the edges of curves of the upper leather before folding; a tip scouring machine, and a flap-slashing machine, used for slashing the curves in the shank of the insole. We have put out perhaps fifty flap-slashing machines. They were principally sold in this country. The Julian cementing machines were nearly all—about 90%—sold in this country. We formerly made a hookhole punching machine, but do very little on it now. It was used to prepare the upper for setting of the hooks. We handle the Union Seam rubbing machine, but do not make it. We have the exclusive sale of it. It is used for pressing the seams of the uppers. . . . We make an insole pinking machine." (R. Vol. 1, p. 926, lines 39–44; p. 927.)

He added: "We hold ourselves ready to supply all of the machines named" in our catalogue. "We employ 100 men, more or less, altogether." (R. Vol. 1, p. 927, lines 39–42; catalogue in Defts.' Physical Exhibit 321.)

The United Company puts out machines for performing nearly all of the operations which are performed by the various machines mentioned by Mr. Illingworth. (Defts.' Exh. 232, R. Vol. 5, pp. 481, 490, 493, 496, 499–501, 504–507, 527.)

Larsen Machine Company.

Charles G. Wirths, an officer of the Larsen Machine Company, of New York, testified: "We make a welt and outsole lockstitch machine. It is used principally by shoe repairers." "There is no reason why it could not be used for making new shoes except that it is not as fast as a Goodyear stitcher." (R. Vol. 1, p. 928, lines 2–15.)

The Goodyear Outsole Rapid Lockstitch Machine of the United

Company is put out for this character of work. (Defts.' Exh. 232, R. Vol. 5, p. 516.)

Matson-Hoyt Machine Company.

Carl A. Matson of Lynn testified that the Matson-Hoyt Company "make a heel-finishing machine" sold "directly to shoe manufacturers" of which "about a dozen" had been put out "within the last three years." (R. Vol. 1, p. 928, lines 29–38.)

The United Company, through the Xpedite Company, puts out a machine of this character. (Defts.' Exh. 232, R. Vol. 5, p. 524.)

Quarmby & Hilliker.

Charles T. Hilliker of Lynn testified that Quarmby & Hilliker make more than half a dozen types of machines, including sole cutting and leather stripping machines, which go to shoe manufacturers and "to persons making parts for shoe manufacturers, such as soles or linings or uppers." "We have made between one hundred and fifty and two hundred dinking machines." Referring to his catalogue and letter contained in Defendants' Physical Exhibit 321 (p. 10 and the reverse of p. 11), he said: "We . . . could make any of the machines named if we were asked to." (R. Vol. 1, p. 928, lines 42–45; p. 929.)

The United Company puts out substantially the same line of machines. (R. Vol. 1, p. 929, lines 27–29; Defts.' Exh. 232, R. Vol. 5, pp. 480, 481, 496–498, 501, 502, 506.)

Holmes Leather Working Machinery Company.

Frank A. Bradford, manager of the Holmes Machinery Company of Cambridgeport, testified that they make a sole-leather roller sometimes sold to shoe manufacturers. (R. Vol. 1, p. 941, lines 29–33.)

The United Company also puts out such rolling machines. (Defts.' Exhs. 227, 228, R. Vol. 5, pp. 427, 437.)

Harlow Shoe Finishing Machinery Company.

Edwin E. Bartlett of Hyde Park, connected with the Harlow Shoe Finishing Machinery Company, testified that he had put out about one hundred and thirty-seven heel finishing machines to shoe manufacturers and also put out personally a heel-seat beading machine. (R. Vol. 1, p. 942, lines 6–14.)

The United Company, through the Xpedite Company, puts out one machine for performing both the heel finishing and heel beading operations. It also puts out directly two other heel-seat beading machines. (Defts.' Exh. 232, R. Vol. 5, p. 524.)

W. J. Young Machinery Company.

William J. Young of Peabody, treasurer of the W. J. Young Company, testified that they manufacture or put out "a heel building machine,"

> "a buffing machine for buffing counters and box toes; a wedge-strip beveling machine, which makes wedge lifts for use in heels, and which goes to shoe manufacturers and heel manufacturers, probably more to the latter; a heel compressing machine, which is sold almost altogether to heel manufacturers at the present time; a wedge lift-cutting machine for dieing out the wedge lifts from the wedge strips in connection with the heel, which goes to both heel makers and shoe manufacturers; a counter end finishing machine which is used in connection with the counter; a heel-lift gouging machine, which goes to both heel makers and shoe manufacturers about equally; a counter molding machine; a box-toe skiving machine; a counter-skiving machine; a shank-piece skiving machine; and a spring-heel scarfing machine. We do not build a rand-splitting machine, though we may possibly have handled one or two secondhand, and have not as yet put out a treeing machine. We do put out a waxing and rolling machine for counters. We employ between forty and fifty men.
>
> "We have been in business for twenty-four or twenty-five years. Our business has been growing. . . . We lease on a royalty rental our automatic lift-die machine, which has not yet been mentioned, and our counter-buffing machine, and one or two machines for molding the heel seat. The others we sell. . . . we are preparing to build a pneu-

matic treeing machine. . . . We make a rand trimming machine." (R. Vol. 1, p. 942, lines 34–45; p. 943, lines 1–16, 27–30.)

He stated also that, during seven or eight years, he had "put out between two and three thousand heel building machines" in this country, largely to shoe manufacturers, and also "three or four hundred counter-molding machines, over three hundred heel-compressing machines, and one hundred and fifty to two hundred lift-gouging machines." "We advertise ourselves as manufacturers of the most complete line of counter and heel making machines, and we consider that to be true." (R. Vol. 1, p. 942, lines 28–33; p. 943, lines 16–24.)

Practically all of these machines named by Young are in direct competition with machines of the United Company. (R. Vol. 2, p. 2445; Defts.' Exhs. 228, 232, 235, R. Vol. 5, pp. 431, 432, 435, 497, 498, 504–509, 526, 653, 654.)

Donnelly Machine Company.

John F. Donnelly of Brockton testified that the Donnelly Machine Company "designs, manufactures, and rebuilds shoe machinery." He named eight or ten different machines all of which, except two, "operate on the bottom or the heel of the shoe." (R. Vol. 1, p. 943, lines 36–44; p. 944.)

With hardly a single exception, all of these machines are in direct competition with machines of the United Company. (Defts.' Exh. 232, R. Vol. 5, pp. 481–483, 519, 522–525; as to McKay sewers, see also R. Vol. 1, p. 858, lines 35–45; p. 859, lines 1–21.)

American Worsted Machinery Company.

Bicknell Hall of Abington testified that for seven years, beginning about 1907, he had been connected with the American Worsted Machinery Company which had, ready to put out, more than a dozen types of machines and had facilities for making and were ready to make about a dozen others; he quoted specific prices therefor. They had made and put out twenty-five or thirty McKay channeling machines to shoe manufacturers and

had also made and sold "between one hundred and twenty-five and one hundred and fifty eyeletting machines." They had also handled a McKay sewing machine and made parts for it. (R. Vol. 1, pp. 953–954; p. 976, lines 25–28.)

With hardly a single exception all of the machines named by Mr. Hall are in direct competition with the machines of the United Company. (Defts.' Exhs. 232, 235, R. Vol. 5, pp. 482, 483, 490–491, 494–495, 500, 503–505, 507, 517, 519, 525, 603; see also Vol. 2, p. 2246 and Pltff.'s Exh. 190 (a physical exhibit).)

Atlas Tack Company.

William F. Donovan, president of the Atlas Tack Company, testified:

> "Our output during the last year has been from forty to sixty million eyelets per month. Three or four years ago, before my advent into the business, it was nearly twice as high. Practically all of the eyelets we make go into the shoe trade." (R. Vol. 1, p. 959, lines 7–10.)

The "United Company owns or has an interest in" several competing eyelet concerns. (R. Vol. 1, p. 477, lines 1–4.)

ADDITIONAL SHOE MACHINERY MANUFACTURERS CALLED IN REBUTTAL.

We have omitted, in the foregoing, reference to the testimony of certain of the rebuttal witnesses, as for example Morris of the Singer Sewing Machine Company, Spaulding of the Willcox and Gibbs Company, and Heath of the Boston Last Company (R. Vol. 1, pp. 886, 890–891, 901), whose concerns admittedly supply shoe machinery to shoe manufacturers but do not supply machines for the operations as to which the United States charges a monopoly. We have likewise omitted reference to still other witnesses, such as Chamberlain of the Walpole Shoe Supply Company and Hammond of the Becket & Hammond Machine Company (R. Vol. 1, pp. 889, 925), whose concerns actually supply machines for such operations to shoe manufacturers *although the United Company does not supply machines competing therewith.* (Defts.' Exh. 232, R. Vol. 5, pp. 501, 521.)

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In the Supreme Court of the United States.

OCTOBER TERM, 1917.

No. 207.

UNITED STATES OF AMERICA, APPELLANT,

v.

UNITED SHOE MACHINERY COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR THE UNITED STATES.

[REARGUMENT.]

INTRODUCTORY STATEMENT.

This is an appeal from a decree of the District Court for the District of Massachusetts, dismissing a suit brought by the United States under the Sherman Act against the United Shoe Machinery Company of New Jersey, certain affiliated or subsidiary corporations and certain individuals who were officers or directors of the corporate defendants.

The petition was filed December 12, 1911. The trial court, in error as petitioner believes, refused to

hear evidence of any events subsequent to that date (I, 201, l. 42).[1] The case was submitted June 5, 1914. The decree is dated March 14, 1915.

Trial of the cause was delayed, in part because in the first instance, the Court, over the Government's protest (I, 1062), ordered the public and the press excluded from the taking of testimony before the examiner designated to act in the case. (I, 1064–1070.)

Congress thereupon passed a statute (Act of March 3, 1913) forbidding such exclusion of the public from the taking of testimony in proceedings of this character.

Thereafter, the Attorney General filed a certificate under the expediting act (32 Stat. 823). The case was then set down for trial before two circuit judges and a district judge and was heard in open court.

THE PLEADINGS AND THE SUBJECT MATTER.

I. THE NATURE OF THE PROCEEDING.

The object of the suit is to forbid and prevent the defendants further making, maintaining, or engaging in certain unlawful combinations, contracts and agreements hereafter described, and from continuing to monopolize a part of the interstate and foreign commerce of the United States in machines used for the manufacture of shoes, as hereafter defined.

[1] References to the record are by volume, page, and line. Thus the reference I, 201, l. 42 is to the Record, volume I, page 201, line 42.

The relief sought is a decree adjudging the corporate defendants to be combinations in restraint of trade and to have acquired and to be maintaining and extending a monopoly of the commerce in question and enjoining the further continuance of such illegal combinations and such monopolization; and, especially, forbidding the continued making or enforcement of certain provisions of certain leases or contracts under which the defendants have put out and are putting out machines, or any provisions of like tenor and effect.

The defendants, other than certain corporations as to whom at the opening (I, 1061) a discontinuance was entered, are—

United Shoe Machinery Company of New Jersey.
United Shoe Machinery Corporation.
United Shoe Machinery Company of Maine.
United Xpedite Finishing Company.
O. A. Miller Treeing Machine Company.
W. W. Cross & Company.
Ross-Moyer Manufacturing Company.
J. K. Krieg & Company.
Booth Brothers Company.
Ellis Lacer Company.
United Shoe Repairing Company.
Sidney W. Winslow, and twenty-one other individuals, all of whom were officers or directors of the corporate defendants above named or of some of them.

The answers of the various defendants are not identical, but the answer of the United Shoe Machin-

ery Company of New Jersey embraces substantially all the defenses set up by them. A brief outline of it is, therefore, sufficient.

It denies every allegation of the petition not specifically admitted; admits that it acquired the business, assets, and letters patent of the companies named in the petition (I, 1043); claims that those companies were non-competing at the time of their acquisition; that the machinery owned by each was covered by letters patent of the United States; and that the acquisitions were made with the expectation of economies in administration and cessation of patent litigation between the companies purchased. It also alleges that the greater part of its business consists in the manufacture under letters patent of shoe machines and in the leasing of those machines to shoe manufacturers under the letters patent. It denies that it restrains or monopolizes interstate or foreign trade and commerce or ever attempted so to do, but alleges that if it has any such monopoly it is valid and legal as derived under the letters patent owned by it. It also sets up the statute of limitations. (I, 1042–1046.)

Replications were filed to the answers. (I, 1058.)

II. DESCRIPTION OF THE DEFENDANTS.

The United Shoe Machinery Company of New Jersey is a corporation of that State. It was organized February 7, 1899 (I, 1, l. 32; 633, l. 4), and was a consolidation of the business and properties of

the following competing companies, which were taken over as going concerns:

Goodyear Shoe Machinery Company.
International Goodyear Shoe Machinery Company.
Consolidated & McKay Lasting Machine Company.
McKay Shoe Machinery Company.
Davey Pegging Machine Company.
Eppler Welt Machine Company.
International Eppler Welt Machine Company.

(Answer, I, 1043.)

Many of the principal owners and managers of these companies became officers and directors of the new company. Its main factory is in Beverly, Massachusetts. (I, 35, 423, l. 41.) In addition it maintains stations "throughout the country covering all the principal shoe manufacturing centers." (I, 553, l. 34.) It has been engaged, ever since its formation, in manufacturing at its Beverly plant, and in selling, leasing, and shipping to shoe manufacturers all over the United States shoe machines, supplies, and related things. (I, 35, l. 32; 423.)

The authorized capital of the United Shoe Machinery Company of New Jersey is $25,000,000.

United Shoe Machinery *Corporation* was organized in 1905. It also is a corporation of New Jersey. Its business appears merely to be that of a holding company. (Plff.'s Exs. 164–7, IV, 1126–37.) Upon its organization, it acquired "substantially all of the

capital stock of the United Shoe Machinery Company of New Jersey." (Morton, I, 358, l. 28.)

Assuming that the stock issued at the organization of the United Shoe Machinery Company represented no more than the fair value of the properties acquired, the defendants in twelve years, as shown by dividends and surplus, have earned in excess of $50,000,000 upon a total investment in cash or its equivalent of about $20,000,000. (Morton, I, 358–360.)

The United Shoe Machinery Company of Maine is, since a change in 1902, the present name of the old Goodyear Shoe Machinery Company. All its stock—$3,000,000—is owned by the United Company, which acquired it when that company was organized. Its present business is the leasing of machines manufactured by the United Company of which it is merely a department. (Donham, I, 34, l. 40.)

The other corporate defendants do not require particular description.

The combined activities of the various corporate and individual defendants, so far as they relate to the subject matter of the present action, are commonly referred to in the record and are here referred to as those of the "United Company," except where clearness requires a more specific designation.

Of the individual defendants, Sidney W. Winslow was the president of all the corporate defendants and their chief executive officer. He was the principal witness for the defense. The other individual defendants are, or were at the time when the bill was filed, directors or officers of the United Shoe

Machinery Company or of the United Shoe Machinery Corporation. In most cases they were connected with both these companies as well as with others of the corporate defendants. (Plff's. Exs. 186, 167, IV, 1231, 1137.)

III. DESCRIPTION OF THE SUBJECT MATTER OF THE ACTION.

A. IN GENERAL.

The end which avowedly was sought by the organizers of the United Company was "the control in one corporation, both in the United States and in foreign countries, of the efficient types of shoe machinery." (Statement to the Stockholders of the Goodyear Shoe Machinery Company, February 8, 1899. Plff's. Ex. 152, I, 140.) The business in which the defendants are engaged is that of supplying machines used in the manufacture of shoes. The interstate and foreign trade in certain, though not all, of such machines (*infra*, p. 13) is that which defendants are charged with having restrained and monopolized. The subject matter of the action, therefore, is the effect of the things done by the defendants upon the trade between manufacturers of machines used in the manufacture of shoes and the manufacturers of shoes.

B. THE BUSINESS OF SHOE MANUFACTURING.

To understand, therefore, the nature and importance of the questions presented by this case, it is necessary to have in mind certain facts regarding

the manufacture of shoes and the relations thereto of the use of machinery and its supply.

The defendants lease machines to at least 1,033 shoe manufacturers. (Donham, I, 26, l. 39.)[1] In 1909, the latest year for which figures are available, 285,000,000 pairs of shoes, in round numbers, were made in this country, as against 175,000,000 in 1899. (Winslow, 414, l. 38.) Shoes are made in every section of the Union. It is obvious that supplying important machines for such an industry must be an exceedingly important part of the interstate trade and commerce of the United States.

C. EXTENT OF THE USE OF MACHINES IN THE MANUFACTURE OF SHOES.

The making of shoes was almost wholly a handicraft until about 1860. At about that time the first practical machine for performing an important shoemaking operation began to attain wide use. Other machines followed.

When this suit was brought, and indeed at the formation of the United Company in 1899, the industry had become almost wholly a machine industry. Of

[1] The latest figures of the Census of Manufactures (1914) show 1,090 firms, individuals, and corporations reported as engaged in the manufacture of "footwear," operating 1,355 establishments. In dealing with such figures it should be remembered that makers of moccasins, infants' shoes, etc., are classed as making "footwear" and that these do not need to use the essential bottoming machines, the supply of which defendants have monopolized. Their number, which is not established by the record, is to be deducted in considering the extent to which the defendants rule their province of the shoemachinery trade.

the 175,000,000 pairs of shoes produced in this country in that year, according to defendants' figures (Dfts. Ex. 215, I, 424), only 197,000 are described as hand made, and Mr. Winslow testified (I, 869, ls. 37–39) that 110,000,000 were of kinds which never had been made by hand and could not be so made. The record shows that to-day hand work has been superseded by machine work even as to the simplest and least expensive operations. (I, 91, ls. 26–30.) For the most part it persists only for incidental work in connection with the use of machines (e. g. I, 497). No shoe manufacturer attempting to do business on any considerable scale can to-day exist in competition with other manufacturers without having in his factory a substantially complete line of machines. In order to compete successfully, he must, of course, obtain his machinery upon a basis of cost not substantially above that upon which his competitors obtain their equipment.

D. THE MANUFACTURE OF SHOES BY MACHINERY, METHODS AND MACHINES.

The mysteries of the shoemaker's art and the variations between different methods of making shoes are not within the knowledge of the ordinary purchaser nor do they enlist his interest. To him shoes are shoes, except as they differ in appearance, comfort, wearing qualities, and price. For his approval all shoes which approximate his size may be said to compete and the factors which govern that competition are those noted rather than the details of their manufacture.

In the industry, however, shoes are classified according to the manner in which the outsole—what we call the sole—is attached to the upper, and this classification is helpful in understanding the application and importance of various facts which will be brought to the attention of the court.

Shoes, then, are divided into welt shoes, turn shoes, stitch-downs, McKay sewed shoes, McKay welts, fair-stitched shoes, pegged shoes, standard screw shoes, loose-nailed shoes. (Dfts. Ex. 215, I, 424.) In all but the last three varieties the bottom is attached to the upper by a seam of thread. Pegged shoes are shoes in which the sole is attached to the upper by means of wooden pegs. In standard screw and loose nailed shoes the sole is attached by wire slugs or nails. Such shoes are therefore sometimes called "metallic fastened," and the machines which insert the fastenings are among those classified in the trade and by the defendants as "metallic machines." (I, 5, l. 5.)

Welt shoes derive their name from a narrow strip of leather known as the "welt" which is first sewed to the upper and insole by a machine called a "welt sewing machine" or "welter" and is then sewed to the outsole by a machine known as an "outsole stitcher," thus attaching the upper and bottom together, the welt serving as a kind of link. Welt sewing, outsole stitching, and certain other machines used in making welt shoes are hereinafter sometimes called welt method machines.

The sole of the turn shoe is sewed to the upper by the welt sewing machine, adapted for the purpose by the removal of an attachment. Turn shoes are lighter, as a rule, than those made in other ways. They derive their name from the fact that the upper is turned inside out during the process of attaching the sole.

The bottom of the "McKay sewed" shoe is attached to the upper by a seam passing directly through the outsole, insole, and upper. A "McKay sewing machine" is used for this operation.

As was said, the pegged shoe is a shoe in which the sole is attached by wooden pegs. These are inserted by a "pegging machine."

The sole of the "standard screw" shoe is attached by slugs of wire. These are inserted by a "standard screw machine."

The sole of the nailed shoe is attached to the upper by nails made for the purpose. A "loose nailing machine" is used. This machine also is used in the manufacture of substantially all kinds of shoes for attaching to the upper that part of the shoe to which the heel is in turn attached. That is to say, in shoes which are sewed, as distinguished from shoes in which the sole is "metallic fastened," only the part of the sole forward of the shank is attached by the seam of thread. The heel part of the sole, the "heel seat," is nailed on by the loose nailing machine.

McKay welts, fairstitched and stitch-down shoes, mentioned above, are all produced in such relatively small numbers as to be unimportant in com-

parison with the great classes of welt, turn, McKay sewed and metallic fastened shoes which have just been described. (Dfts'. Ex. 215, I, 424.)

Despite these radical differences as to the particular manner in which the bottoms of various kinds of shoes are attached, the general process of manufacture of all shoes is substantially the same. In every case, the parts of the uppers must be cut out and assembled, the linings fitted, the upper, counter, and insole assembled, the shoe "lasted," i. e., the upper stretched and shaped over the last, the outsole shaped and attached, the sole "leveled" or made to conform to the bottom of the last, the heel prepared and attached and the shoe "finished" by polishing, smoothing, and burnishing the edges and bottom of the sole and heel. It follows that "according to general usage, certain names are given by shoe manufacturers to certain parts of their factories in which certain work is done." These are the cutting room where the uppers and linings are cut out, the stitching or fitting room where the uppers, linings, and trimmings are assembled and stitched together, the lasting room, the bottoming room, the finishing room, and the sole leather room. (Winslow, I, 859, l. 39 et seq.)

In all the foregoing rooms in every factory machines are used. Besides the machines used for the major operations of attaching the sole to the upper, there are used in the bottoming of McKay shoes thirty-two different types of machines. (Dfts'. Ex. 236, V, 671.) A shoe manufacturer possessing only

a McKay sewing machine would therefore be a long way from the necessary equipment even for the bottoming department of his factory. For bottoming welt shoes, a larger number of different types of machines is required. (Plff's. Ex. 279, IV, 1557.)

E. THE PART OF THE INTERSTATE AND FOREIGN COMMERCE OF THE UNITED STATES IN MACHINES USED IN THE MANUFACTURE OF SHOES WHICH DEFENDANTS HAVE RESTRAINED AND MONOPOLIZED.

When the petition was filed, the defendants did not manufacture machines used in the fitting room, above mentioned, in which the previously cut and prepared parts of the uppers and linings are assembled. As to certain other machines necessary to the manufacture of shoes, the defendants had not at that time acquired a monopoly. At the trial, therefore, the claim of the United States as to the part of the trade in machines used in the manufacture of shoes which the defendants *actually* had restrained and monopolized was defined as the business of supplying—

> all the [principal and auxiliary] machines used for preparing and attaching the bottoms of shoes to the uppers, and clicking and eyeletting machines. (I, 837–839, *passim*. I, 192, l. 15–19, I, 414, l. 21.)

"Principal machines" and "auxiliary machines" are phrases taken from the practice of the defendants in leasing machines. The defendants class as "principal" the welting, lasting, pulling over, slugging, heeling, standard screw and loose nailing machines. (Winslow, I, 537, l. 12 et seq.) A number of other

machines are called "auxiliary" machines. This is justified in a measure because in one sense some of the auxiliary machines "prepare the work" for the operation of some of the machines called "principal." (I, 537, l. 12 et seq.) In the main, however, the reason for the distinction is rather arbitrary. Mr. Winslow says:

> We call [them] principal machines because they perform operations which are treated as measuring operations for the entire set of machines and because their operations preceded in most cases the development of the auxiliary machines. The auxiliary machines in many instances did work that had been done by hand and their development succeeded the development of what have been termed the principal machines. (I, 537, l. 14 et seq.)

A list of auxiliary machines, including only the machines classed by the defendants as "Goodyear auxiliaries," i. e., auxiliaries used in the manufacture of welt shoes is to be found in Plaintiff's Exhibit 270 (IV, 1446). Inspection of it will show something of the number and variety of the "auxiliary" machines. *These machines are, however, in no sense mere attachments to the principal machines. The operations performed by them are wholly independent.* "That is true with reference to every one of the auxiliary machines. There are no two that operate on the same shoe at the same time. The operations are as separate and distinct as the lasting operation and the welting operation, only they are not so far removed from each other." (Winslow, I, 537, l. 7 et seq.)

The uses of some of these "principal" machines, namely, the welting, standard screw machines, and loose nailing machines have already been noted. (*Supra*, pp. 10, 11.) Pulling over machines stretch the upper over the last, preliminary to the process of shaping it or lasting it. Lasting machines shape the upper over the last and secure it there temporarily or permanently according to the process of manufacture which is to follow. Heeling machines attach the heel to the shoe. Slugging machines which are included in the foregoing list of principal machines are used for inserting slugs or nails around the perimeter of the heel. Clicking machines are used for cutting out the parts of the upper. Eyeletting machines insert eyelets in the uppers.

In the record (I, 495–502) is an enumeration of some of the machines used in the bottoming of welt shoes, with a description of their functions. The nature of the relations between "principal" and "auxiliary" machines, *supra*, appears from what is there said. The distinction, while convenient for the understanding of certain leases of the defendants, *infra*, pp. 154–221, is of no real importance in the Government's view of this case.

F. THE IMPORTANCE, AS A MATTER OF SHOE MANUFACTURING, OF THE MACHINES, THE TRADE IN WHICH DEFENDANTS HAVE RESTRAINED AND MONOPOLIZED.

The processes of lasting, of preparing the bottom and the heel, of attaching them to the upper are necessary processes in the making of every shoe and constitute the "bottoming" of the shoe. The use of ma-

chines in these processes is universal. Shoes can not as a commercial proposition be made without them. This is, perhaps, sufficiently established by what has already been said. It may, however, be added that nearly two score shoe manufacturers testified in the case as witnesses either for the Government or for the defendants. These manufacturers represented concerns whose output ranged from 500 pairs daily (Burt, I, 739, l. 4) to well over forty thousand pairs (Johnson, I, 170, l. 33, Endicott, I. 575, l. 31). Their product comprised all varieties of shoes. Every one of them used machines for the processes named. In substantially every case, for reasons which will be noted, they used the machines of the defendants exclusively.

The process of cutting out uppers, for which the clicking machine was designed, was at the time of filing the petition still performed by hand in a considerable but decreasing number of factories. The clicking machine has been on the market only since 1908, and therefore had been out only about three years at the time when the petition was filed—the time to which testimony was limited by the Court (I, 201, l. 42). The importance of this machine and its practical necessity to shoe manufacturers is indicated by Mr. Winslow's appreciative remarks about it. In his opinion (I, 426, l. 19), according to his experience in the shoe art, "no machine has accomplished so much for the art as the clicking machine." The saving by its use is estimated at as much as three cents a pair *in leather alone* (I, 431,

l. 22), aside from the advantages of machine over hand operation with respect to the cost of labor, speed, etc. The familiar effect of the introduction of such machinery upon the supply of hand operators also is to be considered. The importance to a shoe manufacturer of possessing such a machine is obvious. The manner in which the defendants use their control of it to extend their monopoly in respect to other machines is noted, *infra*, pp. 169–70, 178.

That monopoly is a monopoly of the important and essential machinery used by shoe manufacturers in bottoming shoes, as above defined. Defendants persistently seek to divert attention from the contemplation of the field which they have monopolized to that which is, as yet, not subject to their domination. Like Warren Hastings, they appear to be astonished at their moderation.

It is no answer to proof of control of a great field of industry to say that a related field is as yet open to competition. As well might the Union Pacific have argued that it had violated no law in controlling the Southern Pacific because it had not yet acquired control of lines east of the Missouri River. To say, when charged with monopolizing the great business of supplying the essential bottoming machines upon whose control defendants have built up their tremendous and profitable enterprise, that competition still exists as to certain other machines used in large numbers by shoe manufacturers is to urge upon the Court a total irrelevance.

THE ARGUMENT.

I. INTRODUCTORY OUTLINE.

The general philosophy, construction, and application of the Federal Antitrust Acts have been the subject of exhaustive discussion in the briefs and arguments of the United States in other cases now pending in this Court. What has there been said as to the underlying public policy of the Sherman Act, as to the limits of its application and as to its bearing upon the social, political, and economic structure of the life of the American people is equally applicable here. But as the position of the United States with respect to these general matters is the same in this case as in those, it is hardly useful to repeat here, in detail, the argument there set forth.

A further and even more persuasive reason for avoiding repetition here with respect to the wider aspects of the law of restraint of trade is the belief on the part of the United States that however narrow may be the final definition of that undue interference with competition which is denounced by the law, the facts bring this case within that definition.

For, if the test is the combination of able competitors together preponderant in an important field of interstate commerce, here there were combined competitors who occupied substantially the entire field; if the governing consideration is the intent with which the combination was formed, there was here shown both in what was done at the formation of the corporation and in the subsequent conduct of its affairs a

manifest intent to restrict competition and to establish a monopoly, an intent made plain not only by the comprehensiveness of the combination and by the inherent nature and effect of what was done, but by direct expression of such a purpose; if the acquisition of monopolistic power is the distinguishing mark of an illegal combination, here was both such power and its exercise; if the legality of such a corporation is to be judged by its conduct subsequent to its formation, here is a combination which has steadfastly pursued methods which in themselves are necessarily unduly restrictive of freedom of competition and indeed have had the intended and necessary result of completely excluding from the field any substantial competition; if the question is to be determined by inquiring whether the combination has maintained that domination with which it was endowed by the combination itself, here has such domination, to a degree hardly paralleled in any other industrial situation, brought to the attention of this Court, not only been maintained but has been so intrenched and strengthened by the interposition of artificial barriers in the path of possible competition that such competition is, practically speaking, impossible until those barriers shall be struck down by a decree of this Court.

The United States believes all this will become apparent upon consideration of what is established by the record. It is therefore to the facts that it desires first and chiefly to request the attention of

the Court. Later, it is proposed to discuss briefly certain particular propositions of law which seem to have especial bearing upon certain phases of the present case.

First, therefore, it is proposed to review the conditions existing in the trade when the United Company was formed, to call attention to what was said and done at its formation, and to point out the effect upon competition, existing and potential, of those circumstances. It is next intended to review briefly the subsequent conduct of the corporation and to make clear the position in the trade which it occupied when this petition was filed. Finally it is proposed to state to the Court in detail the outstanding features of the system of leasing machinery adopted by the corporation as the only method of putting out the more important of its machines, to analyze the terms of these documents and to comment upon their inevitable effect upon the trade.

When these matters have all been laid before the Court, as the record shows them, little else, it is believed, is necessary to the decision of this case.

II. CONDITIONS IN THE SHOE MACHINERY INDUSTRY AT THE FORMATION OF THE UNITED COMPANY.

The principal companies which were combined in the organization of the United Company were, as heretofore observed, the Goodyear Shoe Machinery Company, Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, and Eppler Welt Machine Company. (*Supra*, p. 5.)

A. THERE WAS EXISTING AND POTENTIAL COMPETITION BETWEEN THE GOODYEAR AND THE CONSOLIDATED & McKAY COMPANIES IN LASTING MACHINES.

Before the organization of the United Company, lasting machines of the following types had been at some time in use, namely, the McKay and Copeland, Chase, Copeland-Rapid, Consolidated Hand Method, Seaver, Sinning, and Ideal lasting machines. There may have been others. (Jones, I, 106, ls. 23–30; Selz, I, 141, l. 43.) In addition, there were the Continental and Boston machines which, however, are described by Mr. Winslow as "tacking machines" rather than lasting machines. (I, 521, l. 32.) Some of these machines had apparently disappeared prior to the organization of the United Company.

There can be no serious dispute with reference to the various kinds of lasting machines which were being produced at the time the United Company was formed.

At that time there were on the market (Winslow, I, 399, l. 13; 521, ls. 39–41; 526, l. 45) the following:

McKay & Copeland, Chase, Consolidated Hand Method.	Owned by Consolidated & McKay Co.
Ideal, Copeland-Rapid.	Owned by Goodyear Company.

The Ideal lasting machine was a development of the Copeland-Rapid laster (I, 107, l. 38; 526, l. 45; 626, ls. 37–43; 914, l. 3). The only substantial difference between these two machines was that the latter was

operated by the foot of the workman while the former was operated by power.[1] (I, 914, l. 3; 918, l. 3.)

Mr. Winslow testified (I, 526, l. 36) that at the formation of the United Company, the Consolidated & McKay Company and the Goodyear Company were the only companies putting out lasting machines except the Seaver Company. He said that that company was putting out some machines but that it was not doing a successful business. (I, 526, ls. 28–34.) The Seaver Company had no plant and only one witness testified to any use of the Seaver machine. (I, 289, l. 25). The Seaver Company was acquired by the United Company within a year after the formation of that company, in 1899. (I, 526, l. 33.)

There is no dispute that the McKay & Copeland machine was used chiefly on heavy shoes. The Chase laster, according to Mr. Winslow, was used chiefly for lasting men's welt shoes but it was offered by its makers as a machine for lasting women's shoes as well. (I, 960, ls. 29–30.)

The Consolidated hand method machine as originally designed was adapted principally for lasting

[1] The record does not show clearly whether the Goodyear Company continued to manufacture the "Rapid" machine after it produced the improved form to which it gave the name "Ideal." However the fact may be, it is not material upon the issue whether the lasting machines put out by the Goodyear Company were in actual and potential competition with those put out by the Consolidated Company. If the "Rapid" machine is shown by the record, at the places to be cited, to have done the same classes of work and to have competed with the lasting machines put out by the Consolidated Company, *a fortiori*, the improved Rapid, the Ideal, was also a competing machine.

McKay sewed, pegged, and metallic fastened shoes. These types of shoes are lasted in the same manner. At first it could not be used successfully for lasting welt shoes, but the problem of adapting it for such use was in the way of sclution in the fall of 1898. In December, 1898, the Consolidated & McKay Lasting Machine Company was offering to the trade the hand-method machine as a satisfactory machine for the lasting of welt shoes. (I, 960, l. 27.)

Mr. Winslow was not willing to testify that the machine was completely successful for that purpose, despite the fact of his company's offering the machine to the trade, but admitted that some machines were already in shoe factories. (I, 524, l. 7, 8.) He also admitted that it was the intention of the Consolidated & McKay Company to perfect the machine so as to make it an efficient welt lasting machine, and that in 1900, about a year after the formation of the United Company, it had become, even in his present opinion, a commercially successful machine. (I, 524, l. 28.) He added (I, 526, l. 11) that women's welt shoes are now lasted very largely upon this hand method machine.

It appears, then, upon Mr. Winslow's testimony, that the Consolidated & McKay Company was putting out lasting machines which covered the entire ground. Taking at face value his statements as to the kind of work for which the various machines were peculiarly fit, the McKay-Copeland covered the heavy field, the Chase, men's welt shoes, and the

hand method machine, all McKay shoes, and in its improved form, women's welt shoes.

The Goodyear Company's principal lasting machine was, as has been said, the Ideal machine, which was a development of its Copeland-Rapid machine. It was said by Mr. Winslow (I, 527, l. 3) that it was used practically altogether on women's welt shoes, that is to say, in the field in which the hand method machine owned by the Consolidated & McKay Company before the organization of the United Company has now been so successful. Mr. Winslow declined to attempt to state any reasons why the Ideal machine could not last men's welt shoes as well as women's welt shoes, thus bringing it into direct competition with the Chase lasting machine, put out by the Consolidated & McKay Company. In response to the question whether the Ideal could have easily been developed into a machine which would have lasted men's welts successfully he stated that he did not know anything about it. (I, 527, l. 24.)

Mr. Howe testified (I, 627, l. 29) that while each machine had a fairly well defined field, it would frequently happen that McKay shoes would be lasted upon the Ideal machine.

Even if the work of the Ideal machine had been confined to women's welt shoes, that was the field which the Consolidated & McKay Company was entering with its adapted hand method machine.

In addition, however, to the testimony of Mr. Howe as to the use of the Ideal machine for lasting McKay *lasted* shoes (which include standard screw

and loose-nailed shoes as well as McKay *sewed* shoes) there is abundant testimony as to the possibility of the use, and as to the actual use of the Ideal machine owned by the Goodyear Company, for lasting men's shoes, both McKays and welts, in direct competition with the Chase machine owned by the Consolidated & McKay Company. The testimony shows also that the Ideal was in direct competiton with the latter company's hand method machine.[1]

Milton J. Florsheim testified that his company was engaged at the time of the formation of the United Company in the manufacture of men's welt shoes, and at the time they were using three Copeland-Rapid lasters (the same machine as the Ideal machine except that it was operated by the foot of the workman rather than by power, *supra*) and several Chase machines; that the Chase and Rapid (Copeland-Rapid) machines did the same class of work, and that "when the shoe was done, you could not tell on which machine it was lasted;" that there was no difference in the quality of the work, and if there was any difference in the rapidity, the advantage was with the Rapid. (I, 158, 159, l. 32.)

[1] In some cases, the use of the Ideal machine on men's shoes, shown by the testimony, was subsequent to the formation of the United Company. This is immaterial, the issue being whether such use was possible. The machine was unchanged, except *in some instances* by the addition of certain attachments described by witnesses Snow and Heffernan (*post*, 26, 29). Both attachments seem to have been comparatively simple. Their importance is discussed in the body of the brief at the pages mentioned.

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Warren F. McElroy also testified that the Hamilton-Brown Company, of St. Louis, made men's shoes on the Rapid machines in 1899, and continued to use them until they were exchanged for the new machine brought out by the United Company after its formation. (I, 187, l. 15; 189 l. 26 et seq.)

Stephen Snow testified that he was formerly employed by the W. L. Douglas Company, which made *men's* shoes, both McKays and welts, having a capacity of about ten thousand pairs a day; that the company used only the Consolidated hand method and the Ideal lasting machines; that he had charge of the Ideal machines, of which there were more than a dozen; *that the Ideal machines were used both on the McKay and the welt shoes* (I, 895, ls. 36–43); that he had previously worked for George E. Keith Company, which also made *men's McKay and welt shoes;* that its capacity was also about ten thousand pairs a day; that he did not remember that the Keith Company had any other lasting machine except the Ideal machine; that there were about a dozen of them (I, 896, ls. 6–12).

Snow spoke of two attachments which he claimed to have devised for the Ideal machine. One which he had patented had to do with pressing in the counter, and he explained that "they used a very heavy counter at that time and the heel band would not bring the corners of the counter in" (I, 897, ls. 28–31). He testified that he attached this device to one of Keith's machines but did

not remember that he had put it on any others, although all Keith's Ideal machines were used in lasting men's shoes during the entire year he stayed there (I, 899, ls. 21–26). The other attachment which Snow claimed to have invented in 1901 or 1902 (I, 896, 897) seems to have been patented by Heffernan (I, 897, l. 9; 898, line 12), who testified that it was first used in 1909 or 1910 (I, 918, l. 15). Snow claimed that the Ideal machine would not last men's "heavy" shoes "successfully" without his inventions, but that they made it successful on those shoes (I, 898, ls. 32–37). But he admitted that Ideal machines had been used by both Keith and Douglas in the practical manufacture of their men's shoes without the device (I, 900, ls. 5–7; 899, ls. 8–15), and he had already testified (I, 896, l. 16) that Keith and Douglas were making "about a four-dollar shoe which was as heavy as they generally make in those factories." Asked in redirect examination what he meant by his statement that the Ideal laster would not last men's "heavy" shoes, he said he meant "long-legged boots, brogans, miners' shoes, and shoes of that character," adding that nothing could handle those shoes except the McKay-Copeland machine. (I, 900, ls. 15–18.)

As bearing upon the weight of Snow's assent to certain propositions emphasizing the importance of his device, put as leading questions by counsel for the defendants, it seems not unfair to observe that

Snow presumably had the familiar enthusiasm of an inventor respecting his invention.

It may be added that another witness, Fletcher, testified that he was with Douglas at the time and could not say that the hold-down attachment was ever put on more than half of the Douglas Company's Ideal machines (I, 939, ls. 9–11). He also said that Douglas had used the Ideal machine for a number of years without the attachment (I, 938, ls. 26, 27).[1]

Thomas Worsencroft testified that in 1890 he was employed to instruct men to operate the Rapid lasting machine (I, 913), that the only difference between the Rapid and the Ideal was that the Rapid worked by foot power and the Ideal by steam power (I, 914, l. 3); that he was employed from 1897 to 1901 by the Duquesne Shoe Company, of Pittsburgh, Pa., which made men's welt shoes; that that company used five Ideal lasting machines for lasting those shoes, and no other lasting machines; that, previously, he had worked for S. A. Crooks Company, of Hopkinton, Mass., where the Rapid machine was used on men's McKay shoes, and, in 1891 and 1892, in the factory of John Hanan & Sons, of New York City, where high-priced welt shoes were lasted on the Rapid machines, and at George Snow's factory at Brockton in 1893 where welt shoes were made both on the Rapid and the Chase machines (I, 914, l. 33). He thought that the Ideal machine did better work on men's welts than the Chase machine and was equally rapid (I, 914, l. 23).

[1] See also testimony of Jordan, *infra*, p. 31.

William P. Whitman testified that he had been manufacturing shoes since 1883, and that he had obtained Ideal machines from the Goodyear Company, and was still using six or seven of them at the time of his testimony; that he made men's welt shoes and never had made any other kind (I, 915, 916). That he has also now some Number 5 lasting machines [the latest development by the United Company, I, 397, l. 38, now offered as the successor of the Chase machine, I, 453, l. 25], but he sees very little difference in quality or rapidity between the work of the Number 5 machine and that of the Ideal (I, 916, ls. 4–10). Referring to the necessity of the hold-down attachment for the Ideal machine, he said it became necessary when the high-toed shoe began to come in "which was about ten or twelve years ago" (I, 916, l. 38). He was testifying in 1914 and therefore the date referred to was two or three years after the formation of the United Company.

Edward F. Heffernan testified that he had been employed in the factory of the witness just mentioned for seventeen or eighteen years, and for six years had had charge of the lasting department (I, 917, ls. 38–43) and he had operated an Ideal machine for twelve or fourteen years; that there was no substantial difference between it and the Rapid machine (I, 918, l. 3); that he lasted men's welt shoes for twelve years upon Ideal machines without any hold-down appliance; that he had invented such an appliance which improves the operation of the Ideal, and that anything which is

lasted on a Number Five [the United Company's successor to the Chase machine, (I, 453, l. 25)] can be lasted on an Ideal (I, 918, ls. 30, 31). That the Whitman firm is still using seven Ideal machines; that they have also been using the Number 5 lasting machine for three years and he has observed its operation; that the same operator will get as much work off the Ideal as he can off the Number 5 and, in his opinion, probably a little more; that he can run both machines himself, and considers the Ideal a little faster; that the character of the work depends on the operator, a good operator being able to do equally as good work on one machine as on the other; and as to whether or not heavy welt shoes can be successfully lasted on the Ideal machine, everything that can be lasted on the Number 5 can be lasted on the Ideal just the same—they make no distinction; that while the Number 5 is a heavier, stronger machine, yet there is no reason why the Ideal could not be made just as strong, and that by a stronger construction it could last any kind of shoes (I, 918, ls. 1–33). He said that about four years ago he was given his choice between the Number 5 and the Ideal and took two Ideals. (I, 919, l. 41.)

It will be remembered that Whitman & Keith were manufacturers of *men's* welt shoes. Therefore, it is demonstrated in practice that the Ideal without the Snow attachment or any other attachment but, as it was in 1899, was capable of lasting men's welts

as well as women's, and therefore was a competitor of the Chase machine.

John Jordan testified (I, 932, l. 31) that he had been a laster for 25 years and he had lasted *men's* high-grade welt shoes on the Chase machine for two years, on the Rapid for three or four years, and on the Ideal for about ten years; that in his opinion the Ideal did better work than the Chase; that the Ideals at the time he worked on them did not have the hold-down attachment referred to by the other witnesses (I, 933, l. 18, 19); that the Ideal was used at the W. L. Douglas factory for lasting *men's* shoes without any hold-down attachment (I, 933, l. 30); that such an attachment was put on but was taken off after a short time.

John N. Murphy testified that he had been an operator on lasting machines for about twenty-three years; he testified further that he also operated an Ideal machine both at Whitman & Keith's factory and at Douglas's factory upon *men's* high-grade welt shoes (I, 933, l. 43; 934, l. 5).

He said he had also operated the Number 5; that the quality of the work of the Ideal was about the same and that the Ideal was a little faster (I, 933, l. 13, 15).

Francis O'Keefe testified that he was now foreman of the lasting room of Stacy-Adams Company and had been engaged in lasting shoes for about eighteen years. He testified further (I, 934, l. 20 et seq.) that James A. Banister & Company, makers of *men's*

fine welt shoes, were lasting such shoes on six Ideal machines, and that the Chase and Ideals did about the same amount of work. He also testified that that company was at the same time using Chase machines for work of like character. On cross-examination he testified that L. Boyden & Company by whom he was first employed in 1896 successfully used the Chase machine for lasting women's shoes. He said that the Chase could not be used on a high-toed shoe like those which have been out in the last three or four years, but added "It was just as good as any other kind of machine I know of, on regular work." (I, 934, ls. 41–44.)

The Chase owned by the Consolidated & McKay Company and the Ideal owned by the Goodyear Company were, therefore, competitive machines when the United Company was formed.

Ira Fletcher testified that he was superintendent of F. M. Hoyt Shoe Company of Manchester, New Hampshire, that he was employed by W. L. Douglas from 1902 to 1910, and that during that period the Douglas Company which was making *men's* welt shoes only was lasting them on Ideal lasting machines, of which, in 1902, 54 were in use (I, 938, l. 11); that Douglas preferred the Ideal to the Chase (ibid, l. 36). He further testified that he had been previously employed between 1894 and 1901 by Cushman & Company, of Auburn, Maine; that that company made *men's* welt shoes and lasted them upon Ideals, of which they had twelve; that they had no

other kinds of lasting machines in the room in which he was working.

Joshua LeMay testified that he is foreman of Rice & Hutchins' lasting department, and that in that factory the Chase machine was used on both welt and McKay work, indiscriminately, and that in 1897 or 1898 women's McKay shoes were lasted upon the Chase machine. He stated that he had worked on the Chase machine for eight years and that he knew of no reason why the Chase machine could not be used on women's welt shoes, the same as men's. (I. 947, ls. 23–37.)

Walter C. Springer (I, 947, l. 43) testified that he had worked for Rice & Hutchins about twenty-one years, and was, when his evidence was given, assistant superintendent of the Curtis factory, and at times had partial charge of the lasting room. Before the "No. 5" came out they used the Chase machine, on men's, boys', and youths' McKay and welt shoes. They also used it successfully on *women's* shoes, and he knew of no reason why it could not be used on women's welt shoes, the same as on men's. He had never heard of anything wrong with the lasting of the women's shoes done on the Chase machine. (I, 949, l. 29.)

Emanuel F. Selz, general manager of the manufacturing department of Selz, Schwab & Company for more than twenty years, testified that his company's factories had a capacity of fifteen thousand pairs of shoes per day (I, 141, l. 16); that just before the

establishment of the United Company the Rapid, the Chase, the Consolidated hand method, Ideal and Boston machines were in use; that there was practically no difference as to the uses to which these various lasting machines were put; that they could *all* last *men's* and *women's* shoes (I, 142, ls. 14–19); that he got the Chase in 1891 and used it up to a few years ago and that his company still has the Boston and some of the Consolidated hand method machines (I, 148, ls. 22, 32); that they have lasted both men's and women's shoes on the Chase and on the Consolidated (I, 148, l. 40); that they now use the Consolidated laster principally for *women's* shoes and men's McKay shoes (I, 149, l. 5).

Martin E. Welch, a man of forty-seven years' experience as a shoe manufacturer, twenty-five of which were spent in business for himself, testified that "when we started the welts we began with the Consolidated hand method machines and we are still lasting all our welt shoes on that machine. We make women's shoes altogether and have never made any men's welt shoes." (I, 712, ls. 2–7.)

The foregoing testimony shows that the Consolidated hand method machine, owned by the Consolidated & McKay Company, was in competition with the Ideal, owned by the Goodyear Company, in the lasting of women's shoes at the time the combination was formed.

John Strootman (I, 742, l. 41) testified that he was engaged in manufacturing *women's* shoes, one half of which were McKays and the other half turns

and welts. He said, "We lasted by hand until we got the Consolidated hand method machine and we are still using improved machines of that type. Formerly we lasted our shoes *entirely* on that machine, but now we last the toes on the Number 5 machine and the sides on the Consolidated hand method." (I, 744, l. 28.)

Charles A. Eaton (I, 751, l. 18), engaged exclusively in the manufacture of men's welt shoes, except a few ladies' and boys' shoes, testified that he had been in the manufacturing business since 1879; that between 1892 and 1899 he was making men's welt shoes exclusively (I, 755, l. 6); that he used the Consolidated hand method, the Chase and the Seaver machines, replacing the Chase by the Seaver on the better grade of work, and doing the cheaper work on the hand-method machine (I, 755, ls. 2–7); that the Seaver was put out by the Seaver Lasting Machine Company acquired by the United Company soon after its organization. (*Supra*, p. 22.) The Seaver, owned by one company, and the Chase, and Consolidated hand method machines, owned by another, were therefore in competition at the time the United was formed.

The defendants made no effort to meet the foregoing testimony directly, but while contending that each type of lasting machine was better on some kinds of work than others, conceded that there was "some overlapping." (Winslow, I, 527, ls. 1–27; Howe, 627, ls. 18, 19.)

Mr. Howard, the patent attorney for the Company, gave certain technical testimony (I, 966–973) which is intended to show by reference to patent drawings the unsatisfactory character of the Ideal lasting machine for men's work. *He admitted that he had never lasted a pair of shoes* and does not pretend to any knowledge qualifying him to contradict the direct statements of the witnesses as to the actual use of these machines.

He stated that his testimony must be taken "as technical information" only (I, 971, l. 32). He admitted that "it is pretty hard to identify the Ideal machines used before 1899 because the records of the Goodyear Company (the owner of the Ideal) were not nearly as complete as those of the Lasting Machine Company," owner of the Chase and other machines. (I, 973, l. 35.) His testimony is therefore of little value when confronted with the foregoing testimony of practical and disinterested witnesses.

The same may be said of the testimony of Mr. Winslow (I, 975, l. 42) relative to the number of Ideal machines out January 1, 1899, and the work done upon them. This, too, can be based only upon the records, which Mr. Howard tells us "were not nearly as complete as those of the Lasting Machine Company." Besides, the relative number of machines in use would have little if any tendency to prove whether or not they were competitive. The greater number in use of the one might be due to better management, more capital, or any one of a number

of causes having nothing to do with the competitive character of the machines.

It appears also from the testimony of Mr. Winslow that prior to 1898 the Goodyear Company was accustomed to put out the Ideal machines "on a large initial payment and no royalty." (I, 978, l. 24.) This being so, the company would have no record of the number of shoes operated upon by the Ideal.

In addition to the foregoing facts, as to the active competition existing between the lasting machines put out by the Goodyear Company on the one hand and those controlled by the Consolidated & McKay Company on the other and as to the prospect of increasingly sharp competition between those machines, some one of which was necessary to the making of every shoe, it is further to be noted that the Goodyear Company, though possessing only a single type of lasting machine, had the great advantage of being able to offer also welt sewing and outsole stitching machines and auxiliaries to those machines. It was able, therefore, to make its lasting machine help its welt machine, and *vice versa*. At the same time, the Consolidated Company was retaliating by requiring the use of its lasting machines to full capacity and insisting upon the requirement that if the lessor should have work for *lasting machines* requiring additional machines, such machines should be taken from the Consolidated & McKay Company. (Plff's. Exs. 6–10, III, 45–82.)

This is in effect an admission that Mr. Winslow's company, the Consolidated & McKay Company,

believed that its own lasters were capable of lasting men's and women's shoes, and were, therefore, in direct competition with the Ideal machine as to both classes of shoes.

The Government's testimony on this point is strongly sustained by certain advertisements which appeared in the Hide & Leather Reporter, a trade paper. On December 3, 17, and 31, 1898, about two months before the combination was formed, the Consolidated & McKay Lasting Machine Company published an advertisement stating that the Consolidated hand method lasting machine was adapted to the lasting of "welt shoes" and offered it to the trade for that purpose. The advertisements made no distinction between men's and women's welt shoes, but claimed the machine would last welt shoes without distinction. (I, 960, l. 24.)

On December 22, 1897,[1] about a year and two months before the consolidation, the Chase laster, also put out by the Consolidated & McKay Company, of which Mr. Winslow was the chief managing officer (I, 522, l. 21, et seq.), was advertised in the same paper as a machine "for lasting women's shoes." (I, 960, ls. 29–30.)

The evidence afforded by these contemporaneous advertisements should overcome anything which Mr. Winslow and his witnesses said in this law suit, twelve years afterwards. If the advertisements were warranted, which may perhaps fairly be assumed, the Consolidated hand method, and certainly the Chase,

[1] The date is stated in the record as 1907, an obvious misprint.

both owned by the Consolidated & McKay Company prior to the organization of the United Company in 1899, were adapted to the lasting of *women's* welt shoes as well as men's. Unquestionably they were so offered to the trade. Therefore as to these shoes, also, they were competitors of the Ideal laster, owned by the Goodyear Company, which is conceded by all hands to have been thoroughly fitted for the lasting of *women's* welt shoes.

The foregoing testimony clearly shows that the purchase of the Consolidated & McKay Company and of the Goodyear Company by the United Company, February 7, 1899, destroyed an existing and vigorous competition between lasting machines.

That with the development of the industry this existing competition between powerful corporations must have become increasingly sharp is, it is respectfully submitted, not open to doubt.

B. THERE WAS EXISTING AND POTENTIAL COMPETITION BETWEEN THE GOODYEAR AND EPPLER COMPANIES IN WELT SEWING AND OUTSOLE STITCHING MACHINES AND AUXILIARIES.

The characteristic feature of the welt method of making shoes is, as has already been said (*supra*, p. 10), the use of a strip of leather called the welt, which is employed as a connective between the upper and the outsole, both of which are sewed to it. Before the consolidation the Eppler Welt Machine Company and the Goodyear Shoe Machinery Company were each putting out machines for performing the operations involved. Each put out welting machines. They laid the stitch of the seam which attached the welt

to the upper in different ways. Each also put out outsole stitchers, and the two companies were therefore in competition as to these machines also (Howe, I, 469, l. 36). Undoubtedly many more machines had been put out by the Goodyear Company, which had 20 years' priority in the field. The statement made in the lower court that the Eppler machines could not produce "Goodyear welt" shoes is, however, only warranted when understood literally, and when so understood is of absolutely no significance. Eppler machines could not produce "Goodyear welt" shoes because "Goodyear welt" was a trade-mark name for shoes produced on Goodyear machines. (I, 22, l. 3; 625, l. 44.) But Eppler machines could and did produce merchantable shoes made by the welt method, and the shoes so produced possessed the advantages of that method. (*Infra*, pp. 41–46.) Manufacturers using both kinds of machines packed the shoes made upon them together indiscriminately in the same case and sold them all as welt shoes. (*Infra*, p. 46.) That there was open to the Eppler Company a wide field of possible competition, that it was successfully entering that field, and that in all human probability it must have become at least a dangerous and annoying competitor of the Goodyear Company are circumstances which, if true, are not lessened in significance by the contention of the defendants that the competition when ended by the illegal combination had not yet threatened the dominance of the Goodyear Company. Neither are they affected by the *belief* on the

part of some, even if such a belief were warranted, that after all was over, the Goodyear machines, whether because of the placing of the seam or otherwise, would have demonstrated a superiority which the Eppler interests could not have offset either by improvement of their machine or by concessions of price. That the Eppler company was, in fact, an able and a prospectively very dangerous competitor is shown by the following evidence:

C. H. Jones testified (I, 108, l. 42) that when the United Company was formed the Goodyear Company and the Eppler Company were both putting out welting, sewing, and outsole stitching machines, and he knows of his own personal knowledge that the welters and outsole stitchers produced by the Goodyear and Eppler companies were used for the same grade of work (I, 111, l. 16).

E. F. Selz testified that immediately before the United Company was organized there were on the market the Goodyear and the Eppler stitchers and inseam sewing machines (inseam machine is the same as welting machine) and that they were doing exactly the same work, the only difference between the Eppler and the Goodyear being in the formation of the stitch, but so far as he knew, and he had used both machines, there was no difference in the rapidity with which the work was done (I, 143, l. 22 et seq.).

Warren F. McElroy, an expert of wide experience, (*infra*, pp. 111, 144) testified that in 1897 or 1898 the company with which he was working was solicited

by an agent of the Eppler Machine Company, and that the witness went to a factory and looked at the machines and the class of work they were doing. They were working on men's medium and fine grade welt shoes, and from his observation it appeared that the work of the Eppler was equally as good as the work done by the Goodyear machine and that it could have been used on women's shoes (I, 187, l. 32 et seq.).

Charles S. Smith testified that the Eppler Company began business in 1893, and put out the welting machine, and began putting out the outsole stitching machine in 1893 or 1895. The witness had sewed shoes on the Eppler machines as an expert (I, 352, l. 43) and they could be and were used for the same purposes as the Goodyear welt sewing machine (I, 352, l. 20).

William P. Whitman testified that he installed an Eppler welt machine before the formation of the United Company and operated it for several years. The work done by the machine was satisfactory (I, 916, l. 11).

Fred F. Field testified that he was president of the Fred F. Field Company, of Brockton, and vice president of Field Brothers & Gross, of Auburn, Maine. The Fred F. Field Company, of which he has immediate charge, manufactures men's welt shoes, and they at one time had in their Brockton factory as many as *eight* Eppler welt machines. At the same time they had *two* Goodyear welters. He thinks

they obtained the first Epplers probably in 1902 or 1903, and kept five or six of the machines until about a year ago. (This witness testified February 5, 1914.) During that entire time he was using both Eppler and Goodyear welters, and it was the witness' judgment that the Eppler machine sewed a flatter seam than the old Goodyear, hence the shoe did not require so much filling in the bottom, which he regarded as some advantage, and he does not think there was much difference between the old Goodyear and the Eppler as to the amount of work which could be done. They put in the Eppler machines because they regarded them as the better of the two, and kept them until the United put out its Model K. (I, 930, l. 15, 24 et seq.)

George Strong testified (I, 931, l. 42) that he has been making men's welt shoes for thirty years; that he began the use of the Eppler outsole stitcher about 1892, when they were then sewing the inner seam by hand, and they got along with the stitcher very well. About 1895, they took two Eppler welt machines and used them until about 1900, when they made a trade with the United Company and took Goodyear machines. The witness testified that at that time, i. e., after the Eppler Company had become a part of the United Company, "the machines had been used a long time and were practically gone by, and we had a chance to turn them in to the United Company for the new rapid stitcher and welter and we did so." (I, 932, ls. 18–21.)

Milton S. Florsheim testified that when the United Company was formed, he had Goodyear welters and stitchers, and had installed one line of Eppler welters, stitchers and rounders (I, 159, l. 7); that the Epplers were being used by others and he wanted to find out whether he could not use them and thus save one cent per pair royalty, the Eppler people charging that much less than the Goodyear (I, 169, l. 22). And he said that in his opinion the work performed by the Eppler welters, stitchers and auxiliaries was as well done as that performed by the Goodyear machines, and that the best shoes made at that time, or as good as any made, were made on the Eppler machines. His company then made a high-grade shoe, but they were not as high priced as the shoes it is now making, which retail [1913] from $4 to $6 per pair. (I, 935, l. 30 et seq.)

George E. Keith, formerly president of the Eppler Company, and now a director of the United Company (I, 385, l. 21) admits that the Eppler Company had put out about thirty or forty welters, but not so many stitchers; that they had been attempting to install welters after 1892, and stitchers after 1894 or 1895, and that they had a line of machines for making welt shoes, except a rough rounder, and were trying to perfect that, and had put five agents in the field (I, 389, l. 6, 26).

R. H. Long (I, 224, l. 31) testified that he engaged in shoe manufacturing for himself in 1886 and was so employed at the time the United Company was formed; that his factory had a capacity of six

thousand pairs a day; that at the time the United Company was formed he was engaged exclusively in the manufacturing of welt shoes, and was using the Eppler welt machine principally (I, 225, l. 10) and that he continued to use that machine long after the formation of the United Company (I, 226, l. 3); that finally he surrendered the Eppler and took the Goodyear, which performs exactly the same class of work (I, 227, l. 41). There is considerable testimony as to why he made the surrender, but that is immaterial. We are only concerned with the fact that he had successfully used the Eppler for many years.

James H. Cunningham (I, 288, l. 31) testified that he had been superintendent of Stacy Adams Company for 30 years, which company has a daily capacity of about 1,200 pairs, welt shoes, exclusively; that his company commenced the use of the Eppler welter about 1892 and continued it until two or three years after the United Company was formed; that it was used for performing the same kind of work as the Goodyear machine; and that the *welter* was satisfactory to him, but the outsole stitcher was not (I. 290, l. 3).

Ira E. Fletcher (I, 937, l. 36 et seq.) superintendent of F. M. Hoyt Shoe Company, said that he worked for W. L. Douglas from 1902 to 1910; that Mr. Douglas used the Eppler and Goodyear welt machines, had about *twelve* of the former and *eight* of the latter; *that the two classes of machines ran side by side in the same factory.* The shoes made on the Eppler and Goodyear machines were both put on the market

as welted shoes. They were not kept separate, but shoes made on the Eppler machine were sent out in the same cases with shoes made on the other machines. Douglas was using the Eppler stitcher as well as the welter, he said. The witness considered the Goodyear *stitcher* better than the Eppler, but he made no comparison between the Eppler and Goodyear *welter* further than to say that they ran side by side in the same factory.

Mr. Keith, just mentioned, testified that the Eppler welter was put out in 1892 and the stitcher in 1894 or 1895 (I, 389, l. 11). The Eppler Company, then, was in business some seven years before the consolidation. It was shown that the Eppler Company was pressing its business and was advertising its product up to the moment of its acquisition by the United Company. (I. 361, l. 37.) It was a valuable property. In the Court below the Government sought to prove its value by reports of the company made as required by statute to the Commissioner of Corporations for Massachusetts covering the years 1896, 1897, and 1898. Copies of these reports, duly certified by the Secretary of the Commonwealth, were rejected by the Court on the ground of incompetence (I, 362, l. 5; 388, l. 45). Mr. Keith, president of the Eppler Company at the time it was absorbed and a director of the United Company, when he testified swore to the originals of the reports, in one case before a notary who duly attested the fact under his seal, according to the certified copies. Asked whether he knew of the reports at the time they were made,

Keith said, "I suppose I must have had knowledge of that." And further answered, when asked if the reports contained a correct statement of the assets owned by the company at the times covered by them, "I suppose it must have been. It must have been reported that way," but insisted that he had no present recollection of it (I, 386, l. 42; 387, l. 41).

The reports were sworn to and filed in pursuance of law. Hence, properly certified copies of them were, under the circumstances, at least *prima facie* evidence of what they purported to disclose, and should have been admitted.

The report made March 30, 1898, less than a year before the United Company was formed, shows:

Machinery	$19,977.03
Cash and debts receivable	10,421.09
Patent rights	245,853.61
Machines in factories	287,010.09
Miscellaneous	17,713.16

and the admitted testimony shows, despite an extraordinary and unexplained reticence, ignorance, and forgetfulness upon the part of the former officers of the Eppler Company and upon the part of the officers of the United Company (Winslow, I, 531, l. 37; 842, l. 20 et seq.; Keith, I, 385–7; Howe, 675, l. 42; 676, l. 1–39), that there was paid for the stock of the Eppler Company some $6.00 (Arnold, I, 952, l. 24) or $6.50 (Brackett, I, 949, l. 40) a share. The par of the stock was $10.00 and its issued capital stock was $600,000. At this rate there was paid in the interests of the United Company from $360,000 to $390,000 for the business of this

company, which, according to the defendants' evidence, then had only thirty or forty machines out in shoe factories, and these largely in the factory of its president (*supra*, p. 44). Mr. Howe was certain that the Eppler people would not take $100,000, but as to whether they got as much as $500,000 he did not know (I, 676, l. 27). Although the officers of the United Company, when asked to do so by the United States, could find no records showing what was paid for the Eppler Company, they were able to find without any apparent difficulty a letter which passed between R. H. Long and the Eppler Company and a lease executed by that company and him before the consolidation (I, 32, l. 33; 251, l. 6).

The value placed upon the Eppler Company by the purchase shows that in the opinion of the defendants the Eppler Company was a real and dangerous competitor.

The testimony above quoted as to the actual use of the Eppler machines and their possibilities of competition with the Goodyear machines is substantially corroborated by Mr. Winslow himself. He said that both machines were being used in the manufacture of welt shoes, and that the machines were intended to perform the same operation but they did it in distinct and different ways (I, 530, l. 37, et seq.; 531, l. 14). And he added,

> It is true that in obtaining the Eppler Company we did not broaden our field, because it was embraced in the Goodyear Company's machines.

Q. I believe you claim the Eppler machine was not hardly as good as the Goodyear welting machine?

A. It wouldn't make as good a shoe; no.

Q. But it was being put on the market?

A. It was in use.

Q. At that time, in the same territory in which the Goodyear machine was being put on the market?

A. It was in use at that time and they were manufacturing Eppler welt shoes with it. (I, 531, l. 22–33.)

There should here be noticed the reason given for this acquisition made secretly through Henry B. Endicott (who will again appear in connection with an even more important acquisition) at a cost of over $350,000 (Winslow, I, 530, l. 4). The reason according to Mr. Winslow was to get rid of existing litigation. He insists there was no other purpose. (I, 531, l. 34.) Howe claims now that the Goodyear Company, which was going into the United Company, was confident of winning this litigation (I, 470, l. 21) which was all litigation brought by the Goodyear Company, not against it. It was, moreover, litigation in which the plaintiff was apparently not very keenly interested. The principal case, No. 248, was brought in April, 1892. When the United Company was formed, seven years later, the evidence, if any had been taken, had never been turned into court and no hearing had been had. (I, 470, l. 16, 472, l. 1.) According to Mr. Howe, "The taking of testimony

had been abandoned when the United Company acquired the Eppler Company and these suits were all dismissed in November, 1905, on a general call of the docket under the order of the Court of October, 1905, dismissing all cases in which nothing had been done." (I, 472, ls. 1–5.)

It is only the merest speculation what the outcome of those suits would have been. Their history does not appear to reflect the confidence which Mr. Howe professed some fifteen years later to have had in them. But it is to be observed that in only one of them was the essential mechanism of a principal machine directly involved. Mr. Howe says, "Excepting the suit under the Briggs patent, on the welting machine, and three suits on the outside stitcher, *on the improvement in shuttles,* all these suits related to auxiliary machines." (I, 123, l. 29.) Mr. Howe continued: "It is my opinion that the infringing devices were very material in the construction of the Eppler Company's machines, *except the welt sewing machine,* and that the litigation would have compelled alterations, especially in their stitcher and auxiliary machines." (I, 623, ls. 31–35.) (Italics ours.)

It is respectfully submitted that Mr. Howe's opinion expressed in 1913 as to what would have been the outcome of this patent litigation which had been abandoned in 1899 after lying dormant for years before that date can not be regarded as any justification for the acquisition by the

United Company of a competitor. The patent questions involved can not properly be tried out in that manner in this litigation, but even an established infringement by the Eppler Company afforded no justification for the acquisition. The authority supporting that contention will be set out later in this brief.

Assuming all that is said by the defendants upon this subject to be relevant and justified, all that it amounts to is that there were pending the suits in question and that their result might have been to compel alterations in certain of the Eppler machines. "It is," said Mr. Howe, "of course, a matter of speculation whether they could have succeeded in making those alterations and in getting around such decrees as we were likely to obtain." (I, 623, ls. 35–38.) But it is as useless to speculate upon that question as upon the primary question whether, in fact, the Goodyear Company was likely to obtain any decrees at all. One can not, however, refrain from wondering over the lack of enthusiasm shown with respect to pressing litigation now said to have been so important and so promising.

Perhaps the reason was that the litigation did not, according to Mr. Howe (I, 679, l. 15), relate to the fundamental patents, taking "fundamental" to mean what Mr. Howe later (I, 686, ls. 25–29) explained was intended by him. In view of the nature of what was claimed, as shown above, this may well have been the explanation. That specu-

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lation also, however, is hardly of much relevance to the questions now presented to this Court.

The only advantage which defendants suggest that the United Company could obtain by "getting rid" of this inactive litigation brought by one of its constituent companies against a competitor was that it escaped controversy with customers of the Eppler Company who were customers also of constituent companies of the United Company other than the Goodyear Company. If this was indeed the reason it suggests that the Eppler Company's customers were more in number and greater in importance than the United Company is now willing to admit. Brief consideration will suggest the number of ways in which such a purpose might have been accomplished other than by the purchase of the competitor, without spending between $360,000 and $390,000.

That the purchase which suppressed substantial competition was illegal even if it be assumed that the real purpose was merely to end this litigation is shown later. (*Infra*, p. 246.)

Other facts of importance in their bearing upon the position of the Eppler Company as an actual and prospective competitor and the purpose behind its acquisition are these:

The Goodyear Company asked and received a royalty of four cents a pair for each pair of men's shoes made on its machine. Its competitor, the Eppler Company, charged only three cents (Florsheim, I, 159. l. 24–27; Long, 249, l. 43; Advertisement, Eppler Welt Machine Company, I, 960, l.

31–35.) This very usual competitive situation is to be borne in mind when one is asked to consider the competitive disadvantages of the Eppler machines with respect to the number of auxiliary machines, etc.

The United Company after the consolidation demanded as the royalty on the Eppler machines four cents (Winslow, I, 417, l. 36–45). It refused to give Eppler machines at three cents to Florsheim, who testified that some time after the United was formed, "I desired to trade in my Goodyear machines on which I was paying four cents a pair royalty for Eppler machines, for which, under my understanding with the Eppler Company, I would have had to pay only three cents a pair. Mr. Wilson [an officer of the United Company] would not make the trade." (I, 159, l. 24–28.) None the less, a demand for the Eppler machine continued, even after the consolidation.

Frederick G. King (I, 696, l. 30) called by the defendants testified that he was manager of the Goodyear Department of the United Company; that since the United Company was formed it had put out more than *forty* Eppler welters and more than *twenty* Eppler stitchers, but that he did not recollect that any auxiliary machines were put out; also that the last Eppler machines were received back by the United Company about December, *1912*. (I. 702, ls. 9–15.)

After all, the preponderant cause is found in the following:

There was a circular letter sent by the directors of the Goodyear Company to the stockholders of that

company announcing the organization of the United Company and inviting their participation. That statement (Plff's Ex. 152, I, 140) was drawn by defendant witness Howe (I, 630, l. 18). It contained the following:

> The great advantages to be secured by the control in one corporation, both in the United States and foreign countries, of the most efficient types of shoe machinery have been for several years recognized by the officers of the principal shoe machinery companies. For more than a year your directors and large stockholders have been in negotiations to accomplish this end.
>
> The United Company will also from time to time acquire other shoe machinery properties, either by direct ownership or by purchase of shares of their stock.

When asked about the meaning of the paragraph first quoted above, Howe said (I, 630, l. 18 et seq.):

> I drew the circular letter to the stockholders of the Goodyear Company, which is Plaintiff's Exhibit 152. As to what I had in mind in making the statement in the first sentence in that circular, when this circular was issued, we had acquired the Eppler Welt Machine Company. * * * Therefore we had then the most efficient types of shoe machinery—perhaps I should have said protected by patents—in that we had the Goodyear welt and turn sewing machines and a long line of auxiliaries, which were the only system or set of machines which would make the Goodyear

> welts. * * * If any manufacturer wanted to make Eppler welts, we had the only system that would make them. Therefore, that seemed to my mind at that time—the United Shoe Machinery Company did—to represent the control in one corporation of the most efficient types of shoe machinery,

and he added:

> We didn't know whether the manufacturers would prefer, if there were no litigation at all between the two companies, whether the trade would prefer Eppler welts or whether they would prefer Goodyear welts. (I, 630, l. 43; 631, l. 1–3.)

This statement of the chief managing officer of the Goodyear Company (I, 466, l. 34 et seq.) that those concerned in the organization of the United Company did not know "whether or not the trade" eventually "would prefer the Eppler" machines to the Goodyear machines demonstrates that the Eppler Company was an important actual and even more important potential competitor of the Goodyear Company with which it was combined in the organization of the United Company. Taking this fact in conjunction with his explanation that the purpose of himself and associates was to place in the control of one corporation "the most efficient types of shoe machinery," there can be no doubt as to the real reason why the Eppler Company was absorbed. It was for the purpose of monopolization.

C. THE CONSOLIDATED & McKAY COMPANY HAD A MONOPOLY IN PEGGING MACHINES.

Formerly at least three types of pegging machines had been in use (I, 534, l. 34–39). At the time of the organization of the United Company, however, only the Davey Pegging Machine Company then owned by the Consolidated & McKay Company was putting out such machines. Pegged shoes had become an increasingly negligible factor in the industry. Of the 173,000,000 pairs of shoes made in 1899, only 7,475,000 were pegged. Of the 279,000,000 pairs made in 1910, only 3,000,000 were pegged (Dfts. Ex. 215, I, 424).

D. THE McKAY SHOE MACHINERY COMPANY HAD A SUBSTANTIAL MONOPOLY IN METALLIC AND HEELING MACHINES.

At the time of the formation of the United Company in 1899, the McKay Shoe Machinery Company was not a competitor of either the Eppler, the Goodyear, or the Consolidated & McKay Company. It did not produce either a welter, laster, or outsole stitcher. But it had a substantial monopoly of the more important metallic machines.

Mr. Winslow said, referring to metallic machines,

> As regards different kinds or makes of machines there were not a great many in 1899 and practically all were being made by the McKay Company, which was putting out a large number of those machines. My best information is that the McKay Company was putting out all the heel attaching machines that were being put out in 1899, and that no other company had put out any heel attach-

> ing machines for quite a number of years prior to 1899. When I speak of a heeling machine, I mean a heel attaching machine always. (I, 851, l. 23, et seq.)

As to metallic fastening machines other than heeling machines, Mr. Winslow said,

> I think the Metallic Association * * * the stock of which was owned by the McKay Company were putting out nearly all the metallic fastening machines that were being made in the United States. (I, 532, l. 6, et seq.)

The acquisition of this company by the United Company did not, in itself, destroy existing competition. It did, however, remove the possibility that this powerful corporation engaged in a cognate line of business might some day become a competitor of the United Company, a familiar occurrence. (Cmp. what is said by counsel for the International Harvester Company with respect to the entry of Deere & Co. into the field of harvesting machinery.) The acquisition, moreover, had a much more important result. As will appear, it completed the defendants' fabric of monopoly in important bottoming machinery and made fully effective the system of leasing, which will be set out. (*Infra*, pp. 154–221.)

III. THE ORGANIZATION OF THE UNITED SHOE MACHINERY COMPANY IN 1899.

It has already been stated that the United Shoe Machinery Company of New Jersey was incorporated February 7, 1899. The circumstances which led up

to its formation were related in considerable detail both by Mr. Winslow and Mr. Howe who appear to have been the prime movers of the project. (Winslow, I, 406, l. 35; Howe, I, 627, l. 44; 628, l. 1, 2.)

Mr. Winslow was the principal man in the Consolidated & McKay Company. (I, 406, l. 25; 522, l. 20.) That company, as has been noted, put out a line of lasting machines which substantially covered the field, and it owned the Davey Company, which was the only company then putting out pegging machines. Mr. Howe was the principal executive officer of the Goodyear Company (I, 466, l. 34) which had a large business in welt-method machines, and a considerable business in lasting machines. The competition between these two companies has been noted above. (*Supra*, pp. 21–39.)

The discussions between Mr. Winslow and Mr. Howe covered several months. The date was 1898. Mr. Howe was a lawyer of wide experience in patent and corporation law, having come to the bar in 1878. (I, 466, l. 28.) Mr. Winslow was not a lawyer. Mr. Howe was "opposed to the plan of having a harmonious agreement, a sort of working agreement between the Lasting Machine Company [the Consolidated & McKay Co.] and the Goodyear Company because (he) had a sort of indefinite idea that it might be deemed a combination in restraint of trade." (I, 629, l. 20.) He evidently thought, however, as did a good many other lawyers at that chronological stage of the interpretation of the Sherman Law, that it was enough to escape the penalties of

the statute to give the combination a corporate form. He insisted, therefore, "that there should be a complete merger and consolidation." (I, 630, l. 7.) This idea "led to the formation of the United Company instead of carrying out the matter in the other way." (Howe, I, 675, l. 13.) Mr. Howe added, "I think it was under my advice." (Ibid.) Mr. Winslow says he was in accord with the general policy outlined by Mr. Howe upon this point. (I, 535, l. 14.)

In addition to being a lawyer, Mr. Howe was a practical business man, for he says that the management of the Goodyear Company "fell very largely upon" him. (I, 466, l. 34.) He knew whether or not the welter, stitcher, and auxiliaries which his company was putting out competed with the welter, stitcher, and auxiliaries of the Eppler company and he knew whether the lasting machines put out by the Consolidated & McKay Company were competitors of the lasting machine put out by his company. Because of what he knew, he also knew that the *combination of the companies would suppress competition* and restrain trade. His error, not then uncommon, in supposing that a *combination in corporate form* could suppress competition and escape the penalties of the Sherman Law, is discussed *infra*, p. 237.

The plan was thereafter expanded to include the McKay Shoe Machinery Company which had a monopoly of its particular field, and had not yet extended its activities to the point of competition with the Consolidated & McKay or the Goodyear Compa-

nies, *supra*. The only reason given by Mr. Howe for the inclusion of the McKay Shoe Machinery Company was the opportunity to consolidate its agencies with those of the Goodyear Company. (I, 633, l. 27.) Mr. Winslow, however (I, 409, l. 29), apparently did not think very highly of the agencies of the McKay Company. He suggests as a reason for the inclusion of the McKay Company that its managing director, Mr. Brooks, was an old man, and wanted to retire (I, 406, l. 41), and his final statement was that he believed that by adding the metallic and heeling machines to the lasting and welt method machines they could give better service, get a better product from the machines, and get better results to the manufacturers and themselves. (Winslow, I, 529, l. 27 et seq.) This is the customary justification for monopoly. And he must have had a belief approaching certainty that a far-reaching monopoly would result. Whatever the reason, the fact was that the McKay Company was acquired at a price of eleven dollars a share for stock which was selling on the market at eight or nine dollars (I, 533, l. 40) and the original offer was raised from nine to eleven dollars in order to get it. (Howe, I, 633, l. 41.) There is no ambiguity about the monopolistic result. (*Infra*, p. 61.)

It was decided also to acquire the business of the Eppler Welt Machine Company. The business of that company in welt machinery has been described. (*Supra*, pp. 39–55.) It is insisted that this company

was taken in only to avoid the litigation above described. (Winslow, I, 531, l. 34.) The facts as to this litigation have been noticed. (*Supra*, pp. 49–52.) For some reason best known to the parties concerned, this stock was treated differently from that of the other companies. Instead of an offer to exchange the stock of the United Company for the stock of the Eppler Company, the stock of the latter company was purchased quietly by Mr. Endicott and later turned over to a syndicate which took it for the United Company and turned it over to that company. (Winslow, I, 528, l. 42; 529, l. 1–3; 530, l. 1 et seq.)

IV. CONSEQUENCES OF THE FORMATION OF THE UNITED COMPANY AND THE SUPPRESSION OF EXISTING AND POTENTIAL COMPETITION.

The formation of the United Company brought under a single control every company actively putting out or planning to put out lasting, pegging, welt sewing and outsole stitching, heeling and the more important metallic fastening machines in the United States. (Jones, I, 112, l. 22; Selz, I, 142–145; Winslow, I, 537, l. 32; 851, l. 19 et seq.; Howe, I, 630, l. 24 et seq.)

The immediate results were:

(1) The suppression of the actual and of the potential competition in lasting machines theretofore existing between the Consolidated & McKay Company and the Goodyear Shoe Machinery Company. (*Supra*, pp. 21–39.) It created a monopoly in lasting machines.

(2) The suppression of the actual and of the potential competition between the Goodyear Shoe Machinery Company and the Eppler Welt Machine Company. (*Supra*, pp. 39–55.) It created a monopoly of welting and outsole stitching machinery.

(3) The absolute prevention of future competition between the McKay Shoe Machinery Company, the Goodyear Shoe Machinery Company, the Eppler Welt Machine Company, and the Consolidated & McKay Company.

(4) The creation of an absolute and complete monopoly in lasting, pegging, welting, outsole stitching, heeling and metallic fastening machines.

(5) The creation of an organization with vast resources whose control of many different types of machines necessary to the shoe manufacturing industry gave it a power to extend and intrench its monopoly which none of its constitutent companies, however successful, could approach.

A simple illustration makes this clear. Before the consolidation the McKay Company had a monopoly of metallic machines. (*Supra*, p. 56.) But a shoe manufacturer, though obliged to go to it for such machines, was free to choose welt machinery where he could find it. The leases of each of the constituent companies dealt only with the machines made by it. In the case put, therefore, a competitor of the Goodyear Company would not be affected by the McKay Company's monopoly. After the consolidation, however, it became possible for the United Company to say to a manufacturer seek-

ing metallic machines that he could have them on acceptable terms only if he used also United Company's welt machinery, lasting machinery, and so on through the list.

From the formation of the United Company, therefore, it became possible to that company to destroy any competitor who had only one or two types of machines to offer, no matter what the excellence of those machines. It acquired the power, by using an appropriate leasing system, to eliminate and forever exclude all competitors and to maintain a monopoly of all the lines of machines made by it.

The manner in which exactly this was accomplished under the system of leases devised and enforced by the United Company to transform into fact the possibilities of monopoly afforded by the circumstances of its organization appears *infra*, pp. 154–221.

The effect of the consolidation of those companies was precisely the same as if they had remained *separate* but had entered into a written agreement vesting in Winslow and the other persons who became officers of the United Company the power to refuse the machines of one company to any shoe manufacturer who would not agree to operate them only in connection with the machines of the other companies.

Even Mr. Howe recognized the illegality of such a plan. The device of corporate organization was accordingly resorted to. (*Supra*, p. 59.) Such an artifice is not a way of escape from the prohibition of the Sherman Law. (*Infra*, p. 237.)

Control of the McKay Shoe Machinery Company was necessary to the success of a design to exclude competition in the manner just outlined. This is, as was suggested, a sufficient and, it is submitted, the true reason for taking in that company.

(6) The creation of a corporation so powerful that it could raise royalties, e. g., by increasing the royalty on welt machines established by the Eppler Company at three cents to four cents (*supra*, p. 53); bring about a manufacturer's giving up machines to which he had title, and substituting machines for whose mere use he must pay royalties by refusing to supply repair parts (McElroy, I, 189, l. 39); compel an association of manufacturers to accept leases to whose terms they made earnest objection (*infra*, p. 216); and generally to become an overlord of the industry.

V. THE EXPRESSED PURPOSE OF THE CONSOLIDATION.

The evidence establishes that it was the purpose of the combiners to create and perpetuate a monopoly in the lines of shoe machinery then put out by the companies entering the combination and to extend it to other lines.

This purpose was expressed. When the organization of the United Company had been determined upon, the directors of each of the constituent companies sent out, as we have shown, an address to its stockholders; and in the first paragraph of the address to the stockholders of the Goodyear Shoe Ma-

chinery Company, dated February 8, 1899, it was said:

> The great advantages to be secured by the control in one corporation, both in the United States and in foreign countries, of the most efficient types of shoe machinery have been for several years recognized by the officers of the principal shoe-machinery companies. For more than a year your directors and large shareholders have been in negotiation to accomplish this end. * * *
>
> The United Company will also from time to time acquire other shoe-machinery properties, either by direct ownership or by purchase of shares of their stock. (Plff's Ex. 152, I, 140.)

Mr. Winslow was confronted (I, 535, l. 22) with this statement of which Mr. Howe admitted authorship (I, 630, l. 18). He did not deny that the original purpose of the United Company was that set forth in the above quotation. And it is very significant with respect to the purpose actuating the combination that 20 days after its organization the United Company bought out the Goddu Company, a competitor. (*Infra*, pp. 69–72.)

Speaking of that acquisition, Mrs. Converse, formerly Miss Van Wagennen, daughter of the treasurer of that company, testified to a conversation with Mr. Winslow on February 3, 1900, about the purchase of the stock of that company in which he said, "Miss Van Wagennen, I bought them out to get rid of them, to have no more trouble or *competition* with them." (I, 311, l. 32; 312, l. 11.)

Mr. Winslow at first denied this, although he admitted the conversation with her, and then said, "I do not remember any talk about competition." (I, 437, l. 17.) But Mrs. Converse supported her statement by producing what she testified was a substantial copy of a memorandum of the conversation made by her at the time. (I, 312, l. 30–32.)

Other instances showing that it was Winslow's purpose to suppress competition by the purchase of competing companies appear later on. (*Infra*, pp. 72–133.)

A contract entered into on September 11, 1899, between the United Company and Henry W. Peabody & Company, wherein Peabody & Company were made agents of the United Company in Australia, contains the following:

> Whereas the United Company have acquired control of the boot and shoe and leather working machinery made by the following-named corporations doing business in said Boston, namely:
>
> Goodyear Shoe Machinery Company,
> Consolidated & McKay Lasting Machine Company,
> McKay Shoe Machine Company,
> Eppler Welt Machine Company,
> Goddu Metal Fastening Company,
> Gordon Staple Lasting and Tacking Co.,
> Davey Pegging Machine Company,
> Gem Flexible Insole Company,
> Boot & Shoe Sole Laying Company,
>
> and contemplates acquiring the control of other lines of boot and shoe and leather work-

ing machinery and boot and shoe findings, except leather, linings, lasts, and finished boots and shoes. (Plff's Ex. 189, IV, 1250.)

That contract was signed by George W. Brown, treasurer of the United Company. And after Winslow had stated that he was in constant communication with Brown about the various matters affecting the company and its policy, he was asked whether Mr. Brown was correct in the recitals just quoted. He answered with a significant evasion. (I, 536, l. 3.)

There is no doubt that the organization of the United Company accomplished exactly the purpose of combining "in one corporation the most efficient types of shoe machinery," most of which before the combination were competitive. (Plff's Ex. 152, *supra.*) The recitals of the contract quoted above show that the United Company contemplated exactly the expansion of that company which in fact took place. The inevitable results upon interstate commerce have been noted and will be the subject of further comment. In the face of these facts, literal denials of specific intent to restrain trade are of no significance.

VI. SUBSEQUENT ACQUISITIONS MADE BY UNITED COMPANY FOR PURPOSE OF DESTROYING COMPETITION AND EXTENDING ITS MONOPOLY.

A. ACQUISITIONS OTHER THAN THE PLANT PURCHASE.

In the record (I, 37–105) are set out summaries of contracts of purchase and bills of sale under which the United Company acquired the shoe machinery business and assets of fifty-six individuals, partnerships,

and corporations, not including the properties of Thomas G. Plant, which are dealt with separately hereafter. The result of these acquisitions was to remove certain remains of competition, to give the United Company control of a number of shoe manufacturing machines previously freely obtainable in the open market, and so to intensify the possibilities of domination already noted as an effect of the original consolidation. They emphasize and make clear the intent to monopolize which underlay defendants' course of action. In many instances covenants were exacted from the vendors designed to prevent future competition with the United Company where the vendors were inventors. These covenants required assignment to the United Company of all inventions made during a period of years.

The general attitude of the defendants with respect to these acquisitions is vividly exemplified by the testimony of C. H. Krippendorf. The witness was a director of the National Boot & Shoe Manufacturers' Association. Testifying with regard to Mr. Winslow's statements at a conference with a committee of that body, Krippendorf said:

> After discussion, he said, in substance, "We in order to prevent competition, have to buy out competing machines, and we have endeavored to create a condition under which we don't have to pay more money for those machines than they are worth." (I, 214, ls. 35–39.)

It is also a fact that in some cases what was purchased was patent rights and inventions and not

machines. This difference would seem to be of no importance. A prospective competitor is none the less such because he has only proceeded to the point of acquiring a valid patent under which to pursue competition at the time he is removed from the field by acquisition.

For example, the first of the acquisitions proved was that of the Goddu Company. This was consummated less than a month after the organization of the United Company and was deemed by defendants of sufficient importance to warrant inclusion in the recitals of the Henry W. Peabody contract. (*Supra*, p. 66.) The Goddu Company was engaged in perfecting and manufacturing nailing machines, slugging machines, tacking machines and standard screw machines—all important metallic fastening machines. No other concern except the United Company was engaged in this field. The United Company, as successor to the McKay Company, was putting out machines for doing the work for which the Goddu machines were adapted. (I, 42, l. 1.) The Goddu machines, according to Winslow, were not yet in a condition to be placed in the hands of manufacturers for continuous operation, "but they were in a state of development where some of them could have been, without extensive changes, made operative." (I, 436, l. 28.)

In view of this testimony there would seem to be no warrant for the contention of one of the judges below that "the evidence is not sufficient for a belief that without reconstruction, radical in character, anyone

could have used them as competing machines." In any event, it appeared that the very thing the Goddus were doing was the perfection, by all necessary reconstruction, of their machines. The contention referred to is made as a basis for the proposition that, if a competitor is likely to become so important that his removal after his competition had become actual would be illegal, illegality is escaped by removing him before he develops to that point. This is ingenious, but it is not the law. (*Infra*, pp. 252–254.)

In the particular case the reason given by Mr. Winslow for the acquisition, at a cost of about $150,000 (Plff's Ex. 60, III, 514), was the disposal of patent litigation to which the United Company had succeeded as *plaintiffs*. Howard testified that all the alleged infringements were on the part of the Goddus. (I, 849, l. 4.) The disposal of such litigation could hardly be worth $150,000 to the defendants. The removal of an able competitor might well have been worth that amount. The testimony of Mrs. Converse, previously referred to, shows this reason to be the true one. Her father had been a stockholder and was treasurer of the Goddu Company from its organization in 1897. (It had been in existence less than two years when acquired.) The actual purchase by the defendants was of the stock belonging to the Goddus, who possessed inventive ability (I, 436, l. 42) as the witness's father apparently did not. When the Goddus sold out they left her father and others in. (I, 312, l. 25.) Mrs. Converse testified to a subsequent conversation with Mr.

Winslow to which reference has previously been made and which was supported by a copy of a contemporaneous memorandum. She said:

> We had discussed a long while. I said to Mr. Winslow, "If you say what is true, that they had no business and no machines,and no money in the treasury and no money—they couldn't raise money to go on with the business, and no manufacturers to take them—they couldn't put them on the market then," I said, "Mr. Winslow, why did you buy them out—because they would have gone to the wall—they would have had to if you say what is true—they could never have competed with you, a rich, powerful trust; why didn't you leave them alone and let them die a natural death, which they would have done? Why did you buy them out?" And he said: "Miss Van Waggenen, I bought them out to get rid of them, to have no more trouble or competition with them." (I, 312, l. 1.)

The Goddu Company ceased to do business. The Goddus under the contract agreed to assign any and all inventions which they should thereafter make within a period of 10 years and agreed that thereafter they would not during a period of 10 years engage directly or indirectly in the business of making or selling any invention relating in *any* way to machinery useful in the manufacture of boots and shoes. (Plff's Ex. 60, III, 518, par. 1.)

Thus, by this initial acquisition the prospective opportunity of shoe manufactures to obtain metallic machines elsewhere than from the defendants was

removed, and the defendants were enabled to say to a shoe manufacturer in need of such machines, "You may have metallic machines on acceptable terms only if you are willing to use them upon shoes upon which other operations are performed by our lasting and other machines."

It is unnecessary to review in detail all of the 56 acquisitions set out in the testimony. Some may, however, be noted as having special significance in the aspects already shown.

Among these are the following transactions:

1. WINKLEY AND PHILLIPS.

On March 16, 1900, the United Company acquired from Erastus E. Winkley and Benjamin Phillips their inventions and improvements relating to "sole leveling machines," agreeing to pay to Winkley and Phillips a royalty of $20 for each made or sold, leased, or otherwise disposed of. (Plff's Ex. 77, III, 615, par. 3.)

It took covenants from Winkley and Phillips that all inventions or improvements in sole-leveling machines or sole-pressing machines which they should *thereafter* make or acquire should be conveyed to the United Company. (Plff's Ex. 77, III, 615 par. 7.)

Howard, defendants' patent attorney and expert (I, 41, l. 27), testified that at the time of acquiring the above inventions or improvements the United Company was engaged in putting out sole-leveling machines, but that they were not of the same type as those covered by the inventions and improvements acquired (I, 48, l. 11).

2. SWAIN-FULLER MANUFACTURING COMPANY.

On February 2, 1911, United Company acquired the business and assets, including the latters patent, of Swain-Fuller Manufacturing Company, Boston, Mass., a Maine corporation engaged in manufacturing shoe machines, paying therefor $13,201.98, part in cash and part in preferred stock of the United Company. (Plff's Ex. 88, III, 660, par. 1; Dfts' Ex. 231, V, 454.)

Howard testified that the Swain-Fuller Company was manufacturing and putting out, among others, a machine known as the "Star leveling machine," used practically exclusively on turn shoes, and that the United Company was manufacturing and putting out a leveling machine, but he claimed that the United Company's machine was not adapted for leveling turn shoes. (Howard I, 53, l. 20.)

Winslow testified that by this purchase they also acquired a "Single sole-molding" machine. (I, 459, l. 28. Dfts' Ex. 231, V, 455.)

3. CARVER COTTON GIN COMPANY.

On April 30, 1908, the United Company acquired for $16,883 cash the shoe machinery business of the Carver Cotton Gin Company, a corporation engaged in the business of manufacturing and putting out machines and devices used in the manufacture of shoes. (Plff's Ex. 127, IV, 893.)

The United Company took from the vendors covenants that they would not within 15 years directly or indirectly enter into or assist any other

concern in entering into or carrying on any business relating to manufacturing or dealing in any machininery or devices used in the manufacture of shoes, or any other business which would *in any way interfere* or *compete* with the business of the United Company with respect to such machines or devices. (Plff's Ex. 127, IV, 895.)

Howard testified that among the machines obtained from the Carver Cotton Gin Company were the Acme leveling machine, a vamp skiving machine, and a machine known as the Davis leather-board skiver. (I, 71, l. 1.)

He further testified that at the time of this agreement the United Company was putting out the Goodyear automatic leveler and the Emerson skiving machines, but that the acquired machine did not do the work in the same way. (I, 70, l. 37.) Even though this be admitted the result accomplished was the same.

Since the acquisition of its shoe machinery business, the Carver Cotton Gin Company has continued with its cotton gin business.

By these three acquisitions the defendants acquired control of a machine needed in manufacturing all kinds of shoes. The leveling machine used in welt shoes is now put out only as an auxiliary machine. (Dfts' Ex. 231, V, 457.) It can not be obtained for use with welt machinery supplied by any competitor of the defendants. (I, 468, l. 34; 544, l. 10.)

4. THE SEAVER PROCESS LASTING COMPANY.

On January 30, 1900, the United Company acquired for $38,000 (capital stock $600,000) the business and assets, including all letters patent of the Seaver Process Lasting Company, a corporation engaged in manufacturing *lasting* machines and *pulling-over* machines used in the manufacture of shoes. (Plff's Ex. 75, III, 591.) The Seaver Company was then insolvent. (Winslow, I, 456, l. 30.)

Suits had been brought by the Consolidated & McKay Company against the Seaver Company. The record does not show that the suits were ever prosecuted to a final determination.

The Seaver Company was the only company putting out lasting machines in 1899, except the Goodyear and Consolidated Companies. (*Supra*, p. 22.) It had also a pulling-over machine; as had the United Company. (Howard, I, 47, l. 8.) The development of the latter machine was continued. It is now put out by the United Company and is a successful machine. No other pulling-over machine is now offered by any American manufacturer of shoe machinery. (Dfts' Ex. 235, V, 585 [72].)

The result of this acquisition, then, was to remove the final vestige of competition in lasting machines, and to shake off the possibility of competition in pulling-over machines.

5. CORRUGATED WIRE FASTENING COMPANY.

On June 30, 1899, defendant Hurd, in behalf of the United Company, acquired for $12,750 from Silas Pierce and John M. Kingsbury a majority of the

capital stock of the Corrugated Wire Fastening Company, Boston, a corporation engaged in the manufacture and sale of a tacking machine and corrugated wire used in the manufacture of boots and shoes. (Plff's Ex. 62, III, 530–531; Donham, I, 37, l. 43; 38, l. 1; Dfts'. Ex. 231, V, 474.)

Howard testified that the United Company had a machine for performing the *same* character of work as the one obtained from the Corrugated Company. (I, 42, l. 17.) He says the machine was "out of date" (I, 42, l. 16), but this is discredited by the further statement which he makes, viz, "The United Company continued to supply wire and parts for those machines. They have parts in stock to-day." (I, 42, l. 34.)

The Corrugated Company was discontinued as a going concern and its business transferred to the factory of the United Company. (Dfts'. Ex. 231, V, 475.)

6. GLOBE SEWING MACHINE COMPANY.

On February 15, 1901, the United Company acquired control of the stock of the Globe Sewing Machine Company, Boston, a corporation engaged in putting out sewing machines used in the manufacture of shoes, paying therefor $20,000. (Plff's Ex. 89, III, 662.)

Howard testified that at the time of acquiring stock control of the Globe Company that company was engaged in manufacturing a *welting* machine, an *outsole stitching machine*, and an experimental *rough rounding machine*. The business of the Globe

Sewing Machine Company was discontinued. (Howard, I, 53, l. 36.)

By this acquisition a possible competitor in welt method machines was removed. It is noteworthy that the Globe Company had an experimental rough rounder. The absence of such a machine is said by defendants' witnesses to have been a weakness in Mr. Plant's effort to produce a complete line of independent shoe machinery. (I, 776, l. 29.)

7. ROSS-MOYER MANUFACTURING COMPANY.

On September 20, 1900, the United Company acquired for $86,580 all the business of the Ross-Moyer Manufacturing Company, Cincinnati, engaged in manufacturing and putting out *edge setters, edge trimmers,* heel scourers, buffing machines, rolling machines, etc., used in the manufacture of shoes. (Dfts'. Ex. 231, V, 451, 454.)

On the same day an employment agreement was made by the United Company with Simon Ross, under the terms of which he contracted that in consideration of the purchase of the Ross-Moyer Company, and the agreement to employ him, he would not during a period of *ten* years engage in the manufacture of, or deal in, machines, tools, or appliances in *competition* with said United Company and would convey to the United Company any invention relating to shoe machinery which he then owned, or which he should thereafter, during the period of ten years, invent. (Plff's Ex. 87, III, 658.)

Howard testified that at the time of the acquisition of the Ross-Moyer Company the United Company was engaged in putting out *edge setters* and *edge trimmers*. (I, 52, l. 44.)

The Ross-Moyer Company (issued capital stock $197,400—all owned by the United Company) now acts as agent for the United Company. (Plff's Ex. 187, IV, 1235.)

Defendant Winslow is also president of the Ross-Moyer Company (Plff's Ex. 188, IV, 1242), and he and Howe are on its board of directors (Plff's Ex. 188, IV, 1247).

4. EDWIN THEOPHILUS FREEMAN.

On October 9, 1899, the United Company acquired from Edwin Theophilus Freeman, Boston, all of his business, including machinery and letters patent of the United States, relating to nailing machines used in the manufacture of shoes, for $11,000, $500 in cash and $10,500 in preferred stock of the United Company, and in addition thereto $500 per year as royalties for a period of eight years. (Plff's Ex. 68, III, 568.)

The United Company took from Freeman, for the same consideration, covenants that he would not *thereafter* engage in the manufacture of, or deal in, or directly or indirectly aid, assist, or encourage anyone to engage in the manufacture of, or to deal in, boot and shoe or leather-working machinery, in *competition* with said United Company, or the corporations owned or controlled by it, and an additional covenant from Freeman that he would "convey to said United Com-

pany any and all improvements or inventions in or relating to shoe machinery which he has made, or which he shall hereafter make." (Plff's Ex. 68, III, 570, par. 3.)

Howard testified that when the above agreement was entered into with Freeman the United Company already had a nailing machine for performing operations *similar* to the operations performed by the Freeman machine. (I, 44, l. 37.)

It is claimed by the defendants that there were cross infringements of the United's machines by Freeman and of the Freeman patents by a machine that the United Company was developing, although no infringement suits had been brought. (Dfts.' Ex. 275, V, 757.)

9. ALBERT G. BREWER.

On October 11, 1899, the United Company acquired from Albert G. Brewer, Hopkinton, all of his inventions and improvements in machines used in the manufacture of boots and shoes known to the trade as "heel-breasting machines" for $250 in cash and $5 royalty on each machine thereafter marketed by the United Company. (Plff's Ex. 70, III, 576.)

It took also from Brewer an assignment of "all inventions which he may hereafter make relating to machines for breasting heels on the last."

Howard testified that Brewer had built an experimental heel-breasting machine, and that the United Company, prior to the acquisition of Brewer's machines, had been experimenting with a machine for performing *similar* operations, but that it was not

upon the market as a commercial machine; that Brewer's inventions were subsequently embodied in the United's machines. (I, 45 l. 14.)

The defendants claimed that Brewer's machine infringed one of the United's patents, but there is no evidence that the United's machine infringed Brewer's patents.

Six hundred and ninety-eight power heel-breasting machines alleged to have embodied the Brewer inventions, were subsequently made and put out by the United Company. (Dfts'. Ex. 275, V, 759.)

10. AMERICAN SOLE LAYING MACHINE COMPANY.

On September 25, 1902, the United Company acquired for $5,200 from Arthur Fuller, all the property and assets, including letters patent of the American Sole Laying Machine Company, Boston, a corporation, engaged in manufacturing and putting out machines designed and used for laying or leveling shoes. (Plff's Ex. 98, IV, 705.)

The United Company took from Fuller covenants that he would not become interested, directly or indirectly, for a period of ten years in the business of manufacturing machines adapted for use in the operation of laying or leveling the soles of boots and shoes. (Plff's Ex. 98, IV, 708, par. 9.)

Howard testified that at the time of the acquisition of the business of the American Sole Laying Machine Company, the United Company was engaged in manufacturing and putting out machines for laying the soles of boots and shoes, although he claims that

the United Company's machines were inferior to those of the American Sole Laying Company. (I, 56, l. 19.)

11. BOOT & SHOE SOLE LAYING COMPANY

On May 25, 1901, the United Company acquired for $45,000 cash, the property and business of the Boot & Shoe Sole Laying Company, Boston, a corporation, engaged in manufacturing and putting out machines designed and used for laying the soles of boots and shoes. (Plff's Ex. 90, III, 666.)

Howard testified that, at the time, this company was engaged in manufacturing and putting out a sole-laying machine known as the "Boston sole layer," and that the United Company was then engaged in putting out a machine for doing *similar* work, although he claims that the United's machine was inferior to the machine acquired. The acquired company was discontinued as a going concern and its business taken over by the United Company. (I, 54, l. 20 et seq.)

12. J. K. KRIEG & COMPANY.

On May 6, 1903, the United Company acquired for $97,056.52 the property and assets of J. K. Krieg & Company, New York, engaged in manufacturing and dealing in shoe machinery, etc. (Plff's Ex. 104, IV, p. 746, also Ex. 105, IV, 752.) The United Company took from the vendors covenants that they would not engage for a period of 15 years, except as employees of said United Company or some one of its controlled corporations, in any business relating

in any way to the manufacture of or dealing in shoe machinery, or in any business which would in any way interfere with or *compete* with said United Company. (Plff's Ex. 104, IV, 750, par. 8.)

Howard testified that the Krieg Company was engaged in putting out a heel-seat rounding machine, a Louis heel-scarfing machine, and two or three types of embossing machines; that the United Company at that time was putting out a heel-seat rounder and a scarfing machine of different types; that the United Company was also engaged in putting out embossing machines. (I, 60, l. 28.)

Winslow testified that the Krieg Company had also been agent for some of the old companies that became a part of the United. (I, 419, l. 31.)

11. JOSEPH P. CURTIS.

On October 20, 1903, the United Company acquired from Joseph P. Curtis, Everett, Mass., all of his business, including letters patent and applications relating to cementing machines for $500 in cash and the balance in royalties until the total should amount to $5,000. (Plff's Ex. 106, IV, 756.)

The United Company took from Curtis conveyances of all inventions and improvements which he should *at any time thereafter* make relating to cementing machines, and all letters patent and interest therein. (Plff's Ex. 106, IV, 755.)

Howard testified that at the time of entering into the above agreement with Curtis the United Company was engaged in putting out a cementing ma-

chine, but for performing an entirely different operation from that performed by the Curtis machine. (Howard, I., 61, l. 12.)

14. GEORGE A. SMITH MACHINERY COMPANY.

On November 20, 1902, the United Company acquired for $38,790.79 from George A. Smith all the assets and business of the George A. Smith Machinery Company, a corporation "engaged in the business of manufacturing devices and supplies used by manufacturers and dealers in boots and shoes, and by others." (Plff's Ex. 100, IV, 721, 2nd par.)

The United Company took from the vendor covenants that he would not at any time within 10 years enter into or be engaged in or assist any other person in entering or carrying on any business relating to the manufacture or sale of any machinery intended or adapted for use in the manufacture of boots or shoes, or *compete* or interfere with any business carried on by said United Company, or by any company of which it is the owner of the majority of the capital stock. (Plff's Ex. 100, IV, 723, par. 4.)

Howard testified that the Smith Company at the time of its acquisition was putting out a spring-heel scarfing machine, and that at the time the United Company was not putting out a machine for doing similar work. (I, 58, l. 3.) He further testified that the Smith Company had also been acting as agent prior to 1899 for certain of the companies that made up the United Company. (I, 57, l. 42.)

13. ARNOLD MACHINE & SUPPLY COMPANY (WILLIAM B. ARNOLD).

On June 28, 1904, the United Company acquired all the business and assets of the Arnold Machine & Supply Company, Boston, a corporation engaged in manufacturing and putting out cementing machines used in the manufacture of boots and shoes, for $500 cash, and the royalties to be paid on each machine thereafter manufactured by the United Company during the life of the patents transferred. (Plff's Ex. 113, IV, 820.)

The United Company for the same consideration required and took from Arnold restrictive covenants similar to the others already noted, providing that he would not engage in a like business within 15 years, and would convey to it any inventions relating to such machinery he might make. (Plff's Ex. 113, IV, 818.)

Howard testified that at the time of entering into the above agreement the United Company was engaging in putting out *cementing* machines, but he claimed that they were not adapted for work similar to that of the Arnold machine. (I, 64, l. 39 et seq.)

14. BOOTH BROTHERS.

On October 25, 1904, the United Company acquired from Booth Brothers, Rochester, N. Y., an assignment of their business in the United States and Canada relating to *perforating* machines, for $24,000 and a royalty of $15 to be paid for each machine thereafter sold by the United Company in the United States and $10 for each machine sold by it in Canada; the said royalties to be continued until they should

aggregate $7,600, whereupon all interest of said Booth Brothers in the said inventions should cease. (Plff's Ex. 114, IV, 823, par. 2.)

The United Company took covenants from the vendors that neither of them would engage in the manufacture or sale of any perforating machines, or become interested in any manner whatsoever in any such machines during the terms of the patents assigned to the United Company. (Plff's Ex. 114, IV, 825, par. 8.)

Howard testified that the United Company was engaged in putting out a *perforating* machine which could be used for the same operation as the Booth machines, although he claimed that it was not *intended* for the same operation. (I., 65, l. 28.)

On November 1, 1907, the United Company acquired for $71,284 the entire remaining business of Booth Brothers of manufacturing and putting out machinery, tools, mechanisms, devices, findings, materials, and supplies used in the manufacture of boots and shoes. (Plff's Exs. 121–124, IV, 856–871.) The United Company took from the vendors elaborate restrictive covenants, excluding the vendors from having any interest in any shoe machinery business or any business or patents relating to the manufacture of shoes for a term of 15 years. (Plff's Ex. 121, IV, 859.)

Howard testified that the United Company through the above agreement acquired from Booth Brothers a fudge edge-making machine, a *wheeling* machine,

a stitch burnishing machine, an upper-shaping machine, and a *beating* machine. He further testified that the United Company at that time had a *wheeling* machine and an upper-*beating* machine. (I, 69, l. 9.)

Having acquired Booth Brothers' business, a corporation was formed under the laws of New York, with a capital of $25,000, all of which is issued and owned by the United Company. It operates a manufacturing plant at Rochester, N. Y. Winslow became president of the company and also a director, as well as defendants Hurd, Howe, and Coolidge. (Plff's Exs. 187, IV, 1232, 188; IV, 1240, 1246.)

17. FRED H. PERRY.

On January 1, 1904, Fred H. Perry entered into an agreement with the United Company wherein he agreed to convey to that company all inventions which he should make relating to shoe machinery for a period of five years from the termination of his employment by the United Company. (I, 61, l. 19, et seq.)

18. BOSTON SHOE TOOL COMPANY.

On August 16, 1899, the United Company acquired the business of Timothy A. Bresnahan, Boston, engaged in manufacturing and putting out machines, tools, and appliances used in the manufacture of shoes, together with the entire capital stock of the Boston Shoe Tool Company for approximately $72,000, paid in cash and preferred stock of the United Company. (I, 38, l. 33; Plff's Ex. 67, III, 563 et seq.; Dfts' Ex. 231, V, 460.) The business of

the Boston Shoe Tool Company as a going concern was discontinued and the business transferred to the Beverly factory of the United Company. (Dfts' Ex. 231, V, 460.)

Bresnahan agreed to enter the employ of the Boston Shoe Tool Company, as manager, for a period of two years. United Company took from him covenants that he would not *thereafter* engage in nor directly or indirectly aid, assist, or encourage any other person to engage in the manufacture of heel-trimming, edge-trimming, or edge-cutting machines and tools, cutters or irons for heel or edge trimming, for edge setting, or of any of the machines, tools, and products formerly made by the Boston Shoe Tool Company. (Plff's Ex. 67, III, 565.)

19. GLOBE SHOE TOOL COMPANY.

On October 24, 1899, the United Company acquired the business of James H. Reed, and others, copartners, trading under the name of Globe Shoe Tool Company, Boston, engaged in manufacturing and putting out edge cutters and irons used in the manufacture of shoes. The purchase price was $30,000, which was paid part in cash and part in preferred stock of the United Company. (Plff's Ex. 71, III, 577.)

Loomer and Perkins, part owners of the Globe Shoe Tool Company, each agreed to enter the employ of the United Company at a compensation of $25 per week, for a period of one year, and furthermore agreed that they would not *thereafter* engage, either directly or indirectly, or assist or encourage

any other person so to do, in the manufacture of shoe machinery in competition with the United Company; and for the same consideration each of them further agreed that they would convey to the United Company all improvements or inventions relating to shoe machinery, which they should *thereafter* make. (Plff's Ex. 72–73, III, 581, 582, 583, 584.)

The machines and business of the Globe Shoe Tool Company were along the *same* line as that of the Boston Shoe Tool Company *previously* acquired by the United Company. (I, 46, l. 1; Dfts' Ex. 231, V, 430.)

M. JOHN RITCHIE, AND JOHN RITCHIE COMPANY.

On November 18, 1899, the United Company acquired all the business of John Ritchie, and John Ritchie Company, a corporation, relating to the manufacture of standard screw machines, slugging machines, tacking machines, and machines, mechanisms, and appliances for manufacturing and inserting metallic fastenings, including standard screw wire, slugger wire, and tacker wire, used in the manufacture of boots and shoes. The purchase price was not to exceed $15,000 (I, 40, l. 11; Plff's Ex. 74, III, 585, 588.)

The vendors agreed that they would not *thereafter* manufacture, or sell, or become, directly or indirectly, interested in any wire-fastening shoe machinery like that which they had sold.

The purpose of defendants to force shoe manufacturers to deal exclusively with the United Company is well illustrated in Dfts' Ex. 231, V., 444. It is

there stated, with respect to the contract with John Ritchie, and the John Ritchie Company—"the reason for this contract and purchase was to prevent manufacturers who held metallic machinery under lease from the United Company (and who had agreed to purchase their metallic fastening material from the United Company) violating their leases and contracts by purchasing material from Ritchie." (I, 46, l. 31 et seq.)

21. STANLEY MANUFACTURING COMPANY.

On March 19, 1900, the United Company acquired the stock of machines, parts, and supplies on hand at Frankfurt, Germany, of the Stanley Manufacturing Company, a Maine corporation, with its principal place of business at Lawrence, Mass., engaged in the manufacture of McKay sewing machines and other machines, paying therefor $86,500 in preferred stock of the United Company. (I, 40, l. 35; Plff's Ex. 78, III, 620.)

The United Company took from the Stanley Company a covenant that "the said Stanley Company will at once give up its branch office in Germany, so far as relates to the sale or disposal of shoe machinery or shoe manufacturers' supplies, and that the Stanley Company will not in the future establish an office or maintain an agent or representative of any kind to solicit orders for the sale of such machinery and supplies outside of the United States of America, and will not *export* or sell, or dispose of to others for export, any boot or shoe machinery or supplies therefor outside of the United States, except

through the United Company." (Plff's Ex. 78, III, 621.)

A somewhat similar transaction in respect of a shoe machinery company engaged in foreign commerce is that with W. J. Young. (Plff's Ex. 99, IV, 713.)

22. BAY STATE INTERNATIONAL SHOE MACHINERY COMPANY.

On January 30, 1901, United Company acquired for the United Shoe Machinery Company de France and for Deutsche Vereinigte Schuhmaschinen Gesellschaft G. m. b. H. the property and good will for the Continent of Europe of the Bay State International Shoe Machinery Company, Boston, Mass., paying therefor approximately $25,000 in preferred stock of the United Company. (Plff's Ex. 86, III, 655; Dfts' Ex. 231, V, 448.)

Howard said that the acquired company "had a welter and stitcher and I think *a rough rounder,*" but that he did not know whether it "was shipping machinery from the United States to foreign countries." (I, 52, l. 20.) It was free to do so if it saw fit, and therefore it was a potential if not an actual competitor.

23. GEORGE W. EMERSON & COMPANY.

On December 18, 1902, the United Company acquired for $41,500 the business of George W. Emerson and William R. Sampson, copartners, trading under the name of George W. Emerson & Company, Lynn, Mass., engaged in manufacturing

and putting out machinery, appliances, devices, and supplies used in the manufacture of boots and shoes. (Plff's Ex. 101, IV, 725.)

The United Company, for the same consideration, took from the vendors covenants that they would not engage in competition with the United Company for a period of 15 years, and that all inventions which they should make relating to machinery for use in the manufacture of shoes at any time within said period should be forthwith disclosed to the United Company. (Plff's Ex. 101, IV, 729, 730, 731; pars. 5, 6, and 7.)

Howard testified that the Emerson Company at the time of its acquisition was engaged in manufacturing a power-spring heel scarfer, and a heel-burnishing machine, and that the United Company was at that time putting out a heel-burnishing machine but of a different type from that put out by the Emerson Company, and that the United Company was also putting out a spring heel-scarfing machine, to be operated by hand. (I, 58, l. 21, 39; 59, l. 5.)

The business of the Emerson Company as a going concern was discontinued and its business transferred to the United Company. (I, 59, l. 11.)

Sampson has remained in the employ of the United Company. (I, 95, l. 12.)

24. JOSEPH W. LEARY.

On January 1, 1904, the United Company acquired, for $3,052, from Joseph W. Leary, Lynn, Mass., his business of manufacturing and dealing in shoe machinery. (Plff's Ex. 108, IV, 765.)

The vendor agreed to enter the employ of the United Company for a period of 5 years at a compensation of $40 per week, and for the same consideration, agreed to convey to the United Company all improvements which he should make within 10 years from the date of the termination of his employment with the United Company, and that within the same period he would not engage, directly or indirectly, in any business which *competed* or interfered with the United Company. (Plff's Ex. 108, IV, 767, par. 3.)

25. ZACHARY TAYLOR FRENCH.

On January 1, 1904, the United Company and United Shoe Machinery Company, of Maine, acquired the business of Zachary Taylor French, Boston, Mass., engaged in the development of machines designed and used in the manufacture of boots and shoes, agreeing to pay therefor $15,000 in annual installments of $1,500 each. (I, 63, l. 22; Plff's Ex. 111, IV, 803.)

The United Company took from the vendor, for the same consideration, covenants that he would assign all inventions which he should make or acquire within 10 years relating to machines useful in the manufacture of boots and shoes, and that he would not engage in competition with the United Company, for the same period, in the United States or in any foreign country. (Plff's Ex. 111, IV, 807, pars. 5 and 6.)

Howard testified that French had been in the employ of the United Company and previously in the employ of the Goodyear Company, as an inventor,

and was later superintendent of the Goodyear factory at Boston; that the above agreement was entered into as a settlement of the royalties that would become due under various existing contracts, as French desired to leave the employ of the United Company. (I, 63, l. 30.)

M. KIMBALL & HADLEY.

On June 11, 1904, the United Company acquired, for $4,750 cash, the business of Herbert L. Kimball and Irving A. Hadley, copartners, doing business under the firm name of Kimball & Hadley, Lynn, Mass., engaged in manufacturing and marketing *awls, needles*, drivers, supplies, etc., used in the manufacture of boots and shoes. (Plff's Ex. 112, IV, 814.)

The United Company, for the same consideration, took from the vendors *covenants* that neither of them would, within a period of 15 years, become interested in, developing, or carrying on any business which related to manufacturing or dealing in awls, needles, or drivers. (Plff's Ex. 112, IV, 815, par. 2.)

Howard testified that at the time of acquiring the business of Kimball & Hadley the United Company was engaged in manufacturing and putting out *awls, and needles*, except curved needles for the Goodyear sewing machine, and that the United Company was making awls for the use of its own machines; that the United Company purchased Goodyear needles from others, including Kimball & Hadley. (I, 64, l. 16.)

Howard's testimony that the United Company bought Goodyear needles from Kimball & Hadley

is specifically denied by Hadley, who testified as follows:

> Q. Now, do you know whether the United Company, before it obtained your needles, manufactured any needles for its Goodyear machines?
>
> A. It did not, to my knowledge.
>
> Q. Did it buy Goodyear needles of you?
>
> A. Never.
>
> Q. Did you supply Goodyear needles for its machines?
>
> A. Not to the United Shoe Machinery Company. (I, 310, l. 20.)

The fact is that Kimball and Hadley were forced to sell out their business to the United Company by reason of the latter's leasing system, discussed *infra*, pp. 154–221. That company was buying its awls and needles from persons other than Kimball & Hadley and supplying them to its lessees, who were obliged by the terms of their leases (Plts. Ex. 24, par. "Two," III, 214, 216) to take the needles from the United Company. Consequently when Kimball & Hadley approached the lessees for the purpose of selling their needles, "They stated orally that the using of our needles and awls was in violation of the terms and conditions of the leases and if the manufacturer continued to use our awls and needles the United Company would take their machines out of the factories." (I, 308, l. 31.) Finding it difficult to place the output of their factory, Hadley had a conversation with Mr. Bailey, one of the managing officers of the United Company, with respect to the sale of the Kimball &

Hadley business. They were not able to agree upon a price. He said to Mr. Bailey, "We can manufacture needles and sell them as cheap as the United Shoe Machinery Company," to which the latter replied, "Oh, no, you can't; we can give them away if necessary. You know Mr. Winslow is a man that once having made up his mind to get something, he will get it." (I, 309, l. 16 et seq.) Realizing the impossibility of competing with the United Company and impressed by the truth of what Mr. Bailey said with respect to Mr. Winslow's disposition, Kimball & Hadley sold out; but the sale was not voluntary; it was coerced.

Kimball & Hadley, several years after they had sold out their partnership business to the United Company again engaged in the awl and needle business and the United Company brought suit to enjoin them, upon the ground that they were violating their agreement of June 11, 1904. (I, 311, l. 15.)

27. LEOPOLD J. COURTEAU.

On October 1, 1904, the United Company acquired from Leopold J. Courteau, Brockton, an assignment of all his inventions and devices, including letters patent, relating to machines and mechanisms for holding the linings of shoes during the process of pasting the outer leather to the lining. (Plff's Ex. 115, IV, 826–831.)

The United Company, for the same consideration, took from Courteau covenants that he would convey to it all inventions which he should at any time thereafter, within 15 years, own or possess or in which he

should have any interest whatsoever, relating to mechanisms or devices for handling or holding linings. (Plff's Ex. 115, IV, 830, 1st par.)

28. BROCKTON SUPPLY COMPANY.

On November 1, 1905, United Shoe Machinery Company of New Jersey acquired, for $21,724, the business of Oscar A. Campbell and Samuel H. Nichols, copartners, trading under the name of Brockton Supply Company, Brockton, Mass., engaged in manufacturing and putting out machines for pulling lasting tacks. (Plff's Ex. 116, IV, 831–834.)

Howard testified that at the time of acquiring the business of the Brockton Supply Company the United Company was engaged in developing a machine for pulling lasting tacks, but that none had been put out. (I, 66, l. 24.)

29. ZOTIQUE BEAUDRY.

On September 4, 1906, the United Xpedite Finishing Company, a corporation controlled by the United Company, acquired for $12,500 cash, from Zotique Beaudry, Lynn, his inventions and improvements relating to machines, and parts thereof, for burnishing and finishing the heels of shoes. The United Xpedite Finishing Company for the same consideration took from vendor covenants that all inventions which he should thereafter make should be disclosed to the United Xpedite Finishing Company, and that the vendor would not within a period of 15 years engage in making, developing, or exploiting any improvements in heel burnishing machinery or carry-

ing on any business of manufacturing mechanisms for finishing or burnishing the heels of shoes without the consent in writing of said United Xpedite Finishing Company. (Plff's Ex. 120, IV, 850–855.)

Howard testified that at the time of entering into the agreement with Beaudry, the United Company *had* a heel-burnishing machine. (I, 68, l. 9.)

30. RICHARDSON SHOE MACHINERY COMPANY.

On December 1, 1908, the United Company acquired, for $80,000, from W. B. Rice and others, all the property and business of Richardson Shoe Machinery Company, Lynn, Mass., engaged according to the recitals of the contract of purchase "in developing and in dealing in and with certain machinery intended or adapted for use in the manufacture of footwear, including especially sewing machines of the type known in the trade as '*McKay Sewing Machines*' and machinery intended or adapted for cutting or dieing out leather or other materials, including machines of the kind known in the trade as '*Clicking Machines.*'" (Plff's Ex. 125., IV, 871.) (Italics ours.)

United Company took from the vendors, and each of them, covenants that they would not for a period of 10 years engage in the manufacture of any machinery which should compete with the business of said Richardson Company in such machinery. (Plff's Ex. 125, IV, 875, par. 6; also Plff's Ex. 126, IV, 889, par. 3.)

Howard testified that at the time of the acquisition of the Richardson Company, United Company was also engaged in manufacturing and putting out *McKay* sewing machines. (I, 70, l. 10 et seq.)

31. HARRY L. RICE—FRED LA CHAPELLE.

On January 20, 1909, the United Company acquired, for $11,500 cash, from Harry L. Rice and Fred La Chapelle, of Lynn, their inventions and improvements relating to machinery for forming chain stitches and chain-stitch seams, and machines used for attaching the welts of boots and shoes. (Plff's Ex. 128, IV, 898–904.)

The vendors for the consideration aforesaid in effect agreed to sell to the United Company all inventions which they owned relating to methods for the formation of chain stitches adapted to use in attaching the welts to shoes, etc., and likewise to transfer to the United Company all inventions which either of them within 10 years thereafter might make or acquire relating to any shoe machinery intended for the purposes described in the agreement.

They further agreed that they would not, without the consent in writing of the United Company, enter into or become interested financially or otherwise or assist any person in carrying on the manufacturing of or dealing in the machinery described in the agreement in any manner which would directly or indirectly *compete* with the business of the United Company therein. (Plff's Ex. 128, IV, 899, 901, pars. 1, 4.)

Howard testified that the United Company acquired by this purchase a welting machine which was equipped "to put an extra thread on to the single thread side of the chain stitch formed by the machine," and that the United Company was then engaged in manufacturing and putting out welting machines, minus the improvement on the Rice and La Chapelle machine. (I, 71, l. 32.)

Howard further testified that the United Company has not yet put out the machine acquired from Rice and La Chapelle, but "we are still experimenting with it." (I, 72, l. 1.)

32. THE WENTWORTH COMPANY.

On February 3, 1910, the United Company acquired for $60,000 cash all of the capital stock and business of the Wentworth Company of Cincinnati, a corporation engaged in manufacturing and putting out machines used in the manufacture of boots and shoes. (Plff's Ex. 130, IV, 913.)

The United Company took from each of the vendors (seven individuals) covenants which in effect provided that none of them would at any time within a period of 10 years without the consent in writing of the United Company engage in manufacturing, developing, or dealing in certain shoe machinery described therein and would not compete or interfere with the business of the United Company in the aforementioned machinery. (Plff's Ex. 130, IV, 918, par. 5.)

Howard testified that through this acquisition they acquired a "machine for beating heel seats; * * * This operation was to prepare the heel end of the shoe for the sole." That they also acquired "a shank sticking machine." He further testified that the United Company at that time was manufacturing a machine for beating heel seats, and that the United was experimenting with the shank sticking machine. (I, 73, ls. 6, 18, 29.)

Winslow testified that the Wentworth Company was acquired for the purpose of settling infringement litigation.

33. ADAM H. PRENZEL.

On November 22, 1910, the United Company acquired from Adam H. Prenzel, of Halifax, Pa., all his inventions and letters patent of the United States and of other countries, relating to certain machines used in the manufacture of turn shoes, for $8,000 cash and 25 per cent of all royalties on machines thereafter manufactured by the United Company under the letters patent acquired until they shall have aggregated $75,000. (Plff's Ex. 143, IV, 1046.)

The United Company for the same consideration took from the vendor covenants which in effect provided that he would convey to the United Company all inventions, etc., adapted for use in connection with footwear or for use in connection with machinery adapted for use in the manufacture of footwear which the vendor should make or acquire at any time prior to the expiration of certain letters patent. (Plff's Ex. 143, IV, 1048.)

This, like other similar covenants, tends to show suppression of competition so far as it puts restrictions upon the use of any inventions which the vendor might make respecting the art of shoe machinery.

34. M. V. BRESNAHAN & COMPANY.

On December 19, 1910, the United Company acquired for $25,000 cash the business of Maurice V. Bresnahan, William H. Bresnahan, and John J. Dolan, trading under the name of M. V. Bresnahan & Company, of Lynn, engaged in manufacturing and putting out machines used in the manufacture of boots and shoes. The vendors each agreed to enter the employ of the United Company. (Plff's Ex. 144, IV, 1054, 1057.)

The United Company took from the vendors covenants that neither of them should, directly or indirectly, within 10 years *after* the termination of their employment by the United Company engage in any business relating to manufacturing machinery adapted for use in the manufacture of boots and shoes, or in any business which would in any way compete with the business of said United Company; and each of them further agreed to convey to the United Company for the same consideration all inventions which they should make or acquire at any time within 10 years after the termination of said employment agreement relating to shoe machinery. (Plff's Ex. 144, IV, 1055, 1058, pars. 2 and 5.)

Howard testified that by this purchase they acquired an experimental *lasting* machine and a *heel-*

burnishing machine and that the United Company at that time was manufacturing and putting out *lasting* machines and *heel-burnishing* machines. (I, 77, l. 1, 18.)

"Schedule A" attached to Plaintiff's Exhibit 144 gives a list of many different machines together with supplies acquired from the Bresnahan Company.

35. CHARLES P. STANBON & COMPANY.

On April 2, 1911, the United Company acquired for approximately $122,735 cash the business of Charles P. Stanbon, doing business under the name of Charles P. Stanbon & Company of Lynn, engaged in manufacturing and putting out machines, tools, mechanisms, and devices used in the manufacture of shoes. The vendor agreed to enter the employ of the United Company. (Plff's Ex. 145, IV, 1064.)

Howard testified that the United Company acquired from the Stanbon Company a channel-cementing machine, a folding machine, perforating machine, and a channel-opening machine, and that the United Company at that time *was* putting out an inferior channel-cementing machine and a perforating machine. (I, 78, l. 15.)

The foregoing evidence shows a series of restrictive covenants imposed upon the vendors which greatly restrained trade. They were forbidden to engage in *competition* with the United Company for a stated period of years and were required during a like period, where they were inventors, and most of them were, to assign to the United Company all discoveries made by them. This had the effect of chill-

ing the genius of invention and of removing all incentives to serious work in that field of discovery. Not only that, but it withheld any inventions the vendor should make from the hands of men who might become competitors of the United Company.

The claim that any or all of these acquisitions were made for the purpose of avoiding litigation relative to patent infringements will not do, because the purpose, real or fancied, is immaterial when the natural and necessary effect, as here, is undue restraint of trade. (*Infra*, pp. 242, 244–248.)

Moreover, if the machines acquired were infringing any machines owned by the United Company, the parties owning them could have been prevented by injunction from manufacturing or operating them, but suits for infringement would not prevent the defendants therein from inventing or acquiring other constructions which would accomplish the same purpose and avoid infringement. Hence to bring about the desired result, namely, the destruction of competition, it became necessary not only to buy out the inventors but to tie them by covenants which would prevent future competition. Accordingly there are here constantly recurring stipulations binding competitors and inventors who might become competitors not to compete in the future. Whether such covenants isolately viewed are illegal need not be discussed. Such a series of such covenants is forbidden by the Anti-Trust Law. (*Infra*, p. 255.)

The fact that some of the machines obtained by the defendants in the foregoing acquisitions were not

at the time actually competing with machines put out by the United Company does not alter the illegal character of the transaction. It must always be remembered that these machines were taken over by a great corporation which had a monopoly of certain machines which no shoe manufacturer could be without (*supra*, pp. 15–16, 61–62), and therefore could compel every shoe manufacturer to come to it for those machines. Every acquisition which gave to the defendants control of a machine formerly freely obtainable in the open market increased the power of the defendants to exclude competition as to other machines by refusing to let shoe manufacturers have on acceptable terms machines of which defendants were the only source of supply, unless such manufacturers took also from the defendants machines in which competition existed or threatened. How the defendants availed themselves of this power is shown. (*Infra*, pp. 154–221.)

B. THE PLANT ACQUISITION.

1. INTRODUCTORY.

During several years prior to September, 1910, Thomas G. Plant had, at great trouble and expense, developed a complete line of shoe machinery for manufacturing welt, turn, and McKay shoes. (I, 189, l. 19.) Plant also had contracts with factories where such machines could be made in large quantities, and had equipped and was successfully operating his machines in the factory of Thomas G. Plant Company, a corporation, engaged in the shoe manufactur-

ing business at Boston, Mass. (daily capacity approximately 17,000 pairs). He had thus demonstrated his ability to become immediately an active and effective competitor of the United Company, when that company, after extended negotiations, purchased all his assets, including machines and patents relating to shoe machinery, together with a majority of the capital stock of the Thomas G. Plant Company. Clearness requires the statement that this latter company is a *shoe manufacturing* corporation of whose stock Plant owned 60 per cent. It must not be confounded with the *shoe machinery* interest of Thomas G. Plant of which he was the sole owner.

On September 23, 1910, at four o'clock in the morning, the purchase was consummated. (I, 590, l. 1.)

2. WHAT PLANT HAD.

The properties and contracts acquired from Plant were as follows:

(a) Two hundred and six United States patents.

(b) Twenty-eight applications for United States patents.

(c) Seventy-four British patents.

(d) Twenty-one applications for British patents.

(e) Seventy-three French patents.

(f) Fourteen applications for French patents.

(g) Forty-two German patents.

(h) Forty-seven applications for German patents.

(i) Twenty-six Austrian patents.

(j) Fifty-eight applications for Austrian patents.

(k) Thirty-three Australian and eleven New Zealand patents.

(l) Fifteen thousand shares of the preferred and seven thousand five hundred shares of the common stock of the Thomas G. Plant Company. This company, which was engaged in *shoe manufacturing* exclusively, had outstanding twenty-five thousand shares of preferred stock and twelve thousand five hundred shares of common stock. The par value of each share of preferred and common stock was $100.

(m) The contents of a machine shop located in the Pevear Building, in Lynn, Mass., and two-thirds of the capital stock of the Bresnahan Shoe Machinery Company, which was manufacturing for Plant; also patterns, tools, jigs, etc., built for the purpose of manufacturing the "Wonder Worker" shoe machinery (Plant's machinery). These patterns, etc., were in use at the place of business of the Bresnahan Shoe Machinery Company, at the machine shop in the Pevear Building, at the place of business of C. P. Stanbon & Company, Lynn, Mass.; Taft-Pierce Manufacturing Company, Woonsocket, Rhode Island; Stanley Manufacturing Company, Lawrence, Mass.; National Machine & Tool Company, Boston. Certain machines and parts were also included. (I, 563, l. 9.)

(n) There were also assigned the following agreements:

i. Between Charles P. Stanbon & Company and the Manufacturers' Machine Company, which latter was controlled by Plant, under which the Stanbon Company gave to the Manufacturers' Company an option

to purchase on or before November 1, 1906, the business of the Stanbon Company. (Plff's Ex. 132, IV, 931.) By a separate contract the United Company assumed all obligations and liabilities of Plant under the Stanbon contract. (Plff's Ex. 138, IV, 1038.)

ii. Between the Keighley Company and Thomas G. Plant, dated January 26, 1910, whereby the Keighley Company agreed to furnish to Plant its rapid inseam trimming machines in such quantities, up to twenty-five per cent of its output, as Plant might desire, said machines to be subject to a lease of forty-nine years without the payment of royalty. Plant agreed that he would place said machines only in the factories of such shoe manufacturing concerns as equip their factories with his general line of machinery; that he would use his best efforts to induce the users of his machines to use the Keighley rapid inseam trimming machines; Plant further agreed that he would take thirty or more of said machines during the year 1910 and fifteen or more during each six months thereafter during the life of the agreement; and the Keighley Company agreed that it would not sell its business or patents to any one within one year in such manner or to such effect as would interfere with the performance of its contract with Plant. (Plff's Ex. 132, IV, 975.)

By separate contract, the United Company covenanted with Plant that it would indemnify and save him harmless from all actions, claims, and liabilities, which might at any time arise under the contract with the Keighley Company, and Plant agreed that he

would exercise the rights secured to him by said agreement *solely* as the United Company should direct. (Plff's Ex. 135, IV, 1023.)

iii. Between Plant and the Stanley Company, dated June 15, 1910, wherein Plant obtained the right to use certain machinery belonging to the Stanley Company. (Plff's Ex. 132, IV, 931.)

iv. Between Plant and the Stanley Company of the same date, which assigned to Plant the rights held by the Stanley Company under a contract it had made with the United Company on May 1, 1901. (Plff's Ex. 132, IV, 983.)

v. Between Plant and the Stanley Manufacturing Company whereby the latter leased to Plant certain real estate, also a lot of machinery; by which Plant also agreed that on or before the termination of the lease, to wit, June 30, 1915, he would purchase the property described for $150,000 cash. (Plff's Ex. 132, IV, 988, 991.)

vi. Between Plant and the Stanley Manufacturing Company, whereby Plant agreed to manufacture for that Company so many of certain machines as the Stanley Company might thereafter need, and as Plant might find it convenient to make. (Plff's Ex. 132, IV, 1012.)

In connection with the several contracts above referred to, the United Company entered into special contracts to protect Plant against all liability that might arise therefrom. (Plff's Ex. 140, 142, IV, 1040–43.)

It was also agreed that claims against Plant to enforce certain leases for the use of United Company's machines, which were set forth in a bill in equity then pending in the Supreme Judicial Court of Massachusetts, and claims for infringement of letters patent by Plant, would be abandoned.

We invite attention to the large number of important obligations assumed by the United Company for the purpose, defendants say, of procuring a few patents owned by Plant.

The United Company took from Plant covenants that he would assign to it all inventions, etc., which he might make or otherwise acquire within 15 years thereafter, relating to the manufacture of shoes or to machinery, devices, etc., used in such manufacture.

Thus the several contracts executed between Plant and the United Company show within themselves that Plant was the owner of numerous patents upon shoe machinery, that he had obtained the ownership or control of or was in contract relations with a number of factories for the manufacture of shoe machinery located in different parts of the country, and that he was fully equipped to enter upon active and extensive competition with the United Company.

3. THE PURCHASE BY THE DEFENDANTS.

In June, 1910, negotiations were entered upon between the United Company and Plant with a view to purchasing the Plant machinery interests just described. At first they were without success. They

were renewed from time to time until September 23rd, 1910, when they were closed, according to Howe, after an all-night session, at 4.30 a. m. (I., 688, l. 21.) The money consideration was $6,000,000; according to the defendants' testimony, $500,000 had been paid the day before when not so much as a scrap of paper had been drafted or signed. (I., 487, ls. 28–44; 488, l. 1.)

This covered the Plant machinery, 60 per cent of the capital stock of the Plant shoe manufacturing company, and the other Plant interests described under the previous head. (I., 486, ls. 1–11.)

The story of the negotiations eventuating in the purchase is told by Winslow (I., 558, l. 6 *et seq.*); Endicott (I., 578, l. 10 *et seq.*); Howe (I., 668 l. 35 *et seq.*) and Herrick (I., 602, l. 6 *et seq.*). We do not think it necessary further to abstract it here.

4. PLANT WAS A SERIOUS COMPETITOR OF THE DEFENDANTS.

a. He Had Already Completely Equipped a Large Shoe Factory.

As stated, *supra*, Plant had equipped with his machines the shoe factory of the Thomas G. Plant Company, Boston, which had a daily capacity approximating 17,000 pairs. The Thomas G. Plant Company conducted its entire business for several years with this machinery. It continued to use it even after the purchase by the United Company. Substantially all the machines were continued in use until December, 1912 (McGaffee, I., 774, l. 36), and some of them were in operation at the time when the testimony was taken [Jan. 7, 1914] (McGaffee, I., 781, l. 42).

b. He Was Offering to Equip Other Manufacturers and Was Ready to Do So.

Plant also had contracts with factories where his machines could be made in large quantities. (*Supra*, pp. 104–108.) He had offered to install them in the factories of the Commonwealth Shoe and Leather Company and Endicott-Johnson & Company. (Jones, I, 114, l. 31; also Endicott, I, 576, l. 27.) He had issued an elaborate catalogue (Plff's Ex. 266) and was prepared to furnish his machines to shoe manufacturers generally if the opportunity was presented.

Representatives of large shoe factories located in the West had caused his machines to be inspected and as will appear came to Boston immediately prior to the sale to the United Company and made a further inspection with a view to purchasing an interest in the business. (*Infra*, pp. 116–118.)

c. His Machines Were Efficient Competitors of the United Machines in the Opinion of Experts.

Apart from actual success in the Plant shoe factory, there was the following direct testimony as to the capabilities of Plant's machines:

Warren F. McElroy, from 1890 to 1911, superintendent of the manufacturing department of the Hamilton-Brown Shoe Company, later president of the Non-Royalty Shoe Company, and still later in the employ of Burrow, Jones & Dyer Shoe Company, St. Louis, Mo., testified that he went through Plant's factory in May, 1910, at the request of Mr. Brown, president of the Hamilton-Brown Shoe Company. The shoe manufacturers just mentioned as contem-

plating acquiring an interest in Plant's shoe machinery had also sent McElroy as an expert to examine the machines.

Mr. McElroy testified:

> The machines were doing women's McKay and welt work of good workmanship and high grade. I spent practically two days going over the machinery. I can not state the number of machines in operation, but it was a full line, consisting of lasting, welting, stitching, and leveling machines. The essential bottoming room machinery was the machinery I examined. The work done was equally as good as that done by our United Company machines [the Hamilton-Brown Company, his employer, had the United Company's machines] and I felt they were doing about the same number of pairs. They were actually at work on women's shoes. I saw men's shoes there which were made upon them. (I, 189, l. 15, et seq.)

Milton S. Florsheim, president of the Florsheim Shoe Company, of Chicago, Illinois, testified that he went through Plant's factory in 1910, and found that Plant's machines were doing very satisfactory work, and that Plant had a line of machines which were making welt shoes and also McKay sewed shoes. (Florsheim, I, 160, l. 37 et seq.)

E. F. Selz, general manager of the manufacturing department of Selz, Schwab & Company, Chicago, Illinois, engaged in the manufacture of men's and women's shoes, testified that he spent a half day

examining Plant's machinery which was in operation in Plant's shoe factory and that the machines were making women's welts and McKay sewed shoes, and that Plant had a full line of machinery for making such shoes; that the machines were doing equally as good work, as far as he could observe, as the United Company's machines in his own factory, and with as much rapidity; that the machines were capable of being used in the manufacture of men's welt shoes. (I, 145, l. 40; 146, l. 1 et seq.)

Charles H. Jones, president of the Commonwealth Shoe and Leather Company, with factories at Whitman, Mass., and at Gardiner and Skowhegan, Maine, testified that he spent one entire day in June, 1910, examining Plant's machines; that his examining the machines was with a view to arranging for their use in his own factory; that Plant offered him the complete line of machinery which included every machine that was then in use in the Jones factories belonging to the United Shoe Manufacturing Company, offering in all, somewhere between 125 and 150 machines; that the price named by Plant was somewhere between $125,000 and $150,000 for the complete line; that the proposition was rejected principally on account of the tying clauses of the United Company's leases (*infra*, pp. 154–186); that Plant's machines were adapted for the manufacture of men's shoes as well as women's, although witness never saw the machines manufacturing men's shoes. (Jones, I, 114, l. 26 et seq.; 124, l. 16 et seq.; 125, l. 31.)

George E. Warren, an expert in the employ of the United Company, testified that, in conjunction with a Mr. Phillips, he had made an examination of the Plant factory in September, 1910, at the instance of the United Company. (I, 808, l. 29.) He said there were "sixty-nine machines in the Plant catalogue, and we saw them all, but not all in operation. It was a very large factory and had a capacity of ten thousand pairs a day or more, and was in full operation at that time," (I, 809, l. 6.) "I found a welter which was welting shoes and doing the work rapidly. They were running it at different speeds, some of them as fast as we run ours. The work on the shoe looked very well." (I, 809, l. 21.) "I regard the United Company welter as mechanically superior and, taken as a whole, to some extent a superior machine to the Plant machine." (Ibid, l. 35.) "These Plant improvements on the welter were the things which especially impressed me." (I, 813, l. 5.)

This, we may add, is high praise from a representative of the United Company.

Elmer P. Howe, director and expert of the United Company, said that he had examined the Plant machines with Winslow prior to the purchase (I, 668, l. 35), and that in the main the machines "were improvements on old machines" upon which the patents had expired (I, 787, l. 6; 669, l. 16). With respect to the Plant *welting* machines, he said that Plant had added certain improvements which constituted a very valuable feature. (I, 669, l. 21–30.)

The defendants introduced considerable evidence with reference to this transaction, designed to show that Plant's machines as they were in September, 1910, were not yet fully satisfactory for shoe making processes; that the purchase was intended merely to acquire certain inventions which the United Company believed that *it*, but inferentially not Plant, could develop so as to be of great value and to relieve the United Company of litigation.

It appears, however, that after the report of Mr. Warren and his associate experts was made to Winslow, there was no suggestion whatever upon Winslow's part that the particular inventions mentioned by them should be singled out and purchased, but during the entire negotiations nothing was talked of but the buying of Plant's *entire* line of machinery. (I, 559, l. 19 et seq.)

The machines were new, and to a certain extent experimental, and, as was to be expected, certain weaknesses and defects developed under the test of actual operation. Much is made of this circumstance by the defendants. There is, however, nothing in the record to indicate that the defects were of such character as not to be easily remedied by the alterations and adjustments common in the practical working out of a project like Plant's and the evidence does show conclusively that Plant and his assistants were possessed of a very high grade of inventive genius which already had been shown in the production of a number of inventions admitted by the defendants to be very valuable.

d. Shoe Manufacturers Believed the Plant Machines to be Efficient and Were Eager to Purchase an Interest in Them.

In September, 1910, a group of shoe manufacturers had been for some time in negotiation with Plant with a view to acquiring an interest in his shoe machinery business for the purpose of obtaining a source of supply of machinery other than the United Company and to secure relief from what they regarded as oppressive and arbitrary methods of the United Company. These manufacturers were Jackson Johnson, representing the Roberts, Johnson & Rand Shoe Company, with a capacity of over 30,000 pairs of shoes daily, A. C. Brown, representing the Hamilton-Brown Company of St. Louis, with a capacity of 25,000 pairs of shoes daily, George Brown, representing the Brown Shoe Company of St. Louis, Henry W. Peters, representing the Peters Shoe Company of St. Louis, Milton S. Florsheim, representing the Florsheim Shoe Company of Chicago, with a capacity of 4,000 pairs of shoes daily, E. F. Selz, representing the Selz, Schwab Company of Chicago, with a capacity of over 15,000 pairs of shoes daily, and Charles H. Jones of the Commonwealth Shoe and Leather Company of Boston, with a capacity of 6,000 to 7,000 pairs of shoes daily. (Rand, I, 178, l. 24; Florsheim, I, 158, l. 13; Selz, I, 141. l. 16; Jones, I, 105, l. 20; Brown, I, 617, l. 10.)

A further idea of the importance of these manufacturers may be gathered from the fact that they paid to the United Company royalties ranging from $79,000 (Jones, I, 117, l. 23) to $600,000 per annum (Rand, I, 186, l. 40).

These gentlemen met in Boston on September 22, 1910. Plant made them an offer to sell an undivided *one-half* of the *shoe machinery* business for $1,600,000. They asked for specifications as to what he owned. He was then unable to give them such, but insisted that it was unnecessary as they had seen the machinery in operation, and he assured them that he had the facilities to produce the machines in large quantities. This was true. (*Supra*, pp. 104–108.) That was between eight and nine o'clock on the evening of September 22d. The purchase was not effected that night because they were unable to raise before Plant left them the very large sum required. The following morning, before they heard anything further from Plant, they succeeded in procuring subscriptions for $1,100,000, and Wade, treasurer of the North American Company of St. Louis, and Campbell, president of the Mercantile Trust Company of St. Louis, men abundantly able to supply the money, undertook to underwrite the purchase. That occurred about nine or ten o'clock in the morning of September 23d, but when the shoe manufacturers heard from Plant on that morning, they learned that about three or four o'clock on the previous night, after Plant had left them, he had gone to the office of counsel for the United Company and had sold all his interests to that company for $6,000,000. (Jones, I, 114, l. 39 *et seq.;* 115, l. 1 *et seq.;* Selz, I, 147, l. 7 *et seq.;* Florsheim, I, 160, l. 30 *et seq.;* 161, l. 1 *et seq.*)

The fact that the shoe manufacturers who had examined the machinery were willing to purchase a half interest in Plant's shoe machinery business, and pay therefor $1,600,000, is very persuasive that they regarded the machinery as capable of doing well the same work as that done by the United Company's product.

e. Winslow Knew of Their Desire.

Winslow states that on the evening of September 20, the day of the meeting when Winslow practically agreed to buy the Plant property, Plant advised him that he was expecting the "western people," and that if he traded with Winslow he would have to put up a proposition to the western people that they could not accept, or words to that effect. (I, 488, l. 18–23.) According to Winslow, the "western people" came on September 22. (I, 488, l. 17.) Mr. Endicott, who became a director of the United Company "to carry through the deal for the Plant machinery" (I, 587, l. 33), also knew that the western shoe manufacturers were interested and were coming to examine Plant's machines (I, 589, l. 25). He knew this at least as far back as June, 1910. (I, 589, l. 27.)

He also testified that Plant had told him the day *before* the papers closing the purchase were signed that the western manufacturers *were in town and that he was going to take them out that day and show them his factory*, but that he, Endicott, didn't "think" that he knew of their presence in Boston until *then*. (I, 589, l. 30.)

Mr. Endicott, a leading figure in the defendants' negotiations, must have informed Mr. Winslow and Mr. Herrick of the presence of the western manufacturers in the town and the object of their mission. No other hypothesis is reasonable.

From this testimony it is fair to conclude that Winslow and his associates were well aware that negotiations were going on between Plant and the shoe manufacturers, and that unless the United people were prompt in closing the bargain the shoe manufacturers would obtain the Plant machines and establish a vigorous rival of the United Company. The result was the all-night session, ending in closing the deal at 4.30 a. m. (I, 688, l. 9.)

f. Defendants Knew That Other Capitalists Contemplated the Purchase of the Plant Machines.

Herrick, attorney for the United Company, who took an important part in the Plant negotiations (I, 602, l. 6 et seq.), stated that on September 1, 1910, while the Plant purchase was under consideration by the United people, he was called to New York by Wiggin, president of the Chase National Bank, who said to him that Evans, of the North American Insurance Company, desired to see him; that when he asked what Evans wanted to see him about, he was told by Wiggin to call upon Wallace, president of the Central Trust Company, New York; that he did so, and Wallace, after talking for a while about other matters, said in effect that a large concern with international banking connections was considering buying into the Plant machinery, and that he, Wallace, was

planning to have an expert, together with a patent lawyer, go to Boston for the purpose of seeing what Plant had, and that if this concern which he was speaking about took over the Plant machinery it would undoubtedly establish a strong and prosperous business (I, 613, l. 28 et seq.); that he also saw Woodward, of the Hanover National Bank, a director of the United Company, who told him that he had heard "Plant owed the City Bank (of New York) some money, and that the City Bank and a hide man, whose name he would not tell me, had some plan for buying Plant's business" (I, 614, l. 14).

g. Winslow was Exceedingly Anxious to Get Plant's Machines.

The whole history of the transaction shows that the defendants were keenly alive to the importance of removing from their path so dangerous a competitor and were exceedingly anxious to accomplish that end.

The negotiations began in June, 1910, with a talk between Winslow and Plant at Endicott's home in Dedham. (I, 479, ls. 39, 40.) When Winslow did not hear from Plant as then agreed, he called up Endicott "to see if Plant had decided what he wanted to do." (I, 480, ls. 13, 14.) From that time on the negotiations were continuous until their consummation in September. When they were not proceeding between Plant and Winslow, through Endicott, they were going on between Herrick and Plant, at the instance of one Smith. Herrick was reporting to Winslow after every interview. (I, 602, l. 17; 604, l. 10; 605, l. 18; 608, l. 43; 609, l. 1 et seq.; 610, l. 4, 20.)

The defendants insist that the fact that the evidence does not show any offer by Winslow to Plant is of some significance. But Winslow was a good trader. Through Endicott and Herrick, he knew what was going on between Plant and the other parties interested. He knew what they were saying in the New York banks about the condition of Plant's enterprises and finances. He was in a position to bide his time and wait for the psychological moment. That moment arrived when the western manufacturers came to town.

One very significant circumstance shows his anxiety in sharp relief. When the negotiations had once reached the semblance of agreement, although none of the intricate details had been worked out, the defendants hastened to give Mr. Plant a check for $500,000. (I, 488.) When this check was delivered not a document had been drawn.

Other facts indicate this imperative anxiety even more strongly.

I. Endicott's Story.

Henry B. Endicott, of Endicott-Johnson Shoe Company, Endicott, New York (daily capacity about 40,000 pairs) testified that in 1909 Plant had told him that he would give to him $250,000 if he would complete or help to complete the sale of Plant's machinery to the United people (I, 576, l. 40); and that thereupon Endicott arranged for a meeting between Winslow and Plant at his house (I, 577, l. 1); that, after he had failed as the representative of

Plant, he then sought Winslow, and made to him a remarkable proposition. Here is the way he tells it:

> "I am going to make a proposition to you, Mr. Winslow, and you may laugh at it, but you shall be the only man that will laugh at it, because you must promise me, if you don't accept it, never to reveal it," which of course he did promise. I said, "Hanan and Keith refuse to take the responsibility of this recommendation" (to examine the Plant machines and report on the advisability of the purchase). "I have been thinking that if I had been director in your company I would have been willing to take that responsibility; if you care to elect me as a director in your company, I will do my share toward taking that responsibility." Mr. Winslow said he would not laugh at that (of course not); that he liked the idea of it; and he asked me if I would go and see Mr. Howe, which we did—took a motor and went to Mr. Howe's residence, I think to Marblehead. (I, 578, l. 22.)

Asked why he thus pledged Mr. Winslow to secrecy, Mr. Endicott said, "I am not in the habit of offering myself as a director."

> Q. Why did you offer yourself as a director in this case?
>
> A. Because I wanted to make a success of what I had started in on.
>
> Q. In other words, you wanted to be elected a director of the United Shoe Machinery Company to carry through this deal to acquire the Plant machinery; is that right?

A. As far as I was concerned, yes, sir; and because I believed, of course, as I have stated here, that there was value there. (I, 587, l. 30.)

That night he informed Plant that he had changed his allegiance (I, 579, l. 4), went with Winslow to New York, where they met others of the directors, and was elected to the board, although he did not own a dollar's worth of stock in the company. (I, 587, l. 43.) He then continued his efforts to forward the purchase. (I, 579, l. 11.) But, according to his story, he had, simply for the sake of accomplishing that end, exchanged a position where $250,000 was to reward his success for one where he could profit not a penny.

It will be remembered in this connection that this was not the first time Mr. Endicott was so used to serve the ends of the United Company. When Mr. Winslow desired to secure control of the Eppler Company, he did not go about it directly, but employed Mr. Endicott as the man to accomplish the result. (I, 530, l. 4.)

Here we find Mr. Endicott appearing as the most active agent in the purchase of a much more important competitor. He was made a director expressly to carry forward those negotiations. When it was decided that he assume that position he had not yet renounced his character as agent for Plant. As agent he had acquired information about the machinery. It had been examined by his experts. (I, 576, l. 12.) He knew of the desire of the western men to

buy it. (*Supra*, p. 118.) When he became a director of the defendants he knew better than any other how likely Plant was to become a powerful competitor of the defendants.

Endicott's maneuvers are difficult to understand. His story excites lively curiosity. It is doubtful if it has a parallel in the history of great business transactions. However that may be, it shows the deep anxiety of Mr. Winslow and his associates to acquire the Plant machinery and their willingness to adopt any means necessary to accomplish the result.

There was a cause for this anxiety. It rested in the fact that the Plant machinery was seriously competitive and that men capable of making that machinery a vigorous antagonist of the United Company were on the spot or near at hand ready to purchase it.

II. Suits by United Company to Compel the Sale.

On July 5, 1910, a committee appointed by Winslow to examine the Plant machinery made an adverse report. (I, 484, l. 16 et seq.) On that day the United Company commenced a suit against Plant and the Thomas G. Plant Company to enjoin the latter company from using the machines which had been supplied to it by Plant; to enjoin Plant from supplying to the Plant Company other machines in place of those leased by the United Company, and for other purposes. (Pff's Ex. 162.) Soon thereafter a number of patent infringement suits were instituted against Plant and others made

ready for filing. (I, 480, l. 19; 484 l. 38; Dfts' Ex. 270, V, 723.) Defendants' witnesses talk of counter infringements by their machines. (I, 820, l. 17; Dfts' Ex. 277.) *But no litigation was begun by Plant.* These suits, no doubt, were intended in part at least as spurs to induce Plant to sell and hence certainly tend to show that the United Company believed Plant to be a dangerous competitor.

5. DEFENDANTS' ALLEGED REASONS FOR MAKING THE PURCHASE ARE INSUFFICIENT TO CONCEAL THEIR FEAR OF PLANT AS A COMPETITOR.

Defendants say that the purchase was made to obtain Plant's improvements so that they might advance the art of shoe machinery for the benefit of shoe manufacturers.

This altruistic motive might have been satisfied without the expenditure of $6,000,000. All that was necessary was to permit the shoe manufacturers who were ready and anxious to purchase an interest in Plant's machinery to carry through their design. They were ready to interest themselves in the machinery to which the improvements had already been successfully applied.

And the facts demonstrate that the United Company, which is directed by pretty efficient business minds, hardly could have invested $6,000,000 for the purpose of getting control of a few improvements.

In the first place, no effort was made to acquire the improvements or any of them or any right to use them without at the same time acquiring all of Plant's interests in shoe machinery. In the second place, the defendants' own witnesses show that

however valuable the Plant improvements were to him as a present and prospective competitor of the defendants, they were of little use to the United Company, for the following testimony shows what, according to the defendants, the improvements were and what they did with them.

Warren, an expert of the United Company, said:

> These Plant improvements on the welter were the things which especially impressed me. (I, 813, l. 5.)

Howe said that Plant had added a certain improvement to his welting machine which constituted a valuable feature. (I, 669, l. 20–30.)

From Howard we learn that these improvements were an automatic stopping mechanism on an outsole stitcher and a welt measurer and cutter attached to the welting machine. (II, 2259–2263, *passim.*)

With respect to the stopping mechanism, Howard said:

> The Plant mechanism was far from satisfactory as it was not a good mechanical arrangement and occasioned much trouble from breakage. After the acquisition of the Plant patents by the United Company in September, 1910, *five* different inventors employed by the United Company were put to work upon the *problem* of providing a *commercially satisfactory stopping* mechanism. * * * The mechanism finally produced by the joint work of these five inventors was that which I have described and *was entirely different in structure and mode of operation from the Plant mechanism.* (II, 2297.)

Concerning the welt measurer and cutter, he said:

> Some four or *five* inventors were put to work by the United Company to adapt [it] to the United Company's Model G. welter. * * * The United Company's inventors made *important improvements* upon them so that, as finally incorporated in the Model G. machine embodying these improvements and others to which I shall refer, became known as Model K. machine, improvements were made which represent almost as *important advances* in the industry as did the Plant improvements. In operating the Plant welt holder and cutter, it was necessary for the operator to step on a treadle at the time when he desired to sever the welt. In the Model K. machine it is only necessary for the operator to move the shoe slightly to the left. (II, 2260–2261.)

It appears, then, that none of the improvements purchased from Plant at enormous cost could be used by the United Company without radical and far reaching change.

Plant's machines were efficient and were of great value *to him as a competitor of the defendants.* But the United Company already had machines, of different design, which it believed efficient. All that it could get from Plant in the way of machinery of value to it was improvements which it could add to its own machines. The foregoing testimony shows that Plant's improvements could not be added to its machines without being so changed that they were *entirely different* in structure and mode of operation. New invention was required. What was of immediate

value to the defendants in the Plant acquisition was the removal of Plant's competition. This is what they bought and it was for this that they paid their millions.

It is suggested by the defendants also that the purchase was inspired by a desire to avoid litigation. This would not be a defense for an otherwise illegal purchase. (*Infra*, p. 246.) But that the avoidance of litigation was in fact an actuating factor in the transaction does not appear. In no part of the negotiations was it suggested that the defendants should buy out Plant in order to avoid litigation. And no litigation *against* the United Company had been brought.

It is true that a number of infringement suits had been instituted against Plant, as above noted. But it does not appear that if any or all of them had been sustained it would have been fatal to the line of machinery owned by him. His improvements, so far as his two principal machines were concerned, were made upon machines previously put out by the United Company. (I, 787, l. 6.) The patents on these machines had expired, by limitation.

Nor will it do to say that Plant had developed his line of machines with the design to force the United Company to purchase them and that the purchase was made at his instance. He did not have to sell to the United Company. The western manufacturers and the people of whom Herrick was told in New York (*supra*, pp. 116–120), were ready to go in with him. He had two courses open, one to sell to the

United Company and restore the complete monopoly in his lines of machinery which existed before he came into the field, and the other to sell to the others and thus perpetutate the active competition in those lines. He chose the former and no doubt was moved thereto by the fact that the United Company was willing to buy out his entire interest in both his shoe machinery and his shoe-manufacturing business and permit him to retire to enjoy his mountain in New Hampshire. (I, 488, l. 24.) But whether the initiative came from the defendants or from Plant, the result was the same. A powerful existing and potential competitor was purchased. That is the significant fact.

The purchase of the shoe factory is in itself enlightening. The United Company had never been in the shoe-manufacturing business and, so far as this record shows, had never intended to go into that business. (I, 580, l. 42.) Yet, in order to obtain Plant's machines, it took 60 per cent of the stock of the Thomas G. Plant Shoe Company, *whose factory was equipped with Plant's machines*, at a price which Winslow says was $3,500,000. (I, 499, l. 35.)

Furthermore Winslow says that this stock was not purchased because he wanted it. It was because Plant made it a condition of his proposition. (I, 562, l. 12.) It is inconceivable that such an expensive piece of property which was not desired and in which the United Company had never manifested any interest was purchased for no other reason than to

obtain inventions which defendants say had to be entirely worked over before they could be adjusted to the United Company's machines, machines which defendants insist were already better machines than those made by Plant.

In addition, the magnitude of the consideration paid clearly shows that the value of the purchase did not consist alone in the machines and improvements obtained. In the original organization the stockholders of the Consolidated & McKay Lasting Machine Company received $4,599,840 of stock, preferred and common, and $432,000 in cash, or a total of $5,031,840, or $968,160 less than was paid Plant. (I, 568, l. 21.) The Goodyear stockholders received $4,800,000 in stock, or $1,200,000 less than was paid Plant. (I, 569, l. 3.) The McKay Shoe Machinery Company stockholders received $5,500,000, or a half a million dollars less than was paid Plant. (I, 569, l. 8.) Furthermore, it is difficult to conceive how Winslow could value 60 per cent of the stock of T. G. Plant Company at $3,500,000. The total capitalization of that company was $3,750,000, of which $2,500,000 was preferred and $1,250,000 was common stock. Plant owned and the United Company received by this purchase only $1,500,000 preferred and $750,000 common, or a total of $2,250,000 (I, 486, l. 8 et seq.), and the statement furnished the company by Plant showed that the Plant Company had a net investment at that time of only $2,500,000 (Plff's. Ex. 132, IV, 1015), 60 per cent of which was $1,500,000. The evi-

dence does not show that the stock of the Plant Company was worth any such figure.

Besides the amount paid Plant, the United Company also paid under the several contracts which Plant had, $122,000 to Stanbon (I, 558, l. 33 et seq.), $150,000 to the Stanley Company, and also considerable sums to other concerns which were taken over; but Winslow says that these purchases were regarded as mere incidents.

6. RESULT OF THE ACQUISITION OF THE PLANT PROPERTIES.

a. The United Company Again Acquired Substantial Control of Welters and Stitchers.

In order to fully comprehend the effect of this purchase, the conditions then existing must be kept in mind. The only other concern at that time engaged in putting out welters and stitchers to any material extent was the United Company. Winslow named the Haverhill Company, R. H. Long, and the Boylston and Duplessis Companies as being engaged in manufacturing welting machines but the evidence of representatives of each of those companies is in the record and shows that when the Plant purchase was made no one of them was manufacturing welting machines to any material extent. (Webster, I, 290, l. 26; 291, l. 42; 292, l. 8; Doidge, I, 344, l. 17 and 26; Maloy, I, 301, l. 26; Hamel, I, 326, l. 9, 36, 37.)

b. The United Company Secured Control of the McKay Sewing Machine.

While the McKay sewing machine was the first shoe bottoming machine and was one used in large numbers by shoe manufacturers, it was apparently

not put out by any of the companies combined in the organization of the United Company and that company, though putting out the machine in its general department, seems to have done little with it until after 1908. Two reasons seems to have contributed to this, although its exact cause is left by the record somewhat to conjecture. It was a machine which the United Company, bending its energies chiefly to the development of the welt process (I, 441) regarded as obsolescent. Moreover, the Richardson Company was putting out an improved patented type which was considered by the experts of the United Company to be superior to that which the latter company was making. (I, 70, l. 10–14; 82, l. 33–35.) The lack of attention paid to the McKay machine by the United Company resulted in the fact that a large majority of the McKay machines in use came from other manufacturers. In the second place, the McKay sewing machine was not included within the scope of the defendants' leasing system. On both these circumstances, defendants rely heavily in argument in this case.

But in 1908 the situation regarding this machine began to change. In that year the Richardson Company was acquired. (I, 69, l. 20 et seq.) Thereafter the United Company began putting out the McKay sewing machine in its improved form, either by sale or more recently by lease.[1] There still remained,

[1] The lease form adopted was Plff's. Exhibit 170, IV, 1161. It "ties" the use of the machine to the use of defendants' lasting machines. Only a manufacturer who uses exclusively United Company's lasting machines can lease the McKay machine.

however, an established competitor, the Stanley Company, which was putting out the original McKay machine. (I, 564, l. 22.) Its properties were procured at a consideration of $150,000 as a part of the Plant acquisition. This gave the United Company complete control of that machine.

Winslow testified that the machine could be obtained elsewhere, but he was wholly unable to name any other concerns which manufacture it in competition with the United Company. (I, 564, l. 25.) Possibly second-hand machines can be obtained from dealers, but when that supply is exhausted it will be necessary for every manufacturer to equip his factory with McKay machines held by the United Company.

In consequence, the United Company by procuring control of the McKay sewing machine completed its monopoly of every important machine used in bottoming shoes.

c. It Removed the One Formidable Competitor of the Defendants.

Mr. Johnson of the International Shoe Company, one of the largest practical shoe manufacturers of the country, truly said of the Plant purchase that—

> it showed either that somebody was able to make a superior line of shoe machinery to what the United Company had, or else they wanted to retain an absolute monopoly of the shoe machinery business. (I, 161, l. 26.)

The fact is that the purchase removed the one really formidable competitor which had appeared since the organization of the United Company.

VII. THE POSITION OF THE UNITED COMPANY AT THE TIME WHEN THIS ACTION WAS BEGUN.

A. IT WAS OVERWHELMINGLY PREPONDERANT.

Facts already reviewed show that upon its formation the United Company acquired every company then actively putting out or planning to put out lasting, pegging, welt sewing, outsole stitching, heeling and metallic fastening machines. (*Supra*, p. 61.) In the twelve years before the bringing of this action no substantial change took place, but rather the monopoly so acquired was in some respects extended and in many respects strengthened and intrenched. In 1911 the United Company was putting out a complete line of machinery in the field which it then had entered. It was offering machines for every operation performed by machinery in the bottoming of shoes, clicking and eyeletting machines. (Dfts.' Ex. 232, V, 480.) As to many of these machines, it appears from Exhibit 232 that the defendants admit that they have no competition. No company in this country except the United Company offer such a full line of machines. (Jones, I, 115, l. 31; Long, I, 231, l. 17; Dfts.' Ex. 232, V, 480.) The testimony of the many shoe manufacturers who appeared as witnesses either for the United States or for the defendants shows that substantially every machine used for these operations by shoe manufacturers in the United States is a machine put out by the defendants.

Charles H. Jones, president of the Commonwealth Shoe & Leather Company, of Boston, Mass.—capacity

6,000 to 7,000 pairs per day—testified that his company does not use any welting, outsole stitching, lasting, heeling, or metallic fastening machines other than those of the United Company. (I, 114, l. 22.)

E. F. Selz, of Selz, Schwab & Co., Chicago, Illinois—daily capacity about 15,000 pairs—testified that his company has obtained all its welting, stitching, lasting, heeling, and metallic fastening machines under lease from the United Company. (I, 144, l. 15.)

Milton S. Florsheim, president of the Florsheim Company, Chicago—daily capacity about 4,000 pairs—testified that his company leases all of its welting and stitching, lasting, and heeling machines from the United Company, except a few machines which had been obtained previous to the consolidation from companies which became a part thereof. All royalties are paid to the United Company, except royalties for the use of the Xpedite finishing machine, which is paid direct to the Xpedite Company, a subsidiary of the United. (I, 159, l. 44; 160, l. 1 et seq.)

Frank C. Rand, vice president of the International Shoe Company, of St. Louis, Mo.—daily capacity about 50,000 pairs—testified that his company leases all of its lasting, heeling, welting, stitching, and metallic fastening machines, etc., from the United Company. (I, 178, l. 37 et seq.)

George R. Harsh, president and general manager of Harsh-Edmands Shoe Company, Milwaukee, Wisconsin, testified that his company did not use in the bottoming department any machines other than those obtained from the United Company, except one

stitching machine of the Union Lock Stitch Company for ornamental work. (I, 195, l. 14.)

Pearl E. Selby, of the Selby Shoe Company, Portsmouth, Ohio—daily capacity about 6,000 pairs—testified that his company uses the United Company's welters and stitchers exclusively for welt work, but for fair stitching, viz, inserting an ornamental stitch in the McKay shoe they have used a Puritan machine for about 15 years, and were trying out the Union lock-stitch machine (I, 210, l. 38; 213, l. 11 et seq.) and that the company uses exclusively lasting, heeling, and metallic fastening machines of the United Company (I, 212, l. 33).

John E. Williams, with factories at Portsmouth and Ironton, Ohio, testified that he used exclusively the United's bottoming machines. (I, 216, l. 37.)

William A. Hogan, treasurer of T. D. Barry Company, Brockton, Mass.—daily capacity from 3,000 to 3,500 pairs—testified his company uses exclusively the United Company's welters, stitchers, heeling, lasting, and metallic fastening machines. (I, 222, l. 10; 224, l. 14.)

Frank R. Hilliard, Haverhill, Mass., manufacturer of women's welt and turn shoes—daily capacity about 4,000 pairs—uses the United Company's machines exclusively. (I, 282, l. 42; 283, l. 4.)

Ernest Bottomley, Haverhill, Mass., manufacturer of McKay shoes—daily capacity about 700 pairs—testified that with the exception of two old McKay sewing machines he uses exclusively bottoming

machines of the United Company. (I, 285, l. 2, 24; 287, l. 18.)

James H. Cunningham, general superintendent of the Stacy-Adams Company, Brockton, Mass.—daily capacity about 1,200 pairs of welt shoes—testified that his company uses exclusively the United Company's welting and outsole stitching, lasting, heeling, metallic fastening, and eyeletting machines. (I, 288, l. 35; 289, l. 29.)

Ira J. Webster, Haverhill, Mass., shoe manufacturer, testified that he uses exclusively bottoming machinery of the United Company. (I, 362, l. 20.)

Thomas H. Shinn, superintendent for the Curtis & Jones Company, Reading, Pa.—daily capacity about 10,000 pairs—testified that his company uses the United Company's bottoming machinery exclusively. (I, 366, l. 35, 37.)

Alanson C. Brown, president of Hamilton-Brown Shoe Company, St. Louis, Mo., manufacturers of welts, turns, and McKays, with a daily capacity of about 25,000 pairs, testified that practically all of the machinery used in his factories was obtained from the United Company. (I, 617, l. 10, 26.)

Robert P. Hazzard, of the R. P. Hazzard Company, Gardiner, Me., manufacturers of men's welt shoes, with a daily capacity of about 5,000 pairs, testified that his company "got from the United Company all the machinery they could supply." (I, 651, l. 10, 26.)

Martin E. Welch, of the Welch Shoe Company, of Lynn, Mass., testified that every machine used by

that company in the bottoming room with the exception of two or three machines are United machines. (I, 710, l. 25.)

Frederick Allen, of the Allen, Foster, Willett Company, of Lynn, Mass., manufacturers of welts, turns, and McKays with a daily capacity of about 6,000 pairs, testified that his concern uses the United Company's bottoming machines exclusively, with the exception of the Puritan fair stitching machines. They also used defendants' eyeletting and clicking machines. (I, 723, l. 37.)

Jonathan Brown, jr., manufacturers of women's, misses', and children's McKay sewed and standard screw shoes, with an output of about 7,500 pairs per day, testified that he uses practically all of the United's bottoming machines in his factory. (I, 730, l. 15, 31; Plff's Ex. 269, IV, 1441.)

James W. Hitchings, of Luther S. Johnson & Co., Lynn, Mass., manufacturers of slippers, testified that all of the bottoming machines used by his company belonged to the United Company. (I, 738, l. 6.)

Edward W. Burt, of E. W. Burt & Co. (Inc.), of Lynn, Mass., manufacturers of men's, women's, misses', boys', and children's welt shoes, with a daily capacity of about 500 pairs, testified that he was using the United Company's machines. (I, 739, l. 4.)

Charles A. Eaton, of the Charles A. Eaton Company, Brockton, Mass., manufacturers of men's welt shoes, with a daily capacity of about 2,400 pairs, testified that he had not made any attempt to obtain bottoming machines from any other source than the

United Company. (I, 751, l. 20, 27; 755, l. 25 et seq.)

C. Willis Bennett, Fitchburg, Mass., manufacturer of women's, misses', and children's McKay sewed shoes, with a daily capacity of from 800 to 1,400 pairs, testified that, with the exception of machines for fair stitching, all of his sewing, heeling, lasting, and metallic fastening machines were obtained from the United Company. (I, 757, l. 42; 760, l. 1.)

Frederick J. Gross, of Field Bros. & Gross Company, Auburn, Me., shoe manufacturers, with a capacity of 7,200 pairs per day, testified that at the time of his examination his company was using no bottoming machines except those of the United Company. (I, 806, l. 21; 808, l. 1.)

Evidence of this kind might have been indefinitely multiplied, but even the foregoing was hardly necessary in view of the defendants' admission that they are in business relations with 1,033 shoe manufacturers in the United States. (Donham, I, 26, l. 39.) The census of 1910 showed that in 1909, there were in the neighborhood of 1,300 manufacturers.

These figures are sufficiently impressive even without the corrections necessary to accuracy. Census figures appear to include not only shoe manufacturers but producers of "cut stock and findings." These do not use the machines which the defendants have monopolized. Nor do makers of certain kinds of "footwear" other than boots and shoes, e. g., moccasins, infants' shoes, and various types of slippers.

The surviving small hand shops also are to be excluded.

The number thus to be deducted is, unfortunately, not shown by the record. Taking, however, the proof as to the use of defendants' machines together with the absence of a showing that any appreciable number of substantial shoe manufacturers are equipped with competing machines, it is submitted that it is well established that the United Company was not only greatly preponderant in the industry but that its control very closely approximated 100 per cent. Direct evidence, however, was put in as to the actual results of the efforts of those attempting competition. It removes any possible doubt upon the question.

B. EXISTING COMPETITION WAS NEGLIGIBLE IN EXTENT.

1. IN GENERAL.

The foregoing testimony in itself shows that the defendants had in the American market no competition worthy of the name as to any of the more important machines used for operations lying within the field to which the Government's charge of monopolization applies. In the course of the testimony of Mr. Winslow and of other officers of the United Company various manufacturers are named as offering to the trade machines which competed with the United Company's machines of these departments, and a number of exhibits containing lists of such names were introduced. The claims of the defendants, however, were summed up in a final exhibit,

to which the attention of the Court is respectfully invited. (Dfts.' Ex. 337, V, 906). This was chronologically the last of the series of these exhibits to be produced, and therefore may fairly be taken as stating the defendants' case on this point in the way in which they desired to leave it and the heading of the exhibit itself indicates this. It is headed: "List of Machines Offered by Shoe Machinery Manufacturers and Dealers Other Than United Shoe Machinery Company for Preparing and Attaching the Bottoms to the Uppers of Shoes, Eyeletting Machines, Dieing-Out Machines, and Clicking Machines. Named in Defendants' Exhibit 311 (Folio of Catalogues), Defendants' Exhibits 312, 313, 314, 315, 316, 317, 318, 319, and 320 (Catalogues), Defendants' Exhibit 321 (Letters, Advertisements, and Catalogues)." Alleged "competitors" who do not appear in this final statement of the defendants may therefore be and they are herein disregarded.

Analysis of this exhibit (Dfts.' Ex. 337, V, 906) in the light of certain testimony in the record discloses the unsoundness of any claim that the defendants have any substantial competition in the field which they have undertaken to preempt.

The basis of the exhibit as is shown by its descriptive heading was a number of catalogues, letters, and advertisements which defendants were permitted to introduce. The circumstances under which this material was received appear in the examination of the witness Sampson. (I, 836–837, 879–881.) He

was permitted to put in, as Defendants' Exhibit 311, what he described as

> catalogues of machines which I have not seen specifically advertised within a few years, but which were generally known to be those of manufacturers who have these machines for sale as a matter of general trade knowledge. (I, 836, l. 43; 837, l. 1–3.)

Other catalogues were gathered by solicitation. As to the actual putting out of machines by the concerns whose catalogues he had collected, the witness testified in substance that he had no way of knowing, and he explained:

> As to how I know that these various concerns that have catalogues are holding themselves out to the trade as furnishing these various machines, I know it from the advertisements and catalogues which they issue and from general trade knowledge. I have not undertaken to buy anything from them * * *. I do not know how many they are selling. (I, 880, l. 43; 881, l. 1–5.)

In view of the care and labor expended by the defendants in collecting these catalogues, in writing letters to the concerns, many of them mere machine shops (I, 837, l. 6 et seq.), asking them for quotations on machines which the concerns had described themselves as ready to furnish upon order, and in utilizing the "general trade knowledge" of the witness, it is very significant that neither he nor any witness called by the defendants informed the Court of any appreciable use of the machines furnished by

this cloud of alleged competitors. Eighty-five representatives of a number of these manufacturers were, however, called by the Government (I, 882–960 and elsewhere) and testified as to the actual character and amount of the business of these companies. Some of the machines named in defendants' Exhibit 337 are minor machines used for cutting sole leather, etc., as to which the United States does not charge the United Company with monopoly. As to many others the defendants, in that exhibit, do not claim to have any American competition.

2. THE FOREIGN COMPANIES.

It is convenient, therefore, first to dispose of the eleven foreign companies which are mentioned by the defendants in connection with a large number of the machines enumerated in Defendants' Exhibit 337. A number of companies in France, England, and Germany are named as manufacturing one or more of the more important machines used for bottoming operations and it is contended by the defendants that these companies compete with them in this country. The defendants did not show the use of a single foreign machine in the United States, offered no evidence of any attempt to introduce such machines, and contented themselves with producing catalogues bearing the names of the companies in question which they were allowed to introduce as evidence of something.

On the other hand, the United States produced witnesses Stone, McElroy, and Cavanaugh, who

testified specifically on the matter and supplied the full story of foreign machines in this country. This evidence was in addition to the testimony of the shoe manufacturers as to their exclusive use of the defendants' machines which has been noted, *supra*. The testimony shows that these foreign companies had not attempted marketing their machines in the United States in competition with the United Company.

Cavanaugh (I. 954, l. 31 et seq.; 955, l. 1 et seq.) testified that as a salesman of shoe machinery he had visited shoe factories all over this country. He was acquainted with nearly all the foreign companies mentioned, and testified that he knew of no business in shoe machinery having been done in the United States by any of the foreign companies mentioned.

McElroy was especially qualified to testify on this point because of his experience in attempting to fit up a factory to manufacture welt shoes without using any of the machinery supplied by the United Company. (I, 190, l. 1 et seq.) In his effort to do so, he "looked over all the available markets." (I, 190, l. 18.) He did obtain in England certain machines, to wit, sole molding, stitching, indenting, rough rounding, leveling, and lasting machines "because we could only get them from the United Company in this country." (I, 190, l. 43.) These are the only foreign machines which the record shows ever to have been used in this country. To obtain these machines, he was compelled to make a journey to England (I, 190, l. 20, 45; 191, l. 1 et seq.)

and then was unable to secure a machine without waiting for it to be constructed. It took him in all seven months to get together machinery (I, 922, ls. 26–29) sufficient to equip *one* factory with a capacity of 600 to 1,000 pairs of shoes a day. (I, 194, l. 18.) On page 923 this witness reviewed the foreign concerns named in defendants' list. The only one which he knew of as having done any business in this country was the Standard Rotary Machine Company, of England, and in connection with it he refers *only* to the machinery which he himself had obtained. He testified that it had no machinery in this country at the time when he resorted to it for his machinery. (I, 190, l. 35.)

Stone, who was called by the United States (I, 339, l. 41), testified to all that the record shows as to the making of any efforts by any foreign company to market machines in this country. Representing the Atlas Works, of Leipsic, Germany, he spent six weeks in this country. In that time he succeeded in selling two machines for nailing wooden heels on turn shoes to two small manufacturers. (I, 341, l. 21.) He placed no important machines and did no business with any manufacturers of any considerable size.

Why he was unable to do any more business is graphically illustrated by the reception he got from Mr. Jackson Johnson, of the Roberts, Johnson & Rand Company, of St. Louis. Mr. Johnson said:

> My boy, I know all about it, about the machines you are producing in Germany, and what kind of machines can be made in Ger-

> many or in Europe; but, as it is, you know, if you bring over a machine which is constructed in such a way that we drive a cow into it, and on one side ready-made shoes come out and on the other side ready-made sausages and you want to sell it to us for ten cents, then we are not allowed to install it or make use of it.

and added (I, 340, l. 13) that this situation arose from the leases of the United Shoe Machinery Company which are dismissed *infra*. Other large manufacturers gave him the same reason. (I, 340, l. 29; 341, ls. 12, 16.)

This witness, who was the only person ever connected with any foreign company who testified, was asked as to the capacity of the Atlas Works. He answered that his proposition to the American shoe manufacturers was that if they would put at his company's disposal the capital that they would pay in one year in royalties they "might be able *to enlarge* their plant and furnish them machinery; but, as it was, *they were equipped only for European business.*" (I, 344, l. 4.) He stated that he had given up his employment "automatically," being unable to do anything for his employers. (I. 343, l. 28.) It will be noticed that he was not even permitted to show his wares. To be sure, he had no wares in the shape of actual machines to show.

Nothing on the record goes further than to show that these foreign companies are doing business in the countries in which they are respectively

situated, and issue catalogues, of which the United Company had been able to procure copies.

With respect to the Plant transaction, the United Company contended that Mr. Plant was not in competition with them, although he had issued an elaborate catalogue, and announced that he stood ready to supply shoe manufacturers with all of the machinery therein named. The Government, however, supported its contention as to Mr. Plant with the concrete evidence of ability to supply machines, which has heretofore been reviewed. The United Company made no such effort as to the foreign, or indeed as to most of the domestic, concerns whose catalogues were introduced and referred to in Defendants' Exhibit 337.

It is submitted, therefore, that the alleged foreign competition may be dismissed without further notice.

3. AMERICAN COMPANIES.

It has just been noted that Warren F. McElroy testified that in the year 1911 he attempted to equip, as a demonstration, a factory to manufacture welt shoes having a capacity of from 600 to 1,000 pairs a day from sources independent of the United Company. (*Supra*, p. 144–145.) He searched all over the United States, picking up machines here and there. But he could not get in this country, and was compelled to go to England to obtain, many essential machines which he desired. (*Supra*, p. 144.) Certain machines, such as heeling machines, he found he could obtain in this country with the exercise of

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sufficient patience, "but it took two months to get the first one." (I, 191, l. 6.) He could not get a full line of welt machines in this country (I, 190, l. 45; 191, l. 1–2), although he did get two welt machines for trial from *two* American manufacturers. After his return from England he found that the Krentler Company, of Detroit, had a crude lasting machine which they were ready to install on trial. That machine was not a commercial proposition at the time. (I, 190, l. 22.) The record shows that *Krentler's entire output was two machines*, both of which were installed in this demonstration factory. (I, 190, l. 29.) Winslow testified that the Krentler property had been offered to the United Company. It had not been accepted at the time the suit was brought. (I, 570, l. 25.) Under the rule of the Court limiting the introduction of evidence to events prior to the filing of the petition, the subsequent history of this company could not, of course, appear in the record.

McElroy also spoke of the circumstance that from the organization of the United Company he observed the discontinuance of calls from agents for different shoe machines which had been customary before. (I, 188, l. 35; 189, l. 2.)

Winslow also testified that while other machines for dieing out heavy stock were offered, he knew "of no clicking machine that is being used in this country in the manufacture of light grades of shoes except ours." (I, 592, l. 38.)

The foregoing testimony in itself tends to establish the situation with respect to the dominance of the United Company, already disclosed by the evidence of the shoe manufacturers and otherwise. (*Supra*, pp. 134–140.) It did appear that certain companies were preparing to enter the field, provided a reasonable opportunity of successful competition presented itself. The defendants make the most of the fact that some of these companies had at times claimed to be better off than the evidence shows them to have been. A certain exaggeration in such matters is neither unusual nor surprising. In fact, however, representatives of practically every one of these factories testified with reference to the machines which they had actually put out, the supply of machinery which they had on hand, and the capacity and resources of their factories. It is to be presumed that they made the best possible showing for their respective companies. But there is in these matters a very great difference between desire and performance. It is one thing to have for exhibition purposes an experimental machine and quite a different thing to be prepared to produce a practical machine in commercial quantities. The evidence of their representatives showed that these companies are at present wholly inadequate to supply any appreciable part of the American demand. (Merrick, I, 199, l. 8; Long, I, 232, l. 4, and 233, l. 11; Maloy, I, 301, l. 23; 302, l. 2; Webster, I, 298, l. 1; Doidge, I, 344, l. 14.)

Charles H. Jones, of the Commonwealth Shoe & Leather Company, testified that from his knowl-

edge of the shoe-machine business no one outside of the United Company could, on December 12, 1911, furnish machines for the purpose of fitting out a factory for the manufacture of welt and turn shoes. (I, 115, l. 31.)

Long testified to the same effect. (I. 231, l. 17.)

Appendix B, parts 1 and 2, attached hereto, is a condensed statement drawn from the uncontradicted evidence of the 85 witnesses referred to with respect to the catalogues, etc., and from other undisputed sources indicated therein, showing in part 1 the number of principal bottoming machines together with clicking machines which the United Company had out March 1, 1911, and the number which all competing concerns had out at that time. The appendix, part 1, does not give the number of pulling over, standard screw, or pegging machines in use at that time, but they are found in Defendants' Exhibit 228. A summarization of the appendix aided by Defendants' Exhibit 228, as just indicated, is as follows:

Machines.	By defendants.	By all others.
Clicking machine	3,655	None.
Pulling-over machine	1,632	None.
Lasting machine	7,496	7
Standard screw machine	409	None.
Pegging machine	146	None.
Tacking machine	3,488	6
Welt sewing machine	2,527	142
Outsole stitching machine	2,676	758
Loose-nailing machine	1,835	24
Heeling machine	2,019	17
Slugging machine	1,876	23
McKay sewing machine	898	8

With respect to the situation as to McKay sewing machines, see *supra*, pp. 131–133.

According to this summary, the United Company controls all the clicking, all the pulling over, all the pegging, and all the standard screw machines, and about 96 per cent of the total number of bottoming machines in use (clicking machines are not bottoming machines).

It should also be noted that welt sewing and outsole stitching machines are used in repair work and many of the independent machines of these classes are used for that work and not for making new shoes. Doidge, general manager of the R. H. Long Machinery Company, said:

> We have sold 285 outsole stitching machines, of which 3 went to shoe manufacturers and the others to cobblers. (I, 344, l. 25.)

The Victor Shoe Machinery Company also disposes of its product to cobblers. (I, 301, ls. 38–39.)

Remarkable as this showing is, it finds ample support in the testimony of Mr. Winslow. He said "that a large proportion, to wit, more than 90 per cent, of all the welt and turn shoes made in this country are sewed upon such machines" (meaning the machines of the United) (I, 597, l. 10); also, "I know of no clicking machine that is being used in this country in the manufacture of light grades of shoes except ours" (I, 592, l. 38).

The evidence therefore demonstrates conclusively that there is now no substantial competition with the defendants in the field which they have preempted by combination and acquisition.

To this the defendants made no answer other than to introduce the catalogues, letters, and advertisements already referred to and discussed unless certain testimony of Mr. Winslow based upon lists made up for him (I, 575 l. 4. et seq.), can be said to supplement them. The defendants did not call any *independent* maker of machinery *or any shoe manufacturer* to testify *to the use* of such *independent* machinery. In view of the evidence offered by the Government the reason for their so doing is obvious.

Two other claims of the defendants with respect to the question of their monopoly may be here noted. The defendants suggest that they are not to be charged with monopolizing because a number of ideas and inventions had been offered to the company which it had not bought. And because a number of concerns manufacturing or dealing in certain kinds of shoe machinery had been offered to the United Company but rejected. But Mr. Winslow was asked to name a single one of the rejected ideas or inventions which had developed into a machine of any value. His reply was that he should "hope [he] could not mention a single one, but [he had] not looked through the list to see." (I, 574, l. 25.) He was asked whether any one of the concerns which had been offered to the United Company and rejected by it was in existence on December 12, 1911, and was doing a substantial business in competition with the United Company. His answer (I, 575, l. 14) was that he should have to study the list before he could state.

A further example of the value of Mr. Winslow's elaborate testimony as to the existence of competition, testimony based on lists which were worked up laboriously by clerks who were not called (I, 575, l. 4 et seq.) appears in what he says regarding the acquisition of the Stanley Company, the last independent manufacturer of the McKay sewing machine, *supra*, page 133. He referred to a list previously filed which shows Walter Pearson, A. Johnson & Sons, the American Worsted Machine Company and the Nolle Works as manufacturers of or dealers in the McKay machine. But he was unable to state who Walter Pearson was, or anything about A. Johnson & Sons, except that they were probably somewhere in France. He did not know what the American Worsted Machine Company was putting out. He did know that the Nolle Works were in Germany. (I, 565, l. 29.)

It is respectfully submitted that Mr. Winslow would not need to make any particular research to remember the names of substantial competitors. The fact is that the United Company is now the only company in this country making and putting out the McKay sewing machine. That circumstance is unaffected by the fact that second-hand machines may be had, if one wants second-hand machinery, or that the old types of McKay machines are unaffected by patent control, and therefore *could* be manufactured by others than the United Company.

Nor are the figures stated as to the comparative numbers of McKay machines put out by the United Company and by existing competitors affected by the

fact that such machines put out, say, by the Stanley Company, before its acquisition are still in use.

A final reason why no one else *will* manufacture such machines will appear when the leases of the United Company are considered.

Winslow also filed a list showing the increase in welt machines, lasting machines, and certain other shoe machines from 1900 to 1911. He admits, however, that the entire increase in welt machines and in lasting machines was in machines put out by his company.

The evidence is wholly c[illegible]vincing and indeed substantially uncontradicted that the United Company which had a complete monopoly of the field which it entered at its organization in 1899 retained that monopoly down to the institution of this suit, and that in 1911 it had no substantial competition.

VIII. CLAUSES IN DEFENDANTS' LEASES UNDULY INTERFERE WITH INTERSTATE COMMERCE.

A. IN GENERAL.

Irrespective of whether the original formation of the United Company or the subsequent acquisitions by that company were legal or illegal, the defendants have adopted and are enforcing a system of leasing machines which has contributed to the building up and intrenchment of their illegal monopoly and is unlawful in itself in that it directly and inevitably interferes with the free flow of trade in the channels of interstate commerce.

The United States raises no objection to the fact that the United Company leases but refuses to sell its

more important machines. The illegality to which it directs the attention of the Court lies in the insertion in the defendants' leases of certain specific clauses "framed to accomplish exactly what they seemed to be intended to accomplish" (Choate, I, 113, l. 31) whose necessary effect is the restraint described.

These leases themselves are in every respect carefully and skilfully drawn and contain every ordinary provision to protect the interests of a lessor. Among these is a clause requiring the payment of a fixed minimum royalty. In many leases there is a clause authorizing the lessor to take back all machines not needed for the business requirements of the lessee. The lessee is bound at his own expense to keep the machinery in good and efficient working order; to procure from the lessor exclusively the parts which he may need to replace worn or defective ones and to pay therefor "the regular prices from time to time *established by the lessor.*" The machine is held at the sole risk of the lessee, who is bound to pay all taxes and assessments upon it, and when the term of the lease has expired he must return the machine to Beverly, Mass., and pay the freight on it. If the machinery be destroyed by fire, he must pay for it a sum fixed in the lease; and whether the machine is put out on a rental or a royalty basis he is obligated to guarantee a minimum monthly return. Plaintiff's Exhibit 21 (III, 182) is in these and other respects a fair sample of the defendants' leases.

But in addition to these provisions there are clauses in general use in defendants' system of leases which

are sometimes called "tying clauses." These restrict the freedom of choice of the lessee between the defendants' machines and those of their competitors not merely as to the particular need for machinery whose satisfaction was the occasion for the making of the particular lease but also as to his future desires both for machinery of the kind leased and for shoe machines of different but important and necessary kinds. Correlatively they limit and prevent the possibility of access to the shoe manufacturers—the only market possible to defendants and their competitors—of all competitors of the defendants not only as to the immediate transaction closed by the particular lease but as to all future transactions, including the replacement of existing equipment with superior or cheaper machinery.

The objectionable clauses are inter-related and operate together with cumulative effect. They are unlawful both as integral and effective parts of an unlawful whole, and, for the most part, in and of themselves. It is, however, in their combined effect as a system of leasing, used and insisted upon by a corporation dominant in its field that the full extent of their illegality is to be perceived.

The number of the lease forms, the intricate and often equivocal nature of their verbiage, and the technical complications of the situation to which they are applied render an attempt at a general statement of the nature and combined effect of this leasing system at once necessary and difficult. Much of the apparent difficulty of dealing with the matter is, however,

removed by keeping in mind a few general propositions. For instance, although new forms of leases for various machines have been devised by the defendants from time to time, the outstanding forms have usually not been changed or retired. They remain binding upon the lessee until their expiration by lapse of time and their effect upon the organization of the lessee's business remains after them. *Of more importance is the fact that the lessee has no right to demand either the cancellation or modification of an existing lease.*[1] Nor has he the right, when it is a matter of a new lease, to insist that he be given one form rather than another. All these matters are wholly within the control of the United Company. Argument, therefore, as to what competition could be permitted by the United Company if it chose to allow to a lessee a particular selection from its leases is of little moment. What is important rather is what actually has been done and what is being done through the leasing system. Still more important is the use which can be made of it to extinguish competition should it receive judicial approval. For it is fair to judge it by its extreme forms. If a given lease is legal for a given type of lasting machine, for example, it is legal for all lasting machines and for all machines of whatever type.

In what follows care has been taken, as elsewhere, to support the statements made by reference to the record. And ultimately, of course, it is upon the lease forms themselves and their apparent and nec-

[1] He has no right whatever to demand that his "restricted" leases be changed to the so-called "independent" system (*infra*, 190).

essary effect upon competition that the United States relies. All of the forms actually in use at any time by the United Company and its controlled companies appear in the record.

B. THE LEASE FORMS.

Petitioner's Exhibits, 14 to 49, inclusive (III, 121–435), 149, 168–174, 176 (IV, 1082, 1144–1197, 1212), are leases made by the United Company or controlled companies subsequent to the organization of the United Company. Defendants' Exhibits 278 to 308 (V 777–807) are riders attached by the defendants at different times to their leases. The testimony as to the circumstances and frequency of their use is in the record (I, 832–835). The exhibits first referred to cover samples of all the United Company leases of lasting machines (Exhibits 14 to 22, III, 121–203), welt sewing and outsole stitching machines (Exhibits 23 to 26, III, 204–254), heeling machines (Exhibits 27, 28, III, 254–272), metallic machines, including slugging, nailing, standard screw, and all the remaining machines classified by the defendants as metallic machines (Exhibits 29 to 35, III, 272–331), pulling over machines and auxiliaries (Exhibits 36, 39, III, 331–373), general department machines[1]

[1] Defendants refer repeatedly in argument to these "general department" leases as not containing various objectionable clauses and in other connections. Much emphasis is laid upon the variety and number of the machines in the general department. The "general department" leases are not dealt with at length in this brief for two reasons: First, because the defendants claim to have discontinued leasing these machines (Donham, I, 13, ls. 12–13); second,

(Exhibits 40, 41, III, 373–387), eyeletting machines (Exhibits 42, 43, III, 387–401), clicking machines (Exhibit 44, III, 402), McKay sewing machines (Exhibit 170. IV, 1161), and pegging machines (Exhibits 45, 46, III, 413–430). Order forms used by the United Company are Exhibits 47 to 49 (III, 430–435). Leases used by companies controlled by the United Company are Exhibits 50 to 59 (III, 436–514).

The foregoing leases are forms of all the leases used by the United Company. (Donham, I, 5–17,

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because the machines in question have, as a result, become less subject to monopolization. It should be said, however, that the general department leases were a very effective agent of monopolization of machines in other departments, for these leases which were made upon an initial payment "substantially less than" the sale price (Donham, I, 13, ls. 6–8), carried under one form of lease no further payment and under the other only a small annual rental. But only a shoe manufacturer who had machines of the defendants' other departments could have the general department machines upon lease and, when leased, they were limited to use with such machines, i. e., tied to them. All other manufacturers were compelled to buy at the higher price (Donham, I, 12, l. 37 et seq.). It should be added that manufacturers of machines like the general department machines found their market very seriously affected by the fact that the United Company was thus putting out these machines at a price so low as to make competition practically impossible to those who could not recoup their losses in increased royalties on other machines. It should also be noticed that certain important machines while called "general department" machines—e. g., clicking machines and McKay sewing machines—are not treated as are the other machines in that department. The leases covering those machines are dealt with separately in the record and in this brief.

passim.) The riders referred to are all the riders ever used by the defendants (Donham, I, 822, l. 12), and together the exhibits cover the entire body of leases in force and exemplify both what the defendants call their restricted system and their "independent" system.

C. THE "TYING" CLAUSES.

The leases are characterized by the inclusion in them of the tying clauses to which reference has been made. They are called "tying" clauses because they tie the use of the machine leased to the use of machines not covered by the particular lease. Their result is to make it in effect a condition of the lease that the lessee shall not use the machines of competitors either to supply a need for additional machines of the kind leased or for machines of other important though wholly different types. For example, a welting machine may not be used upon any shoe operated upon by a sole-stitching machine procured from another than the lessor. This necessitates taking the sole-stitching machine from the United Company, and thus the use of the welter and the sole stitcher are *tied* together. (Plff's. Ex. 21, par. 9, III, 182.) As it is in the case of the welting machine, so it is with respect to the other machines used in the bottoming of shoes.

In addition to these clauses there are certain other clauses which have a similar effect upon the freedom of the lessee's choice of machines. They give to the tying clauses their maximum effect as destroyers of the possibility of competition with the defendants.

Examples of the various tying clauses and other clauses which together give the defendants' leasing system its illegal character are set out below. The names given to them are adopted purely for convenience.

1. THE SEVENTEEN YEAR TERM.

All leases made by the defendants are made for a uniform term of seventeen years. The result is of course that during that long period no replacement of a machine so leased by a better machine of defendants or others and no change in the form of the lease or avoidance of any of its requirements is open to the lessee except with the defendants' consent and upon their terms.[1]

2. THE "ADDITIONAL MACHINES" CLAUSE.

This clause appears in many leases. It is said by the defendants (I, 444, l. 17) to have been abandoned in 1907, but the defendants have called in no leases containing this clause (Donham, I, 981, l. 2, 16 et seq.), and therefore have now in full force many leases in which it appears. A typical form is that of Plaintiff's Exhibit 30, lease for Metallic department machines (III, 281, par. 3)—covering in one lease 26 machines. The clause reads:

> In case the lessee has more work of the kind which can be performed by any of the machines belonging to the Metallic department of the lessor than the capacity of the Metallic machinery which he has under lease from the

[1] The lessee has no right to demand that an obsolete machine be replaced by a modern one. He can not even "junk" and replace an outworn model and buy a new one. He is compelled to keep on using the old one to "full capacity."

> lessor will permit, then the lessee *shall either take from the lessor*, under a like lease and agreement, sufficient *additional machinery* to perform the work, *or* in case the lessee does not thus lease additional Metallic machinery from the lessor, then *the lessor may*, if it so elects, *cancel* forthwith this lease *and any other* lease of Metallic machinery then in force between the lessor and the lessee. [Italics ours.]

The extent of the use of this clause and any material modifications which have been made in its phraseology are noted in Appendices C and D. This is true of all the clauses here set out. It is sometimes claimed by defendants that this "additional machines" clause was abandoned in 1907. The fact is that Exhibit 34 is the current form of lease for the important group of "metallic machines." (Donham I, 11, ls. 24–28.) *The clause as quoted is taken from that lease.*

1. THE EXCLUSIVE USE CLAUSE.

This clause as it appears in Plaintiff's Exhibit 21 (III, 187, par. 8) lease of No. 5 lasting machine, reads as follows:

> If at any time the lessee shall fail or *cease to use exclusively* lasting machinery held by him under lease from the lessor for lasting all boots, shoes, and other footwear made by or for him, which are lasted by the aid of machinery, or shall fail or cease to use *exclusively* tacking mechanisms and appliances held by him under lease from the lessor for doing all work in the manufacture of all boots, shoes, and other footwear made by or for him which is done by the aid of tacking mechanisms and appliances, *the*

lessor, although it may have waived or ignored prior instances of such failure or cessation, *may* at its option *terminate forthwith* by notice in writing *any or all leases* or licenses of lasting machines, lasting machinery, lasting mechanisms, or lasting devices then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all lasting machines, lasting machinery, lasting mechanisms, and lasting devices the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever.

4. THE PROHIBITIVE CLAUSE.

This clause as it appears in the lease last referred to, Exhibit 21 (III, 185, par. 5), is as follows:

> The leased machinery *shall not* nor shall any part thereof *be used in the manufacture* or preparation *of any* welted boots, shoes, or other footwear or portions thereof *which* have been or *shall be welted in whole or in part*, or the soles in whole or in part stitched by the aid of any welt-sewing or sole-stitching machinery not held by the lessee under lease from the lessor, or in the manufacture or preparation of any turned boots, shoes, or other footwear or portions thereof, the soles of which have been or shall be in whole or in part attached to their uppers by the aid of any turn-sewing machinery not held by the lessee under lease from the lessor, *or in the manufacture of any boots, shoes, or other footwear which have been or shall be in whole or in part pulled over,*

slugged, heel seat nailed, or otherwise partly made by the aid of any pulling-over or "metallic" machinery not held by the lessee under lease from the lessor. [Italics ours.]

5. THE "RIGHT TO TERMINATE ALL LEASES" CLAUSE.

This clause as it also appears in Plaintiff's Exhibit 21 (III, 188, par. 9) is as follows:

> But if any breach or default shall be made in the observance of *any one or more* of the conditions in *this* agreement contained or contained *in any other* lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, *the lessor shall have the right* by notice in writing to the lessee *to terminate* forthwith *any or all leases* of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. * * * Upon the expiration or termination of this agreement or any extension thereof, or of the lease and license herein contained by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise, in any manner whatsoever, the *lessee shall forthwith deliver* the leased machinery to the lessor at *Beverly, Massachusetts, complete* and *in good order,* reasonable wear and tear alone excepted. [Italics ours.]

6. THE "FULL-CAPACITY" CLAUSE.

This clause as it appears in Plaintiff's Exhibit 21 (III, 185, par. 5) reads as follows:

> The lessee shall use the leased machinery to its full capacity upon all boots, shoes, or other footwear or portions thereof made by or for the lessee in the manufacture or preparation of which such machinery is capable of being used.

7. THE RETURN CHARGE.

Where machines are installed by the defendants under certain of their restricted leases no charge is made at the time of installation. Many of these leases, however, provide for what is called a "return charge." The provision for the charge as it appears in Plaintiff's Exhibit 21 (III, 189, par. 9), previously referred to, reads as follows:

> Upon the expiration or termination of this agreement or any extension thereof or of the lease and license herein contained by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise, in any manner whatsoever, the *lessee shall forthwith deliver* the leased machinery to the lessor *at Beverly*, Mass., complete and *in good order*, reasonable wear and tear alone excepted; *and shall thereupon pay* to the lessor without prejudice to any other rights or remedies of the lessor the sum of *One Hundred and Fifty Dollars* ($150) in respect to each lasting machine hereby leased as partial reim-

bursement to the lessor for deterioration of the leased machinery, expenses in connection with the installation thereof, and instruction of operators.

The figure above set out is significant upon the question of the value of the machine when considered in connection with the fire insurance demanded of $225.

8. FASTENING MATERIALS USED ON DEFENDANTS' METALLIC MACHINES TO BE PURCHASED ONLY FROM DEFENDANTS.

Leases of the defendants' metallic machinery also provide that the lessee shall use in or in connection with such machinery only fastening material purchased from the defendants. The requirement as it appears in paragraph 4 of Petitioner's Exhibit 30 (III, 278), reads as follows:

> The lessee agrees, as rent or royalty for the said machinery, to purchase of the lessor at the prices established by the lessor all the fastening material used by him in or in connection with the said machinery, paying therefor in cash on delivery. The lessee hereby guarantees that for each machine hereby leased the amount of fastening material used by him and purchased from the lessor in accordance with the terms hereof shall not be less than 400 pounds during each calendar year embraced by this lease, excepting that a reduction of 33 pounds from the amount thus guaranteed shall be allowed at the end of the year for each calendar month during which the factory of the lessee has remained wholly idle.

3. "ROYALTY" CHARGES ON WORK NOT DONE ON DEFENDANTS' MACHINES.

A clause which is not strictly a "tying" clause in the sense in which that phrase is ordinarily used, but which operates to support and extend the monopoly of the defendants, appears in several leases and especially in leases of welt machinery which the defendants contend are "unrestricted" and classify as such in tabulations introduced as exhibits. Plaintiff's Exhibit 24 (III, 214) is an example of such a lease. In addition to the exclusive use, full capacity, and right to terminate all leases clauses, it provides (par. 6, p. 218) that—

> The lessee shall pay to the lessor throughout the full term of this agreement the respective amounts set forth in the following schedule in respect to each pair of welted boots, shoes, or other footwear, or portions thereof, manufactured or prepared by or for the lessee, which shall have been welted in whole or in part or the soles of which shall have been in whole *or in part* attached to welts by the use of *any welting* or stitching or sewing *machinery*, and in respect to each pair of "turned" boots, shoes, or other footwear, or portions thereof, manufactured or prepared by or for the lessee, the soles of which shall have been sewed or attached to their uppers in whole or in part by the use of *any* sewing or stitching machinery, viz: * * * [Here follows a schedule of prices.]

It will be noted that if a shoe manufacturer made 1,000 pairs of shoes of which 500 were sewed on defendants' machines *used to their full capacity* and 500

on a machine of a competitor, he would nevertheless have to pay to defendants royalties both on the 500 pairs made on their machines *and on the 500 pairs made on the competing machine.* In addition, he would, of course, have to pay for the competing machine. The likelihood of a shoe manufacturer's taking a welt machine of a competitor of defendants under such circumstances need not be enlarged upon.

The lease proceeds (p. 219):

> All payments and the guarantee in this agreement provided for are independent of and in addition to all payments and guarantees provided for in any other leases or licenses or agreements between the lessor and the lessee, provided, however, that (excepting in so far as is required by the guarantees herein contained or contained in other lease and license agreements between the lessor and the lessee) in case under any other "Goodyear department" lease and license agreement between the lessor and the lessee and covering one or more Goodyear Welt and Turn Shoe Machines, Goodyear Universal Inseam Sewing Machines, or Goodyear Outsole Rapid Lockstitch Machines, the lessee shall have paid to the lessor the amount set forth in the schedule of payments in such lease and license agreement contained in respect to any pair of boots, shoes, or other footwear, then the lessee shall be relieved from said payment hereunder in respect to that pair of boots, shoes, or other footwear.

This means that the United Company charges in the first instance for *each* machine what it deems an adequate compensation for *all* the machines of the

group described. When, therefore, the lessee pays for one, he has paid for all, and is relieved by the provision quoted from further payment for the use of any of the others. That is to say, he is obliged to pay as much *for one machine* as *for all* in the group. The evident purpose and result of this provision is to prevent a manufacturer who leases one of the machines, without which he can not get along, e. g., under the prohibitive clauses in his leases of lasting and other machines, from taking an independent machine. For if he did he would have to pay not only for it, but also royalties to the defendants in the same amount as though the work were done on their machines. It is a cunning and effective provision.

10. DISCRIMINATORY ROYALTY CHARGES WHERE COMPETITORS' MACHINES ARE USED BY THE LESSEE.

Apart from the "initial premiums" which characterize the so-called "independent" leases, which are discussed *infra*, the defendants in many cases make higher demands for compensation where the lessee uses machines of defendants' competitors than where he refrains from such use. These demands are made. although the use of competitors' machines be for purposes for which the machine covered by the particular lease is not designed.

An example of such a clause is the following, taken from Petitioner's Exhibit 44 (III, 405, par. 6), lease of a clicking machine, a machine used for cutting out the parts of uppers, whose importance is indicated *supra*, page 16:

> The lessee shall pay to the lessor on the last day of each calendar month the amount or

amounts set forth in the following schedule of payments in respect to each pair of footwear of a kind or kinds therein specified cut during the preceding calendar month in whole or in part by the aid of any clicking machine or machines held by the lessee under lease from the lessor or by the aid of any Clicking Machine dies of the lessor:

Schedule of Payments.

	Per pair.
For all footwear which is lasted by machinery *not* held by the lessee under lease *from* the *lessor*	1 cent.
For all welted footwear which is welted or stitched by machinery *not* held by the lessee under lease *from* the *lessor*	6 cents.
For all turned footwear the soles of which are sewed to their uppers by machinery *not* held by the lessee under lease *from* the *lessor*	1¾ cents.

[Italics ours.]

(NOTE.—The lease provides for a discount of 50 per cent for prompt payment.)

It will be noted that the royalties above stated are cumulative.

The pulling-over machine lease which is Petitioner's Exhibit 38 (III, 350) contains a similar provision. Payment is required in respect to each pair of shoes "pulled over in any way, whether wholly or in part, by the use of machinery" (Par. 6, III, 355).

The same principle in another form appears in a lease for metallic machines. As to these machines, comprising a large and important group, it appears that the defendants' compensation is derived from payments for material used in the machines, the lease requiring all such material to be bought of the lessor.

Exhibit 31 is a lease for metallic machines. It may cover a number of machines or only one, e. g., a standard screw machine. (I, 11, l. 20.) It contains the full capacity clause, additional machines clause, applying not only to machines of the kind leased but to *all* metallic machines, and the right to terminate all leases clause. It provides for the return to the lessor of any machines which the *lessor* thinks the lessee does not need for the requirements of his business and for the payment on such return of such sums as may be necessary to put the machine into condition to be leased to another lessee. It provides for the purchase of a minimum amount of material. It does not contain the prohibitive clause and therefore apparently permits the use of the machines leased upon shoes operated upon by machines, other than metallic machines, supplied by competitors of the defendants. In return for this apparent grant of freedom, wholly illusory as will be shown (*infra*, pp. 190–200), the lease contains this clause:

> The lessee, as rent and royalty for the leased machinery, shall purchase exclusively of the lessor all the fastening material used by him in or in connection with the leased machinery, and shall pay the lessor in cash on delivery the regular and uniform prices therefor as established *from time to time by the lessor*, which shall not be more than *ten* per cent *in excess* of the prices to be established from time to time by the lessor for like fastening material to be used in its metallic department machinery by lessees who shall *agree not* to use the me-

tallic department machinery leased to them in the manufacture of boots or shoes which are lasted on machines *other* than those leased from the lessor, or of welted boots or shoes which are *not* welted and stitched on welt-sewing and sole-stitching machines leased from the lessor, or of turned shoes the soles of which are *not* attached by turn sewing machines leased from the lessor. (Plff's Ex. 31, III, 290, par. 4.)[1]

D. THE USE OF THE RESTRICTIVE CLAUSES IN LEASES OF DEFENDANTS' MACHINES.

All of defendants' leases, as we have seen, provide for a seventeen years' term. All contain the "right to terminate all leases" clause. The varying use of the other clauses noted above appears from the summaries which are to be found in Appendices C and D. These appendices contain all the forms of lease used by the defendants for the machines mentioned, whether such leases are in the "noninitial payment" form or in the "initial payment" form in which in some cases, though not in all, the prohibitive clause is replaced by the demand for an installation charge. Appendix C is a brief statement of the clauses contained in each lease of the defendants. It has been carefully compared with the record and is believed to be entirely accurate. Appendix D shows, as to each of the various clauses set out, the leases in which it is to be found. Appendix E is a tabular statement of the same material.

[1] Defendants' own construction of the prohibitive clause as used in the restricted form of this lease as an agreement by the lessee is to be noted.

E. THE EFFECT OF THE RESTRICTIVE CLAUSES.[1]

Certain of the foregoing clauses clearly restrain the freedom of trade of buyers and sellers of shoe machinery even when considered separately and not as parts of a greater whole. The exclusive-use clause, for example, obviously limits the freedom of choice of every lessee as to all his future needs for machines of the kind leased and clearly restricts access to him, as a possible customer for any such machines, of all who seek to compete with defendants as to those machines.

Some other clauses considered separately and without regard to the circumstance that in practice they are combined with the other clauses as units in an interrelated system used by a dominant monopoly might be argued to be unexceptionable. Such an argument, for example, has been made regarding the full capacity clause taken by itself. But even this clause can not be considered separately and it is a grave misconception of the situation to endeavor to so dispose of them. Were all the clauses, considered separately, legal enough, which we deny, their combined and cumulative effect constitutes a clearly illegal restraint of trade.

For example, if it be assumed that the full capacity clause standing alone is a reasonable and not unduly restrictive condition where machinery is leased, here it is not alone. The clause binds the manufacturer

[1] Under this head, reference is made *only* to the so-called "*noninitial payment*" or "*restricted*" leases. The leases claimed by the defendants to be alternative leases are discussed under G, later, pp. 190–200.

to use to full capacity the machine leased, for the term of and, of course, subject to all the conditions of the lease. A manufacturer is not only forbidden by it even to try out a competing machine by doing upon it work which could be done on the leased machine but he is bound for 17 years. He has no right to cancel or change the form of his lease. During all that long period he is legally unable to replace that machine with that of a competitor no matter how superior. Should he take the one method open to him of obtaining freedom, that of violating his lease and permitting the defendants to exercise their right of cancellation, he finds—under a lease like Exhibit 24, paragraphs 9 and 10 (III, 222–223), for example—that he must pay not only the cost of putting the machine into condition to be leased to another but, in addition, a return charge amounting practically to the value of the machine. Nor is this heavy payment all. He also, under the right to cancel all leases clause, *supra*, page 164, subjects himself to the penalty of cancellation of *all* his leases and the loss of *all* his leased machinery. And this though he may conceivably have made heavy payments for "initial premiums" in order to obtain machines under the so-called "independent" leases. The result, then, of an attempt to replace a machine of sufficient capacity to do his work may be not only to cost him a prohibitive sum of money but also to take away from him machines necessary to his business which he can not obtain elsewhere—e. g., lasting machines. (*Infra*, p. 177.) The

practical operation, then, of this clause which to outward seeming is perhaps the most reasonable of all the restrictive clauses is to prevent the displacement by competitors of any of the defendants' machines. Without looking beyond it and those which have just been mentioned as giving it its peculiar effect the United Company is, indeed, as Brown, J., says, in a phrase not marked by exaggeration, "a very formidable competitor." Without going further, it is apparent that no field of competition is left open except the equipment of entirely new manufacturers and the satisfaction of new or additional requirements of old manufacturers.

But, for practical purposes, this latter field is closed by the exclusive use clause. Since a manufacturer who takes a single machine from a competitor has ceased to use United Company's machines of that type exclusively, no new demand of a manufacturer holding machines under a lease containing that clause or its equivalent can be satisfied without its breach. And the clause or its equivalent is contained in every lease of the principal bottoming machines, except the McKay sewing machine, which has been discussed *supra*, page 131.

The consequence of such a violation may be, at the least, the cancellation of defendants' leases of machines of the kind in question, and it by no means follows that a manufacturer who could get one satisfactory machine of a given type from a source other than the United Company could replace from that source on short notice all the machines of that

kind necessary to his factory. Without seeking to try out here a collateral question of law,[1] it seems clear enough that the matter goes much further and that a violation of the exclusive use clause may, under the "right to terminate all leases" clause, have exactly the same consequences as a breach of the full-capacity clause. Those need not be repeated. It is enough to say that, "as a practical question," no manufacturer can afford to hazard the chance that he may incur them.

Nor is this enough for the defendants. Even the opportunity to do business with new manufacturers is closed by the all-embracing system of defendants' leases. Here the "prohibitive clause" is peculiarly effective. It is the "tying clause" *par excellence*. The defendants term leases which do not contain it "independent" leases. How complete a misnomer the term "independent" is as applied to these leases and how fictitious the pretended choice offered to the shoe manufacturer really is will appear when those leases are examined, as shortly they will be. (*Infra*, p. 190–200.)

What is important here is the fact that a shoe manufacturer about to enter the field who finds,

[1] Defendants are inclined to quibble here by claiming that the exclusive use clause is only a reservation and not a "condition expressed to be obligatory on the lessee" within the intendment of the "right to terminate all leases" clause. While the Government is content to rest upon the language of the clause itself, *supra*, p. 162, it may be said that this clause was expressly decided to be such a condition by Trieber, J., in *U. S.* v. *United Shoe Machinery Company*, 234 Fed. 127, at p. 148.

as he will find, that he is compelled by business necessity to take one important machine from the defendants under a lease which contains a "prohibitive clause" is thereby removed as a possible customer for competitors of the defendants not only as to machines of the particular type leased but also as to all machines of other important types used in the bottoming of shoes. This can, perhaps, best be made clear by stating a specific case, based on the facts as they were at the filing of the petition.

One of the necessary machines for bottoming shoes is the lasting machine (*supra*, pp. 12, 15). A manufacturer in need of lasting machines finds in the first place that except the United Company, which has out 7,496 such machines, only one American company is professing to put them out (Appendix B.) That company, the R. H. Long Machinery Company, has out in all only four and it does not appear that it is able to supply any lasting machines for standard screw shoes, loose nailed shoes, McKay sewed shoes, or turn shoes. (Dfts.' Ex. 235, V, 531.) It has no machine for lasting the sides of welt shoes (Dfts.' Ex. 235, V, 531), no pulling over or assembling machines, and no lasting machine auxiliaries (Dfts.' Ex. 235, V, 531). These circumstances, in themselves compelling of resort to the defendants for lasting machines, are reinforced by the further circumstances that under the restricted lease system if he should do any of his lasting on machines supplied by any concern other than the

United Company, his payments for pulling over machines as to which the United Company has no American competition (Dfts.' Ex. 235, V, 531) would be nearly tripled (Pffs.' Ex. 38 III, 350, par. 6).[1] His payments for clicking machines as to which also the United Company has no American competition (Winslow, I, 592, l. 38) would also be increased by a penalty royalty of at least one-half cent a pair. And if in addition he contemplates the use of welting or stitching machinery not obtained from the defendants, the royalty upon the clicking machine will be increased 3 cents more. *Supra*, p. 170.

Obviously such a manufacturer must go to the defendants for the kinds of lasting machines which no other American manufacturer even professes to be able to supply. Practically, he must go to them for all lasting machines, for the defendants offer no form of lease for lasting machines which does not contain an "exclusive use" clause. The manufacturer is thus committed to the defendants for all of his present and future demands for any kind of lasting machine or device. He is presented with the form of lease for lasting machines which the defendants assure him (Winslow, I, 594, l. 6) is most favorable to him. In the case of the No. 5 machine, the defendants' latest product and the successor to the Ideal and Chase machines, it is Exhibit 21. It contains the "pro-

[1] Petitioner's Exhibit 38 is the *noninitial payment* form of pulling-over machine lease. It provides for a royalty of one-half cent (par. 6) *plus* the amounts set out in column I of a table appearing near the beginning of the lease.

hibitive clause" as quoted, *supra*, p. 163. He may learn of another form without this clause. But he will also learn of certain conditions attached thereto which make the choice of the alleged alternative commercially impossible. These will be discussed. (*Infra*, p. 190–200.) Accordingly he accepts the lease containing the prohibitive clause.

At once the possibilities of competition with the defendants in respect of future needs of that manufacturer, already closed as to lasting machines, are closed as to welting, sole stitching, turn sewing, pulling over, slugging, nailing, and all "metallic" machines. For, under the prohibitive clause, he can not use any machine of any competitor of the defendants for any of those operations upon any shoe lasted in any part on the defendants' lasting machine. And for the reasons already given he can have in his factory no lasting machine not the defendants'.[1]

A chart illustrative of the practical effect of the tying clauses in these restrictive leases is submitted herewith as Appendix A. This chart has been criti-

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These amount to 1½ cents if all the machines of the pulling-over set are used, making a total of 2 cents, or 1 cent *net*. But it is also provided that if the lessee uses defendants' lasting machines exclusively, the maximum royalty shall be three-eighths cent net, or a little more than one-third of 1 cent.

[1] As pointed out, *supra*, p. 157, if Exhibit 21 is legal for No. 5 lasting machines, it is legal for any lasting or other machine to which defendants choose to apply it. In fact, however, the restricted leases of all types of lasting machines contain the tying clauses in various forms and combinations.

cized by the defendants, but all the criticisms are trivial and none of them is based upon fact. It will be observed that this chart relates to provisions in "restrictive" leases and not to leases generally, and it will be found that every statement made in it is supported by the provisions of the leases to which reference is made therein.

It is also to be noted that each lease is in practice tied to all the earlier leases. This is made clear by an illustration. Suppose a manufacturer took lasting machines on the noninitial payment form (Exhibit 21) in 1910, heeling machines (Exhibit 28) in 1922, and metallic machines (Exhibit 30) in 1926. In 1927 his lasting machine leases would expire. His heeling and metallic machines, however, must be used by him to full capacity for 12 and 16 years more. But those machines can not be used under the terms of the leases upon them except upon shoes lasted on defendants' lasting machines. (Ex. 28, par. 5; Ex. 30, par. 3.) Therefore in order to comply with the "full capacity" clause of the heeling and metallic leases the manufacturer must take out new lasting machine leases from the United Company and thereby commit himself to that company for all his demands for lasting machines (*exclusive use* clause) for a further term of 17 years. When other leases expire, a similar situation will arise as to those machines. It results that a manufacturer once within the toils of the tying clauses never can escape.

The foregoing emphasizes what has been said as to the illegality of the full capacity clause when

used in conjunction with the other tying clauses and the hollowness of the defendants' contention that the prohibitive clause is a mere restriction of the right to use the machine leased under it and not an obligation of the lessee that he will not use other machines. Since the full capacity clause, which is expressly an agreement of the lessee, can not be complied with by a manufacturer using other manufacturers' machines of the kinds affected by the tying clauses the result is that in agreeing to a lease containing both the full capacity and the prohibitive clause the shoe manufacturer does agree that he will not use machines of the enumerated classes which are supplied by competitors of the defendants.

It follows, therefore, that by the cumulative and interrelated operation of the various parts of the defendants' leasing system coupled with the circumstance that, as to certain machines necessary in the bottoming of shoes the defendants admit a virtual monopoly (Dfts.' Ex. 235, V, 531) the defendants have brought about a situation in which competition with them either as to the existing or the future needs for machinery of existing or future shoe manufacturers has become entirely impossible. The United Company is not merely "a formidable competitor." It is absolute monarch of the industry. No competitor can exist unless for its own pleasure or policy it withholds its destroying hand.

It remains only to notice certain special features in regard to the leases of certain machines.

1. GOODYEAR MACHINES.

The leases of Goodyear machines are noteworthy in several respects. In the first place, the two principal machines, the welter and stitcher, are tied together under all available forms of lease. In the second place, the noninitial payment forms of these leases contain the royalty provision requiring payment on all shoes made by *any* welting machinery which was discussed, *supra*, page 167. There is no "independent" lease of the auxiliary machines. They can be used only with the principal machines. Leases of these machines have the exclusive use clause.

Much is made by the defendants of the circumstance that the leases of their principal welt method machines while tying them to each other do not forbid the use of competitors' machines other than welt method machines on shoes on which defendants' welt method machines are used. This might be important were it not that the prohibitive clauses in leases of the other indispensable machines as above indicated make the use of such competing machines impossible.

The defendants also call attention to and emphasize the circumstance that they permit the use of their principal welt method machines with auxiliary machines supplied by other manufacturers. This would be more important were there such machines to be had. But Winslow testified that a great many of these machines were manufactured only by the defendants. (I, 545, l. 31 et seq.; 546, l. 3; and Dfts.' Ex. 235, V, 531.)

(For the definition of "principal" and "auxiliary" in this connection, see *supra*, p. 13.)

A much more important circumstance is the fact that the defendants do *not* permit their "auxiliary" machines to be used with principal welt method machines supplied by other manufacturers. (I, 544, l. 8.) The operations performed by these auxiliary machines are necessary to the making of welt shoes. The effect of the defendants' refusal to permit the auxiliary machines of which they have an admitted monopoly to be used with principal welt method machines supplied by their competitors upon the possibility of competition is too obvious to require elaboration. Winslow was questioned regarding this practice of the defendants. Attention is invited to the evasive character of his answers. (I, 867, l. 17.) The upshot of his testimony is that the defendants have not departed from the practice just noted because no competitor has yet produced welt method machines which, in their opinion, are the equal of their own machines. But he suggests that when the happy day arrives on which a competing welt method machine is produced which the defendants recognize as equal to their own, then the company will establish prices for its auxiliary machines. The prospect which this position holds out to competitors of the defendants is also too obvious to warrant elaboration.

It may be said, however, that if no welter or stitcher made by any competitor of the defendants is in fact equal to those of the defendants, the defend-

ants who offer increased economy and efficiency of manufacturing as the justification of their combination need fear no competition even if they made it possible by relaxing the rigors of their practices as regards these auxiliary machines. Nor can the practice in any way redound to their advantage except by extending their monopoly of principal welt method machines and intrenching it by keeping out competitors.

It is apparent that these machines are tied together and are tied to the principal welt method machines of the defendants in order to hold for the United Company the monopoly in such machines which it acquired at its organization.

2. HEELING MACHINES.

It will be observed (Appendix C) that from 1900 to 1904 the only form of lease for heeling machines which had been adopted by the United Company was Exhibit 27. In 1904 Exhibit 28 was adopted. This superseding lease contained in addition to the "right to terminate all leases" clause which had appeared in Exhibit 27, the full capacity, exclusive use, and prohibitive clauses.

Winslow testified that the prohibitive clause was inserted in the lease of Exhibit 28 because it had been decided to get out a lease for welt method machines without requiring an initial payment and it was decided "to have the manufacturer use our heeling machines or [to be] entitled to limit it to use with the welter or stitcher." (I, 546, l. 29.) He said that compensation for ceasing to charge the

initial premium was not to be obtained by requiring manufacturers to put in more heeling machines but by getting a greater volume of business in a given factory. (I, 546, l. 34.) Pressed for further explanation, he said that since the productive capacity of a series of machines depends on regularity of operation, the breaking down of a heeling machine obtained from a competitor might stop defendants' machines (I, 547, l. 1), and added that "What we wanted to bring about was the productivity of the machines that were in use." (I, 547, l. 25.)

The machines whose breakdowns are in Mr. Winslow's apprehension to stop the flow of work are machines of competitors of the defendants. Productivity was to be increased by replacing them with defendants' machines. In other words, the defendants proposed to increase productivity by so designing their system of leasing as to produce monopoly. The probabilities as to increase of productivity depend upon whether the Court is willing to believe that no other manufacturer could produce a machine as effective as that of the defendants. But there was nothing problematical about the effect of the defendants' efforts in respect of their monopoly. The tie created between the welt method and the heeling departments rendered doubly secure the monopoly already enjoyed as to each.

3. METALLIC FASTENING MACHINES.

The prohibitive clause was applied to metallic machines upon the adoption of Exhibit 30 in June, 1900. The defendants attempt to justify it as an

offset to the rising cost of copper. They say that instead of increasing the price of the material sold by them (Winslow, I, 548, l. 5) they adopted the policy of limiting the use of these metallic machines to work that had been done on machines of other departments (*ibid*). But while it was practical and desirable in the opinion of the defendants to tie the metallic machines to the other machines when the price of copper rose it was "not a practical proposition" to untie them when it fell. (Winslow, I, 548, l. 29.)

The obvious effect of the tying was to protect the defendants' control of machines. That this was the object is consistent with their having found it impracticable to give up the tie when the conditions which they say justified it disappeared. That such was the purpose is substantially admitted. Mr. Winslow testified that at the time this lease was adopted the United Company "was about the only one that had any metallic machines or any welting or stitching machines in the factories in this country." (I, 550, l. 20.) In other words, it had a monopoly. The purpose of the tying as expressed by Mr. Winslow was to lessen the cost of service by placing two sets of defendants' machinery in a given factory where without tying there might be only one. (I, 549, l. 29.) But when asked how in view of the circumstance that his company had at the time a virtual monopoly of the business that result could follow, his only answer was, "The best way I can answer is to ask why we didn't raise the price."

(I, 550, l. 25.) Such an answer from Mr. Winslow, who was usually a resourceful witness, is extremely suggestive. The real reason is indicated by Mr. Winslow's testimony, as far as it can be understood, at the bottom of page 549. The increased revenue was to be obtained by "treating the metallic machines in the broad sense like auxiliary machines." How the defendants treat auxiliary machines has just been shown. The change of the form of lease could not change the location of a single machine or add a penny to any royalty. But it could and did operate to prevent future competition with the defendants in the machines to which the metallic machines were tied. And it could have been intended for no other purpose.

F. OTHER OPPRESSIVE PROVISIONS OF DEFENDANTS' LEASES.

In addition to the tying and rebate clauses there are other clauses which are extremely burdensome. Brief reference has been made to these, *supra*, but a more extended statement is warranted.

Take, for example, the provisions of Exhibit 21. (III, 182, par. 1.)

The lessee can not without permission from the lessor remove a machine from one of his factories to another.

The lessor "and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use." The representatives of the United Company

may enter the factory of the lessee at any time they please, and put themselves in a position to learn any manufacturing secret the lessee may have. They have the power to determine when repairs are needed and the extent thereof. (Par. 11.) If a lessee should refuse he violates his lease and the lessor acquires the right to cancel every lease on machines in his factory. (Par. 8.)

Further, he is required "at his own expense" to keep the machinery "in good and efficient working order," although the machinery belongs to the lessor and the lessee is bound to pay for its use. He is also required to obtain from the "lessor exclusively" the parts needed for repairs and to pay therefor the prices "from time to time established by the lessor," no matter how unreasonable. (Plff's. Ex. 21, par. 2.)

The machinery must be held by the lessee at his risk and in case of its destruction by fire he is required to pay a stated sum (where it is a lasting machine, $225), and must return whatever remains of it to the defendants. (Plff's. Ex. 21, par. 3.)

Where the machine has not been lost, he must, after paying full royalties for its use and also keeping it in good order at his own expense, return it at the end of the term for which it has been leased to Beverly, Mass., and pay a return charge of $150, in the case of a laster, "as partial reimbursement to the lessor for deterioration," etc.

If the value of the machine is $225, as we may infer from the amount which the lessee is required to pay

in case of destruction, payment of this return charge is exorbitant. In other words, after paying for the use of the machine for 17 years, paying for all repairs necessary and all taxes and assessments upon it during that period and the freight from Beverly to the lessee's factory, and the freight from the latter place to Beverly at the end of the term (par. 9), he is compelled to pay the lessor a very large proportion of the value of the machine, while the lessor takes the machine.

He must also pay a *minimum* charge of $10 a month for 17 years, or $2,040 for the use of a machine valued, as we have just said, at $225. (Par. 6.)

He is obligated to keep accurate accounts showing the number of boots and shoes or other footwear operated upon, to submit these accounts to the defendants or their representatives, and to "furnish any further information which may be called for in relation to the leased machinery or the use thereof." (Par. 7.)

He gives to the lessor the full right, power, and authority to enter upon his premises and take possession of the machine and remove it in case of "any default on the part of the leesee as to the terms of this agreement or of any other lease," and he agrees that he will not have any claim for the repayment of any sum which shall have been paid upon the machine. (Par. 9.)

For the use of machinery under these conditions he pays an extraordinary price. Assuming a very small factory with a maximum capacity of 350 pairs per day,

making all the deductions for which defendants contend (I, 444, ls. 41–43), its actual annual production will still be over 41,000 pairs. At 6 cents per pair, the royalty fixed for machines making welt shoes (I, 503, l. 32), the defendants would receive annual royalties of $2,460. For this they lease nine principal machines. Assuming their value to average $225, the defendants have here an investment of $2,025. They receive *annually* a return of over 120 per cent on this investment. This calculation omits both the auxiliary machines, whose value ranges from a small figure to a rather large one, and the rentals, which likewise range from $5 to $35 a year, paid by the manufacturers for them. It omits also the payments for materials used in metallic machines which expressly include a royalty charge. (Ptr's Ex. 29, III, 272, par. 4, etc.)

No self-respecting business man would enter into stipulations so offensive and destructive of his liberty unless he was coerced by the circumstances surrounding him. This is additional evidence that all competition in bottoming shoe machinery is substantially dead, and that by reason of the tying clauses the defendants hold all shoe manufacturers in a steel-like grip from which escape is impossible save through a decree of this Court.

G. THE SO-CALLED "INDEPENDENT" LEASES.

The defendants also offer what they call "independent" leases and have much to say about this "alternative." The difference between the "independent" and the "restricted" leases lies in the fact that they do not contain the "prohibitive" clause. But these

leases do contain the exclusive-use, full-capacity, and right-to-terminate-all-leases clauses, and other burdensome and restrictive provisions. The defendants grant these leases only upon terms which, as a practical matter, prohibit their acceptance and coerce the manufacturer into taking the restricted form.

In the first place, they are granted only on the payment of heavy "initial premiums." It does not remove the effect of this circumstance to say that these premiums whose payment is the price of a limited freedom to deal with competitors of the United Company are no larger now than at a previous time when there were no leases without them. When all pay the same, the situation of a shoe manufacturer is very different from that where he is called upon to make payments which his business rivals who are content to deal with the United Company exclusively are not obliged to pay.

In the second place, under the later practice of the United Company, it seems clear that a manufacturer must take all his leased machines on the "independent" leases if he is to gain the limited measure of freedom which they offer.

To a very large degree this is inevitable because of the interlocking of the restricted system. For illustration, suppose one entering upon the making of welt shoes should take restricted leases of his No. 5 lasting machines (Ex. 21) and of his heeling machines (Ex. 28) but the independent form of lease for metallic machines (Ex. 32). He would still not be

free to use competing metallic machines because his lasting-machine lease (par. 5) and his heeling-machine lease (par. 5) prohibit the use of those machines in connection with metallic machines not leased from the United Company. For that matter, should he take independent leases for all machines except the No. 5 machine that one lease would prohibit the use of the lasting machine in connection with welting, stitching, pulling-over, and metallic machines taken from a competitor of the United Company. Whether the form of Exhibit 21, if legal, shall be extended to all machines or made even more onerous in its restrictions is, of course, a matter wholly within the control of the defendants.

Examination of the terms of the various leases as they stand, however, shows that the same general principles which underlie the situation outlined apply to other combinations of leases with variations of detail.

The Curtis & Jones Company, shoe manufacturers, had an experience almost exactly like that outlined above. They had heard of the "independent" lease of metallic machines. (Ex. 32.) Supposing that that form of lease gave the manufacturer the right to use any independent machines, that "the arrangement related to the whole field," they determined to avail themselves of the option offered as a result of the efforts of the committee of the National Boot and Shoe Manufacturers' Association, under which *during the period of a year* from January 29,

1901, manufacturers were permitted to change from the "restricted" or "ironclad" lease to the "modified" lease. (I, 661–663.) But they found that they were mistaken in the belief that they thus obtained liberty of action with respect to their use of machines. Shinn testified:

> On the strength of that we sent the notice referred to, because we wanted to get into a position to use independent machines, and we told Mr. Clark when he raised his question with reference to our violating our leases that we were working under the modified lease, which gave us the privilege of putting in any machine that we wanted. Mr. Clark said the modified lease didn't apply in this instance. (I, 376, ls. 17–26; also see ls. 35–39.)

Mr. Clark was speaking by the lease and the result was the removal of competing machines and their replacement with United machines.

Mr. Winslow made clear the actual practice of the United Company in this respect. He testified:

> For example, if a manufacturer wished to use Pettingill heelers, which are not built by our company, in the place of our heeling machine, we asked him to respect his leases up to the time when he made that decision. Then he could return our heeling machines, place his machines in the other departments upon the independent forms of leases, and continue to use the heeling machines of others. (I, 443, l. 2.)

Mr. Winslow, it will be observed, was speaking of a situation where a manufacturer who had taken the restricted system and committed himself to the defendants desired to change his leases so as to use competing machines. It must be borne in mind that such a manufacturer has no right to change existing leases and that in this respect he can do what the United Company will permit and nothing more.

The defendants endeavor to meet Mr. Winslow's testimony by showing that it is possible to pick out a group of leases for certain machines, some "restricted" and some "independent," whose terms are not mutually exclusive. But Mr. Winslow's statement, which obviously deals with facts and not possibilities, is clear and direct. Defendants contend that he did not mean what he said. But there was ample opportunity for later explanation or qualification, and there is none. And the statement seems to be in complete harmony with what the record shows of defendants' actual practice. (I, 180, 181, 217, 873.)

The difference in cost between the "independent" and the restricted leases is well illustrated in the record. Winslow says that in 1899, when his company was operating under the so-called independent form of lease, it cost $11,350 to equip a factory with certain machinery necessary to manufacture a thousand pairs of welts per day, while in 1911, under the restricted form of lease, it would cost only $2,467.50 to equip the same kind of factory with the same

machinery, a difference of $8,882.50. The figure for 1899 includes the purchase price of the "general department" machines, which in 1911 could have been had on lease from the United Company. The fact, if it be a fact, that these machines are no longer leased does not remove the effect of the circumstance that it was during the long period from 1899 to the beginning of this litigation in 1911 that the United Company was building up and intrenching its hold upon the trade.

Williams, a shoe manufacturer of Portsmouth, Ohio, testified that the United people proposed to charge him $3,675 for equipping his factory, having a capacity of less than 600 pairs per day, with machines under the "independent" leases. (I, 217, l. 28; also 218, l. 20.)

George A. Learned was told by Matthew Gray, a representative of the United Company, that it would cost him $3,000 to secure the machines which he desired from the United Company under the "independent" leases. (I, 313, l. 35.)

Rand, of the International Shoe Company, obtained from Winslow a careful estimate of what it would cost his company to change from the restricted to the "independent" leases, and it amounted to about $250,000. (I, 180, l. 42.)

Winslow made a proposition to F. E. Leavitt to install certain machines under "independent" leases. (Dfts.' Ex. 334, V, 848; I, 873, l. 22 et seq.) Leavitt's factory was a small one, as there was but one McKay and one lasting machine included in the list. How-

ever, the total charge for the privilege of installing one "independent" machine would be $1,800.

In this regard it must not be forgotten that after the shoe manufacturer has paid for the privilege of using independent machines he is required to pay to the United Company, except in the case of one machine, the same royalty upon the machines leased from it as if they were taken on the restricted lease. In addition, he must make increased payments on certain machines, e. g., clicking and metallic fastening machines, *supra*. Only under extraordinary circumstances would a shoe manufacturer who knew what he was doing indulge in these independent leases. The handicap under which he would rest in his competition with manufacturers who took machines under the restricted system would deter him. Consequently the alleged alternative afforded by the so-called independent leases is the merest illusion. Manufacturers are, in practice, compelled to take their machines under the restricted leases or not at all. But, as we have heretofore shown, even if the shoe manufacturer did take the independent lease he would gain but little freedom, because every lease of the principal bottoming machines except the McKay sewing machine contains the "exclusive use" clause, or its equivalent, and all have the "right to terminate all leases" clause. (Appendix D, p. 366.)

In fact, it is not claimed by the defendants that the shoe manufacturers can obtain any benefits by taking the independent leases. Touching this question

Winslow says: "I believe a manufacturer is better off if he uses all our machines in series." (I, 550, l. 39.) Again: "I do not think it is any advantage for a manufacturer to take metallic machines on an independent lease; I never have thought so." (I 551, l. 26.)

Therefore, Winslow has deliberately formulated two classes of leases, and has so established the relation between the two classes that in his judgment it is more beneficial to the lessee to adopt the restricted class, which ties him hand and foot to the United Company.

No shoe manufacturer testified that under the present conditions there are any advantages in operating under the United's so-called "independent" leases. Many of the large manufacturers who are the most strongly opposed to the present system equip their factories under the restricted leases.

The competitive disadvantage which they otherwise would suffer is a sufficient explanation. This disadvantage results not only from the heavy initial premiums but from the discriminatory royalties and other conditions of the defendants' system. It should not be forgotten that this is an industry where pennies in machinery charges may make the difference between success and bankruptcy. One cent a pair sounds trifling; but 1 cent a pair means many dollars to a manufacturer making thousands of pairs a day. Florsheim came to Boston to beg for Eppler machines, which cost 3 cents a pair instead of the 4 cents charged for Goodyear machines. (I, 159, ls.

16–28). Herrick did not dare to keep a Haverhill machine because under his leases with defendants it meant an increase of royalties of 1½ cents a pair. (I, 293, l. 2 et seq.; 318, l. 6.)

Assuming for convenience that these cumulative disadvantages to the manufacturer who tried the "independent" lease amounted only to 4 cents a pair, it would mean to a manufacturer like Selby, a small manufacturer as compared with many mentioned in the record (I, 210–214), $72,000 in a working year of 300 days. It is no wonder that Selby gave up an attempt to use independent machines upon welt shoes, but acquired an interest in the Boylston Manufacturing Company "to get independence" (I, 212, l. 44). It would cost the International Shoe Company (I, 170) $600,000 a year. The difference in the clicking machine royalties (*supra*, p. 170) is alone sufficient "as a matter of dollars and cents" to compel the choice of the restricted leases.

The natural result of the system appears in the relative number of manufacturers who held restricted and those who held unrestricted leases in the years 1905 and 1911. (Winslow, I, 448, l. 42 et seq.)

In 1905 the United Company had under lease 8,129 metallic machines, of which 603, or 7.4 per cent, were under independent leases.

In 1911 it had out 7,587 metallic machines, of which 225, or 3 per cent, were under independent leases. (I, 449, l. 17.)

In 1905 it had out 1,652 heeling machines, of which 1,500, or 90.8 per cent, were under independent leases. (I, 448, l. 44.)

In 1911 it had out 2,019 heeling machines, of which 415, or 20.5 per cent, were under independent leases.

In 1905 it had out 5,289 lasting machines, of which 1,956, or 37 per cent, were under the independent leases (I, 449, l. 3, 23) while in 1911 it had out 7,819, of which 1,506, or 19.3 per cent, were under independent leases.

That is, from 1905 to 1911 there had been a decrease in the number of machines held under independent leases, of metallic machines, 4.4 per cent; heeling machines, 70.3 per cent; and lasting machines, 17.7 per cent. These figures not only show that a very large proportion of the principal machines are now held under the restricted forms of leases, but that there is an increasing tendency among shoe manufacturers to take the restricted form in preference to the so-called "independent" leases; and that the result of the system in actual operation is to destroy such independence upon the part of the shoe manufacturers as heretofore existed, to tie them more strongly to the United Company, and thus to prevent the development of any competition with the defendants. Nothing could demonstrate more clearly the actual workings of the system than these figures presented by Winslow.

The defendants attempt to offset these figures by presenting Exhibit 225 (I, 449), which purports to show that of 90,296 machines out on lease (Ptr's Ex.

163, IV. 1125) 23,403 were machines of the Goodyear metallic heeling and lasting departments which were out on "independent" leases. But of these 23,403, 5,203 were Goodyear principal machines and 16,054 were auxiliary machines of various kinds. How far these are "independent" is noted, *supra*, p. 182. It follows, then, that on these figures of defendants only 2,146 machines (2.3 per cent of the leased machines) are out on the leases pretended to be "independent." Of these, 1,506 are lasting machines and the consolidated hand method lasting machine for McKay shoes is the one machine carrying a lower royalty on the initial payment form. *There remain 640 machines, almost exactly seven-tenths of 1 per cent of the leased machines. How many of these were out on leases dating from a time when there were no other forms, defendants do not tell us.* At the best, on defendants' own showing, the use by shoe manufacturers of independent leases is negligible. In view of the conditions attending these leases, there is no cause for wonder.

H. ALLEGED MODIFICATIONS OF THE RESTRICTIVE LEASES.

The defendants insist that the leases do not represent the policy of the company because of certain "riders" by which their leases are modified upon occasion. (Winslow, I, 546, l. 16 et seq.) Donham, however, produced and described (I, 822, l. 12 et seq.) all riders of which he had any knowledge. They are Exhibits 278 to 310. (V, 777–809.) Winslow produced no others.

On account of the large number of these exhibits, no special analysis will here be attempted, but a glance at them will show that the modifications were generally the giving of permission to a lessee to use some particular machine upon a certain kind of work, as, for instance, an outsole stitcher upon shoes welted by hand, or upon McKay shoes, for fair-stitching. In some cases, the rider was intended to modify a "restricted" lease form by eliminating the prohibitive clause and thus giving the document the "independent" form. In no instance does any modification indicate the least deviation from the general policy or effect of the lease system.

There is certainly no material proof otherwise than from the officers of the company that any liberality of spirit along this line was shown.

The legality of the lease system must be determined independently of occasional concessions to particular individuals for the special use of a machine. There is certainly nothing in any lease which obligates the company to make such concessions. If they are made it is by favor of the company and not as a matter of right to the lessees.

I. EFFECT OF THE LEASING SYSTEM UPON COMPETITION WHICH WOULD OTHERWISE EXIST BETWEEN SHOE MANUFACTURERS.

Mr. Winslow testified upon this point:

> We have never granted concessions of any sort. * * * Our royalties have been the same to all, whether they used a thousand machines or one; they are charged by the pair, and the service is exactly the same. (I, 439, l. 43; 440, l. 2 et seq.)

This testimony is not quite correct, for the record shows that the United Company granted rebates in the form of stock donations, whose amounts varied according to the premiums paid. (I, 351, l. 43.) But it is generally true and characteristic of the United Company's system.

The general effect of it is to eliminate all opportunity of competition as to a very important element embraced in the manufacture of footwear, namely, machinery.

Manufacturers may compete in the purchase of hides and other material for the manufacture of shoes, in the location of their factories with regard to shipping and manufacturing convenience, in the construction and arrangement of the factory, and in marketing the finished product. But the skilful manufacturer is denied the privilege of exercising a choice as to machines or to exercise his judgment as to the terms on which he will take them or the manner of keeping them in proper efficiency. Undoubtedly the cost of a shoe must depend to a very material extent upon the kind and cost of the machinery used in its manufacture. But from the time the shoe is presented to the pulling-over machine until it emerges from the final bottoming machine the possibility of competition in this respect to any material extent is entirely cut off; and the cost of preparing and attaching the sole of every shoe of a given kind must be exactly the same to every lessee of the United Shoe Machinery Company, which

comprises substantially all the shoe manufacturers of the United States.

Any scheme which is enforced by contracts, and which has the effect of making absolutely uniform one element of cost of practically all the shoes which enter into interstate commerce, must be violative of the Sherman Act.

J. ENFORCEMENT BY THE UNITED COMPANY OF THE RESTRICTIVE PROVISIONS OF ITS LEASES.

The United Company in administering its leasing system and its consequent control of the shoe manufacturing industry has adopted a system of rewards for those who assist its program of monopoly and of punishment for those who do not comply with its requirements.

1. REBATES GRANTED TO OBEDIENT LESSEES.

The restricted leases in themselves represent not merely a persuasive but a controlling concession in price to those who will use the United Company's essential machinery exclusively.

As a part of its plan for monopolizing the shoe machinery business, the United Company at one especially important period granted rebates and special inducements to its lessees upon condition that they should faithfully observe the covenants of the leases.

On June 10, 1910, the United Shoe Machinery Company of New Jersey, by its president, Sidney W. Winslow, addressed a circular letter "To the Lessees of the United Shoe Machinery Company," in which it was provided that beginning with January 1, 1910,

the company would create a fund by investing in the common stock of the United Shoe Machinery Company and would add to it from time to time; that at the end of three years it would distribute the stock among the lessees of "the Goodyear welting, Goodyear stitching, and Goodyear turn sewing machines in the United States," who had "faithfully observed the covenants of their leases," and that in this fund not less than 15 per cent of the amount received from the use of the Goodyear welters and stitchers in the United States would be invested and of the amount received from Goodyear turn machines not less than 10 per cent would be invested. (Plff's Ex. 146, V, 1067, last four paragraphs.) The covenants referred to embrace the tying clauses which in effect obligated the lessees, as we have said, not to use machinery procured from competitors of the United Company.

This proposition of the United Company is of special significance, in view of the fact that the offer was made at a time when serious competition threatened the United Company. It was in May, 1910, that Plant discontinued the use of the United Company's machines in the factory of the Thomas G. Plant Company and installed in their place the Plant machines. It was about that time that Endicott invited Winslow to meet Plant at Endicott's house at Dedham, Mass., for a conference with respect to the Plant machines, and it was in June, 1910, that the meeting was held. (I, 558, l. 6.) Furthermore, while this notification to the lessees of the United Company of

the plan for rebating was not made until June 10, 1910, the plan, by the terms of the notification, became operative on January 1, 1910, antedating the notification by a period of more than five months.

The testimony of defendants' witnesses is to the effect that the principal improvements obtained by the United Company through the Plant purchase, were embodied in the welters and stitchers. (I. 785, l. 44; 787, l. 34 et seq.) The conclusion is irresistible that the defendants realized that Plant's welters and stitchers would appeal to the shoe manufacturers, and that it was for the purpose of holding the shoe manufacturers in line and inducing them to continue the exclusive use of the United Company's machines that the proposition of June 10, 1910, was made by that company. The United Company was organized in February, 1899, and a period of more than 10 years had elapsed before there was any expression of an intention to grant a rebate. It is noteworthy that the plan did not present itself to the minds of the representatives of the United Company prior to the time when serious competition was threatened. Furthermore, it will be observed that only those lessees "*who shall faithfully observe the covenants of their leases*"—the tying clauses—were entitled to the benefits of the plan.

2. PUNITIVE ACTION AGAINST DISOBEDIENT LESSEES.

The defendants contend that they have used their great power mildly and that their policy is much more liberal than the leases indicate. This

forbearance, if genuine, can not be of any legal consequence. But it does not appear that the defendants have refrained from enforcing their rights in any appreciable number of cases of violation of the leases. That there should be few instances of violation is not remarkable when one considers the possible consequences to a recalcitrant manufacturer of such violation. A manufacturer who can not procure the machinery necessary to his business existence elsewhere is not likely to violate the leases. But when the evidence is taken as a whole, there can be no doubt that the provisions of the leases which are especially obnoxious have been strictly enforced.

The efforts made by the United Company to enforce the restrictive provisions and their effect upon the business of competitors, are indicated by the following evidence, which is practically uncontradicted.

Frank R. Hilliard is a shoe manufacturer. His company attempted to install a turn sewing machine made by the Haverhill Shoe Machinery Company at a time when they had machines of the United Company doing the same work. They talked with Winslow, who stated that they were using that machine contrary to their lease, and would either have to change the lease or stop using the machine. They had the Haverhill machine on trial, and returned it, on account of the objection of the United Company based on the provisions of the lease. (Hilliard, I, 282–284.)

The Haverhill Shoe Machinery Company installed with Herrick, of Lynn, a channeling machine, a turn sewer, a heeling machine, and a heel-breasting machine. There was a clause in Herrick's clicking machine lease, from the United Company, prohibiting the use of these machines. Under the terms of that lease he had to pay the United Company royalty *on work done on the Haverhill machines* of 1½ cents per pair, with a 50 per cent discount for prompt payment; so Herrick did not dare keep the machine, and took it out. He kept the nailing machine for some time, but found that if he kept it, he would lose his rebate on his Gem insoles, and also the 15 per cent rebate that the United was giving for not violating the leases. Consequently Herrick gave up the Haverhill machine. (Webster, I, 293, l. 2, et seq.; also Harriman, I, 318, l. 6.)

Fred W. Herrick testified as to one of these machines, that on negotiating for a return of a United machine, it was said by the United people that the Herrick Company would have to pay them royalty on the same shoes on which they had already paid for the use of the Haverhill machine, consequently the Haverhill machine was taken out. (Herrick, I, 357, l. 2 et seq.)

Louis H. Harriman, treasurer of the Haverhill Shoe Machinery Company, details the following instances in which that company had trouble in installing machines, in addition to those detailed by the witnesses Webster and Hilliard:

Lynch & Sherman had a turn sewing machine which was installed in their factory and operated for

a short time. They caused the Haverhill Company to take it out, because the agents of the United Company had told them that they were violating their lease. (I, 318, l. 26.)

W. S. Chase & Company had installed two channeling machines, a turn sewing machine, and a heeling machine, which were operated very satisfactorily, but a year before the witness testified the Haverhill Company was told to remove all their machines. One reason given by Chase & Company was that they had been sued for infringement by the Xpedite Company, and that one of the terms of the settlement of the suit without charging damages was that they should remove the Haverhill machines, and another reason assigned was that the United Company said they were violating the conditions of their leases. (I, 319, l. 35 et seq.)

Carleton & Hunt installed a channeling machine in 1908, and about two years later a turn sewing machine, which were operated until early in 1912. The machines were taken out because otherwise the manufacturers could not get from the United Company a line of machinery for making welt shoes. (I, 320, l. 1 et seq.)

The Haverhill Company installed two turn sewers and two channelers in N. D. Dodge & Son's factory. Their use was discontinued because the Haverhill Company *could not furnish a line of welt machinery, and they could not get such line from the United Company while they used the Haverhill machines.* (I, 320, l. 9.)

Ned Pike was employed to install machinery by the Haverhill Company and while so employed he traveled in eight States, and he details certain difficulties which he encountered (I, 329–331) as follows:

He attempted to install a machine in the factory of Ashe, Noyes & Small, Auburn, Me., but they said that under their existing leases with the United Company it would be impossible to take the machinery without laying themselves open to a great deal of trouble with that company.

Dunn & McCarthy, of Auburn, N. Y., stated "they would like to consider the proposition of putting in my machine, particularly the turn sewer, but under the United Company's leases their toe-laster and heel-seat machines would cost them more than any saving they could make on our machines."

Krippendorf & Dittman, of Cincinnati, ordered some machines from another solicitor for the Haverhill Company, and when witness saw them afterwards they said they did not dare put in the machines at that time, on account of the character of the leases of the United Company they were operating under.

The Syracuse Shoe Company, in New York, said it meant altogether too much to them to install a competing machine, as it would make lots of trouble for them with the United Company.

The Irving Drew Shoe Company, of Portsmouth, Ohio, said in substance that they were owned, body and soul, by the United Company, so far as shoe machinery was concerned.

George A. Learned, a shoe manufacturer at Newburyport, Mass., had been using United Company machines and some machines belonging to the Haverhill Shoe Machinery Company. He was told by one Gray, representing the United people, that if he wanted to use other machines in conjunction with the Haverhill machines he would have to pay $3,000 in addition to the sum that would be required from him if he discontinued the use of the Haverhill machines. Later he was told by Winslow that unless he did comply with the terms of his leases—that is, those which in effect prohibited him from using independent machinery—the United Company would withdraw all their machines from his factory and drive him out of business. (I, 313, l. 27 to 314, l. 16.)

Prior to December 12, 1911, the Union Lockstitch Company had difficulty in installing its curved needle machine, which had the same function as the United Company's outsole stitcher. In fact, the Lockstitch Company had succeeded in installing but one, and that was with a small manufacturer. The company had tried to sell to Roberts, Johnson & Rand, Harsh & Edmands, Commonwealth Shoe & Leather Company, and the Peters Shoe Company. Jones, of the Commonwealth Company, said he could not afford to touch the Union Lockstitch Machine because his lease forbade it. (I, 203, l. 5.)

Merrick, of the Lockstitch Company, when subsequently recalled, filed as Plaintiff's Exhibits 177, 178 and 179 letters showing that these parties would

not take machines from his company on account of the United Company's leases. (I, 207, l. 36.)

John E. Williams, of the Portsmouth Shoe Company, has four factories at Portsmouth and Ironton, Ohio, manufacturing men's and boys' welts and mock welts. They had installed a Union lock-stitch machine, and talked with Col. King, of Boston, representative of the United Company. After three days' talk, Col. King said: "Mr. Williams, under the leases we feel that you have broken your obligation, and would ask you to discontinue it."

King, through Ross, the local representative of the United Company, submitted a plan whereby they could use the Union machine, but the initial charges would have been $3,675, and there would have been an additional royalty of 1⅛ cents per pair. They thereupon sent the machine back, and took no more. The proposition was made with reference to the installation of a new factory, with much auxiliary machinery left out, the shoe to be a simple one. (I, 217, l. 14; 218, l. 27.)

E. P. Reed was using a turn sewing machine of the Standard Shoe Machinery Company, which was manufactured by the Bay State Shoe Machinery Company, and the Standard Company wanted him to introduce more of its machines, but he said he was afraid—that the United Company was such a gigantic corporation that no shoe manufacturer could afford to be a martyr. (Darrah, I, 334, l. 35.)

The Standard Company had a Woodward machine with Mark J. Worthley, of Lynn, Mass., who reported

that he was afraid he would have to return it; that the United Company's agents were after him all the time and were making threats. (Darrah, I, 335, l. 1.)

Thomas G. Plant, who was using the Standard's Woodward machines, told the witness Darrah that the United Company's agents had been after him so often and so persistently that he was afraid he would have to surrender the Woodward machines and install the McKay machines of the United Company. (Darrah, I, 335, l. 8.)

The T. D. Barry Company had obtained some machines from the Standard Shoe Machinery Company. The United Company's machines were also in use in that factory. Barry was in Europe, and the United Company had had a writ of replevin issued and started to take the United machines out, when William A. Hogan, treasurer of the Barry Company, threatened to shoot the officer. Hogan then obtained a writ of injunction, which was subsequently dissolved, and he then agreed with Storrow, counsel for the United Company, to stop the Standard machines until Barry should return. After his return the Standard machines were taken out. (Hogan, I, 222, l. 11–38.)

The Standard Shoe Machinery Company was incorporated in 1899 and went into the hands of a receiver in 1901. (I, 335, l. 30.)

Prior to 1912, Curtis & Jones had one shoe factory at Reading, Pa., and another at Hamburg, 16 miles from Reading. In the Hamburg factory they used

a miscellaneous lot of machinery and the Lincoln machine, made by the Campbell Sewing Machine Company, but used the United Company's sewing machines altogether in the Reading plant. They combined the two factories, moving the Hamburg plant to Reading, in July, 1902. (I, 363, l. 36, 364.) About the time of the consolidation they bought three Duplessis turn sewing machines, and they already had five Lincoln machines. Mr. Clark, the local representative of the United Company, told them that the operation of the Duplessis machines in the same factory with a Goodyear machine was prohibited by the United Company's leases, and that since the factories had been consolidated the rule applied. He said they would remove all their leased machines unless they discontinued the use of the independent machines. (I, 365, l. 41.) Col. King, a manager of the United Company, then came, and they agreed to turn over the independent machines at cost price, and replace them with Goodyear machines. (Shinn, I, 366, l. 3; Curtis, I, 377, l. 29 et seq.)

Curtis, of the same firm, testified that they changed to United Company's machines to avoid a fight with the United Company; that company told them that they could not, under their leases, use any independent machinery in the same building, and that the United would take its machinery away if they kept on operating the independent machinery. If the witness's company had thrown the United machines out, he said they *could not have obtained substitutes*,

as he knew of no other concern from which he could obtain them. (I, 380, l. 21 et seq.) The use of the United machines increased the cost one-half cent per pair. The independent machines were doing satisfactory work and they wanted to keep them. (I, 381, l. 8.)

In 1904, Peter Tessier, of Peter Tessier & Company, Haverhill, Mass., was manufacturing shoes. He had two channelers, a slugging machine, a molder, and a Goodyear stitcher, which he had obtained from the United Company. He installed a Duplessis sewing machine, and the United Company thereupon took all its machines out of his factory. (I, 281, 282.)

Ernest Bottomley, of Haverhill, Mass., testified that about 1903 he was engaged in making turn shoes, and had nailing and stitching machines made by the Duplessis Company. Prior to that time he had a Goodyear stitcher, which he quit using when he took the Duplessis. He had a sole rounder, and several other United machines. He had a talk with Col. King, of the United Company, in which King said, in effect, that witness would have to use one or the other line of machines. Witness chose the Duplessis, and the United Company took its machines out. Subsequently witness's factory was changed from making turn shoes to McKays, and therefore had to change its machines. Witness went to the United Company, and they required him to pay royalty on the shoes *made on the Duplessis machinery,* after the machinery of the United Company had been taken out. He now uses United machinery exclusively,

except a buffer or rounder, which he bought from others. (I, 284, l. 26.)

George R. Harsh, of Harsh-Edmands Shoe Company, Milwaukee, Wis., had procured a clicking machine from the Richardson Shoe Machinery Company, of Lynn, and was trying to procure other clicking machines. Wilson, a representative of the United Company, told Harsh that it would be better for him if he ceased his activities against the United Company, and would take things as they were, and showed him that in a lease for a metallic fastening machine he was already bound by a provision similar to the one he was complaining about in the clicking machine lease. As a result the witness made no further efforts to obtain such machines elsewhere, but took them from the United Company. (I, 196, l. 5.)

George H. Clark had invented a method of molding shoes, and had also invented an attachment for a stitcher which enabled him to stitch the shoe and trim it at the same time. He had one of the machines in Richardson's factory at Lynn. The United Company refused to place any of their machines in that factory, saying, through its manager, Hurd, "We have to put the knife and protect our interests." (I, 307, l. 12.)

Kimball & Hadley, of Lynn, Mass., were making needles and awls. Beginning about January, 1904, they found that they could not sell Universal Slugging Machine awls. Five firms told Hadley personally that the reason they would not purchase was that the

use of their needles and awls was in violation of the lease of the United Company (Ptr's. Ex. 24, par. "Two," III, 214, 216); and if they continued to use their needles and awls, the United Company would take its machines away from them. (Hadley, I, 308, l. 11.)

In truth, Mr. Choate, one of counsel for the defendants, concedes that they enforce the tying clauses, for he said in answer to a question by the presiding judge: "I do admit that they carry out the terms of the leases." (I, 281, l. 30.)

K. UNSUCCESSFUL EFFORTS OF SHOE MANUFACTURERS TO OBTAIN MODIFICATIONS OF THE RESTRICTIVE CLAUSES.

From the very beginning of the United Company's existence shoe manufacturers have attempted unsuccessfully to secure modifications of the restrictive clauses. These efforts have been uniformly unsuccessful. And the circumstances, taken together with Mr. Winslow's declarations, show that the object sought by the defendants in devising and insisting upon the clauses was the exclusion of competitors.

We have already referred to the first of these efforts. It was made by the National Boot and Shoe Manufacturers' Association, of which Charles H. Krippendorf was a director. He testified that on November 8, 1900, members of the association had a conference with Winslow for the purpose of asking him to eliminate the restrictive clauses from the new leases for the metallic machines. They had a stenographer present, who reported the proceedings. The witness produced the report. In the course of Winslow's remarks refusing to modify the tying clauses, he said

that if the tying clauses were eliminated his company would be compelled to buy out every new machine that might be manufactured, and when asked why he would have to do this, stated:

> Why? Well, let me ask you if we haven't got either to purchase that machine *or compete* with the man who is simply doing that to force us to buy. (Krippendorf, I, 216, l. 6.)

In January or February, 1907, Winslow sent for Charles H. Jones, president of the Commonwealth Shoe & Leather Company, who went to his office with McElwain, another manufacturer, now deceased. During the meeting they urged Winslow to abandon the tying clauses. Winslow replied in substance that he could not consider doing so; that those clauses gave him complete control; that without that complete control other machines would creep in; that if the clauses were eliminated "the *intense competition* which existed before would return."

Florsheim testified that while in Boston in September, 1910, in connection with the Plant purchase (*supra*, p. 116), and a few days after the United Company had acquired that business, he and Jackson Johnson told Winslow that the manufacturers were dissatisfied with the tying clauses of the leases, and after considerable talk Winslow proposed to let the matter rest for the present. (I, 161, l. 23.)

Winslow went to St. Louis in the following February, and Johnson, who presided at the meeting called to hear him, submitted to him a proposition looking toward the elimination of the clauses. No definite

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action was taken, but Winslow proposed another meeting in Boston. (Florsheim, I, 161, l. 38; 162, l. 15; Selz, I, 145, l. 5.)

The next meeting between them was in Boston, in May, 1911; and Winslow then said that he had given the matter a good deal of consideration, but he didn't see how he could make any changes in the leases, and that any such change as they suggested in the leases would ruin the system, and could not be made. (Selz, I, 147, l. 22–32.)

L. OTHER EFFORTS OF SHOE MANUFACTURERS TO ESCAPE THE TYING CLAUSES.

For the purpose of protecting themselves against the oppressive practices of the United Company, a number of the shoe manufacturers invested in the Boylston Manufacturing Company.

Johnson, of the International Company, said:

> Our company has an interest in the Boylston Manufacturing Company. It amounts to about $80,000. We went into it to protect our business by insuring the permanency of the supply of shoe machinery. (I, 171, l. 19.)

Rand, of the same company, says that they invested in the Boylston Company "to safeguard our shoe business by developing another source of supply in shoe machinery, and competition in that commodity." (I, 182, l. 41.)

Harsh, of the Harsh-Edmonds Shoe Company, Milwaukee, speaking of his investment in the Boylston Company, said:

> My sole and only reason for taking that interest was to supply my business with shoe machinery. (I, 196, l. 33.)

Selz, of Selz, Schwab & Company, Chicago, said that he had invested between $25,000 and $30,000 in the Boylston Company, and, when asked the object of that organization, said:

> If these leases are declared invalid, we want to have a competitive shoe machinery in the market. (I, 157, l. 31, 33.)

Selby, of Drew, Selby & Company, testified:

> I have an interest in the Boylston Manufacturing Company which I acquired in January or February of this year to protect the business of the Selby Shoe Company, to get independence. (I, 212, l. 42.)

Jones, of the Commonwealth Company, says he invested $20,000 to $25,000 in the Boylston Company, "Because we could see no other way in which to establish competition in shoe machinery." (I, 135, l. 28.)

It does not appear that the Boylston Company has put out bottoming machinery to the trade. (I, 301, l. 29.) It stands ready to enter active competition "if the leases are declared invalid."

Even Mr. Choate, counsel for defendants, admits that producers of independent shoe machinery are doomed to destruction if the tying clauses are not struck down. This undoubtedly is the purport of the following colloquy between him and Mr. Selz, while cross-examining the latter. After Selz had stated that he had an investment of between $25,000 and $30,000 in that company, this took place:

> Q. So you have that amount at stake upon these machinery leases being declared invalid?

A. If you choose to look at it that way.

Q. If they are not, you stand to lose that money?

A. Yes, sir.

Q. If they are, you stand to make it?

A. Yes. (I, 158, l. 1.)

This is undoubtedly true, and Mr. Choate has made a valuable contribution to the Government's contention by his implied admission. The sustaining of the leases would destroy not only the Boylston Company but every company that dared to compete with the United Company.

M. BY WAY OF SUMMARY.

In general, the United States contends with respect to these lease clauses:

That the United Company having by combination, development, and acquisition whose legality is not important in this connection, acquired control of all clicking machines, all lasting machines of certain necessary types, all pulling over machines and about 96 per cent of all bottoming machines, has adopted a system of leases which whether originated wholly by them or in part an inheritance from their predecessors has been so designed that its practical effect is necessarily to exclude, to all intents and purposes, competing shoe machinery manufacturers from the trade.

That such exclusion is accomplished by compelling, or, as defendants would perhaps say, inducing substantially all shoe manufacturers as a condition of securing necessary machines from the defendants

upon acceptable terms, to agree—for such in final analysis is the necessary effect and manifest purpose of the tying clauses—that they will not use the machinery of competitors.

Finally, that the defendants and the shoe manufacturers have through the leases brought into existence a combination in which the latter enter, as we say, under coercion which is in effect as much a boycott of independent shoe machinery dealers as was the boycott of Loewe by the Danbury hatters. (*Infra*, p. 267.)

IX. CERTAIN ALLEGED DEFENSES.

The main lines of defendants' effort to explain or to extenuate the circumstances set out above have become apparent in the course of the litigation, but it is neither practicable nor profitable to expand this brief by attempting to anticipate and to reply to all that may be said. The United States has rather endeavored to state fairly the facts upon which it relies and to support its statement by references to the record which settle any question as to its justification. It is content to stand upon the case so made.

A few things insisted upon by defendants with particular earnestness may, however, be noticed. For example, the difference of the United States with the lower Court is not so much with its findings as to the fundamental facts as with the deductions drawn from them, the conclusions reached, and the applications made. In a few instances, it is believed that the Court below fell into error which becomes plain upon

reading the evidence. These matters so far as they have seemed to be of importance have been discussed upon their merits at their proper place in the argument. The United States, however, differs chiefly with the learned judges of the lower Court with respect to the view of the law in the light of which they interpreted the facts which were established, a view which obviously forms the premise for many of the conclusions believed by the United States to be unsound. Indeed the decision below seems very largely to have been shaped by what is believed to have been a wholly unwarranted extension of the doctrine of *Henry* v. *Dick Co.*, 224 U. S. 1. Since, as noticed, *infra*, p. 280, that case has been overruled, the matter need not be discussed here.

Certain particular contentions of the defendants may, however, be here dealt with briefly.

A. THAT THE UNITED COMPANY'S LEASING SYSTEM IS MERELY AN INHERITANCE FROM ITS PREDECESSORS AND THAT IT IS AS LIBERAL AS WERE ITS CONSTITUENT COMPANIES.

Defendants argue that the leasing system as at present constituted must, whatever its effects, be regarded as a normal development of this particular business and therefore is justified. They say it is a mere inheritance from the predecessors of their corporation. The defendants themselves, however, are given to emphasizing the fact that the history of shoe machinery is very recent history. The fact is that so far as this matter is concerned the history of the industry disclosed by the record is the history of these defendants themselves and especially of Messrs.

Howe and Winslow. The argument of defendants seems to be that because they have always done the things now complained of, they have thereby set all the standards for judging their conduct; that it is to be judged by that conduct and to be subjected to the application of no other rules.

The fact is that the leasing system of the United Company is very much more than an inheritance from the constituent companies and that it is applied to a very different situation with very different effects. It is this which makes defendants' further contention that they have not restrained trade because, as they say, they have continued to offer machines on substantially the same terms as they were offered before the consolidation, irrelevant if true. For the defendants have now adopted also the restricted system of leases and have so devised it as to make its acceptance by manufacturers a matter of practical business necessity. The contention has, however, no basis in fact. The leases under which machines were put out by the constituent companies are all set out in the record. (Ptr's Exs. 3–17, III, 3–153; see also Donham, I, 2–6.)

Inspection of the leases shows that the McKay Shoe Machinery Company, at the time of the consolidation, was putting out its machines (comprising the numerous and important group of metallic and heeling machines) *without initial payment* and *without exclusive use or other tying clauses.* Its previous initial payment lease had no such clauses. (Plff's. Exs. 11,

12, III, 90, 103.) The defendants offer no such lease. The Goodyear Company was offering lasting machines upon leases (Plff's Ex. 5, III, 37) which forbade the use of the machine with welt method machines supplied by competitors of the Goodyear Company, *but had no other tie* to any other kind of bottoming machinery. It had no exclusive use clause and therefore permitted the lessee to have in his factory an independent lasting machine to use with independent welt method machines. The United Company offers no such lease. The Consolidated Company, Mr. Winslow's original company, had an initial payment for the hand method machine. (Plff's. Ex. 8, III, 68.) It contains none of the tying clauses. The United Company offers no such lease. The Goodyear Company's "full set" lease for welt method machines (Plff's. Ex. 4, III, 29) contained no exclusive use clause. No such lease is now offered by the United Company.

It has already been pointed out that no lease of a constituent company could contain a prohibitive clause of the kind and effect of those which characterize the "restricted" system devised by the United Company. A prohibitive clause in the McKay Shoe Machinery Company leases could not have affected competition in lasting machines. It made no such machines. The effect of such a clause could have been produced only by an agreement that each company would refuse to put out their machines to shoe manufacturers who would not undertake to deal

with the other companies exclusively as to the machines dealt in by them. The illegality of such a boycott need no longer be argued to this Court. Yet what the defendants actually did, by progressive steps and what they must have intended since it resulted inevitably from what they did, was to give such an illegal agreement the form of corporate organization. And so, as said above, in so far as the defendants follow the leasing system of the constituent companies, they apply it under wholly different conditions to wholly different circumstances, with very different practical and legal effect.

B. THAT THE TYING CLAUSES AND ESPECIALLY THE "RIGHT TO TERMINATE ALL LEASES" CLAUSE ARE NECESSARY PROTECTION AGAINST DISHONEST LESSEES.

The defendants insist that there are excellent business reasons for their desire to maintain the tying clauses. Among other things they contend that these clauses and particularly the "right to cancel all leases" clause are necessary to protect them against dishonesty on the part of lessees. (Winslow, I, 447, l. 22 et seq.)

This clause, as has been shown, makes every tying clause in *any* lease signed by a shoe manufacturer a condition of *every* lease signed by that manufacturer. Its effect upon the shoe manufacturer's freedom to deal with competitors of the defendants has been noted. (*Supra*, pp. 174, 175.)

Now all lessees are not dishonest. But this clause is contained in every lease put out by the company

and the power created thereby remains whether it is exercised or not. It is a threat to honest manufacturers as well as to others. Its existence is sufficient to compel obedience to the tying clauses and to impel a shoe manufacturer to take no chances in case of a difference of opinion between him and the United Company. Under all the circumstances it is not surprising that defendants should very seldom have to take steps to enforce their leases.

But even if every lessee was inclined to dishonesty that remarkable circumstance would not justify the existence of this clause. The defendants must find some legal method of protecting themselves in their just rights. There are many such.

C. THAT IT IS NECESSARY TO EFFICIENT WORK THAT MACHINES BE LEASED AND OPERATED IN "TEAMS."

Emphasis is laid by the defendants upon the circumstance that in practical shoe manufacturing, the product is routed so as to advance progressively along the line of machines. It is said that for maximum production and economy it is necessary that the flow of work should be continuous. And that in a factory so organized the breaking down of a single machine may throw the entire organization out of gear and the inferiority of a single machine may result in a deleterious effect upon the output of the line. (Winslow, I, 866, l. 33 et seq., 867.)

There is nothing peculiar to the shoe manufacturing industry in this. Such organization is a commonplace of modern manufacturing. The special application sought by the defendants is in their con-

tention that in this industry it is peculiarly necessary that all of the machines comprising a given line be specially designed to work with each other, and that that circumstance and the further necessity of protecting the reputation of their machines by preventing the introduction into the line of an inferior machine of one of their competitors are a justification of their leasing system. (Winslow, I, 866, 867.) It is upon such an application also that defendants base rather elaborate argument, in which they press a supposed analogy to a manufacturer of a single machine, who, they say, could not be criticised for refusing to sell the parts of his product, and insisting that customers take the complete machine.

Certain facts regarding this contention should be noticed. It is obvious that a machine must be properly designed to perform the function for which it is used. It does not follow that no machine not designed by the defendants can perform a given function. Unless there is some direct physical connection between the operation of two machines there can be no practical difficulty in their proper performance of successive related functions if each is in fact properly designed for its own work. It has already been pointed out that the defendants concede that even the machines which they term "auxiliary" to other machines perform entirely independent operations. "The operations are as separate and distinct as the lasting operation and the welting operation, only they are not so far re-

moved from each other." (Winslow, I, 537, l. 9.) This is borne out by the testimony of McElroy and Selby. McElroy, who equipped the Non-Royalty factory, a man of very wide experience, testified: "I do not think it necessary for a factory to have all its machines from one manufacturer in order to get efficient service." (I, 921, l. 1.)

Selby, a shoe manufacturer of large experience in the use of shoe machinery, said:

> The operation of the lasting machine has nothing to do with the operation of the welt sewing machine. The operation of the welt sewing machine has nothing to do with the operation of the outsole stitching machine. The operations are performed by separate operators on different machines. The same is true of heeling machines. (I, 924, l. 21.)

Therefore no machine is necessary to the operation of any other.

A further and even more convincing circumstance, however, is to be found in certain facts upon which the defendants rely to support certain other arguments which they make. The method of making shoes by the welt process is that which the defendants say they have peculiarly fostered and promoted. It is upon shoes of this type that defendants earn their largest royalties. Welt shoes made in that particular manner which distinguishes the operation of the defendants' machines have been given by the defendants a trade-mark. (I, 22, l. 3.) They are claimed to be the best type of shoes. (I, 441, l. 38.) In

their manufacture more different types of machines are used than in the making of shoes by any other method. (Dfts.' Ex. 235, V, 631.) Especially are more "auxiliary" machines used. (*Ibid.*) In no branch of shoemaking can the "continuity of operation" of which defendants talk have greater significance. The operations of no machines are more closely related than those of the welt method principal and auxiliary machines. Yet in this all-important division of their business it is not only admitted by the defendants but is asserted by them that "Auxiliary machines doing any of the operations that are performed by any of our auxiliary machines may be obtained from any one and used in connection with (our) welter and stitcher." (Winslow, I, 544, l. 12.)

Another thing that should be remembered in this connection is the fact that defendants boast their readiness for a consideration to admit independent machines into their line of machinery under the so-called independent leases. An independent machine thus admitted would be as likely to break down and disturb the continuity of operation as if admitted in any other way, but still defendants are willing to let it enter. Does this not expose the hollowness of their continuity argument?

D. THAT DEFENDANTS HAVE MADE IMPROVEMENTS IN MACHINERY AND METHODS.

The United Company further insists that it has greatly improved the different kinds of machinery; that it gives excellent service to the manufacturers; that its leasing system is satisfactory to some of the manufacturers and is a benefit to the public generally. From these things they seek to argue that the tying clauses are lawful. But even were they all true, which we deny, they furnish no justification for violating the Anti-Trust Act (*infra*, pp. 244-248). Some such palliation is offered for every monopolistic endeavor. The question here is not whether some beneficial results have followed in the train of the defendants' acts. It is whether those acts were acts in restraint of trade—whether competition or monopoly shall be the law of this industry. Upon what is relevant to that inquiry this Court has long since passed.

In this connection it is proper to observe that shoe manufacturers may well prefer a leasing system to a system under which they could obtain machines only by purchase with a necessary investment of large amounts of fixed capital. That, however, shows no approval of the tying clauses. Those clauses are neither essential nor proper accompaniments to a satisfactory leasing system. Nor does it prove any necessity for the exclusion from the trade of competing machinery manufacturers. Defendants have no patent upon the system of putting out machines on lease.

E. THAT DEFENDANTS' SUCCESS IS DUE WHOLLY TO THE EFFICIENCY OF THEIR MACHINES.

It is also claimed by the defendants that their preponderant position in the shoe machinery business is due to the efficiency of their machines and not to the tying clauses. Assuming the claim of superiority for their machines to be well founded, it is not clear how the defendants expect the Court to differentiate between the contribution to their control made by that circumstance and the contribution made by the fact that the United Company began with an admitted monopoly and has supported and extended it in the way herein indicated. Nor do the defendants indicate the answer to another obvious question. The superiority of their machines, if any, has been gained in a field in which the efforts and the possibilities of competitors of the defendants have been limited and circumscribed by the conditions which the defendants have been able to impose upon the industry. They have won in a race in which they have themselves allotted the handicaps. Who shall say what would have been the merits of competing machines developed by competitors to whom a fair and equal opportunity was open? Who can predict as to the future of such a field?

In fact it is here that the argument of the defendants destroys itself. If it be true that the superiority of their machines is in itself a sufficient explanation of their success, then it certainly is true that now that such superiority has been established it is unnecessary for them to hedge about the shoe

manufacturers of the country with the restrictions and penalties of the tying and cognate clauses of the leases. Unless the defendants contend that the shoe manufacturers do not understand their own best interests and that the defendants must therefore be permitted to be the benevolent despots of the shoe machinery world, they should allow shoe manufacturers to exercise freely their own judgment as to what machines are best suitable for their purposes. For the tying clauses are utterly opposed to that freedom of trade which it is the purpose of the Sherman Act to foster and are antagonistic to the genius of American institutions.

F. THAT THE UNITED COMPANY GIVES GOOD SERVICE.

Defendants make much of their alleged free service.[1] They talk of service stations, of a force of six or eight thousand men maintained for the purpose of keeping leased machines in repair without charge, *except for parts*, to the lessee. But the machines are the defendants' machines and they produce revenue only when in good condition. Keeping the machines in repair is in every respect a good business proposition for the defendants. It affords no basis for claims of altruism.

And it is very doubtful whether anything is given without compensation. At most all that can be said is that no separate charge is made apart from what is charged in royalties and for repair parts, etc. In this connection, the great profits of the defendant corpo-

[1] The leases give the lessee no *right* to this service. It can be withheld or refused at any time.

ration, *supra*, p. 6, are especially significant. And it must be remembered that the lessees are bound by the leases to permit defendants to determine whether repairs or repair parts are needed and to purchase repair parts exclusively from the defendants at prices which the defendants fix. (Plff's. Ex. 30, par. 2, 3, III, 278.) Upon all the facts it is a pretty safe inference that the defendants do not lose money on this vaunted service system.

The weakness of the argument, however, is the failure to indicate any connection whatever between this service and the tying clauses. What has just been said with reference to the claim of excellence for defendants' machines applies equally here. As a matter of fact the defendants are by no means the only corporation which gives service. The Singer Manufacturing Company, for example, does so. (I, 734, l. 44.) But it does not find it necessary to adopt a system of restricted leases in order to do so.

It may, however, be repeated that the question here is whether the defendants have done acts which restrain trade and thereby violate the Sherman Law. It is no answer to that charge to say that certain other acts of the defendants are not blameworthy.

G. THAT THE RESTRICTIVE LEASES SIMPLY MAKE A WHOLESALE PRICE.

The defendants contend that their restrictive leases simply are the making of a wholesale price. But they regard it as a virtue that they charge a manufacturer who uses a dozen lasting machines no

less per machine than a manufacturer who uses only one such machine. (*Supra*, p. 201.)

The point here, however, is that in no sense do they make a quantity discount. The discount—and it is a heavy one—is for monopoly and for monopoly alone. The discount is made to an exclusive user of defendants' machines in exactly the same proportions whether he uses one machine of each type or many. Where the ordinary purchaser who buys "at wholesale" is free to make his next purchase where he will, he who deals with the defendants under the restricted system surrenders his liberty of choice for at least seventeen years—in many cases it may be for his business life.

H. THAT COMPETITORS HAVE NO RIGHT TO EXIST.

Defendants contend in effect that they can not be charged with violation of law in excluding competitors because competitors have no right to exist. They urge this especially in respect to welt machinery, a field they say would not exist had they not discovered and developed it. In so far as this contention is based on patent rights, it is discussed, *infra*, pp. 277–301. But a competitor who produces a noninfringing welt method machine has the same right to equal opportunity, and users of such machines have the same right to a free choice as to welt method machines as in any other division of industry. No rights of preemption or prescription are recognized by the Sherman Law.

X. THE UNITED COMPANY IS A COMBINATION IN VIOLATION OF THE ANTITRUST ACT.

A. The organization of the United Company was illegal.

The organization of the United Company was a merger of the Goodyear Company, the Consolidated & McKay Company, the Eppler Company, and the McKay Shoe Machinery Company. It resulted in the immediate suppression of the existing competition between those companies and in the creation of a great and powerful single corporation with vast resources which dominated to the point of practical exclusion the important field of supplying the principal and essential machines necessary in the manufacture of shoes. As was said by Rugg, C. J., in *United Shoe Machinery Company* v. *La Chapelle*, 212 Mass. 467, 480, "the modern machinery for the manufacture of footwear would seem to be a close approach to a prime necessity." The merger resulted in the creation of a monopoly. In the *La Chapelle Case*, just referred to, the Court said (480):

> But whatever may be the precise definition of the word monopoly as used in this statute [the Sherman Law], a business device by which a considerable number of competing corporations are welded into a single corporate entity which controls from ninety to ninety-five per cent of the commerce of the country in a particular branch required for the economical production of a necessity of mankind, is a monopoly.

More than this, the merger precluded all future possibility of competition between the "able" industrial units which were combined. That the Goodyear Company, which had already departed from the restricted limits of the welt machine field and entered upon the production, in competition with the Consolidated Company, of lasting machines, would have stopped at the point it had reached in 1899; that the Consolidated Company with its resources and energetic management would have been content to remain upon the defensive and confine itself to lasting machines; that the McKay Company, itself a strong unit, would not have extended its business into cognate lines are suppositions wholly at variance with the modern history of industry. But these obvious probabilities, amounting, indeed, to practical certainty, of increasing future competition were for all time cut off by the merger of 1899. As was said in the *Reading Case*, 226 U. S. 324, 353, without the combination the several groups had the power and the motive to compete. Both were ended by the organization of the United Company. If "competition not combination should be the law of trade" (*National Cotton Oil Co.* v. *Texas*, 197 U. S. 115; *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61, 87), if the purpose of the anti-trust laws is "to secure competition and to preclude combinations which tend to defeat it" (*International Harvester Co.* v. *Missouri*, 234 U. S. 199, 209), there was here clearly a combination which was illegal.

In fact its essential illegality was recognized at the time and confessed at the trial by the witness Howe, one of those principally concerned in bringing it about. He testified that he had an idea that the making of a working agreement between the Goodyear Company and the Consolidated Company would be an illegal restraint of trade. (*Supra*, pp. 58, 69.) He was, however, one of a somewhat numerous and distinguished company of lawyers who believed and long contended that a combination in corporate form which could be defended as an exercise of the "right to purchase property" escaped the prohibition of the Sherman Act. He accordingly insisted upon resort to that "subterfuge of form" (*Tobacco Case*, 221 U. S. 106, 181), and Winslow, who was not a lawyer, concurred. Howe was wrong in his belief that a corporate combination offered a means of evading the Sherman Law. *Standard Oil Case*, 221 U. S. 1, 59; *Tobacco Case*, 221 U. S. 106, 184, 187; *Harriman* v. *Northern Securities Co.*, 197 U. S. 244, 291; *Northern Securities Case*, 193 U. S. 197, 362. But what is here important is that he was entirely right in his idea that what he and his associates were consciously doing was an illegal restraint of trade.

B. The original illegality has been emphasized by the subsequent conduct of the defendants.

The subsequent history of the defendants emphasizes and reinforces what has just been said. It is a history of aggrandizement, of restrictive contracts, covenants and acquisitions, some unobjectionable in and of themselves but all playing their parts in an

ever strengthening scheme of monopoly. It is marked by the spending of millions to acquire within a few months of its definite appearance the first and only self-contained and truly formidable competitor which arose to challenge the defendants' supremacy. Above all it is notable for the consistent extension and enforcement of the restrictive lease system well characterized by the Judiciary Committee of the House of Representatives as "one of the greatest agencies and instrumentalities of monopoly ever devised by the brain of man." (Report accompanying the Clayton bill, p. 13.)

Through the years, the United Company has maintained and strengthened the control of the trade with which it was endowed by its organization. It has, while distributing very generous dividends to its stockholders, steadily added to its financial and other resources. It has become to all intents and purposes the only practical source of supply for the more important types of machines which it puts out, with the result that no shoe manufacturer dare hazard its displeasure. In short, it has gained a position in which competition with it, so long as it retains the weapons of the monopolist, is a practical business impossibility.

It but strengthens this argument that a few small companies maintain a precarious existence without the gates of the rich industrial province which the defendants have usurped; that they are experimenting with machines and trying them out as occasional opportunity offers, hoping if hope be not too long

deferred to enter active competition with the United Company when those gates shall be opened to them by decree of this Court. It is not necessary to the support of a charge of monopolization that the last vestige of competition shall be destroyed. Mr. Justice Day, then Circuit Judge, said in the *Chesapeake & Ohio Case*, 115 Fed. 610, 623:

> It is not required in order to violate this statute that a monopoly be created. It is sufficient if that be the necessary tendency of the agreement.

And, in the *Knight Case*, 156 U. S. 1, 16, this Court said:

> All the authorities agree that in order to vitiate a contract or combination it is not essential that its result should be a complete monopoly. It is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition.

To the same effect, see the *Lackawanna Case*, 238 U. S. 516, 533; *Atty. Genl.* v. *Great Northern Railway Co.*, 29 Law Journal (N. S. Equity) 794, 799; *Atty. Gen'l* v. *Central R. Co.*, 50 N. J. Eq. 52, 81.

When, as here, acts tending toward monopoly have so far produced that actual result that the defendants have put out over 96 per cent of all the principal machines used in bottoming shoes in this country (Appendix B, part 1, *infra;* see also Winslow, I, 597, l. 11); when Donham, Secretary of the United Company, could remember but two manufacturers making welt shoes who did not use the defendants'

machines (I, 30, l. 31); when there is considered in connection with defendants' preponderance their use of the system of restrictive leases, there seems hardly room for doubt that the United Company is a combination in restraint of trade.

C. The defendants can not justify what they have done by claiming that they did not intend to restrain trade.

1. A direct intention to restrain trade is shown by the record.

Defendants Howe and Winslow, responding to questions by their counsel, made literal denials that in the formation of the United Company they had any intention to restrain trade. Against this, however, are to be set the evidence of Mr. Howe with respect to his reason for insisting that the combination be given corporate form (*supra*, pp. 58, 59), and that of the circulars announcing the purposes of the combination (*supra*, pp. 54, 65). The Peabody contract (*supra*, p. 66) also is a very suggestive contemporary expression of the intention of the combiners.

Apart from these matters, the very comprehensiveness of the combination, taken together with the subsequent conduct of the corporation in carrying out the purposes announced in the documents just referred to, not merely warrants but requires inferences which negative such denials of specific intent. In this respect the case is not unlike the *Standard Oil Case*, 221 U. S. 1, in which the Chief Justice said (75):

> The unification of power and control over petroleum and its products which was the inevitable result of the combining in the New

> Jersey corporation by the increase of its stock and the transfer to it of the stocks of so many other corporations, aggregating so vast a capital, gives rise, *in and of itself*, in the absence of countervailing circumstances, *to say the least*, to a *prima facie* presumption of intent and purpose to maintain the dominancy over the oil industry, not as a result of normal methods of industrial development, but by new means of combination which were resorted to in order that greater power might be added than would otherwise have arisen had normal methods been followed, the whole with the purpose of excluding others from the trade and thus centralizing in the combination a perpetual control of the movements of petroleum and its products in the channels of interstate commerce. [Italics ours.]

Again, in *United States* v. *St. Louis Terminal Railroad Ass'n*, 224 U. S. 383, 394–395, and in *United States* v. *Reading Co.*, 226 U. S. 324, 370, it was recognized that an intent to exclude others might be inferred from the "extent of the control" acquired by the combination, the Court saying in the latter case:

> In the instant case the *extent of the control* over the limited supply of anthracite coal by means of the great proportion theretofore owned or controlled by the defendant companies, and the *extent of the control* acquired over the independent output which constituted the only competing supply, affords evidence of an intent to suppress that competition and of a purpose to unduly

> restrain the freedom of production, transportation and sale of the article at tidewater markets. [Italics ours.]

There was a similar ruling in *Shawnee Compress Co.* v. *Anderson*, 209 U. S. 423, 433, 434, where it was said:

> To what object was the assembling in one ownership or management so many compresses, and keeping the means and declaring the purpose of acquiring more? The answer would seem to be obvious. The first effect would necessarily be the cessation of competition. If there was left a possibility of other compresses being constructed, it was made less by the power that could be opposed to them * * *. This case presents something more than the lease of property by the Shawnee Company, induced or made necessary by financial embarrassment. It presents something more than the acquisition by the Gulf Company of another compress—of a mere addition to its business. It presents acts in aid of a scheme of monopoly.

2. Restraint of trade was the direct and necessary result of what the defendants did

If, however, it be assumed that the defendants in doing what they did had no conscious purpose to restrain trade and were wholly unaware, despite their legal and business experience, that such a result would follow their acts, it is immaterial. For, as has been shown, undue suppression of competition was the necessary result of what the defendants did. As was said by Mr. Justice Lurton in the *Reading Case*, 226 U. S. 324, 370:

> Of course, if the necessary result is materially to restrain trade between the States, the intent with which the thing is done is of no consequence * * * *U. S.* v. *St. Louis Terminal Assoc.* 224 U. S. 383, 394; *Swift & Co.* v. *U. S.* 196 U. S. 375.

To the same effect, see *United States* v. *Patten*, 226 U. S. 525, 543; *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 234.

D. The Winslow Case, 227 U. S. 202, does not affect this case.

United States v. *Winslow*, 227 U. S. 202, is so frequently referred to by the defendants as though decisive of some point in this case that it should be noted that it is not in any respect a decision by this Court that the acts of these defendants as shown by this record are within the law.

That case came to this Court upon appeal from an order sustaining a demurrer to an indictment. Under the familiar rule in such cases, this Court accepted, without reviewing, the construction given to the indictment in the lower Court. That construction was that the indictment did not charge a merger of competing but only of noncompeting and complementary units. It has been shown that those are not the facts here.

Following further, without reviewing, the construction put upon the indictment by the lower Court, this Court also held that—

> The validity of the leases or of a combination contemplating them can not be passed upon in this case.

It results that the decision in the *Winslow Case* is not a decision upon the facts of the present case and does not affect it.

E. It is no defense that defendants' combination is said to have been induced by good intentions and to have had some good results.

It was said in *International Harvester Co.* v. *Missouri*, 234 U. S. 199, at page 209:

> It is too late in the day to assert against statutes which forbid combinations of competing companies that a particular combination was induced by good intentions and has had some good effect.

In that pronouncement of this Court lies the short answer to all that defendants say with respect to the excellence of their machines and the improvements which they have perfected, the superiority and usefulness to shoe manufacturers of their service and the reasonableness of their prices. It was but a summing up of what this court had held more than once before. In the *Trans-Missouri Case*, 166 U. S. 290, 323, the Court pointed out that even a permanent reduction of prices, made possible by the concentration of manufacturing and the reduction of overhead expense which has been urged upon the Court so often in these cases and is again urged here as a predominating motive of combination, is no defense and, indeed, in the long run, may be no economic benefit to the public. While Mr. Justice Day, in the *Union Pacific Case*, 226 U. S. 61, said (88):

> Nor does it make any difference that rates for the time being may not be raised and much money be spent in improvements after the combination is effected. It is the scope of such combinations and their power to suppress or stifle competition or create monopoly which determines the applicability of the act.

The law was well stated by Mr. Taft, then Circuit Judge, in the *Addyston Case*, 85 Fed. 271, 293. After remarking that it had been earnestly pressed upon the Court that the prices charged by the combination were reasonable, he added:

> We do not think the issue an important one because, as already stated, we do not think that at common law there is any question of reasonableness open to the courts with reference to such a contract. Its tendency was certainly to give defendants the power to charge unreasonable prices, had they chosen to do so.

The defense that when the combination was formed, conditions with respect to service were unsatisfactory and that it has greatly improved them was offered in the *Great Lakes Towing Case*, 208 Fed. 733, as in this case. It was rejected as immaterial. (743, 744.)

In a recent decision (*Thomsen* v. *Cayser*, 243 U. S. 66, 86) this Court observed that this argument had been addressed to the Court in all of the cases and that it terminated, as it had always terminated, in the assertion that the particular combination in-

volved promoted trade, did not restrain it, and was a beneficial and not a detrimental agency of commerce. The Court dismissed the contention summarily, saying that it did not require extended consideration.

One phase of the defense of good primary motives perhaps deserves particular notice. Defendants say that they were actuated in acquiring the Eppler Company and the Plant interests in part at least by a desire to compose certain patent litigation. The adjustment of litigation is in and of itself a proper, perhaps a laudable, motive. But, like other good intentions, its presence will not excuse acts whose necessary result is a direct and undue restraint of trade. The following language of the Circuit Court of Appeals for the Third Circuit is directly on the point:

> The suggestion that the contract is justified by the situation of the parties—their exposure to litigation—is entitled to no greater weight. *Patentees* may compose their differences, *as the owners of other property may*, but they can not make the occasion an excuse or cloak for the *creation* of *monopolies* to the public disadvantage. *Natl. Harrow Co.* v. *Hench*, 83 Fed. 36, 38.

The attempted justification, urged especially with respect to the continuance of the system of restrictive leases, that it is *necessary* in the best interests of the trade even if conceded to have any substantial foundation is equally ineffective.

This Court replied to a like contention in the *Eastern States Lumber Case*, 234 U. S. 600, 613, by saying:

> The argument that the course pursued is necessary to the protection of the retail trade and promotive of the public welfare in providing retail facilities is answered by the fact that Congress, with the right to control the field of interstate commerce, has so legislated as to prevent resort to practices which unduly restrain competition or unduly obstruct the free flow of such commerce, and private choice of means must yield to the national authority thus exerted. *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 241–242.

Similarly, in *Grenada Lumber Co.* v. *Mississippi*, 217 U. S. 433, 441, this Court said:

> That such an agreement is one in restraint of trade is undeniable, whatever the motive or *necessity* which has induced the compact. [Italics ours.]

There is no legal difference between the contention that defendants did not intend unlawfully to restrain trade, although undue restraint necessarily resulted from what they intentionally did, and protesting that defendants' purpose was legitimate, although their acts resulted in an illegal restraint of trade. Neither contention states a defense. In the *Standard Sanitary Case*, 226 U. S. 20, the Court went so far as to accept as true, for the purposes of the argument, the alleged intention of defendants to improve the quality of the ware and to benefit the

trade and the public. But Mr. Justice McKenna, speaking for the Court, said (49):

> The law is its own measure of right and wrong, of what it permits or forbids, and the judgment of the courts can not be set up against it in a supposed accommodation of its policy with the good intention of parties, and it may be of some good results. *United States* v. *Trans-Missouri Freight Assn.*, 166 U. S. 290; *Armour Packing Co.* v. *United States*, 209 U. S. 56, 62.

F. The defendants can not justify what they have done as merely a natural and normal development of their business enterprise.

In *United States* v. *Great Lakes Towing Company*, 208 Fed. 733, it was proved that the defendant was formed in 1899 and *acquired* the properties of various tug operators, and subsequently secured by purchase the properties of other operators, with the result that it then owned all the prominent towing companies at 14 important lake ports. The Government alleged that it was a combination in restraint of trade and a monopoly.

The Court sustained its contention and said (741):

> A combination which places the direct instrumentalities of interstate commerce in such a relation as to create a single dominating control in one corporation, whereby natural and existing competition in interstate commerce is unduly restricted or suppressed, is within the condemnation of the act. *Standard Oil Co. Case, supra; American Tobacco Co. Case, supra.*
>
> * * * * *

(744) Has the Towing Company acquired this domination of the towing and wrecking service by normal methods alone; or, as otherwise stated, has it unduly restrained or suppressed competition? We think it clear that the Towing Company's domination does not result from normal methods alone. Whatever may be the views of individual economists, under the Federal statutory policy normal and healthy competition is the law of trade; and such evils as may result from such competition must be considered less than those liable to follow a complete unification of interests and the power such unification gives. The evil of unification lies in the temptation to higher rates and lessened regard for the public interests; and the tendency to this evil result must be recognized, even though not in a given case yet realized in actual experience. *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61; *Joint Traffic Association Case*, 171 U. S. 505, 576; *Standard Sanitary Mfg. Co.* v. *United States, supra*. Even competitive practices, of a nature which as between business rivals standing practically on equal terms may be normal and lawful, yet when employed by a powerful monopolistic combination with the ability to crush, and for the purpose of crushing, a weak rival, may become abnormal and unlawful.

The distinction taken by the Court that business practises which as between equal rivals may be normal and lawful become, when employed by a powerful combination for the purpose of crushing a weak

rival, abnormal and unlawful is of the very first importance. It has sometimes been overlooked by courts and text writers and there has resulted confusion of thought and inaccuracy of expression. Especially it differentiates cases which arise under the Sherman Law and are like the present case from cases like *Mogul Steamship Co.* v. *McGregor* (1892), A. C. 25, and decisions based upon it. Competition may in a proper case be sufficient justification for intentional injury to the trade of a rival and how far acts not in themselves intrinsically unlawful may be so justified is shown by the *Mogul Case*.[1] But where it is a question, under the Sherman Law, of the employment by a combination, constituted by its organization a substantial monopoly and endowed thereby with the monopolist's power, a very different situation arises.

It is also to be remembered in this connection that although the constituent elements of an illegal combination or monopoly, considered separately, may be

[1] The *Mogul Case* did not decide that the agreement there in question was not a contract in restraint of trade. What was held in that case was that a contract in restraint of trade, although not enforceable when sued upon, would not support an action at common law by one injured in his business by the carrying out of such an agreement. A number of the Law Lords who concurred in this result indicated clearly their opinion that the contract *was in restraint of trade.* (See opinions of Halsbury, L. C. (1892), A. C. 25 at pp. 26 and 39; Lord Bramwell, *s. c.* 46; Lord Hannen, *s. c.* 58. That the contract was in restraint of trade was held also by all three of the judges in the Court of Appeal (L. R. 23 Q. B. D. 619), which by a majority held that that circumstance did not make the contract actionable.

unobjectionable, they become unlawful when bound together as parts of a plan to restrain trade.

Mr. Justice Holmes, who delivered the opinion of the Court in *Swift & Company* v. *United States*, 196 U. S. 375, 396, said:

> Moreover, whatever we may think of them separately when we take them up as distinct charges, they are alleged sufficiently as elements of the scheme. It is suggested that the several acts charged are lawful and that intent can make no difference. But they are bound together as the parts of a single plan. The plan may make the parts unlawful.

In the *Reading Co. Case*, 226 U. S. 324, Mr. Justice Lurton said (357):

> It is not essential that these contracts considered singly be unlawful as in restraint of trade. So considered, they may be wholly innocent. Even acts absolutely lawful may be steps in a criminal plot. *Aikens* v. *Wisconsin*, 195 U. S. 194, 206. But a series of such contracts, if the result of a concerted plan or plot between the defendants to thereby secure control of the sale of the independent coal in the markets of other States, and thereby suppress competition in prices between their own output and that of the independent operators, would come plainly within the terms of the statute, and as parts of the scheme or plot would be unlawful.

The application of these principles to the present case is clearly suggested by the Supreme Judicial Court of Massachusetts in *United Shoe Machinery Company* v. *La Chapelle*, 212 Mass., 467.

The Court, in a learned opinion by Rugg, C. J., held that the facts which, on the record, were there taken as true and which were in substance what was proved here, showed the United Company to be a combination in restraint of trade in violation of the Federal Anti-Trust Act.

XI. THE PLANT PURCHASE WAS ILLEGAL EVEN THOUGH PLANT HAD NOT YET INSTALLED HIS MACHINES IN ANY FACTORY OTHER THAN THAT OF THE PLANT SHOE MANUFACTURING COMPANY.

The Plant purchase resulted in the elimination of an able, existing, and growing competitor. (*Supra*, pp. 110–125.) Like the original combination, this purchase was a violation of the Anti-Trust Laws.

It may be urged that Plant was not yet engaged in actual competition with the United Company because his machines were not in use in any shoe factory except that of Thomas G. Plant Company (I, 778, l. 13), although they were in use in that company's factory at the time of the acquisition of the Plant property by the United Company and, indeed, until long afterward (*supra*, p. 110). He had, however, also offered, as we have seen, to install his machines in a number of large factories (I, 575, l. 36), and representatives of still other large factories were trying to make some arrangement whereby they might acquire an interest in Plant's machinery for the purpose of installing his machines (*supra*, p. 116). In other words, the record clearly shows that the Plant machines were indeed right at the threshold of extended competition with the United Company's machines

But conceding, *arguendo*, that Plant had invented and manufactured but had not yet installed his machines in any shoe factory, the purchase, nevertheless, would have been contrary to the provisions of the Sherman Act.

As was said by Circuit Judge Putnam in the *Patterson Case*, 59 Fed. 280, 283 (Mass.):

> Neither the letter of the statute [the Sherman Act] nor its purpose distinguishes between strangling of commerce which has been born and preventing the birth of a commerce which does not exist.

And the language of this Court in the *Reading Case*, 226 U. S. 324, *supra*, with respect to preventing competition from coming into existence is peculiarly applicable here. There the situation was dominated by a number of carriers. It was desired to introduce competition and an independent railroad was projected for the purpose of providing it. Its construction was prevented by a combination of the defendants and the Temple Iron Company. Speaking of this Mr. Justice Lurton said (351):

> The New York, Wyoming & Western Railroad Company was successfully *strangled*, and the monopoly of transportation collectively held by the six defendant carrier companies was maintained.
>
> The *projected* competing railroad was undoubtedly a good faith proposition and held out *promise* to independent coal operators not

> only of the prospect of competition in transportation from the mines to tidewater, but the possibility of selling their coal either to the controlled coal companies defendant at better prices or to the consuming public at tidewater in competition with that of the controlled coal companies. *But if we assume that its construction was doubtful, the result must be the same* as characterizing the purpose and design of the concerted action of the defendants. They were so far convinced of the *threatening* character of the enterprise that they were moved at great cost *to thwart it and at the same time remove the temptation* for a like competition by securing to themselves forever the product of the collieries named. [Italics ours.]

That was precisely the situation in the Plant case, with respect to the threatening character of the Plant enterprise. Certain shoe manufacturers had been endeavoring for years to have the United Company modify its leases so that they might use in their factories competing machinery. For the first time in its history the United Company was threatened with competition in the United States by a single concern in position to furnish a complete line of machinery. The defendants feared that competition and were willing, at a cost of some $6,000,000, to "thwart it and at the same time remove the temptation for a like competition." They secured to themselves the product of the genius and labor of Plant and his inventors. They made secure the monopoly which they possessed of the shoe machinery industry.

XII. THE RESTRAINING AGREEMENTS MADE WITH VENDORS AT THE TIME THEIR PROPERTIES WERE ACQUIRED ARE ILLEGAL.

It is unnecessary to discuss at length whether the covenants entered into with vendors in connection with the acquisitions of competitors and others are in each instance in restraint of trade. All of the covenants restraining the vendors from again engaging in business, etc., are a part of the general plan of defendants to monopolize the bottoming shoe machinery business, and it is immaterial whether the contracts considered singly are void.

However, the majority of them, when considered separately, are clearly illegal, as they go far beyond what was necessary to afford fair protection to the legitimate interests of the purchaser. *Darius Cole Transp. Co.* v. *White Star Line*, 186 Fed. 63, and cases cited. *Gibbs* v. *Baltimore Gas Co.*, 130 U. S. 396.

In any event such agreements when entered into as part of a plan for monopolizing trade and commerce are illegal.

In *United Shoe Machinery Co.* v. *La Chapelle* (212 Mass. 467) the Supreme Judicial Court of Massachusetts applied the law to the facts of the case at bar. That was an action in which the United Shoe Machinery Company began a suit to compel the specific performance of a contract between La Chapelle and it containing a covenant to assign all future inventions and to refrain from engaging in any similar business. The Court said of the contract (485):

> It was made by one who had a monopoly of one branch of trade; it was one of many similar contracts with individuals enough to constitute a practical monopoly of skill in that department; it was a necessary link in a chain of contracts essential to the maintenance and preservation of monopoly in interstate trade which had been established by the plaintiff.

In *Shawnee Compress Company* v. *Anderson*, 209 U.S. 423, *supra*, it appeared that the company had leased all its property and business to the Gulf Company, covenanting that it would not "directly or indirectly engage in the compressing of cotton within 50 miles of any plant operated by the Gulf Company," and that it would "render the Gulf Company every assistance in discouraging unreasonable and unnecessary competition." (430, 431.)

This Court held that the lease was in restraint of trade and in furtherance of a scheme to monopolize. Mr. Justice McKenna, in delivering the unanimous opinion, after observing that the financial embarrassment of the Shawnee Company might have justified the mere lease of the property, said of these covenants (433):

> It covenanted to aid in the restraint of trade. It went out of the field of competition; it covenanted not to enter into that field again, and it pledged itself to render every assistance to prevent others from entering it. And it could not misunderstand the purpose for which its lease was solicited.

He added (434):

> This case presents something more than the lease of property by the Shawnee Company, induced or made necessary by financial embarrassment. It presents something more than the acquisition by the Gulf Company of another compress—of a mere addition to its business. It presents acts in aid of a scheme of monopoly. *Swift Co.* v. *United States*, 196 U. S. 375.

The principle is also well stated in *United States* v. *Great Lakes Towing Company*, 208 Fed. 733, *supra*. There the Towing Company exacted from those whose properties it had acquired covenants whereby the vendors agreed that during the period of five years they would not engage in or be interested, directly or indirectly, in the business of towing and wrecking or in any branch thereof, upon the Great Lakes (except Lake Ontario and its harbors and the waters east thereof), excepting only and so far as they, or either of them, shall be interested in or with the party of the second part, as shareholder or employee.

The Court (three judges sitting) had the following to say with respect to those covenants (742):

> While the sale of a business and the surrender of the good will pertaining thereto, and an agreement thereunder, within reasonable limitations as to time and territory, not to enter into competition with the purchaser, when made as part of the sale of a business, and not as a device to control commerce, is not

within the Federal Anti-Trust Law (see authorities cited in *Darius Cole Transp. Co.* v. *White Star Line* (186 Fed. 63, 65, 108 C. C. A. 165), the imposition of a restraint greater than necessary to afford fair protection to the legitimate interests of the purchaser, or contractor, constitutes an unreasonable restraint under the Sherman Act. *Shawnee Compress Co.* v. *Anderson*, 209 U. S. 423.

Practically all of the agreements against competition in the case at bar are unlimited as to territory, and some of them as to time. A large number, in instances where only a single machine or a few machines were acquired, prohibit the vendors from engaging in the shoe machinery business in any way whatsoever, regardless of the properties conveyed. Many of them, in addition to the restraints against competition, provide that if the vendor shall invent or shall acquire any interest under any invention relating to shoe machinery, all such inventions shall be assigned to the United Company without additional compensation therefor. Such agreements not only restrict competition, but also tend to discourage the invention and improvement of shoe machinery. Considered in their entirety, they present "something more than the acquisition" by defendants of the business of others—"of a mere addition to" their "business." They present "acts in aid of a scheme of monopoly." *Shawnee Compress Company* v. *Anderson*, 209 U. S. 423, *supra*.

In the *American Tobacco Case*, 221 U. S. 106, this Court held that the wrongful purpose of the defend-

ants and their illegal combination was overwhelmingly established by various considerations, and among others (183)—

> By the constantly recurring stipulations, whose legality, isolatedly viewed, we are not considering, by which numbers of persons, whether manufacturers, stockholders, or employees, were required to bind themselves, generally for long periods, not to compete in the future.

XIII. THE LESSEES ARE NOT NECESSARY PARTIES TO THIS LITIGATION.

It was intimated in the trial Court that the leases could not be condemned unless the lessees were parties to the action. As we have said before, the Government does not attack the leases as such, but only certain clauses which, it says, are illegal. They impose obligations upon the lessees and are made for the sole benefit of the defendants. The relief sought is a prohibition against the defendants enforcing them. We do not seek in any wise to control the action of the lessees. What we ask would neither affect their rights, nor impose any obligation upon them. On the contrary, it will relieve them from an oppressive and wholly illegal burden.

There is nothing in *Minnesota* v. *Northern Securities Co.*, 184 U. S. 199, which militates against our position. In that case, the Court said (245) that the controversy was between—

> the State of Minnesota, the Great Northern Railway Company, the Northern Pacific Rail-

> way Company * * * and the Northern Securities Company * * *, the stockholders and bondholders of those corporations, and of the numerous railway companies whose lines are alleged to be owned, managed, or controlled by the Great Northern and Northern Pacific Railway Companies

and that—

> the rights of the minority stockholders of the two railroad companies are not represented * * * ; they have a right to be represented * * * and their rights ought not to be affected without a hearing.

In the words "their rights ought not to be affected without a hearing" lies the gist of that case. As we have just observed, the rights of the lessees are not touched in this case, except to preserve them. Hence, it was not necessary to bring the lessees before the Court.

Moreover, this action is not like a private one involving only private rights. It is an action in which the Government charges the defendants with violation of law, and asks that they be restrained from continuing their illegal practices. They can not object to the suit proceeding because parties whom they claim are interested in their unlawful conduct are not before the Court. No one has the right to say that the unlawful conduct of another shall be permitted to continue because he has an interest in it. The acts complained of are illegal, and the Government has an indubitable right to have defendants

restrained from their continuance This was all brought out very clearly by Judge Lanning in the case of *U. S.* v. *Du Pont de Nemours*, 188 Fed. 127.

Speaking for the Circuit Court of Appeals, he said (153):

> We do not propose by our decree to deal with titles to property. Our power is defined in the fourth section of the anti-trust act. That section invests us "with jurisdiction to prevent and restrain violations" of the act. The same section provides that the petition may contain a prayer that the violation of law, therein alleged, "shall be enjoined or otherwise prohibited." It is our purpose, as it is our duty, to exert the power thus conferred on us to the extent necessary to "prevent and restrain" further violations of the act. In other words, *the relief we can give in this proceeding is preventive and injunctive only.* If our decree, limited to that purpose, shall *necessitate* a *discontinuance* of *present business methods*, it is *only because those methods are illegal.*

Again (155):

> We have not overlooked the motion of the defendants to dismiss the petition for *want* of *necessary* parties. It appears that certain of the defendant corporations have outstanding bonds secured by mortgages or trust deeds, held by trust companies, who are not defendants. As already stated, *this suit* is not designed, primarily, to deal with or dispose of *property* rights. We see no reason for bring-

ing in mortgage or other creditors. [Italics ours.]

If "mortgage or other creditors" were not necessary parties in that case, neither are the lessees here. This suit is not designed to deal with any questions that may arise between the defendants and their lessees concerning the leases. It has to do alone with the enforcement of a public statute which defendants have violated. See, upon practically the precise question, *United States* v. *United Shoe Machinery Co.*, 234 Fed. 127, 138–140.

XIV. STATEMENTS BY SHOE MANUFACTURERS OF THE REASONS WHY THEY DID NOT BUY INDEPENDENT MACHINES WERE ADMISSIBLE.

There is considerable evidence in the record consisting of statements made by shoe manufacturers to the representatives of independent shoe machinery dealers to the effect that they would like to trade with such dealers but could not do so because of the tying clauses in the United Company's leases to which they were parties. These statements were objected to on the ground that they were hearsay, but the objections were overruled and the testimony admitted. This was correct. (*Lawlor* v. *Loewe*, 235 U. S. 522; *Wigmore on Evidence*, sec. 1729; *Casey* v. *Cincinnati Typographical Union*, 45 Fed. 135, 146, 147; *Elmer* v. *Fessenden*, 151 Mass. 359, 361.)

XV. THE TYING CLAUSES ARE ILLEGAL IN THEMSELVES.

As has been said, the Government does not complain of the fact that the United Company leases and does not sell its important machines. Its

objection is to the inclusion in the leases of the tying clauses. These, it says, are illegal as an integral part of an illegal scheme which has produced intended illegal results. Were the United Company and its methods in all other respects unobjectionable the use of these clauses would still be illegal.

A. The tying clauses necessarily suppress competition and tend to create a monopoly.

If the dominant purpose and necessary result of the use of these clauses is a substantial restraint of trade and to tend to create a monopoly, it is apparent that their use is illegal. That, in their practical working, such is their effect and must have been their purpose, has already been shown.

Where their consideration had not been clouded by unwarranted assumptions as to their justification under the supposed rights of patentees, such has been seen to be their necessary effect.

The Judiciary Committee of the House of Representatives, when considering the Clayton Bill (38 Stat. 730), conducted extensive hearings relative to these leases. In its report the Committee said:

> Where the concern making these contracts is already great and powerful, such as the *United Shoe Machinery Company,* * * * the exclusive or "tying" contract made with local dealers becomes one of the *greatest agencies and instrumentalities of monopoly ever devised by the brain of man.* It completely shuts out competitors not only from trade in which they are already engaged but from the

> opportunities to build up trade in any community where these great and powerful conditions are appearing under this system and practice. By this method and practice the *Shoe Machinery Company* has built up a monopoly that owns and controls the entire machinery now being used by all great manufacturing houses of the United States. No independent manufacturer of shoe machines has the slightest opportunity to build up any considerable trade in this country while this condition obtains. If the manufacturer who is using machines of the *Shoe Machinery Company* were to purchase and place a machine manufactured by an independent company in his establishment, the *Shoe Machinery Company could*, under its contracts, withdraw all their machinery from the establishment and *thereby wreck* the business of the manufacturer. (Report of Committee, p. 13.) [Italics ours.]

This view of the clauses here in question is sustained by judicial decision. Judge Dyer of the Eastern District of Missouri, in *United States* v. *United Shoe Machinery Company*, 227 Fed. 507, said of them (509):

> Are the clauses inserted in and forming parts of the contracts between the defendants and their lessees prohibited by the act of Congress heretofore referred to? Reading this act of Congress and the clauses complained of together, there can be but one conclusion, and that is that all of the clauses (with the possible exception of No. 2) complained of in the

> bill are clearly violative of the plain words of the statute.

Continuing, the Court observed with respect to the same clauses (511):

> It is hard to see how the ingenuity of man could have devised a scheme that would more effectually create a monopoly than the scheme set forth in the bill in this case.

Afterwards, in the same case upon a motion to dismiss (234 Fed. 127), Judge Trieber, of the Eastern District of Arkansas, was called upon to consider the same question. He called the tying clauses conditions and, speaking of them, said (148):

> What is the natural, direct, and necessary effect of these conditions? There can be but one answer to this: To compel the lessees to use defendants' machinery and material, regardless of whether the terms granted by the defendants are as favorable as can be obtained from other manufacturers of some of the machines or dealers in some of the materials.
>
> In addition, it is charged that, by reason of these leases, there is no market for anyone inclined to manufacture these or some of these machines, and therefore all are deterred from engaging in their manufacture, as, there being no market for them, financial failure is bound to result from the attempt. Such a condition of affairs clearly tends to substantially lessen competition, and create, *in favor of the defendants, a monopoly in that line of commerce.* [Italics ours.]

Both of these decisions, it is true, were rendered under section 3[1] of the Clayton Act (38 Stat. 731), but the meaning of monopoly is not changed by that circumstance.

B. The effect of the tying clauses is unlawfully to coerce shoe manufacturers to boycott defendants' competitors.

All leases made by defendants run for 17 years. New leases are made from time to time with lessees under earlier leases. As already shown, *supra*, p. 180, each lease is tied to each of the earlier leases. In practice, there never comes a time when the manufacturer is at liberty to procure his bottoming machinery where he wills. There is practical coercion, exercised through the tying clauses, compelling the shoe manufacturer to continue indefinitely to deal with the United Company and to refrain from dealing with its competitors.

A system of leases or contracts producing such a situation must be illegal.

If the combined companies in the case at bar had entered into a trade agreement instead of a corporate combination, thereby securing control of more than 96 per cent of a certain line of machinery, and an absolute monopoly of other lines, and had agreed that no one company would trade with any shoe manufacturer unless he purchased all his machinery from the members of the combination, clearly we

[1] This section, it was said by this court, in *Motion Picture Patents Co.* v. *Universal Film Company*, 243 U. S. 502, 517, "must be accepted by us as a most persuasive expression of the public policy of our country with respect to the question before us."

would have that "potency in numbers" spoken of in the *Loewe Case*, 187 Fed. 522, which amounts to coercion and creates a boycott. As was further said in that case (524):

> If it be shown that individuals have combined in order to induce a manufacturer engaged in interstate commerce to conduct his business as they wish, and upon his refusal, retaliatory steps are taken * * * such combination of individuals must be held to have essentially obstructed the free flow of commerce between the States, a combination to effect such an obstruction is in violation of the Anti-Trust Law.

If the Danbury Hatters were guilty of boycotting by combining for the purpose of preventing dealers in hats from trading with Loewe, the defendants are equally guilty by combining with the shoe manufacturers through the tying clauses, to prevent the latter from dealing with independent shoe machinery manufacturers. The shoe manufacturers are unwilling members of the combination, but they are members for the purpose of the combination—the destruction of trade with independent shoe machinery manufacturers.

The mere fact that the combined companies have united by a corporate combination instead of a loose combination, is wholly immaterial as already shown.

The power which the tying clauses give to the defendants over the shoe manufacturers is analogous to that possessed by the combination in the *Eastern States Retail Lumber Case*, 234 U. S. 600; in *Mon-*

tague v. *Lowry*, 193 U. S. 38; and in *Jayne* v. *Loder*, 149 Fed. 21.

In the former case the Court said (614):

> When the retailer goes beyond his personal right, and conspiring and combining with others of like purpose, seeks to obstruct the free course of interstate trade and commerce * * * by placing obnoxious wholesale dealers under the coercive influence of a condemnatory report * * * he exceeds his lawful rights, and such action brings him and those acting with him within the condemnation of the act of Congress.

Every shoe manufacturer who deals with the appellees is by the coercive influence of the leases prohibited from trading with competitors of the defendants.

In *Continental Wall Paper Company* v. *Voight & Sons*, 212 U. S. 227, manufacturers of wall paper, controlling 97 per cent of interstate commerce therein, organized a corporation to act as their common selling agent, which corporation made separate contracts with wholesalers and jobbers in the several States by which such wholesalers and jobbers agreed to buy only of such corporation.

This Court, speaking through Mr. Justice Harlan, quotes with approval the following language of Judge Lurton in the Court below (256):

> The jobbers and wholesalers, who were to be *coerced* into contracts to buy their entire demands from the Continental Wall Paper Company or be driven out of business, were in

every State. Before the combination each of the combining companies was engaged in both State and interstate commerce. The freedom of each, with respect to prices and terms, was restrained by the agreement and interstate commerce directly affected thereby, as well as by the enhancement of prices which resulted. *A more complete monopoly in an article of universal use has probably never been brought about. It may be that the wit of man may yet devise a more complete scheme to accomplish the stifling of competition.* But none of the shifts resorted to for suppressing freedom of commerce and securing undue prices, shown by the reported cases, is half so complete in its details. None of the schemes with which this may be compared is more certain in results, more widespread in its operation, and more evil in its purposes. It must fall within the definition of a "restraint of trade," whether we confine ourselves to the common-law interpretation of that term or apply that given to the term as used in the Federal act. [Italics ours.]

In the *Reading Company Case*, 226 U. S. 324 *supra*, the defendant carriers controlled about seventy-five per cent, and the independent operators about twenty per cent, of the annual supply of anthracite coal. Contracts were entered into whereby the independent operators severally agreed to deliver their entire output to the defendants and in consideration therefor they were to receive sixty-five per cent of the general average price prevailing at tidewater points. The purpose of the contracts

was to prevent the output of the independent mines being sold in competition with the output of the mines belonging to the defendants.

Speaking of these contracts the Court said (357):

> It is not essential that these contracts, considered *singly*, be unlawful as in restraint of trade. So considered, they may be wholly innocent. Even acts absolutely lawful may be steps in a criminal plot. (*Aikens* v. *Wisconsin*, 195 U. S. 194, 206.) But a *series* of such contracts, if the result of a concerted plan or plot between the defendants to thereby secure control of the sale of the independent coal in the markets of other States, and thereby suppress competition in prices between their own output and that of the independent operators, would come plainly within the terms ot the statute, and as parts of the scheme or plot would be unlawful. [Italics ours.]

The opinion proceeds (358):

> That the plan was calculated to accomplish the design averred, in the present case, seems plain enough. The anthracite field was very limited. The means for transportation from the mines to seaboard shipping points were in the hands of the defendant carriers. They, together with their subsidiary companies, controlled about ninety per cent of the coal deposit and about seventy-five per cent of the annual output. If the remaining output, that of the independent operators along their several lines, could be controlled as to production and sale at tidewater points, there would inevitably result such a dominating control of a necessity of life as to bring the

scheme or combination within the condemnation of the statute.

We submit that the contracts in the *Continental Wall Paper case, supra*, and the 65 per cent contracts in the *Reading case, supra*, were not as far-reaching in their evil results as the system of leasing used by defendants.

C. The tying clauses are illegal irrespective of whether the United Co. is otherwise a lawful or an unlawful combination.

Though it be assumed that the United Company in its original constitution by combination and in its subsequent acquisitions of concerns engaged in the shoe machinery business did nothing illegal, the tying clauses would none the less be illegal because of the restraint and monopolization which is their purpose and necessary effect. They are enforced by a single corporation having an overwhelmingly preponderant position in the trade. It has already been pointed out that trade practices which might be lawful and harmless when pursued by a relatively unimportant trade unit are quite the contrary when practiced by an aggregation as powerful, financially and industrially, as the United Shoe Machinery Co.

The defendants have attempted to justify the tying clauses as a valid exercise of their rights as patentees, basing their contention upon *Henry* v. *Dick Co.*, 224 U. S. 1. This contention which met with favor in the Court below is rendered wholly untenable by the decision of this Court in *Motion Picture Patents Co.* v. *Universal Film Co.*, 243

U. S. 502, *supra*. It is discussed later. Apart from the question of patents, systems of exclusive contracts have been repeatedly condemned in cases under the Sherman Act. What was said in the previous section of this brief and the authority there cited is, of course, equally applicable here. In a footnote are collected a number of citations of cases, some very recent and others at common law, where such contracts when entered into by a corporation subject to the law of public service or when initiated by a powerful industrial corporation have been held to be illegal.[1]

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[1] Systems of exclusive contracts initiated by a powerful industrial corporation or between those engaged in the public service have been condemned in the following cases: *United States* v. *Reading Co.*, 226 U. S. 324; *United States* v. *Eastern States Lumber Dealers Assn.*, 234 U. S. 600; *Montague* v. *Lowry*, 193 U. S. 38; *Continental Wall Paper Co.* v. *Voight & Sons*, 212 U. S. 227; *Jayne* v. *Loder*, 149 Fed. 21; *United States* v. *Eastman Kodak Co.*, 226 Fed. 62, 76–77; *United States* v. *Motion Picture Patents Co.*, 225 Fed. 800; *United States* v. *Corn Products Refining Co.*, 234 Fed. 964; *United States Tel. Co.* v. *Central Union Tel. Co.*, 202 Fed. 66, 72, 74; *Gwynn* v. *Telephone Company*, 69 S. C. 434, 442, 443; *Merchants Legal Stamp Co.* v. *Murphy*, 220 Mass. 281; *United States* v. *Keystone Watch Case Co.*, 218 Fed. 502, 510, 512; *United States* v. *Great Lakes Towing Co.*, 208 Fed. 733 745; *Wheeler-Stenzel Co.* v. *Window Glass Jobbers Assn.*, 152 Fed. 864, 870–871; *Nash* v. *United States*, 229 U. S. 373, 375; *United States* v. *United Shoe Machinery Company*, 227 Fed. 507; *Same* v. *Same*, 234 U. S. 127.

Wilder Mfg. Co. v. *Corn Products Co.*, 236 U. S. 165, is not *contra*. It merely holds that a purchaser under such a contract can not escape paying for his purchase by attacking collaterally his vendor as an illegal combination but can resist payment only in case the individual contract of sale was, in and of itself, in violation of law.

A few of these cases deserve particular notice because they show the importance of the possession of the monopolist's power in connection with the legality of such a system of exclusive contracts and for other reasons.

In *United States* v. *Keystone Watch Case Co.*, 218 Fed. 502, it is said (510):

> As power increases, the temptation to abuse it is likely also to increase, so that the acts of an influential factor in a particular trade may well be scrutinized with more suspicion than the acts of a *weak and inconspicuous* contributor. * * * Beginning in 1904, or thereabouts, it made several attempts—perhaps not very numerous, but numerous enough—that showed a definite purpose to restrain trade by attempting to fix and maintain prices, and *by using a species of boycott or blacklisting in order to lessen the trade of its rivals.* [Italics ours.]

Every lease in the case at bar containing a tying clause is not only an attempt to restrain trade, but an actual restraint thereof, especially when it is considered that practically all of the shoe manufacturers in the country are, for practical purposes, compelled to accept such leases for all the bottoming, clicking, and eyeletting machinery used by them.

Continuing, the same Court said, in speaking of a circular letter informing jobbers that the Keystone Watch Case Company would refuse to deal with those who handled *independent* goods (512):

> We regard it not as a request, but as a threat; and *not as an empty threat, but as a real menace from a strong manufacturer* * * * Now what the defendant company did was either to close these already existing and already utilized outlets, or to narrow them materially so far as the cases of its competitors were concerned; and we think the proposition need not be discussed that this was *pro tanto* a direct and unlawful restraint of trade. [Italics ours.]

The United Company is indeed a "strong manufacturer"—and its business practice amounts to a refusal to deal with shoe manufacturers who use independent machines.

The Court in the *Great Lakes Towing Case* (208 Fed. 733 *supra*) says emphatically (745):

> *No more effective obstacle to successful competition could well be devised than is found in this exclusive contract system.* It is manifest that no competitor doing business at less than all 14 of the ports could compete with the Towing Company on anything like equal terms. With the field already occupied by a strong combination, with a large patronage fixedly secured through stockholding interests, the formation of another company equipped to do business at all 14 ports would seem a commercial and financial impossibility. [Italics ours.]
>
> * * * * *
>
> Even competitive practices, of a nature which as between business rivals standing practically on equal terms may be normal and

> lawful, yet when employed by a powerful monopolistic combination with the ability to crush, and for the purpose of crushing, a weak rival, may become abnormal and unlawful. (744.)

It is equally manifest here that no competitor having less than a complete line of bottoming machinery could compete with the United Company on any terms.

In the *Window Glass Jobbers Association Case*, 152 Fed. 864, we read (870–871):

> *It is argued with much force and ingenuity* by the defendant in error that the combination set out in the declaration was only an agreement by which a certain number of wholesalers were to trade exclusively with a certain manufacturer with the reciprocal understanding that the manufacturer was to sell to no one else, except at a price higher than that paid by the parties to the contract; *that this was, in effect, nothing more than an agreement to sell to one person or to several at a price advantageously lower than the general price, on condition that such person or persons would buy exclusively from the manufacturer so agreeing.* In other words, the American Window Glass Co. had the right to select its customers and charge one price to one and another price to another. It had the right to offer certain inducements to certain customers in exchange for their exclusive trade. And it had the right to do all or any of these things. But it is always to be borne in mind, in considering arguments of

> this kind, that the act of Congress has made, and was intended to make, illegal many sorts of contracts and agreements that prior thereto were not only legal but were regarded as meritorious and beneficial, and has materially restricted the area within which freedom of contract may be exercised. [Italics ours.]

If a contract to sell to one person "at a price advantageously lower than the general price on condition that such person or persons would buy exclusively from the manufacturer so agreeing" is invalid, then a contract leasing to one person who must agree to any terms fixed by the lessor on condition that he will lease "exclusively" from the lessor must be void.[1]

In *Nash* v. *United States*, 229 U. S. 373, 375, one of the means of monopolization named was,

> coercing factors and brokers into contracts with the defendants for the storage and purchase of their receipts and refusing to purchase from such factors and brokers unless such contracts were entered into.

The illegality of such systems at common law is indicated by Stimson, Popular Law Making, as follows (p. 175):

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[1] The long line of decisions of this Court and of Circuit Courts of Appeal to the effect that a system of contracts between a manufacturer and dealers fixing resale prices, thereby eliminating competition and fixing the prices which the ultimate consumer must pay, is restraint of trade and illegal at common law and under the Anti-Trust Act is comparable. See the authorities collected in *Ford Motor Co.* v. *Union Motor Sales Co.*, 244 Fed. 156 (C. C. A.—6th Ct.), at p. 157.

> We have legislated * * * against what we have termed "*unfair competition*," that being generally defined to be the making of an artificially low price in a certain locality for the purpose of destroying a competitor, or the making of *exclusive contracts; that is to say, refusing to deal with a person unless he binds himself not to deal with anybody else. This last thing can hardly, however, be said to add to common law principles.* [Italics ours.]

That is precisely what we have here and it is unlawful according to the foregoing authorities.

D. It is no defense that certain shoe manufacturers do not object to the tying clauses.

Defendants urge that a large number of shoe manufacturers are satisfied with the tying clause system. This can make no difference from a legal standpoint. No man nor body of men can enter into contracts that violate the law of the land merely because such contracts may be to his or their advantage. It is very doubtful, however, whether this contention of the defendants finds any support in the evidence. That a number of shoe manufacturers prefer a leasing system to one which would require them to purchase their machines outright because it saves an initial investment of capital in machinery may be conceded. That it does in fact save the investment of much capital is far from clear, when we consider the amount of the royalties which manufacturers have to pay. (*Supra*, p. 190.) But the Government, as we have heretofore observed, does not find fault with the leasing system as such.

That system can continue with all its actual or imaginary benefits to shoe manufacturers after the obnoxious clauses have been eliminated. Those clauses are burdens on, not benefits to, the shoe manufacturers of the country.

However, the following language from the opinion of this Court in the *Reading Case*, 226 U. S. 324, *supra*, is applicable here (359):

> That the conditions were not accepted by the independent producers as satisfactory, is evident. The majority at all times stood out, and those making such agreements as well as those refusing to do so, maintained an agitation for better freight rates and better prices for those who preferred to sell at their breakers. For many years before this proceeding they maintained an organization called "the Anthracite Coal Operators' Association," and through that body endeavored to improve their situation.

And so it is here. The so-called "Shoe Manufacturers' Alliance," composed of both large and small shoe manufacturers in the West and in the East, has been endeavoring for several years past through their organization to devise some plan whereby they might be relieved from the domination of defendants. Practically their last effort was to obtain an interest in the inventions and machines of Thomas G. Plant, but even in that attempt they were thwarted, by the defendants going in during the late hours of the night and acquiring control of all of Plant's inventions, patents, and machinery.

We submit that in the tying clause system employed by defendants there has been devised and applied a scheme for the stifling of competition and the monopolization of trade and commerce which approaches near to perfection. It is illegal and should be condemned.

XVI. THE DEFENDANTS CAN NOT EXCUSE EITHER THEIR COMBINATION OR THE TYING CLAUSES BY SETTING UP THAT THEY ARE PATENTEES.

A. The ownership of patents does not create an exemption from the antitrust laws.

The answer of the United Company of New Jersey, the principal operating company, contains the following:

> If this defendant is engaged in interstate trade and commerce, which it denies, and has any monopoly of such trade or commerce, which it denies, *then this defendant says any such monopoly is a valid and legal monopoly of such trade or commerce derived under and pursuant to and coextensive with letters patent of the United States, or of foreign countries, owned by it.* [Italics ours.] (I, 1045.)

It seems to be upon this defense that the defendants have hitherto chiefly relied. The defendants, as appears from the quoted excerpt from their answer, offer their ownership of patents as justifying their monopoly. Further, they contend, with respect to their insistence upon the tying clauses, that that insistence is but a valid exercise of the exclusive right to use patented inventions which is granted to them by the patent law. Test of the validity of these

contentions is, of course, to be made by ascertaining exactly what is granted to patentees by the patent law, as distinguished from the general law, and by measuring the claims of defendants by the result of that inquiry.

The long controversy with respect to the limits of the grant to a patentee has recently been brought to a plain and definite conclusion by the decision of this Court in *Motion Picture Patents Co.* v. *Universal Film Co.*, 243 U. S. 502. In that case, in which *Henry* v. *Dick Co.*, 224 U. S. 1, was directly overruled, it is made clear (p. 513) that the right of the patentee under the patent law is limited strictly to the particular mechanism described in the particular patent as necessary to produce the described results and that all other rights which a person who is a patentee may have must be derived from and governed by the general law. Since they are derived from and are governed by the general law, all these rights of the patentee, apart from his exclusive control of the particular mechanism patented, including his right of property and his right to contract must yield when their exercise involves a violation of the Anti-Trust Acts. It was in this very connection that Mr. Justice McKenna used in the *Standard Sanitary Case*, 226 U. S. 20, his often quoted words:

> Rights conferred by patents are indeed very definite and extensive but they do not give any more than other rights an universal license against positive prohibitions. The Sherman Act is a limitation of rights, rights which may

be pushed to evil consequences and therefore restrained.[1]

The particular application of the *Motion Pictures* decision to the justification of the tying clauses, in the past largely grounded by defendants upon *Henry* v. *Dick Co.*, 224 U. S. 1, is the aspect in which, because of the essential similarity of the questions presented, it is of the greatest significance in this case. It will be considered in the following section. With respect to the question whether a patentee has any greater rights than another to violate the general law of the land the implications of the recent decision but reaffirm what was established law.[1] Even in the *Button Fastener Case*, 77 Fed. 288, in which originated the doctrine of the *Dick Case*, the Court said, 292–293:

> We are not at all prepared to say that there are no limitations upon a patentee's power of contract with reference to the use of his invention by others. *The property right of a patentee is, after all, but a property right, and subject, as is all other property, to the general*

[1] Indeed the argument with respect to the alleged rights of a patentee is by no means as strong as that based upon the undisputed right to acquire property which has so often been offered to this Court in these cases without acceptance as a justification for monopolistic enterprise. The *Northern Securities Cases*, 193 U. S. 197, 197 U. S. 244; the *Tobacco Case*, 221 U. S. 106; the *Union Pacific Case*, 226 U. S. 61; the *Pacific & Arctic Case*, 228 U. S. 87, and the *Reading Case*, 226 U. S. 324, are among those in which acquisitions were sought to be justified as merely the exercise of this right. But since they resulted in producing the results forbidden by the Anti-Trust Law they were none the less condemned.

> *law of the land.* We may also concede that contracts respecting the use of inventions and discoveries are, like all other contracts, subject to the limitations imposed by definite principles of public policy. [Italics ours.]
>
> * * * Neither the patentee, nor the machine involving his invention, nor a license for use, can be exempted from the liabilities and regulations which, in the public interest, attach to all persons and property under the general law of the land.

Other cases announcing the proposition that the right to contract concerning the patent is not derived from the patent itself but from the general law, and therefore that the patentee's rights are governed by that law, are noted in the margin.[1]

Since the rights of defendants to contract, with third persons or with each other, are governed by

[1] In *Pope Mfg. Co.* v. *Gormully*, 144 U. S. 224, an agreement not to contest the validity of a certain patent in consideration of a license under other patents was held unenforceable.

In *State* v. *Telephone Co.*, 23 Fed. 539, and *State* v. *Telephone Co.*, 47 Fed. 633, affirmed 50 Fed. 677, it was held that a holder of telephone patents could not insist that its licensees refuse service to any telegraph company except the Western Union because the restrictions violated their common law duty to serve all alike. In the last case, Wales, J., said:

"The conclusion drawn from an examination of these cases is that the patent laws give to the patentee a monopoly in his invention * * * but that they do not authorize him to employ it for a purpose or in a manner that may be forbidden to all other persons in the use of their unpatented property or discoveries."

In the earlier Telephone case, Brewer, J., pointed out that the ownership of a patent was merely a property right to be

the general law it is a truism that they are subject to the Sherman Act which is a part of that law.

And as might be expected, it was decided, before the decision of the *Motion Picture Case, supra*, that competitors had because of their ownership of patents no right to combine in restraint of trade. In *National Harrow Company* v. *Hench*, 76 Fed. 667, Circuit Judge Acheson held the Harrow Company to be an illegal combination. He said (p. 669):

> It is true that a patentee has the exclusive control of his invention during the life of the patent. He may practice the invention or not, as he sees fit, and he may grant to others licenses upon his own terms. But where, as was the case here, a large number of independent manufacturing concerns are engaged in making and selling, under different patents and in various forms, an extensively used article, competition between them is the natural and inevitable result, and thereby the public interest is promoted. Therefore, a combination between such manufacturers, which imposes a widespread restraint upon the trade,

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protected as such. He added (23 Fed. 539, at 540): "The moment he puts that property into what I perhaps may call, for lack of a better expression, the channels of commerce, that moment he subjects that property to the laws which control commercial transactions."

In *Straight* v. *National Harrow Company*, 18 N. Y. Supp. 224, restrictive agreements extending fifty years beyond the life of a patent were held invalid though entered into in consideration of a license to use the patented invention.

In *Patterson* v. *Kentucky*, 97 U. S. 501, the rights of patentees, as of other persons, were held subject to the police power.

> and destroys competition, is as injurious to the community, and as obnoxious to sound public policy, as if the confederates were dealing in unpatented articles. * * * To sanction such a result, because accomplished by a combination of patentees, would be, I think, to pervert the patent laws. * * * I am constrained to regard the license contract sued on as part of an illegal combination * * *.

And on an appeal to the Circuit Court of Appeals for the Third Circuit the judgment below was affirmed (83 Fed. 36). The Court said (p. 38):

> The fact that the property involved is covered by letters patent is urged as a justification; but we do not see how any importance can be attributed to this fact. Patents confer a monopoly as respects the property covered by them, but they confer no right upon the owners of several distinct patents to combine for the purpose of restraining competition and trade. Patented property does not differ in this respect from any other. The fact that one patentee may possess himself of several patents, and thus increase his monopoly, affords no support for an argument in favor of a combination by several distinct owners of such property to restrain manufacture, control sales, and enhance prices. Such combinations are conspiracies against the public interests and abuses of patent privileges. The object of these privileges is to promote the public benefit, as well as to reward inventors. The suggestion that the contract is justified by the situation of the parties—their *exposure to liti-*

> *gation*—is entitled to *no* greater weight. Patentees may compose their differences, *as* the owners of *other* property may, but they can *not* make the occasion an excuse, or cloak for the creation of monopolies to the public disadvantage. We do not see anything to distinguish this case, in principle, from *Nester* v. *Brewing Co.*, 161 Pa. St. 473; 29 Atl. 102; *Carbon Co.* v. *McMillin*, 119 N. Y. 46; 23 N. E. 530; *Morris Run Coal Co.* v. *Barclay Coal Co.*, 68 Pa. St. 173; *Distilling & Cattle Feeding Co.* v. *People* (Ill. Sup.); 41 N. E. 188; *Strait* v. *Harrow Co.* (Sup.), 18 N. Y. Supp. 233. [Italics ours.]

The italicized part is especially pertinent in view of the contention of the defendants that many of their illegal acquisitions were justified by the fact, as claimed by them, that they were made to avoid litigation (*supra*, pp. 49, 70, 128).

There is nothing in *Bement* v. *National Harrow Company*, 186 U. S. 70, which is opposed to our position. The distinction between it and the present case was clearly pointed out by Mr. Justice McKenna in the *Standard Sanitary Case*, 226 U. S. 20, when he said:

> There was a contention in that case [*Bement Case*] that the contract of the National Harrow Company with Bement & Sons was part of a contract and combination with many other companies and constituted a violation of the Sherman law, *but the fact was not established and the case was treated as one between the particular parties, the one granting and the other*

> *receiving a right to use a patented article with conditions suitable to protect such use and secure its benefits.* [Italics ours.]

The same distinction had been taken, a few months earlier, by Rugg, C. J., in *United Shoe Machinery Co.* v. *La Chapelle*, 212 Mass. 467, 481–483, who concludes an exhaustive review of the existing authorities by saying:

> The comprehensive condemnation of the [Sherman] Act against every person who monopolizes interstate commerce by combination with others includes holders of patents as well as others.

See also, in this connection, *Ford Motor Co.* v. *Union Motor Sales Co.*, 244 Fed. 156, 158, 159; *Bobbs-Merrill Co.* v. *Straus*, 210 U. S. 345.

In *Blount Manufacturing Company* v. *Yale & Towne Manufacturing Company*, 166 Fed. 555, the Court said (557):

> The monopoly granted by letters patent is of a particular invention. Devices thus protected by patents are as a matter of fact in commercial competition with both patented and unpatented devices. A contract whereby the manufacturers of two independent patented inventions agree not to compete in the same commercial field deprives the public of the benefits of competition and creates a restraint of trade which results not from the granting of letters patent but from agreement. While the monopoly of the patented articles is not increased, the monopoly of the commercial

field is increased by the "unified tactics" as to prices.

(562) Combinations between owners of *independent patents* whereby as a part of a plan to monopolize the commercial field competition is eliminated *are* within the Sherman Act, for the reason that the restraint of trade or monopoly arises from *combination* and *not* from the exercise of rights granted by letters patent. As by the terms of the contracts under consideration the owners of *distinct patents* each agreed to restrain its own interstate trade, I am of the opinion that the contracts are in these particulars obnoxious to the Sherman Anti Trust Act. [Italics ours.]

That case is supported and supplemented by *Unite States* v. *Standard Sanitary Mfg. Co.*, 191 Fed. 172. The Court (three judges sitting) said, through Rose, J. (190):

> A patentee is as much subject to the laws of the land as is any other man * * *. It [a patent] does not give a right to sell indulgences to violate the law of the land, be it the Sherman Law or another.

Continuing, the Court observed:

> A patentee who monopolizes his invention breaks no law. He who uses his property right to exclude others from the making, selling, or using his invention for the purpose and with the effect of making a combination to restrain trade in something from which his patent gives him no right to exclude others, does break the law. He breaks it precisely as the individual defendants in the Standard Oil

> and American Tobacco Companies broke it. They had the same right to use their brains, their capital, and their credit as they thought best, as he had to use his right to exclude all others from making, using, or selling automatic dredgers. He was subject to the same limitations as they were. They could not lawfully use their brains, their money, and their credit to restrain trade in petroleum and tobacco. He can not use his patent rights to restrain trade in unpatented bathtubs.

The judgment of the Circuit Court in that case was affirmed by this Court (226 U. S., 20, *supra*) in an opinion of Mr. Justice McKenna. After pointing out the distinction between that case and the *Bement Case* as above noticed, he said:

> The agreements in the case at bar combined the manufacturers and jobbers of enameled ware very much to the same purpose and results as the association of manufacturers and dealers in tiles combined them in *Montague & Co.* v. *Lowry*, 193 U. S. 38, which combination was condemned by this court as offending the Sherman Law. The added element of the patent in the case at bar can not confer immunity from a like condemnation for the reasons we have stated. * * * *Rights conferred by patents are indeed very definite and extensive, but they do not give any more than other rights an universal license against positive prohibitions. The Sherman Law is a limitation of rights, rights which may be pushed to evil consequences and therefore restrained.* [Italics ours.]

The precise question of law involved in the present case was considered by the Supreme Judicial Court of Massachusetts in *United Shoe Machinery Company* v. *La Chapelle*, 212 Mass. 467, *supra*. The Court observed:

> Therefore the further question arises whether a combination among several patentees of competing devices is within the inhibition of the statute.

Answering its question, the Court reviewed the decisions of this Court, including the *Dick Case*, and said (482, 483):

> No word or phrase in the Sherman Anti-Trust Act reveals an intent to exempt the owners of patents from its sweeping provisions against monopolistic combination. We are unable to perceive any underlying reason for supposing that by implication growing out of economic or business conditions such an exemption was intended. There appears to be no inherent natural distinction between owners of patents and owners of oil which would justify the application of the statute to one and not to the other. The conclusion seems to follow that the comprehensive condemnation of the act against every person who monopolizes interstate commerce by combination with others includes holders of patents as well as others.

In *United States* v. *Motion Picture Patents Company*, 225 Fed. 800, a very recent decision, the Court discusses at great length the question as to whether or not owners of patents may combine and thereby

restrain and monopolize trade without violating the Anti-Trust Law, and reaches the conclusion, after careful examination of all the decisions of this Court upon the question, that they may not. In that connection the Court says:

> The distinction sought to be pointed out is that while the owner of a patent on a plow covering the handles or beam might acquire or join with the owners of patents covering the moldboard or share or other parts of the plow for the protection of the patented rights of all and thereby incidentally secure an enlarged part of the trade in plows, the judgment would refuse to sanction a combination between the owners of patented plows, patented harrows, patented reapers and binders * * * for the purpose of monopolizing the whole trade in the products of agriculture if the direct end first proposed was to unduly and unreasonably restrain trade as a means to the final purpose of monopolizing. The ownership of the patents in such a case surely could not be accepted as a defense to the charge of unlawful combination. (810)

This language is especially applicable to the present case. Defendants attempt the argument that wholly independent machines covered by entirely distinct patents are to be considered as parts of one machine, although their only relation is that they follow each other in making a shoe just as the agricultural implements referred to follow each other in producing and gathering a crop.

The case of *Straus et al.* v. *American Publishers' Association et al.*, 231 U. S. 222, involved the question as to whether or not the copyright laws protected an agreement made by the defendants restricting the sale, price, etc., of copyrighted books, in violation of the Sherman Act. In it the foregoing language of Mr. Justice McKenna was quoted with approval, and then the Court observed:

> So, in the present case, it can not be successfully contended that the monopoly of a copyright is in this respect any more extensive than that secured under the patent law. No more than the patent statute was the copyright act intended to authorize agreements in unlawful restraint of trade and tending to monopoly, in violation of the specific terms of the Sherman law, which is broadly designed to reach all combinations in unlawful restraint of trade and tending because of the agreements or combinations entered into, to build up and perpetuate monopolies. * * *

To the same effect are *Virtue* v. *Creamery Package Co.*, 227 U. S. 8; *International Harvester Co.* v. *Missouri*, 234 U. S. 199, 209; and *U. S.* v. *Pacific & Arctic Co.*, 228 U. S. 87, 104.

United States v. *Winslow*, 227 U. S. 202, *supra*, contains no statement that owners of competing patents have a right to combine and no expression of any opinion upon a state of facts like those here in evidence.

If authority be needed at this late date, it is submitted that there can be no question, upon a

review of the decisions, that the graphic language of Rose, J., *supra*, was well warranted. A patent does not give a right to sell indulgences to violate the law of the land, be it the Sherman Law or another.

B. The patent law does not confer the right to insist upon leases containing the tying clauses.

In the previous stages of this case and at the former argument defendants sought to justify the tying clauses under the patent law as a valid exercise of their exclusive right to use their patented inventions, and, indeed, ascribed to themselves no little virtue in that they had not pushed their rights in practice to the full extent to which, in theory, they contended they were, under the patent law, entitled to go.

In support of this contention defendants relied, as did the court below, upon *Henry* v. *Dick Co.*, 224 U. S. 1. That case has been overruled in the *Motion Picture Case*, 243 U. S. 502, at 518, and the argument based upon it now demands little attention. In fact, however, *Henry* v. *Dick*, did not support the defendants' contentions for two reasons. First, because the present is not a case where the restriction is to the use of the patented machines only in connection with supplies or other things necessary to the operation of the particular patented mechanism, whose "use" is said to be restricted. The present restrictions apply to and forbid the use of entirely different and independent machines which have no mechanical or other necessary connection with the machine leased by the instrument containing any particular

tying clause. In the second place, there was not in the *Dick Case* the element of a system of contracts together constituting a far-reaching scheme for restraining trade. It did not follow that because the single contract before the Court in the *Dick Case* was then held legal that a whole system of such contracts with many persons, as here, would have been so held.

In fact this distinction between the single contract and the many is exactly that taken by the Supreme Court of Massachusetts in the *La Chapelle Case*, 212 Mass. 467, *supra*, in which the Court was dealing with contracts made by this defendant containing restrictive covenants. It was recognized and enforced by this court in the *Bement Case*, 186 U. S. 75, upon which the Court seemed greatly to rely in the *Dick Case*. The Court there (87) emphasizes the fact that there was no finding that the agreement challenged was ever entered into by any person other than the immediate parties. If the *Bement Case* remains law despite the overruling of *Henry* v. *Dick Co.*, a question which need not be here discussed, it remains law with the qualification upon its effect necessarily involved in the significant circumstance noted.

The sharp distinction between the *Bement Case* and this case has already been noted, *supra*, p. 285.

All question, however, whether the tying clauses can be justified as a valid exercise of the defendants' exclusive right to use their patented inventions is

settled by the decision in the *Motion Picture Case supra.*

In that case the plaintiffs asserted as the defendants here assert a right to insist that the mechanism in question, being covered, at least as to an essential part, by a valid patent owned by them, should be used only in connection with materials supplied by them, or their licensees. In fact the situation in that case was exactly that which arises here in connection with the defendants' requirement that lessees of its metallic machines shall use with them only fastening material obtained from the lessor. (Ptr's. Ex. 30, par. 4; III, 278, 281; *supra*, p. 166.) The film in that case, the fastening material in this, each pass through the patented mechanism and are acted upon it in passing. In each case the use with the patented mechanism of appropriate material is necessary to produce the result for which the patented mechanism is designed. In neither case is the material a part of the patented invention.

In the *Motion Picture Case*, this Court said (p. 516):

> The statutory authority to grant the exclusive right to "use" a patented machine is not greater, indeed it is precisely the same, as the authority to grant the exclusive right to "vend," and, looking to that authority, for the reasons stated in this opinion, we are convinced that the exclusive right granted in every patent must be limited to the invention described in the claims of the patent and that it is not competent for the owner of a patent by notice attached to its machine to, in effect,

> extend the scope of its patent monopoly by restricting the use of it to materials necessary in its operation but which are no part of the patented invention * * *.

The opinion had already pointed out that the scope of every patent is limited to the inventions described in the claims contained in it, that the patentee receives nothing from the law which he did not have before and that the primary purpose of the patent laws is not, as defendants have contended, to create "private fortunes for owners of patents" but "is 'to promote the progress of science and useful arts,'" and to promote the benefit of the community at large (510, 511). Mr. Justice Clarke, after observing that the language of the statute and its established rules of construction restrict the patent to the particular mechanism described in it and that the patent has nothing to do with the materials with which *or on which* the machine operates, continued:

> The difference is clear and vital between the exclusive right to use the machine which the law gives to the inventor and the right to use it exclusively with prescribed materials to which such a license notice as we have here seeks to restrict it. The restrictions of the law relate to the useful and novel features of the machine which are described in the claims of the patent; they have nothing to do with the materials used in the operation of the machine, while the notice restrictions have nothing to do with the invention which is patented but relate wholly to the materials to be used with it. Both in form and in substance the notice

> attempts a restriction upon the use of the supplies only and it can not with any regard to propriety in the use of language be termed a restriction upon the use of the machine itself.

If this is true as to an attempt under color of the patent laws to restrict the use with the patented invention of materials which though not a part of it are necessarily used in actual combination with it to produce the very result for which the particular patented mechanism was designed, what shall be said of an attempt to restrict the use with a given patented invention of wholly separate and distinct mechanisms, totally without connection or mechanical relation to the patented invention through whose license the restriction is attempted? If the patent law does not permit the Motion Picture Patents Company to tie together a projecting machine and the film projected by the machine it is too plain for argument that that law does not permit the defendants to impose "limitations upon the use" of a patented machine which tie to it other machines whose only relation to it is that they operate, at a different stage of its manufacture, upon the same shoe.

This one element of relationship between the mechanisms so tied is of no more importance than the fact that the projecting machine and the film in combination produce a moving picture upon a single screen.

The defendants can not find in the patent laws justification for those leasing practices which, as shown herein, the general law denounces as a mani-

fest and unreasonable restraint of interstate commerce.

In the *Motion Picture Case* the Court puts aside the question as to the extent to which the use of the patented machine may be restricted to specific supplies or otherwise by special contract between the owner of a patent and the purchaser or licensee as a question "outside the patent law." It is because such a contract, e. g., the tying clause of a lease, is outside the patent law that it receives no protection from that law in cases like the present.

In *Ford Motor Co.* v. *Union Motor Sales Co.*, 244 Fed. 156, the Circuit Court of Appeals for the Sixth Circuit had before it the exact question whether in a case which it had held (157) to present elements of undue restraint of trade, any escape from the conclusions of this Court in the *Motion Picture Case* and in *Straus* v. *Victor Talking Machine Co.*, 243 U. S. 490, was to be found in the fact that the restrictions were sought to be imposed by special contract instead of by a "license notice." The Court held that it could see no difference in principle between the two situations.[1]

In the present case, the tying clauses of the leases are wholly outside the protection of the patent law.

[1] *Ford Motor Co.* v. *Boone*, 244 Fed. 335, if sound, rests on different facts. In this case it was taken as true that the restrictive agreement did not interfere with the free play of competition. This circumstance distinguishes the case from that cited above and from the present. It may be added that in view of what is said in the *Boone Case* as to the element of unfair competition what is said as to the restrictions is *obiter*.

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They are subject to the general law. They constitute and contribute to undue suppression of competition and to restraint of trade. They tend to create a monopoly and indeed are the bulwark of a monopoly already established. They are clearly a violation of the Sherman law.

XVIII. THE ALLEGED PATENT INFRINGEMENTS DO NOT REMOVE THE ILLEGALITY OF THE DEFENDANTS' ACQUISITIONS.

A. The challenged patents were presumptively valid.

The purchase of the Eppler Company, the Plant interests, and other acquisitions is sought to be justified by the defendants upon the ground that patented machines owned by them infringed machines belonging to the United Company. This is a part of the defense of good intentions which has already been sufficiently discussed. (*Supra*, pp. 244–248.) In addition to what has been there said certain particular considerations may be noticed. In the first place, patent infringements can not be proved in an action under the Anti-Trust Act, because it would constitute a collateral attack upon the novelty and utility of the patent. Every patent issued is *prima facie* valid. The judgment of the patent officials can not be reviewed or set aside except in the manner provided by statute. *Smelting Co.* v. *Kemp*, 104 U. S. 636; *Boyd* v. *Jaynesville Hay Tool Co.*, 158 U. S. 260; *Lehnbeuter* v. *Holthaus*, 105 U. S. 94, 96; *Barden* v. *Northern Pacific R. R. Co.*, 154 U. S. 288, 327; *U. S.*

v. *Motion Picture Patents Co.*, 225 Fed. 800, 804; *Marsh* v. *Nichols, etc., Co.*, 128 U. S. 605, 610.

The validity of patents can be challenged only by a proper appeal (R. S. sec. 4911–4914) or "*in an action for infringement*" and in accordance with the provisions of the statute (R. S. sec. 4920). *Rubber Co.* v. *Goodyear*, 9 Wall. 788; *Mahn* v. *Harwood*, 112 U. S. 354; *Marsh* v. *Nichols, etc., Co.*, 128 U. S. 605.

Nor were the imperative requirements of Revised Statutes Section 4920, regarding notice of what is relied upon in a collateral attack upon a patent complied with. *Eureka* v. *Bailey Co.*, 11 Wall. 488.

This Court has held that the Federal courts have no jurisdiction of a suit by the United States to establish the invalidity of a patent alleged to have been improperly issued, it being said to be a collateral attack on the validity of the patent. *United States* v. *Bell Telephone Co.*, 167 U. S. 224, 269.

It would obviously greatly burden the administration of the Anti-Trust statute if such a defense, easily raised and difficult to meet, were permitted. In this case it would be necessary for the Court to decide many hundred patent claims before it could determine whether or not the Sherman Act had been violated. The patent expert, Howard, says that with respect to the Plant purchase alone the number of patents would be 132 and the number of claims would be 708. (I., 800, l. 5.) The total number involved in all the acquisitions would be, of course, much greater.

B. Whether the patented machines which were acquired infringed patented machines owned by the United Company is immaterial.

The acquisitions suppressed actual and vigorous competition between the companies owning the machines which the United Company claims infringed machines belonging to it. The Anti-Trust statute, it appears, makes no distinction based upon the existence of patent infringement. It was so held by the decision of the Circuit Court of Appeals for the Sixth Circuit in *Patterson* v. *United States*, 222 Fed. 599, in which Mr. Justice Day concurred.

The lower Court had rejected certain evidence offered to prove that the purchasing corporation owned unexpired patents covering the machines made by 16 competitors whom it bought out. This evidence was offered for the purpose, as here, of showing that in acquiring the competitors the corporation did not violate the Anti-Trust Act. The Court of Appeals, in sustaining the action of the lower Court, said of the Sherman Act (646):

> It includes every conspiracy in restraint of interstate trade or commerce. It is not a question whether it is *rightful or wrongful interstate* trade or commerce that is covered by the conspiracy. It is *sufficient* that it is interstate trade or commerce. If two or more persons in no way interested in a patent were to conspire in restraint of interstate trade or commerce of an infringer, no one would contend that the conspiracy was not covered by the statute. *No more* is it open to contend that a *conspiracy* by a *patentee*

and *another*, or by the officers and agents of a patentee in his interest, to restrain the interstate trade and commerce of an infringer is not within the statute. *The intent of the statute was to sweep away all conspiracies in restraint of such trade or commerce whatever their character may be. The statute respects the monoply of the patentee.* It to no extent invades the rights conferred upon him. (Citing authorities.) But the right to conspire with another or others in his interest in restraint of the interstate trade or commerce covered by his patent *is not* one of the rights conferred thereby, and such a conspiracy is within the statute. [Italics ours.]

CONCLUSION.

The Government has established, then, that there existed vigorous competition between three of the companies merged in the organization of the United Company, and that the fourth company, which at any moment might have become a competitor, was taken in for the purpose and with the effect of furthering the unlawful scheme of the combination thus brought into being; that there was like competition between the United Company and many of its subsequent acquisitions, and that such competition was especially vigorous and threatening in the Plant instance; that these acquisitions not only destroyed prevailing but also strangled potential competition both by combination and through the operation of restrictive contracts exacted from the vendors; and further that the defendants have adopted and are enforcing certain oppressive tying clauses in their

leases which coerce the shoe manufacturers of the country into dealing with them on their own terms and force them to boycott independent shoe machinery manufacturers—clauses which have practically destroyed all competition in bottoming and clicking machinery, and have eliminated every inducement to the birth of new competition. Considering the entire record, the Government urges that the prayer of its petition in all respects should be granted.

Respectfully submitted.

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DECEMBER, 1917.

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FOR
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APPENDIX B.

ANALYSIS
OF
DEFENDANTS' EXHIBIT 337.

"LIST OF MACHINES
OFFERED BY
SHOE MACHINERY MANUFACTURERS AND DEALERS
OTHER THAN
UNITED SHOE MACHINERY COMPANY,
FOR PREPARING AND ATTACHING THE BOTTOMS TO THE UPPERS OF SHOES, EYELETTING MACHINES, DIEING-OUT MACHINES, AND CLICKING MACHINES,
NAMED IN
DEFENDANTS' EXHIBITS 311 TO 321, INCLUSIVE—CATALOGS, LETTERS, ADVERTISEMENTS, ETC."

APPENDIX B.

PART I.

PRINCIPAL MACHINES,

TOGETHER WITH

McKAY SEWING, CLICKING, AND EYELETTING MACHINES,

AND

PERCENTAGE OF EYELET OUTPUT CONTROL OF U. S. M. CO.

GOODYEAR DEPARTMENT.

WELT AND TURN SEWING MACHINE.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Underlease by U. S. M. Co., on Mar. 1, 1911.	**2,527**	.....	Pltffs. Ex. 163, IV, 1125.....	
Hamel Shoe Mchy. Co... Lynn & Haverhill, Mass.	**86**	Hamel (R. I, 326, l. 37).	Pltffs. Ex. 159, IV, 1113..... Defts. Ex. 321, p. 178C.	Total—all turn stitchers—marketed by Duplessis Shoe Mchy. Co.—a defunct concern and its successors, C. A. Hamel and Hamel Shoe Mchy. Co., of which 71 were sold by Duplessis Company, 6 by C. A. Hamel, and 9 by Hamel Shoe Mchy. Co. Of the 71 sold by the Duplessis Company 40 went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines.

				Defts. Ex. 321, reference.—Note by U. S. M. Co. representative that he has seen a "Duplessis Welt Sewing Machine" in operation in a factory.
Haverhill Shoe Mchy. Co. Haverhill, Mass.	56	Webster (R. I, 292, l. 8).	Pltffs. Ex. 161, IV, 1118..... Dfts. Ex. 321, pp. 7C, 5A, 95C.	In use—June, 1913—by shoe manufacturers. Marketed since 1910. Defts. Ex. 321, reference.—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, and notation in sale list of its machines—June, 1913. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912. Also note by Haverhill Company to U. S. M. Co. that it can furnish this machine.
R. H. Long Mchy. Co.... So. Framingham, Mass.	0	Doidge (R. I, 344, l. 17; 345, l. 15; 346, l. 614).	..... Defts. Ex. 321, p. 56B.	Three Duplessis machines bought and resold—two to shoe manufacturers and one to repair man. None manufactured by company prior to June, 1913. Although listed in catalog, witness Doidge explained that not all so listed were manufactured, but that it was the intention to do so. Defts. Ex. 321, reference—Catalog of Long Company.
Boylston Mfg. Co..... Boston, Mass.	0	Maloy (R. I, 301, l. 23; 302, l. 16, 36).	..... Defts. Ex. 321, p. 192E.	Not included among machines specified by witness Maloy, nor in catalog of company. Defts. Ex. 321, reference.—Note by U. S. M. Co. representative that he has reason to believe this company manufactures this machine.

WELT OUTSOLE STITCHER.

Under lease by U. S. M. Co., on Mar. 1, 1911.	2,676	.....	Pltffs. Ex. 163, IV, 1125.....	
Boylston Mfg. Co..... Boston, Mass.	0	Maloy (R. I, 301, l. 23; 302, l. 16, 36).	..... Defts. Ex. 321, p. 192B.....	Not included among machines specified by witness Maloy, nor in catalog of company. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has reason to believe this company manufactures this machine.
Landis Machine Co..... St. Louis, Mo.	.....	McElroy (R. I, 923, l. 5).	..... Defts. Ex. 321, p. 170.....	No representative of company called. Witness McElroy, of St. Louis, Mo., knew this company to be engaged in manufacturing harness machinery, but never knew it to manufacture shoe machinery. Defts. Ex. 321, reference—Catalog entitled "Landis Shoe Repair Machinery." Same reference used under "Fairstitching Machine" classification.

GOODYEAR DEPARTMENT—Continued.

WELT OUTSOLE STITCHER—Continued.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Larsen Mchy. Co. Brooklyn, N. Y.		Wirths (R. I, 928, l. 6).	Defts. Ex. 316, p. 159.	None marketed among shoe manufacturers. Defts. Ex. 316, reference—Catalog of C. V. Engstrom Company containing reference to this machine. Same reference used under "Fairstitching machine" classification.
C. V. Engstrom Co. Peoria, Ill.			Defts. Ex. 316, p. 161A.	No representative of company called. Defts. Ex. 316, reference—Catalog of company containing reference to an "Automatic Stitcher." Same reference used under "Fairstitching Machine" classification.
Jas. Clark Leather Co. St. Louis, Mo.		McElroy (R. I, 921, l. 29).	Defts. Ex. 321, p. 161 (Cat. pp. 68-71).	No representative of company called. Witness McElroy, of St. Louis, Mo., knew this company to be engaged in the shoe findings business and that it manufactured no shoe machinery. Defts. Ex. 321, reference—Announcement of Simplex Manufacturing Company in catalog of Clark Company, which shows that machine had not been marketed prior to issuance of same. Simplex Company not referred to elsewhere in record.
Union Lock Stitch Co. E. Boston, Mass.	400	Merrick (R. I, 199, l. 33, 37; 200, l. 18).	Defts. Ex. 321, pp. 44B, 5J.	Approximate sales—4 curved needle and 350 to 400 straight-needle machines. Of latter type about 75 have been sold to shoe manufacturers. Curved-needle machines marketed since May, 1910; straight-needle machines since 1906. Defts. Ex. 321, reference—Quotations to U. S. M. Co. Same reference used under "Fairstitching machine" classification.
Universal Shoe Mchy. Co. St. Louis, Mo.		Johnson (R. I, 893, l. 38; 895, l. 10).	Defts. Ex. 321, pp. 7L, 95L.	No representative of company called. Johnson, of Victor Shoe Mchy. Co. handled machinery for this company but never placed any.

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				Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, and notation in sale list of its machines—June, 1913. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912.
Victor Shoe Mchy. Co... Boston, Mass.	32	Johnson (R. I, 893, l. 23; 894, l. 6).	..... Defts. Ex. 321, p. 174D.	Machine marketed only since September 1913, and none among lessees of U. S. M. Co. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has seen machine of this company in demonstration at its factory.
R. H. Long Mchy. Co.... So. Framingham, Mass.	285	Doidge (R. I, 344, l. 26).	..... Defts. Ex. 321, pp. 5I, 56A.	Of this total only three have been sold to shoe manufacturers. Defts. Ex. 321, reference—Note by Haverhill Shoe Mchy. Co. to U. S. M. Co., that it can furnish Long machines; also catalog of Long Company.
Hamel Shoe Mchy. Co... Lynn & Haverhill, Mass.	41	Hamel (R. I, 326, l. 36).	Pltffs. Ex. 159, IV, 1113..... Defts. Ex. 321, p. 193C.	Total marketed by Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co., of which 39 were sold by Duplessis Company. These went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines. No machine included as marketed by Hamel Shoe Mchy. Co. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has seen a Duplessis machine in operation in shoe factory.

METALLIC DEPARTMENT.

STANDARD SCREW MACHINE.

Under lease by U. S. M. Co., on Mar. 1, 1911.	409	.....	Defts. Ex. 228, V, 430.....	
Hamel Shoe Mchy. Co...	1	Hamel (R. I, 326, l. 50).	.....	No reference under this classification in Defts. Ex. 337 to this testimony of Hamel.

METALLIC DEPARTMENT—Continued.

HEEL SLUGGING MACHINE.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Under lease by U. S. M. Co., on Mar. 1, 1911.	**1,878**	.....	Pltffs. Ex. 163, IV, 1125..... Defts. Ex. 228, V, 430.....	
Boylston Mfg. Co...... Boston, Mass.	1	Maloy (R. I, 301, l. 23; 302, l. 16.) Cavanaugh (R. I, 956, l. 19).	..... Defts. Ex. 321, p. 192C.....	Not included among machines specified by witness Maloy, nor in catalog of company. Machine noted was installed on trial in January, 1914. (Subsequent to death of Maloy.) Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has reason to believe this company manufactures this machine.
Hamel Shoe Mchy. Co... Lynn & Haverhill, Mass.	22	Hamel (R. I, 326, l. 31).	Pltffs. Ex. 159, IV, 1113.... Defts. Ex. 321, pp. 8Q, 95 N 2.	Total marketed by Duplessis Shoe Mchy. Co.—a defunct concern and its successors, C. A. Hamel and Hamel Shoe Mchy. Co., of which 17 were sold by Duplessis Company, 3 by C. A. Hamel, and 2 by Hamel Shoe Mchy. Co. Of the 17 sold by the Duplessis Company, 7 went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, and notation in sale list of its machine—June, 1913. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912.
R. H. Long Mchy. Co... So. Framingham, Mass.	0	Long (R. I, 232, l. 4 et seq., 272, l. 16). Doidge (R. I, 346, l. 5).	..... Defts. Ex. 321, p. 56K.....	Not included among machines specified by witnesses Long and Doidge as previously manufactured, or on hand. Statement by Long shows none manufactured at date of June 1913. Although listed in catalog, Doidge explained that not all machines so listed were manufactured, but that it was intention to do so. Defts. Ex. 321, reference—Catalog of Long Company.

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LOOSE NAILING MACHINE.

Under lease by U. S. M. Co., on Mar. 1, 1911.	**1,835**	.....	Pltffs. Ex. 163, IV, 1125..... Defts. Ex. 228, V, 430.....	
Hamel Shoe Mchy. Co... Lynn & Haverhill, Mass.	**24**	Hamel (R. I, 326, l. 30).	Pltffs. Ex. 159, IV, 1113, 1114. Defts. Ex. 321, p. 172A.	Total marketed by Duplessis Shoe Mchy. Co.—a defunct concern and its successors, C. A. Hamel and Hamel Shoe Mchy. Co., of which 20 were sold by the Duplessis Company. Of these 15 went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines. Only 4 of the total have been sold by the Hamel Shoe Mchy. Co. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has seen a "Duplessis Loose Nailer" in operation in a shoe factory.
R. H. Long Machy. Co... So. Framingham, Mass.	**0**	Long (R. I, 232, l. 4 et seq., 272, l. 16. Doidge (R. I, 346).	..... Defts. Ex. 321, p. 56J.	Not included among machines specified by witnesses Long and Doidge as previously manufactured or on hand. Statement by Long shows none manufactured at date of June, 1913. Although listed in catalog, Doidge explained that not all machines so listed were manufactured, but that it was intention to do so. Defts. Ex. 321, reference—Catalog of Long Company.
Universal Shoe Mchy. Co. St. Louis, Mo.	.....	Johnson (R.I, 893, l. 38).	..... Defts. Ex. 321, pp. 7H, 95P.	No representative of company called. Johnson, of Victor Shoe Mchy. Co., handled machinery for this company, but never placed any. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company and notation in sale list of its machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.
Victor Shoe Mchy. Co... Boston, Mass.	.....	Johnson (R. I. 894, ls. 5, 27).	..... Defts. Ex. 321, p. 174A.	Adapted for repair trade only. Company started operations about January, 1911. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he had seen a "Tacking Machine" of this company in demonstration at its factory. Same reference used under "Tacking Machine" classification.

METALLIC DEPARTMENT—Continued.

TACKING MACHINE.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Under lease by U. S. M. Co., on Mar. 1, 1911.	**3,488**	.....	Pltffs. Ex. 163, IV, 1125, 1126.	Total represents: Metallic department 3065, lasting department 423.
Universal Shoe Mchy. Co. St. Louis, Mo.	.....	Johnson (R. I, 893, l. 38).	..... Defts. Ex. 321, pp. 88, 95I.	No representative of company called. Johnson, of Victor Shoe Mchy. Co., handled machinery for this company, but never placed any. Defts. Ex. 321, reference—Advertisement of "Clinching Machine" and same reference used under latter classification. Also notation for Universal "String Nailer" in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912.
Hamel Shoe Mchy. Co... Lynn & Haverhill, Mass.	**6**	Hamel (R. I, 326, l. 32)	Pltffs. Ex. 159, IV, 1113, 1114. Defts. Ex. 321, p. 193B.	All marketed by the Duplessis Shoe Mchy Co.—a defunct concern—which preceded the Hamel Shoe Mchy. Co. by some years. These machines went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he had seen a "Duplessis Tacking Machine" in operation in a shoe factory.
Louis G. Freeman Co... Cincinnati, O.	.....	.....	..... Defts. Ex. 321, pp. 7A, 95A.	No representative of company called. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, and notation in sale list of its machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

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Victor Shoe Mchy. Co. Boston, Mass.	.....	Johnson (R. I. 894, ls. 5, 27).	..... Defts. Ex. 321, p. 174A.	Adapted for repair trade only and known as a "Loose Nailing Machine." Company started operations about January, 1911. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he had seen a "Loose Nailing Machine" of this company in demonstration at its factory. Same reference used under "Loose Nailing Machine classification.

HEELING DEPARTMENT.

HEELING MACHINE.

(ATTACHING HEELS.)

Under lease by U. S. M. Co., on Mar. 1, 1911.	**2,019**	.....	Pltffs. Ex. 163, IV, 1125..... Defts. Ex. 228, V, 430.....	Total represents: Bigelow 14, Wood Heel 9, National 10, American Lightning Nailing 978, McKay Automatic Heel Loading & Attaching 948, Rapid Nailing & Automatic (#1 & #2) 60.
R. H. Long Mchy. Co..... So. Framingham, Mass.	**5**	Doidge (R. I, 345, l. 42)	Defts. Ex. 321, p. 56Q.....	National heelers. All installed in Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines. Defts. Ex. 321, reference—Catalog of Long Company.
Haverhill Shoe Mchy. Co. Haverhill, Mass.	**12**	.....	Pltffs. Ex. 161, IV, 1118, 1120-1125. Defts. Ex. 321, pp. 8P, 5N...	In use—June, 1913—by shoe manufacturers. Marketed since about 1910. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912. Also note by Haverhill Company to U. S. M. Co. that it can supply this machine.

LASTING DEPARTMENT.

LASTING MACHINE.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Under lease by U. S. M. Co., on Mar. 1, 1911.	**7,496**	.....	Pltffs. Ex. 163, IV, 1125, 1126. Defts. Ex. 228, V, 430, 432.	Total represents: Hand method (four divisions), 3,854; Chase, 780; McKay & Copeland, 300; Ideal & Copeland (five divisions), 482; No. 5, 2,080.
R. H. Long Mchy. Co.... So. Framingham, Mass.	**4**	Doidge (R. I, 344, l. 34)	Defts. Ex. 321, p. 5E.....	Three to Buffalo Shoe Company, not a lessee of U. S. M. Co.; one to Zion Coop. Merc. Ass'n, a hand-process concern mostly. Defts. Ex. 321, reference—Note by Haverhill Shoe Mchy. Co. to U. S. M. Co. that it can supply Long machine.
Boylston Mfg. Co..... Boston, Mass.	**1**	Maloy (R. I., 301, l. 23; 302, l. 16). Cavanaugh (R. I, 956, l. 8).	Defts. Ex. 321, p. 192A.....	Not included among machines specified by witness Maloy, nor in catalog of company. Machine noted was installed on trial in January, 1914 (subsequent to death of Maloy). Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has reason to believe this company manufactures this machine.
Louis G. Freeman Co.... Cincinnati, Ohio.	**2**	McElroy (R. I, 190, l. 20).	Defts. Ex. 321, p. 7, A1, A2...	No representative of company called. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912. Witness McElroy stated that the only lasting machine used in the Non-Royalty Shoe Company which was procured in the United States was a trial machine of the Krentler Company—last manufacturers—Detroit, Mich. This had not been perfected and was not a commercial proposition. The Krentler Company—prior to 1913—had produced only two of these machines. Both of these

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					were installed in the Non-royalty Shoe Company, but only one was operated. The Louis G. Freeman Co. was the representative for the Krentler Company.

PULLING OVER DEPARTMENT.

PULLING OVER MACHINE.

No competition in United States.

PEGGING DEPARTMENT.

PEGGING MACHINE.

No competition in United States.

MISCELLANEOUS.

McKAY SEWING MACHINE.

Under lease by U. S. M. Co., on Mar. 1, 1911.	898	.....	.....	Pltffs. Ex. 163, IV, 1126..... Defts, Ex. 228, V, 430, 437.	
Shawmut Machy. Co.... Boston, Mass.	8	Emerson (R. I, 910, 1. 23).	.....	.....	Marketed, on trial, only since June, 1913. No reference to Defts. Ex. 321 shown in Defts. Ex. 337, V, 906. Not mentioned in list of company's machines shown in Defts. Ex. 336, V, 849.
Haverhill Supply Co.... Haverhill, Mass.	.....	.....	.....	.....	No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in Defts. Ex. 336 nor elsewhere in record.

MISCELLANEOUS—Continued.

McKAY SEWING MACHINE—Continued.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Louis G. Freeman Co. Cincinnati, O.	.....	.....	.....	No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in list of company's machines shown in Defts. Ex. 336.
Edward E. Spencer & Co. New York, N. Y.	.....	Spencer (R. I, 884, l. 40; 885, l. 1).	Defts. Ex. 312.	Not included among machines specified by witness Spencer as manufactured by company. Company in bankruptcy in 1912. Principal business had been in supplies rather than shoe machinery. Defts. Ex. 312—Catalog of company, printed in 1897.
Manufacturers Supply Co. St. Louis, Mo.	.....	.....	.....	No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in Defts. Ex. 336 nor elsewhere in record.
J. W. White & Co. Haverhill, Mass.	.....	.....	.....	No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in Defts. Ex. 336 nor elsewhere in record.
Lynn Supply Co. Lynn, Mass.	.....	.....	.....	No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in Defts. Ex. 336 nor elsewhere in record.
American Worsted Mchy Co. Abingdon, Mass.	.....	Hall (R. I, 953, l. 5, 20).	Defts. Ex. 321, p. 1K.	None manufactured from 1907 to 1914. Parts only handled. Defts. Ex. 321, reference—Quotation to U. S. M. Co.
Walter Pearson. Whitman, Mass.	.....	.....	Defts. Ex. 321, p. 23A.	No representative of company called. Defts. Ex. 321, reference—Quotation to U. S. M. Co., together with catalog of McKay machines, printed in 1896.

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CLICKING MACHINE.

Under lease by U. S. M. Co., on Mar. 1, 1911.	**3,655**	.....	Pltffs. Ex. 163, IV, 1126..... Defts. Ex. 228, V, 430, 435.	
Seelye Mfg. Co...... Boston, Mass.	.....	Seelye (R. I, 327, l. 28).	.....	Not referred to in testimony of witness Seelye.
			Defts. Ex. 321, p. 182.	Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has seen machine in operation in a shoe factory.
Parsons Mchy. Co...... Marlboro, Mass.	.....	.....	.....	No representative of company called.
			Defts. Ex. 321, p. 12B.	Defts. Ex. 321, reference—Quotation to U. S. M. Co. for "Upper Leather Cutter."

EYELETTING MACHINE.

Under lease by U. S. M. Co., on Mar. 1, 1911.	**4,472**	.....	Pltffs. Ex. 163, IV, 1126..... Defts. Ex. 228, V, 430, 433.	
American Worsted Mchy. Co. Abingdon, Mass.	**150**	Hall (R. I, 953, l. 11)...	.....	Approximate sales from 1907 to 1914 to shoe manufacturers and others.
			Defts. Ex. 321, p. 2 K, B, C, D.	Defts. Ex. 321, reference—Quotations to U. S. M. Co.
Geo. Knight & Co...... Brockton, Mass.	**0**	Knight (R., I, 902, l. 40).	.....	None manufactured since 1906.
			Defts. Ex. 321, p. 9 G.	Now manufactured by Peerless Mfg. Company. U. S. M. Co. never manufactured machines of "Gang" type. Defts. Ex. 321, reference—Quotation to U. S. M. Co., on "Power" and "Gang" machines. (See Peerless Mfg. Co.)
Peerless Mfg. Co...... Boston, Mass.	.....	Muther (R., I, 303, l. 3. et seq).	.....	Output not stated, but we may assume that if it was large enough to be significant it would have been stated by the defendants. Loaned to evelet customers.
			Defts. Ex. 321, p. 67 A, F.	Defts. Ex. 321, reference—Advertisement of "Rapid" and "Gang" eyeletting machines. U. S. M. Co. never manufactured machines of "Gang" type. (See Geo. Knight & Co.)

EYELET MANUFACTURERS IN 1913.

(See Defts. Ex. 234, V, 530.)

Shoe eyelet production.

	Millions per month.
Hughes Eyelet Company, Taunton, Mass	20
Seaville Manufacturing Company, Taunton, Mass	2
Atlas Tack Company, Fairhaven, Mass	200
Waterbury Brass Company, Waterbury, Conn	5
S. O. & C. Company, Ansonia, Conn	200
J. C. Rhodes Company, New Bedford, Mass	200
Rimmon Eyelet Company, Seymour, Conn	5
United Fast Color Eyelet Company	30
Total	662

Controlled by U. S. M. Co. (and allied interests).

Hughes Eyelet Company (by Winslow personally)	20
S. O. & C. Company, Ansonia, Conn	200
J. C. Rhodes Company, New Bedford, Mass	200
Rimmon Eyelet Company, Seymour, Conn	5
United Fast Color Eyelet Company	30
Total	455
Output of Atlas Tack Company (corrected) (Donovan I, 959, I. 7)	50
Output of Seaville Mfg. Company	2
Output of Waterbury Brass Company	5
Total	57
Corrected total	512
Percentage controlled by United Shoe Machinery Company and allied interests ..... per cent..	**89**

NOTE.—Output of Atlas Tack Company and percentage controlled by U. S. M. Co. are approximate figures.

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APPENDIX B.

PART II.

OTHER MACHINES.

WELT BEATING MACHINE.

BOYLSTON MFG. CO., Boston, Mass.

Not included in list specified by witness Maloy on pages 301 and 302, nor in catalog of company—page 302.

(Maloy, I, 301, l. 23; 302, l. 16.)

Defts.' Ex. 321. Reference: page 192, item D. Note by U. S. M. Co. representative that he has reason to believe the Boylston Co. manufactures this machine.

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.

Twenty-five machines manufactured and marketed in United States by Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co.

No division of sales shown in Pltff's Ex. 159, customers of Duplessis Co. and successors.

(Hamel, I, 326, l. 44.)

Defts.' Ex. 321. Reference: page 95, item G. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

HAVERHILL SHOE MCHY. CO., Haverhill, Mass.

None marketed since date of manufacture—May, 1913.

(Webster, I, 292, l. 30.)

Defts.' Ex. 321. Reference: page 5, item T. Haverhill Co. statement to U. S. M. Co. that it can furnish this machine.

R. H. LONG MCHY. CO., South Framingham, Mass.

None marketed prior to June, 1913.

Doidge explained that not all machines listed in catalog were manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, l. 16.)

Defts.' Ex. 321. Reference: page 56, item E. Notation for this machine in catalog of company.

OUTSOLE BLOCKING MACHINE (cutting outsoles).

QUARMBY & HILLIKER, Lynn, Mass.

Twelve machines manufactured and marketed among shoe manufacturers—sometimes referred to as "sole cutters."

The manufacture of these machines has been discontinued.

(Hilliker, I, 929, l. 5.)

Defts.' Ex. 321. Reference: page 11, items A and B. Quotation to U. S. M. Co.

HEEL BUILDING MACHINE.

W. T. BOSWORTH, Brockton, Mass.

Machine manufactured by the Brockton Heel Co., which Bosworth represents.

This is sold or leased to shoe and heel manufacturers and is a measuring machine or device, rather than a heel building machine.

Manufacture of this machine commenced about January, 1914.

To Bosworth's knowledge the U. S. M. Co. builds no machine for performing a similar operation.

(Bosworth, I, 911, l. 22 et seq.)

Defts.' Ex. 321. Reference: page 43, item A. Quotation to U. S. M. Co. on "Log Building and Log Slicing Machines."

JAMES BOSTOCK & SONS, Brockton, Mass.

Approximately 100 machines per year have been sold during past 17 years to shoe and heel manufacturers. A fair proportion of these have been sold to the U. S. M. Co., which also manufactures a heel building machine, although not essentially the same as the Bostock machine.

(Bostock, I, 904, l. 24 et seq.)

Defts.' Ex. 321. Reference: page 21, item F. Quotation to U. S. M. Co.

FORTUNA MACHINE CO., New York, N. Y.

None manufactured since organization of this company in 1903.

This company intended to manufacture and market a heel-building machine invention of one Geiger. It did not prove commercially successful, however, and nothing further was done by the Fortuna Company.

(Diehl, I, 911, l. 1.)

Defts.' Ex. 321. Reference: page 79. Announcement by the company that a heel building machine will be exhibited at a shoe and leather fair.

W. J. Young Mchy. Co., Lynn, Mass.

Approximately 2,500 machines have been manufactured since about 1906, practically all of which were marketed in the United States. The majority of these machines were sold to shoe manufacturers, although this was not true during the earlier years of the sale of these machines.

(Young, I, 942, l. 27.)

Defts.' Ex. 321. Reference: page 62, item F. Advertisement of machine.

Geo. Knight & Co., Brockton, Mass.

None manufactured during the past 15 years.

(Knight, I, 902, l. 32.)

Defts.' Ex. 321. Reference: page 9, item H. Quotation to U. S. M. Co.

Parsons Mchy. Co., Marlboro, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 12, item C. Quotation to U. S. M. Co. on a "Pieced Heel Machine."

F. H. White & Co., So. Easton, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 46, item A. Quotation to U. S. M. Co. and catalog of the concern.

CEMENTING MACHINES (cementing taps for soles).

Universal Supply Co., Haverhill, Mass.

No representative of company called as a witness.

Witness Donnelly, who has been engaged in the shoe machinery business for the past 14 years, stated that he has never heard of this company.

(Donnelly, I, 943, l. 38; 944, l. 31.)

Defts.' Ex. 321. Reference: page 160. Letter offering machine for sale.

Hazen-Brown Co., Brockton, Mass.

None manufactured by this company itself, although these achines are manufactured for it. These are sold to the Cochituate Oilproof Company, which loans them free to

shoe manufacturers in connection with sale of a special cement known as "gumbo tap sticker."

(Hazen, I, 906, l. 14.)

Defts.' Ex. 321. Reference: page 158. Letter to the U. S. M. Co. explaining that these machines are loaned to shoe manufacturers buying "gumbo cement" and using nothing else in these machines.

BOSTON MACHINE WORKS, Lynn, Mass.

Approximately 700 to 800 Julian cementing machines for cementing soles of shoes marketed among shoe manufacturers during past 10 years, 90% of which have been sold in the United States.

This company manufactures a fold-cementing machine which can not properly be included under this classification.

(Illingworth, I, 926, l. 43, et seq.)

Defts.' Exhibit 321. Reference: page 95, item X. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

Another reference is to page 49 (Cat. p. 34). Notation for this machine in catalog of company.

CHANNELING MACHINES (insoles and outsoles).

R. H. LONG MCHY. CO., So. Framingham, Mass.

No information obtained as to the output of Arnold channeling machine referred to in testimony of witness Doidge—page 1698—as one of the machines manufactured by the company.

In explanation of catalog Doidge stated that not all machines listed therein were manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, l. 5–16.)

Defts.' Ex. 321. Reference: page 56. Notations for "Arnold Channeler" and "Insole Channeler" in catalog of company.

HAVERHILL SHOE MCHY. CO., Haverhill, Mass.

Fifty-nine machines at present used by customers of company—Pltff.'s Ex. 161, IV, 1118.

The manufacture of this machine—a turn sole channeler—was commenced in 1908.

(Webster, I, 291, l. 35.)

Defts.' Ex. 321. Reference: page 95, item A. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

Another reference is to page 5, item B. Note by Haverhill Co. to U. S. M. Co. that it can furnish this machine.

HAMEL SHOE MCHY. CO., Lynn & Haverhill, Mass.

Four machines manufactured and marketed in United States by the Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co.

No division of sales shown in Pltff.'s Ex. 159—customers of Duplessis Co. and successors.

(Hamel, I, 326, l. 52.)

WALTER PEARSON, Whitman, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 23, item B. Quotation to U. S. M. Co.

AMERICAN WORSTED MCHY. CO., Abington, Mass.

Approximately 25 to 30 McKay channeling machines marketed among shoe manufacturers from 1907 to 1914.

(Hall, I, 953, l. 5.)

Defts.' Ex. 321. Reference: page 2, item A. Quotation to U. S. M. Co.

GEORGE KNIGHT & CO., Brockton, Mass.

No McKay channeling machines manufactured or marketed during past 15 years.

(Knight, I, 902, l. 38.)

Defts.' Ex. 321. Reference: page 9, item I. Quotation to U. S. M. Co.

CLICKING MACHINE.

SEELYE MFG. CO., Boston, Mass.

PARSONS MCHY. CO., Marlboro, Mass.

Reference to the above in Appendix "B"—Part I.

CLINCHING MACHINE.

UNIVERSAL SHOE MCHY. CO., St. Louis, Mo.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 88. Advertisement of machine.

HEEL COMPRESSING MACHINE.

QUARMBY & HILLIKER, Lynn, Mass.

Manufacture of this machine discontinued about 1907. (Hilliker, I, 929, l. 8.)

Defts.' Ex. 321. Reference: page 109. Quotation to U. S. M. Co.

W. J. YOUNG MCHY. CO., Lynn, Mass.

Approximately 300 machines manufactured and marketed—almost exclusively among heel manufacturers.

(Young, I, 942, l. 38; 943, l, 18.)

Defts.' Ex. 321. Reference: page 62, item G. Advertisement of machine.

LEATHER CUTTING MACHINES (including dieing-out machines).

THOMAS BOSTOCK & SONS, Brockton, Mass.

Rand cutting and tap cutting machines—properly included under this classification—manufactured by this concern.

Extent of output not stated.

Tnis concern conducts a general machine shop business in which 15 men are employed.

(Bostock, I, 904–905.)

Defts.' Ex. 321. Reference: page 21, items C. and H. Quotations to U. S. M. Co.

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, item H. Quotation to U. S. M. Co. on "Rand Cutter."

PARSONS MCHY. CO., Marlboro, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 12, item H. Quotation to U. S. M. Co.

BOSTON MACHINE WORKS CO., Lynn, Mass.

Approximately 50 flap-slashing machines—properly included under this classification—manufactured and marketed principally in the United States.

(Illingworth, I, 927, l. 15.)

Defts.' Ex. 321. Reference: page 49 (Cat. p. 32). Advertisement of machine.

QUARMBY & HILLIKER, Lynn, Mass.

Approximately 150 to 200 dinking machines—properly included under this classification—manufactured and marketed since 1904, one-third of these among shoe manufacturers.

(Hilliker, I, 929, l. 39.)

Defts.' Ex. 321. Reference: page 10, item B. Quotation to U. S. M. Co. on "Beam Dinker."

SEELYE MFG. CO., Boston, Mass.

Approximately 50 to 100 beam-die pressers or dinking machines—properly included under this classification—manufactured and marketed yearly prior to formation of U. S. M. Co. Subsequent to 1889 not more than 25 per cent of this output marketed yearly.

(Seelye, I, 327, l. 37; 328, l. 11.)

Defts.' Ex. 311. Reference: pages 92, 93, 94. Advertisement of machine.

Another reference is to page 95, item N. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

TOWER BROS., Hudson, Mass.

Approximately 10 to 12 sole cutting machines manufactured and marketed yearly.

(Tower, I, 907, l. 35.)

Defts.' Ex. 321. Reference: page 3, item F. Quotation to U. S. M. Co. on "Beam Sole Cutter."

W. J. YOUNG MCHY. CO., Lynn, Mass.

A wedge lift dinker or cutter—properly included under this classification—is manufactured by this concern and marketed both to shoe and heel manufacturers.

Extent of output not stated.

(Young, I, 942, l. 39.)

Defts.' Ex. 321. Reference: page 62, item J. Advertisement of machine.

HEEL LIFT EVENING MACHINE.

QUARMBY & HILLIKER, Lynn, Mass.

Not referred to in testimony of witness Hilliker.

(Hilliker, I, 928–929.)

Defts.' Ex. 321. Reference: page 10, item F. Quotation to U. S. M. Co. on "Knox 30-inch Splitter."

This same reference is also used under the classification for "Splitting Machine."

SEELYE MFG. CO., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327-328.)

Defts.' Ex. 321. Reference: page 91, item C. Quotation (unsigned) purporting to have been received by U. S. M. Co. from Seelye—on "Splitting Machine."

This same reference is also used under the classification for "Splitting Machine."

J. S. WHEELER & CO., Boston, Mass.

Not referred to in testimony of witness Wheeler.

On page 4555 Counsel Choate, for the U. S. M. Co., stated: "I want to call attention to the fact that all we offered was that this man put out a splitting machine and an insole flexing machine."

(Wheeler, I, 889, l. 43; 890, l. 27.)

Defts.' Ex. 321. Reference: page 41, item A. Quotation on "Baby Splitters" (upper leather and sole eveners).

This same reference is also used under the classification for "Splitting Machine."

EYELETTING MACHINE.

AMERICAN WORSTED MCHY. CO., Abington, Mass.

GEO. KNIGHT & CO., Brockton, Mass.

PEERLESS MFG. CO., Boston, Mass.

Reference to the above in Appendix "B"—Part I.

FAIRSTITCHING MACHINE.

LANDIS MACHINE CO., St. Louis, Mo.

No representative of company called as a witness.

Witness McElroy, of St. Louis, Mo., stated that he knew this company to be engaged in the manufacture of harness machinery but had no knowledge that it manufactured shoe machinery.

(McElroy, I, 923, l. 4.)

Defts.' Ex. 316. Reference: page 161. Catalog of C. V. Engstrom Co., Peoria, Ill., containing a reference to this machine.

This same reference is also used under the classification for "Welt Outsole Stitcher."

LARSEN MCHY. Co., Brooklyn, N. Y.

No specific reference is made in the testimony of witness Wirths to a "Fairstitching Machine."

On page 4746 Wirths stated that this company manufactures a "Welt Outsole Lockstitch Machine," but that none have been marketed among shoe manufacturers.

(Wirths, I, 928, l. 4–6.)

Defts.' Ex. 316. Reference: page 161, item A. Catalog of C. V. Engstrom Co., Peoria, Ill., containing reference to an "Automatic Stitcher."

This same reference is also used under the classification for "Welt Outsole Stitcher."

C. V. ENGSTROM Co., Peoria, Ill.

No representative of company called as a witness.

Defts.' Ex. 316. Reference: page 161, item A. Notation for "Automatic Stitcher" in catalog of company.

THE JOHN O'FLAHERTY Co., Rouses Point, N. Y.

No representative of company called as a witness.

Witness Spencer stated that he had handled machines for the O'Flaherty Company and that its lockstitch machine was adapted for harness work principally and could not be used in shoe bottoming operations.

(Spencer, I, 885, l. 13.)

Defts.' Ex. 321. (NOTE.—This Exhibit is one of many "physical" exhibits. It has not been printed, but is a part of the record. It is often referred to herein.) Reference: page 58. Advertisement of "Harness Sewing Machine."

It is to be noted that this machine is advertised for harness work, and that the advertisement appeared in the publication "Harness World."

PURITAN MFG. Co., Boston, Mass.

Approximately 1,000 machines manufactured and marketed since 1892, practically all among shoe manufacturers.

A number of these have also been sold to the U. S. M. Co.

(Lingley, I, 891, l. 19 et seq.)

Defts.' Ex. 321. Reference: page 73, item E. Advertisement of "Flax or Dry Thread Machine."

J. D. Randall Co., Cincinnati, O.

No representative of company called as a witness.

Witness McElroy stated that the J. D. Randall Company was not known to him in the shoe machinery field.

(McElroy, I, 922, l. 42.)

Witness Spencer stated that the J. D. Randall Company particularized on machines for the harness trade and that, to his knowledge, it handles no machines for use in shoe manufacture other than strip cutters.

(Spencer, I, 885, l. 17.)

Defts.' Ex. 321. Reference: page 57. Advertisement in "Harness World."

Another reference is to Defts.' Ex. 313. Catalog of the company.

From both references it appears that no claim is made that this machine can be or is ordinarily used in shoe factories but rather for harness and horse collar work. In the catalog particularly this company sets itself forth as manufacturing only this type of machinery.

James Clark Leather Co., St. Louis, Mo.

No representative of company called as a witness.

Witness McElroy, of St. Louis, Mo., stated that this company is engaged in the shoe findings business and that it manufactures no shoe machinery.

(McElroy, I, 921, l. 29.)

Defts.' Ex. 321. Reference: page 161 (Cat. pp. 68, 69, 70). Catalog of the company.

On page 71 of this catalog it appears that this machine had not been placed upon the market prior to date of issuance, and there is no evidence that any of these machines have ever been marketed. Furthermore, although this announcement appears in the catalog of the Clark Company, it is signed by the Simplex Mfg. Co. of St. Louis, Mo., a company which has not been referred to elsewhere in the record as ever having been engaged in the shoe machinery business.

Union Lockstitch Co., E. Boston, Mass.

Four curved-needle stitching machines manufactured and marketed since May, 1910, and 350 to 400 straight-needle machines since 1906.

The curved-needle machines have been sold to shoe manufacturers. Of the straight-needle machines 75 only have been

installed in shoe factories and the balance among harness and saddlery manufacturers.

From the testimony of witness Merrick it appears that both the curved-needle machine and the straight-needle machine may be used for fairstitching—an ornamental operation. The curved-needle machine, however, is capable of stitching around the shank, a very necessary operation, inasmuch as it attaches the outsole to the inner sole, and hence is essentially a bottoming operation.

(Merrick, I, 199, l. 27; 200, l. 18.)

Defts.' Ex. 321. Reference: page 44, item B; page 5, item J. Quotations to U. S. M. Co. on "curved-needle machines."

BOTTOM FILLING MACHINE.

No. American Chemical Co., Boston, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 147. Note by U. S. M. Co. representative that one of these machines had been seen in operation in a shoe factory.

McKAY INSOLE FLEXING MACHINE.

Edward E. Spencer, jr., New York, N. Y.

In connection with the concern of Edw. E. Spencer & Co., witness Spencer stated that this concern went into bankruptcy in August, 1912.

During the period from 1906 to 1911, Edw. E. Spencer & Co. averaged a yearly business of between $25,000 and $30,000 in shoe machinery and accessories, the larger proportion being in the shoe manufacturers' supply business, such as nails, tacks, wax, etc.

A strip cutter manufactured by Edw. E. Spencer & Co. has been referred to in Defts.' Ex. 321 as an insole flexing machine. Witness Spencer admitted that this machine, although not particularly adapted for this work, can be changed for this purpose by an adjustment of the knives.

(Spencer, I, 884, l. 40; 885, l. 5, 40.)

Defts.' Ex. 321. Reference: page 26. Quotation to U. S. M. Co. stating: "We build a special machine for this purpose—machine fitted up for McKay flexible-insole work on principle of our strip-cutting machine."

Another reference is to Defts.' Ex. 312. Catalog of Edward E. Spencer & Co.—issued in 1897. Few of these had been distributed among shoe manufacturers, but mostly outside of this field.

EDWIN B. STIMPSON & Co., New York, N. Y.

Witness Stimpson stated that this company manufactures a strip cutter—which has been used as a reference under this classification.

Stimpson further stated that the letter used as a reference was signed by him at the insistence of Nichols of the U. S. M. Co. that a strip cutter was the same as an insole flexing machine. Stimpson maintained, however, that this machine had been manufactured for stripping leather for belts and for cutting welts, and had been sold at all times for these purposes only.

Referring to the catalog of this company, Stimpson stated that it had been printed in 1890 and could not be considered applicable to present conditions.

(Stimpson, I, 882, l. 20.)

Defts.' Ex. 321. Reference: page 26. Letter to the U. S. M. Co. stating "In addition to illustrations in catalogue we build an insole flexing machine." (See above explanation.)

Another reference is to Defts.' Ex. 312. Catalogue of the company.

J. S. WHEELER & Co., Boston, Mass.

No insole flexing machines manufactured or marketed.

Witness Wheeler insisted that a welt cutting machine could not be used as a flexing machine—by an adjustment of the knives—as then it would be changed into an entirely different machine.

(Wheeler, I, 890, l. 21.)

Defts.' Ex. 321. Reference: page 65, item X. Advertisement of "Welt Cutter."

HEEL LIFT GOUGING MACHINES.

THOMAS BOSTOCK & SONS, Brockton, Mass.

This machine is manufactured by this concern.

Extent of output not stated.

This concern conducts a general machine shop business in which 15 men are employed.

(Bostock, I, 904–905.)

Defts.' Ex. 321. Reference: page 21, item B. Quotation to U. S. M. Co.

W. J. Young Mchy. Co., Lynn, Mass.

Approximately 150 to 200 machines have been manufactured and marketed—evenly divided between shoe and heel manufacturers.

(Young, I, 942, l. 43; 943, l. 18.)

Defts.' Ex. 321. Reference: page 62, item K. Advertisement of machine.

GRADING MACHINE (gauging thickness of soles).

Lacene Mfg. Co., Manchester, N. H.

No representative of company called as a witness.

Witness Winslow stated that there is no other machine upon the market doing the work of this machine, and that the U. S. M. Co. has never put out a similar one.

(Winslow, I, 600, l. 9.)

Defts.' Ex. 321. Reference: page 77. Advertisement of machine.

This same reference is also used under the classification for "Splitting Machine."

WELT GROOVING AND BEVELING MACHINE.

Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.

Twenty-five of these machines have been manufactured and marketed in the United States by the Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and the Hamel Shoe Mchy. Co.

No division of sales shown in Pltff's Ex. 159, IV, 1113, customers of Duplessis Co. and successors.

(Hamel, I, 326, l. 45.)

Defts.' Ex. 321. Reference: page 178, item B. Note by U. S. M. Co. representative that a "Duplessis Welt Groover and Beveler" had been seen in operation in a shoe factory.

Haverhill Shoe Mchy. Co., Haverhill, Mass.

Not included in the list of machines at present used by customers of this company—Pltff.'s Ex. 161, IV, 1118.

Witness Webster included this machine as one manufactured at date of June, 1913, but no information was obtained as to the extent of output.

(Webster, I, 291, l. 2.)

Defts.' Ex. 321. Reference: page 5, item U. Note by Haverhill Co. to U. S. M. Co. that it can furnish this machine.

R. H. Long Mchy. Co., So. Framingham, Mass.

Extent of output not stated.

Doidge explained that not all machines listed in catalog were manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, l. 16.)

Defts.' Ex. 321. Reference: page 56, item M. Notation for this machine in catalog of company.

HARDENING SHOULDER MACHINE (for Gem insoles).

Plymouth Rubber Co., Canton, Mass.

No representative of company called as a witness.

Witness Donnelly stated that this machine has been manufactured by him for this company, but no further information was obtained.

(Donnelly, I, 944, l. 25.)

Defts.' Ex. 321. Reference: page 81. Advertisement of machine.

Walpole Shoe Supply Co., Boston, Mass.

Approximately 50 machines manufactured and marketed among shoe manufacturers from 1912 to 1914.

(Chamberlin, I, 889, l. 28.)

Defts.' Ex. 321. Reference: p. 80. Advertisement of machine.

HEELING MACHINE (attaching heels).

R. H. Long Mchy. Co., South Framingham, Mass.

Haverhill Shoe Mchy Co., Haverhill, Mass.

References to the above in Appendix "B"—Part I.

LASTING MACHINE.

R. H. Long Mchy. Co., South Framingham, Mass.

Boylston Mfg. Co., Boston, Mass.

Louis G. Freeman Co., Cincinnati, O.

References to the above in Appendix "B"—Part I.

CHANNEL LAYING MACHINE.

AMERICAN WORSTED MCHY. CO., Abington, Mass.

None manufactured, marketed, or handled from 1907 to 1914.

(Hall, I, 953, l. 14.)

Defts.' Ex. 321. . Reference: page 1, item D. Quotation to U. S. M. Co.

GEORGE KNIGHT & CO., Brockton, Mass.

None manufactured or marketed during past 15 years.

(Knight, I, 902, l. 38.)

Defts.' Ex. 321. Reference: page 9, item J. Quotation to U. S. M. Co.

McKAY WELT LAYING MACHINE.

KIMBALL BROS. & SPRAGUE, Brockton, Mass.

Approximately 25 to 30 machines, adapted only for laying the Arnold flex welt, manufactured and marketed from 1909 to 1914.

(Sprague, I, 904, l. 5.)

Defts.' Ex. 321. Reference: page 36. Quotation to U. S. M. Co.

SOLE LAYING MACHINE.

R. H. LONG MCHY. CO., South Framingham, Mass.

Included—as turn sole layer—among machines specified by witness Doidge as manufactured by this company.

Extent of output not stated.

In explanation of catalog, Doidge stated that not all machines listed therein had been manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, l. 11, 15.)

Defts.' Ex. 321. Reference: page 5, item H. Note by Haverhill Co. to U. S. M. Co. that it can furnish sole laying machine of the Long Company.

Another reference is to page 56, item F. Catalog of Long Company, including notation for "Twin Sole Layer."

LEVELING MACHINE.

BOYLSTON MFG. CO., Boston, Mass.

Not included in list of machines specified by witness Maloy on pages 1457 and 1460, nor in catalog of company—page 1463.

Cavanaugh explained that when the company absorbed the Giant Leveler Company in 1904—referred to in testimony of C. S. Johnson—some machines on hand were disposed of. Occasionally the company had rebuilt machines of this type for manufacturers, but had never manufactured any.

(Maloy, I, 301, l. 23; 302, l. 16, 36.)
(Cavanaugh, I, 955, l. 44.)

Defts.' Ex. 321. Reference: pages 108, 109, 179. Statements by U. S. M. Co. representatives that Giant leveling machines had been seen in operation in shoe factories.

A catalog of the Boylston Co. showing an advertisement for C. & J. leveling machines is also included.

Hamel Shoe Mchy. Co., Lynn and Haverhill, Mass.

Five machines manufactured and marketed in the United States by the Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and the Hamel Shoe Mchy. Co.

Pltff.'s Ex. 159, IV, 1113—customers of Duplessis Co. and successors—shows that all of these machines had been marketed by the Duplessis Co. Four of these were installed in the Framingham Shoe Co.—controlled by Richard H. Long—which uses no U. S. M. Co. machines.

(Hamel, I, 326, l. 33.)

R. H. Long Mchy. Co., South Framingham, Mass.

Not included among machines specified by witness Doidge as manufactured by the company.

In explanation of catalog, Doidge stated that not all machines listed therein had been manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, ls. 5, 16.)

Defts.' Ex. 321. Reference: page 56, item I. Notation for "Eclipse Leveler" in catalog of company.

Haverhill Shoe Mchy. Co., Haverhill, Mass.

Not included in the list of machines at present used by customers of company—Pltff.'s Ex. 161, IV, 1118.

Not included among machines enumerated by witness Webster as manufactured by company at date of testimony, June, 1913.

This company handles a Webster leveler, however.
(Webster, I, 291, l. 1.)

Defts.' Ex. 321. Reference: page 5, item M. Note by Haverhill Co. to U. S. M. Co. that it can furnish a "Turn Leveler" manufactured by the Webster Machine Co.

WELT OUTSOLE STITCHER.

Boylston Mfg. Co., Boston, Mass.

Landis Machine Co., St. Louis, Mo.

Larsen Mfg. Co., Brooklyn, N. Y.

C. V. Engstrom Co., Peoria, Ill.

James Clark Leather Co., St. Louis, Mo.

Union Lockstitch Co., East Boston, Mass.

Universal Shoe Mchy. Co., St. Louis, Mo.

Victor Shoe Mchy. Co., Boston, Mass.

R. H. Long Mchy. Co., South Framingham, Mass.

Hamel Shoe Mchy. Co., Lynn and Haverhill, Mass.

References to the above in Appendix "B"—Part I.

MOULDING MACHINE (for outsoles and turn soles).

Boylston Mfg. Co., Boston, Mass.

Not included in list of machines specified by witness Maloy on pages 1457 and 1460, nor in catalog of company—page 1463.

(Maloy, I, 301, l. 23; 302, ls. 16, 36.)

Defts.' Ex. 321. Reference: page 110. Note by U. S. M. Co. representative that he had seen a moulding machine in a shoe factory which he claimed was manufactured by the Boylston Company.

Seelye Mfg. Co., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327-328.)

Defts.' Ex. 321. Reference: page 91, item F. Quotations (unsigned) purporting to have been received by the U. S. M. Co. from Seelye—on "Moulders."

Quarmby & Hilliker, Lynn, Mass.

None manufactured since 1907.

(Hilliker, I, 929, l. 14.)

Defts.' Ex. 321. Reference: page 10, item D. Quotation to U. S. M. Company.

HAVERHILL SHOE MCHY. CO., Haverhill, Mass.

Not included in list of machines at present used by customers of company—Pltff.'s Ex. 161, IV, 1118.

Witness Webster stated that the company manufactured a sole moulder for turn soles, and that 40 to 50 of these have been sold from 1910 to 1913—one with each Haverhill Co. stitcher marketed.

(Webster, I, 292, l. 18.)

Defts.' Ex. 321. Reference: page 5, item D. Note by Haverhill Co. to U. S. M. Co. that it can furnish a "Turn Moulder."

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.

Thirty-five machines manufactured and marketed in the United States by Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co.

No division of sales shown in Pltff.'s Ex. 159, IV, 1113—customers of Duplessis Co. and successors.

(Hamel, I, 326, l. 40.)

Defts.' Ex. 321. Reference: page 159. Note by U. S. M. Co. representative that he had seen two "Duplessis Turn Moulding machines" in operation in a shoe factory.

LOOSE NAILING MACHINE.

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.

R. H. LONG MCHY. CO., South Framingham, Mass.

UNIVERSAL SHOE MCHY. CO., St. Louis, Mo.

VICTOR SHOE MCHY. CO., Boston, Mass.

References to the above in Appendix "B"—Part I.

CHANNEL OPENING MACHINE.

AMERICAN WORSTED MCHY. CO., Abington, Mass.

None manufactured or marketed from 1907 to 1914.

(Hall, I, 953, l. 19.)

Defts.' Ex. 321. Reference: page 1, item J. Quotation to U. S. M. Co.

GEORGE KNIGHT & Co., Brockton, Mass.

None manufactured during past 6 or 18 years.

(Knight, I, 902, l. 43.)

Defts.' Ex. 321. Reference: page 9, item K. Quotation to U. S. M. Co.

VENEER PRESS (for pressing cemented soles and taps).

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, item E. Quotation on "Veneer Sole Press."

HEEL PRESSING MACHINE.

SEELYE MFG. Co., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327–328.)

Defts.' Ex. 321. Reference: page 91, item B. Quotation (unsigned) purporting to have been received by the U. S. M. Co. from Seelye—on "Presses."

TACK PULLING MACHINE.

LOUIS G. FREEMAN Co., Cincinnati, Ohio.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 78, items A and F. Announcement that company will exhibit tack pulling machines.

PULLING OVER MACHINE.

Reference to the above in Appendix "B"—Part I.

TACK PULLING AND RESETTING MACHINE.

LOUIS G. FREEMAN Co., Cincinnati, Ohio.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 7, item B. Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Co., St. Louis, Mo. This concern used no U. S. M. Co. machines and was in existence but a few months—about 1912.

REDUCING MACHINE.

AMERICAN WORSTED MCHY. CO., Abington, Mass.

No feather-edge or shank reducing machines—properly included under this classification—manufactured or marketed from 1907 to 1914.

(Hall, I, 953, l. 19.)

Defts.' Ex. 321. Reference: page 1, item F. Quotation to U. S. M. Co. on "Feather Reducer."

GEORGE KNIGHT & CO., Brockton, Mass.

Feather-edge and shank reducing machines—properly included under this classification—manufactured and marketed by this company, mostly to shoe manufacturers.

Some of these are sold to and through the U. S. M. Co.

Extent of output not stated.

(Knight, I, 903, l. 6, 15.)

Defts.' Ex. 321. Reference: page 9, item D. Quotation to U. S. M. Co.

THEODORE RINGENBACH, Cincinnati, Ohio.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 126. Advertisement of "Rapid Shoe Feathering Machine."

This same reference is also used under the classification for "Thin Edge Machine."

ROLLING MACHINE.

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, item D. Quotation to U. S. M. Co. on "Rolling Mills."

QUARMBY & HILLIKER, Lynn, Mass.

Approximately 50 machines manufactured and marketed since 1904, one-half of these among shoe manufacturers.

(Hilliker, I, 929, l. 15.)

Defts.' Ex. 321. Reference: page 10, item E. Quotation to U. S. M. Co. on "Light Roller."

SEELYE MFG. CO., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327–328.)

Defts.' Ex. 321. Reference: page 91, item D. Quotation (unsigned) purporting to have been received by U. S. M. Co. from Seelye on "Rollers."

TAP ROUGHING MACHINE.

PEERLESS MCHY. CO., Boston, Mass.

The machine referred to is undoubtedly the sanding machine manufactured by this company, which merely "finishes or roughs the sole before it is put on the shoe."

Extent of output not stated.

(Muther, I, 303, l. 24.)

Defts.' Ex. 321. Reference: page 67, item J. Advertisement for "Auto-Scourer."

ROUGH ROUNDING AND CHANNELING MACHINE.

R. H. LONG MCHY. CO., South Framingham, Mass.

Not included as a single machine in list of machines specified by witness Doidge—page 1698—manufactured by the company.

Doidge stated that the company was "getting ready to build" a rough rounder. From this it appears that none of these machines had been manufactured or marketed at date of June, 1913.

In explanation of catalog, Doidge stated that not all machines listed therein had been manufactured at date of June, 1913, but that it was the intention of the company to do so.

A channeling machine manufactured by this company is also included under the "Channeling Machine" classification.

(Doidge, I, 346, l. 9, 15–16.)

Defts.' Ex. 321. Reference: page 56, item G. Notation for "Rough Rounder" in catalog of company.

VICTOR SHOE MCHY. CO., Boston, Mass.

Three machines manufactured and marketed since 1911.

None were sold to shoe manufacturers, but to repair men only.

(Johnson, I, 893, l. 29; 894, l. 5, 9.)

Defts.' Ex. 321. Reference: page 74, item B. Note by U. S. M. Co. representative that this machine was seen by him in demonstration at the Victor Co. factory.

HAVERHILL SHOE MCHY. Co., Haverhill, Mass.

Not included in list of machines used at date of June, 1913, by customers of company—Pltff's Ex. 161, IV, 1118.

Not included—as a single machine—in list of machines specified by witness Webster (I., 291) as manufactured by the company.

This company has manufactured and marketed a turn channeling machine, included under the "Channeling Machine" classification.

(Webster, I, 291, l. 1.)

Defts.' Ex. 321. Reference: page 5, item B. Note by Haverhill Co. to U. S. M. Co. that it can furnish a "Rough Rounding and Channeling Machine."

ROUNDING MACHINE (rounding heels, heel seats, and taps).

LOUIS G. FREEMAN Co., Cincinnati, Ohio.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 8, item T. Note by U. S. M. Co. representative as to operation of "Heel Seat Rounding Machine" in Non-Royalty Shoe Company, St. Louis, Mo. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912.

CONSOLIDATED ROTARY ROUNDER Co., Cincinnati, Ohio.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 128, item A. Telegram from W. F. Harmon to S. G. Ross naming certain shoe factories using Ross rounders; also catalog of company.

The catalog of this company was issued in 1897, evidently by the Ross-Moyer Mfg. Co. of Cincinnati, Ohio, now a subsidiary company of the U. S. M. Co.—its first page being headed "Ross-Moyer Mfg. Co., Distributing Agents." It is further to be noted that both Harmon and Ross were formerly connected with the Ross-Moyer Mfg. Co.—prior to its absorption.

Witness Selz, of Selz, Schwab & Co., Chicago, Ill.—one of the shoe factories named in the Ross telegram as using Ross rounders—stated that these machines had been, and are now, marketed by the Ross-Moyer Mfg. Co.

(Selz, I, 144, l. 21; 154, l. 13.)

BOYLSTON MFG. CO., Boston, Mass.

A "Julian rounder" is included in the list of machines manufactured by this company specified by witness Maloy on page 302, and in catalog.

Extent of output not stated.

(Maloy, I, 302, l. 17.)

Defts.' Ex. 321. Reference: page 8, item K. Note by U. S. M. Co. representative as to operation of "Julian" machine in Non-Royalty Shoe Company, St. Louis, Mo. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

A further reference is to page 95, item B_2. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913.

Another reference is to page 5, item A. Note by Haverhill Company to U. S. M. Co., that it can furnish a Boylston Co. "Sole Rounder."

AMERICAN WORSTED MCHY. CO., Abington, Mass.

None manufactured by this company from 1907 to 1914.

(Hall, I, 953, l. 19.)

Defts.' Ex. 321. Reference: page 1, item A. Quotation to U. S. M. Co. on "Severance Tap Rounder."

SPRING HEEL SCARFING MACHINE.

JAMES BOSTOCK & SONS, Brockton, Mass.

None manufactured.

Second-hand machines have from time to time in the past been purchased and resold.

Extent of sales not stated.

(Bostock, I, 904, l. 37.)

Defts.' Ex. 321. Reference: page 21, item D. Quotation to U. S. M. Co.

THOMAS J. BOWDEN & SON, Marblehead, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 28. Quotation to U. S. M. Co.

W. J. YOUNG MCHY. CO., Lynn, Mass.

A spring heel scarfing machine manufactured and marketed by this company.

Extent of output not stated.

(Young, I, 943, l. 2.)

Defts.' Ex. 321. Reference: page 152, item K. Advertisement of machine.

LITTLE McKAY TURN SEWING MACHINE.

GEORGE HOBBS, Boston, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 177. Note by U. S. M. Co. representative that Hobbs machines have been seen in operation in a shoe factory. Also a catalog of parts for McKay turn sewing machine and channeler, issued in 1902.

McKAY SEWING MACHINE.

SHAWMUT MCHY. CO., Boston, Mass.

HAVERHILL SUPPLY CO., Haverhill, Mass.

LOUIS G. FREEMAN, Cincinnati, O.

E. E. SPENCER & CO., New York, N. Y.

MANUFACTURERS' SUPPLY CO., St. Louis, Mo.

J. W. WHITE & CO., Haverhill, Mass.

LYNN SUPPLY CO., Lynn, Mass.

AMERICAN WORSTED MCHY. CO., Abington, Mass.

WALTER PEARSON, Whitman, Mass.

References to the above in Appendix "B"—Part I.

WELT AND TURN SEWING MACHINE.

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.

HAVERHILL SHOE MCHY. CO., Haverhill, Mass.

R. H. LONG MCHY. CO., So. Framingham, Mass.

UNIVERSAL SHOE MCHY. CO., St. Louis, Mo.

BOYLSTON MFG. CO., Boston, Mass.

References to the above in Appendix "B"—Part I.

SKIVING MACHINE (tap skiving, welt and rand splitting).

VICTOR SHOE MCHY. CO., Boston, Mass.

Witness Johnson indirectly admitted that this company manufactures a skiving machine.

Extent of output not stated.

(Johnson, I, 894, l. 21.)

Defts.' Ex. 321. Reference: page 174, item C. Note by U. S. M. Co. representative that Victor "Tap Skiving Machine" was seen in demonstration at Victor Co. factor

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, item F. Quotation to U. S. M. Co. for "Welt Splitting Machine." This same reference has also been used under the classification for "Splitting Machine."

AMERICAN WORSTED MCHY. CO., Abington, Mass.

Output of machines not stated in testimony of witness Hall.

(Hall, I, 954, l. 8.)

Defts.' Ex. 321. Reference: page 2, items G and J. Quotations to U. S. M. Co. on Tripp "Improved" and "New Old-Style" skivers.

This same reference for "Trip Improved Skiver" has also been used under the classification for "Splitting Machine."

McKAY WELT SLASHING MACHINE.

THOMAS BOSTOCK & SONS, Brockton, Mass.

This machine is the same as the "Heel Lift Gouging Machine" included under the latter classification—for which the same reference has been used.

(Bostock, I, 904, l. 35.)

Defts.' Ex. 321. Reference: page 21, item G. Quotation to U. S. M. Co. on "Rand Chopping and Welt Slashing Machine."

A. G. BREWER, Natick, Mass.

Approximately ten machines manufactured and marketed, the last one about 1912.

(Brewer, I, 907, l. 15.)

Defts.' Ex. 321. Reference: page 105. Quotation to U.S. M. Co., and advertisement of "Double Rapid Welt Splitter."

WILLIAM KNIPE, Ward Hill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 167. Note by U. S. M. Co. representative that he had seen at Knipe Bros. shoe factory a "Knipe Welt Slasher."

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, item G. Quotation to U. S. M. Co. on "Combination Welt Splitter and Slasher."

SLUGGING MACHINE.

BOYLSTON MFG. CO., Boston, Mass.

HAMEL SHOE MACHY. CO., Lynn and Haverhill, Mass.

R. H. LONG MCHY CO., South Framingham, Mass.

References to the above in Appendix "B"—Part I.

SPLITTING MACHINE.

AMERICAN TOOL & MACHINE CO., Boston, Mass.

The machine referred to by witness Eichler—included under this classification as manufactured by this company—is a belt knife splitting machine.

Eichler stated that this company manufactures no bottoming machines, or eyeletting or clicking machines.

(Eichler, I, 886, l. 43; 887, l. 1.)

Defts.' Ex. 321. Reference: page 51. Advertisement of "Belt Knife Leather Splitting Machine."

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, items A and F. Quotations to U. S. M. Co.

The latter reference (6 F) is also used under the classification for "Skiving Machine."

J. S. WHEELER & CO., Boston, Mass.

None manufactured by this company.

Some have been rebuilt from time to time.

This concern does a small jobbing business and employs from two to six men only.

(Wheeler, I, 890, l. 3.)

Defts.' Ex. 321. Reference: page 41, item A. Quotation to U. S. M. Co. on "Baby splitters" (upper leather and sole evener).

This same reference has also been used under the classification for "Evening Machine."

SEELYE MFG. CO., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327–328.)

Defts.' Ex. 321. Reference: page 91, item C. Quotation (unsigned)—purporting to have been received by the U. S. M. Co. from Seelye—on "Splitters."

Another reference is to page 95, item V. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

These same references are also used under the classification for "Evening Machine."

QUARMBY & HILLIKER, Lynn, Mass.

None manufactured.

From time to time some have been purchased second-hand and resold.

Extent of sales not stated.

(Hilliker, I, 929, l. 23.)

Defts.' Ex. 321. Reference: page 10, item F. Quotation to U. S. M. Co. on "Splitter."

This same reference has also been used under the classification for "Evening Machine."

AMERICAN WORSTED MCHY. CO., Abington, Mass.

Not referred to in testimony of witness Hall.

(Hall, I, 954, l. 8.)

Defts.' Ex. 321. Reference: page 2, item G. Quotation on "Tripp Improved Skiver."

This same reference has also been used under the classification for "Skiving Machine."

LACENE MFG. CO., Manchester, New Hampshire.

No representative of company called as a witness.

Witness Winslow stated that there is no other machine upon the market for doing the work of this machine and that the U. S. M. Co. has never put out a similar one.

(Winslow, I, 600, l. 9.)

Defts.' Ex. 321. Reference: page 77. Advertisement of machine.

This same reference is also used under the classification for "Grading Machine."

TURNER TANNING MCHY. CO., Peabody, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 119. Quotation to U. S. M. Co. on "Belt Knife Splitting Machine."

In this connection reference is made to the testimony of witness Eichler, for the American Tool & Machine Co., to

the effect that this is not properly included as a bottoming machine.

(Eichler, I, 886, l. 43: 887, l. 4.)

W. J. Young Mchy. Co., Lynn, Mass.

None manufactured by this company.

At close of cross-examination, Counsel Choate for the U. S. M. Co. requested permission to correct this reference from "Rand Splitting Machine" to "Rand Trimming Machine."

(Young, I, 943, l. 2, 32.)

Defts.' Ex. 321. Reference: page 185. Advertisement of "New Rand Trimmer."

STRIPPING MACHINES (cutting leather or leatherboard into strips).

Quarmby & Hilliker, Lynn, Mass.

Approximately 75 machines manufactured and marketed since 1904, one-third of these to shoe manufacturers.

(Hilliker, I, 929, l. 20.)

Defts.' Ex. 321. Reference: page 10, item C. Quotation to U. S. M. Co. on "Knox Old-Style Geared Stripper."

Parsons Mchy. Co., Marlboro, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 13. Quotation to U. S. M. Co. on "Old-Style Stripper."

Seelye Mfg. Co., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327–328.)

Defts.' Ex. 321. Reference: page 91, item E. Quotation (unsigned)—purporting to have been received by U. S. M. Co. from Seelye—on "Strippers."

Tower Bros., Hudson, Mass.

On page 4622 witness Tower stated—in answer to the question whether this concern manufactures this machine—"We make stripping machines for anybody who wants them, but they have gone out of fashion." This indicates that this machine is not one regularly manufactured and marketed by this company.

(Tower, I, 907, l. 42.)

Defts.' Ex. 321. Reference: page 3, item E. Quotation to U. S. M. Co.

W. J. YOUNG MCHY. Co., Lynn, Mass.

A wedge stripping machine—properly included under this classification—is manufactured by this company.

The majority of these are sold to heel manufacturers rather than to shoe manufacturers.

Extent of output not stated.

(Young, I, 942, l. 35.)

Defts.' Ex. 321. Reference: page 62, item I. Advertisement of "Wedge Stripper."

TACKING MACHINES (tacking soles and heel rands).

UNIVERSAL SHOE MCHY. Co., St. Louis, Mo.

HAMEL SHOE MCHY. Co., Lynn and Haverhill, Mass.

LOUIS G. FREEMAN Co., Cincinnati, Ohio.

VICTOR SHOE MCHY. Co., Boston, Mass.

References to the above in Appendix "B"—Part 1.

THIN EDGE MACHINE.

THEODORE RINGENBACH, Cincinnati, Ohio.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 126. Advertisement of "Rapid Shoe Feathering Machine."

This same reference is also used under the classification for "Reducing Machine."

INSEAM TRIMMING MACHINE.

THE KEIGHLEY Co., Vineland, N. J.

Witness Tappey stated that, during 1911, about 20 inseam trimming machines had been placed among shoe manufacturers on trial in New England.

(Tappey, I, 913, l. 4.)

In this connection it is to be noted that an agreement was entered into on September 21, 1912, between the U. S. M. Co. and the Keighley Co., whereby the U. S. M. Co. obtained control of the inseam trimming machine business of the Keighley Co. in the United States.

The agreement provided in part that neither company, during the period of the agreement, would enter into, engage

in, or financially or otherwise encourage or assist any other person, firm, or corporation from entering into or developing any business in inseam trimming machines.

It further provided that the Keighley Co. should not thereafter sell any inseam trimming machine of the type covered by the agreement for a price less than $650, and also that the U. S. M. Co. should not be required to pay more than $250 for a single inseam trimming machine of the same type.

Pltff.'s Ex. 275, IV, 1529 (U. S. M. Co.-Keighley Co. agreement).

Defts.' Ex. 321. Reference: page 7, item F. Note by U. S. M. Co. as to operation of machine in Non-Royalty Shoe Company, St. Louis, Mo.

Another reference is to page 95, item F. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

HEEL RAND TURNING MACHINE.

James Bostock & Sons, Brockton, Mass.

A rand turning machine is manufactured by this concern. Extent of output not stated.

(Bostock, I, 904, l. 36.)

Defts.' Ex. 321. Reference: page 21, item E. Quotation to U. S. M. Co.

American Worsted Mchy. Co., Abington, Mass.

No rand turning machines manufactured or marketed from 1907 to 1914.

(Hall, I, 953, l. 22.)

Defts.' Ex. 321. Reference: page 6, item B. Quotation to U. S. M. Co. on "Rand Crimping Machine."

LIP OF INSOLE TURNING MACHINE.

American Worsted Mchy. Co., Abington, Mass.

None manufactured or marketed from 1907 to 1914.

(Hall, I, 953, l. 22.)

Defts.' Ex. 321. Reference: page 1, item I. Quotation to U. S. M. Co. on "Lip Turner."

HAMEL SHOE MCHY. Co., Lynn and Haverhill, Mass.

Twelve lip turning machines manufactured and marketed in the United States by the Duplessis Shoe Machy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co.

No division of sales shown in Pltff.'s Ex. 159, IV, 1113—customers of Duplessis Co. and its successors.

(Hamel, I, 326, l. 41.)

Defts.' Ex. 321. Reference: page 178, item A. Note by U. S. M. Co. representative that he had seen a "Duplessis Channeling and Turning machine (hand power)" in operation in a factory.

HAVERHILL SHOE MCHY. Co., Haverhill, Mass.

Four lip turning machines manufactured and marketed from June, 1913, to June, 1914.

(Webster, I, 292, l. 24.)

Defts.' Ex. 321. Reference: page 5, item C. Note by Haverhill Co. to U. S. M. Co. that it can furnish an "Innersole Lip Turner."

Another reference is to page 8, item Z. Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, St. Louis, Mo.

A further reference is to page 95, item Z. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

GEORGE KNIGHT & Co., Brockton, Mass.

A lip turning machine is manufactured by this company. Extent of output not stated.

Some of the machines manufactured by this company are sold to and through the U. S. M. Co. Witness Knight did not specify whether a lip turning machine was so included, however.

(Knight, I, 903, l. 8, 15.)

Defts.' Ex. 321. Reference: page 9, item F. Quotation on "Lip Turner."

R. H. LONG MCHY. Co., South Framingham, Mass.

Number placed not stated.

In explanation of catalog, Doidge stated that not all machines listed therein had been manufactured at date of June, 1913, but that it was the intention of the company to do so. (Doidge, I, 346, l. 7, 16.)

Defts.' Ex. 321. Reference: page 56, item L. Notation for machine in catalog of company.

LIP GEM INSOLE TURNING MACHINE.

Inasmuch as the same companies and the same reference thereto in Defts.' Ex. 321 have been used under this classification as under "Lip of Insole Turning Machine," no further reference thereto is considered necessary herein.

INSOLE REINFORCING MACHINE.

No competition in the United States.

TACKING MACHINE.

References to the above in Appendix "B"—Part I.

POUNDING AND TRIMMING MACHINE.

No competition in the United States.

STANDARD SCREW MACHINE.

Reference to the above in Appendix "B"—Part I.

* * * * *

FOREIGN COMPANIES.

That the Foreign Companies Referred to in the Catalogs, Letters, Advertisements, &c., have not been Engaged in Marketing Shoe Machinery in the United States is Evidenced by the Testimony of witnesses Stone, McElroy, and Cavanaugh. (I, 339–344; 954–957; 190–193; 923.)

APPENDIX C.

SYNOPSIS OF LEASE FORMS SHOWING TYING CLAUSES CONTAINED IN EACH.

1. Lasting Machines.

(Exhibits 14–22)

(a) Consolidated Hand Method Machine.

i. Non Initial Payment.

Exhibit 16 (adopted September, 1900) contains

Prohibitive clause, applying to welting, stitching, turn sewing and metallic fastening machines.

Exclusive Use clause.

Full Capacity clause.

Return charge of $150.00.

Minimum royalty of $15 per month with deduction for months in which factory is wholly idle.

Right to terminate all leases clause.

Exhibit 15 (adopted December, 1900) contains same provisions in particulars here material as Exhibit 16, except that prohibitive clause does not extend to metallic fastening machines.

(Note this form of lease is used for the hand-method type of machine when adapted to lasting welt shoes.)

ii. Initial Payment.

Exhibit 14 (adopted December, 1900) contains

Full Capacity clause.

Exclusive Use clause, applying to all lasting machines and devices.

Initial payment of $300.

Minimum royalty $75 per annum.

1. Lasting Machines—Continued.
   (a) Consolidated Hand Method Machine—Continued.
      ii. Initial Payment—Continued.
         Exhibit 17 (printed 1906).
            Same provisions in particulars here material as Exhibit 14, except that exclusive use clause is extended to include all *tacking* devices as well as lasting machines and devices. There is also a difference in the royalty which is fixed at one cent per pair straight in Exhibit 14 and at one cent per pair for misses' and children's shoes and one and one-fourth cents for all other kinds in Exhibit 17. The latter figure is also that of Exhibits 15 and 16. In each case there is a 50% discount for prompt payment.
   (b) Chase Lasting machine.
      Exhibit 19 (adopted June, 1901) contains
      Non Initial payment.
         Exclusive Use clause, applying both to lasting machines and tacking devices.
         Prohibitive clause, applying to welting, stitching, turn sewing and metallic machines.
         Full capacity clause.
         Right to terminate all leases clause.
         Minimum royalty $10.00 a month.
         Abated royalty ¾c for long legged boots, ½c for all others.
      No other form of lease was adopted by the defendants for this machine, but it is claimed by Mr. Winslow that a manufacturer might still have had the lease formerly offered by the Consolidated & McKay Company. (I. 543.) No evidence of any actual lease or offer to lease in that form subsequent to the adoption of Exhibit 19 appears. The royalties under the old lease (Exhibit 7) "were very much in excess of what they were under the United lease." (Winslow, I. 543.)
      Initial payment.

1. Lasting Machines—Continued.

(b) Chase Lasting Machine—Continued.

Exhibit 20 (adopted August, 1903) contains

Exclusive Use clause applying to tacking appliances as well as lasting machines.

Prohibitive Clause applying to welting, stitching, sewing, pegging, metallic fastening and heeling machines.

Full Capacity Clause.

Right to Terminate All Leases clause.

Minimum royalty of $125.00 per annum.

No other lease for this machine was adopted by the United Company. (Winslow I. 542.) It is worth noting in connection with the defendants' claim that the fields of the various lasting machines were so distinct as to exclude the idea of competition that the prohibitive clause of this lease indicates that in the opinion of the defendants it could be used in a serious attempt to last welt shoes—a circumstance which they are now inclined to deny. The lease used previously by the Consolidated & McKay Company indicates a similar opinion.

(d) Ideal Lasting Machine.

Initial Payment.

Exhibit 18 (adopted August, 1901) contains

Exclusive Use clause applying to tacking devices as well as lasting machines.

Prohibitive Clause applying to welting, sole stitching, and turn sewing machines.

Full Capacity clause.

Initial Payment of $300.

Minimum Royalty of $75 per annum.

Right to Terminate All Leases clause.

NOTE.—Mr. Winslow testified in response to the question whether there had ever been any "unrestricted" form of the leases for the Ideal machine that he did not "recall any different lease ever used by the United Company for the Ideal machine from that of Plaintiff's Exhibit 18." (I. 543.)

1. Lasting Machines—Continued.
   (e) Number Five Lasting Machine.
      i. Non Initial Payment.
         Exhibit 21 (adopted ——, 1906).
            Exclusive Use clause.
            Prohibitive Clause, applying to welt sewing, sole stitching, turn sewing, pulling over and metallic machines.
            Full Capacity Clause.
            Return charge of $150.
            Right to Terminate All Leases Clause.
            Minimum Royalty of $10 a month.
      ii. Initial Payment.
         Exhibit 22.
            Exclusive Use Clause.
            Full Capacity Clause.
            Right to Terminate All Leases clause.
            Initial Payment of $300.
            Minimum Royalty $75 per annum.
               NOTE.—The royalties are the same in both forms of lease. The minimum royalty provision of the initial payment lease, Exhibit 22, provides for the return of the machine at the option of the lessor in case the royalty in any succeeding 12 months does not amount to $75. In case of such return, one-third of the initial payment is returned.
2. Welt and Turn Sewing and Outsole Stitching Machines and Auxiliaries.
   i. Non Initial Payment.
      Exhibit 24 (adopted January, 1905) contains
         Exclusive Use clause, applying to welting, outsole stitching, and turn sewing machines.
         Prohibitive Clause, applying to the same machines.
         Full Capacity Clause.
         Return Charge of $150.
         Right to Terminate All Leases clause.

2. Welt and Turn Sewing and Outsole Stitching Machines and Auxiliaries—Continued.

i. Non Initial Payment—Continued.

Exhibit 24—Continued.

Minimum Royalty, $15 a month for each machine.

NOTE.—This lease provides for "royalties" to the defendants upon shoes made upon machines supplied by competitors of the defendants.

Exhibit 25 (adopted January, 1905) lease for Auxiliary Machines only, contains

Exclusive Use clause applying to welting, turn sewing, and outsole stitching machines.

Prohibitive Clause applying to same machines.

Right to Terminate All Leases clause.

Annual Rental, amounting to about $184 per annum.

Return Charges as scheduled.

NOTE.—This lease embraces twenty-four different kinds of machines. There is no lease under which these auxiliary machines can be obtained without the prohibitive clause restricting their use to use on shoes upon which the defendants' principal welt method machines are used. That is to say, the United Company does not permit on any terms the use of its auxiliary machines with principal machines supplied by some other manufacturer.

ii. Initial Payment.

Exhibit 23(adopted December, 1900) contains

Exclusive Use Clause as to welting and outsole stitching machines.

Prohibitive Clause applying to same machines.

Right to Terminate All Leases clause.

Initial Payment provided for in the written application for the lease. (Donham, I, 9.)

2. Welt and Turn Sewing and Outside Stitching Machines and Auxiliaries—Continued.

ii. Initial Payment—Continued.

Exhibit 26 (adopted 1905).

This lease was intended as a substitute for Exhibit 23. To the provisions of that lease are added the full capacity clause applying to all welting, turn sewing, inseam sewing and outsole stitching machines held under that *and all other leases;* the exclusive use clause was extended to turn sewing machines.

NOTE.—There is no lease under which the defendants will put out a welt sewing machine for welt work without a limitation to work that is to be stitched on the outsole stitcher or under which it will put out the stitching machine for use upon work that has not been welted on the welt sewing machine. (Winslow, I, 544.) In order to obtain either the welt sewing or the stitching or any of the auxiliary machines, the lessee must agree that he will not use at any time in his factory any welt sewing or outsole stitching machines made by any competitor of the defendants.

3. Heeling Machines.

i. Non Initial Payment.

Exhibit 27 (adopted 1900) contains

Right to Terminate All Leases clause.

Minimum Royalty $230 per annum.

Exhibit 28 (adopted 1904) contains

Exclusive Use clause.

Prohibitive Clause applying to welt sewing, sole stitching, turn sewing, lasting, pegging and metallic machinery.

Full Capacity Clause.

3. Heeling Machines—Continued.
   i. Non Initial Payment—Continued.
      Exhibit 28—Continued.
         Right to Terminate All Leases Clause.

NOTE.—It is not unusual for the defendants to contend that they did not withdraw previous forms of leases upon the formulation of the new. Such a claim has already been introduced, *supra*. There can hardly be any question, however, in the light of Mr. Winslow's testimony that upon the adoption of Exhibit 28, the more favorable terms of Exhibit 27 were withdrawn, for, according to Mr. Winslow, the reason for the formulation of Exhibit 28, the insertion of the prohibitive clause which had not appeared in Exhibit 27, was the fact that the United Company at the time was bringing out its leases of welt method machines without initial payment. (I, 546.) His attempt to explain that the compensating advantage which he expected to obtain by way of off-set to giving up requirements of the initial payment on the welt method machines was not the exclusion of competition in heeling machines will be noticed later.

There was no form of lease of heeling machines without the prohibitive clause at the time of filing the petition, but there is testimony as to a rider which eliminated the prohibitive clause and substituted an initial payment.

4. Metallic Fastening Machines.
   i. Non Initial Payment.
      Exhibit 29 (adopted March, 1900).
         Additional Machinery clause.
         Full Capacity clause.
         Right to Terminate All Leases clause.
      Exhibit 30 (adopted June, 1900).
         Superseding Exhibit 29 which was then discontinued contains
            Additional machines clause, providing for the cancellation of all leases for metallic machinery if the lessee fails to take from the lessor any additional metallic fastening machines which he may need.
            Prohibitive clause, applying to lasting, welting, outsole stitching, and turn sewing machines.
            Full capacity clause.
            Royalty in this lease is to be paid by the purchase of material of which not less than 400 pounds per annum is to be taken.
      Exhibit 31 (adopted March, 1901) contains
         Additional machines clause.
         Full Capacity Clause.
         Clause permitting removal of machines deemed by the lessor unnecessary for the lessee's business.
         Right to Terminate All Leases clause.
         Provision for payment for material at prices "which shall not be more than ten per cent in excess of the prices to be established from time to time by the lessor for like fastening material to be used in its metallic department machinery by lessees who shall agree not to use the metallic department machinery leased to them in the manufacture of boots or shoes which are lasted on machines other than those leased from the lessor, or of welted boots or shoes which are not welted

4. Metallic Fastening Machines—Continued.
   i. Non Initial Payment—Continued.
      Exhibit 31—Continued.
         and stitched on welt sewing and sole stitching machines leased from the lessor, or of turned shoes, the soles of which are not attached by turn sewing machines leased from the lessor."
         Provision for minimum use of 400 pounds of material per annum.
      Exhibit 32.
         This is a lease like Exhibit 30 with a rider attached eliminating the prohibitive clause.
      Exhibit 33 (printed July, 1911).
         This is a form which takes the place of Exhibit 32.
      Exhibit 34 (adopted 1911).
         This is described by the witness Donham (I, 11) as the current form of lease for metallic machines "when taken without the initial payment and without the provision for ten per cent excess in royalty charge." These provisions present no substantial change from the form of Exhibit 30.
      Exhibit 35.
         This is a form of lease for a single machine, the standard screw machine, belonging to the metallic department. Its provisions are the same as those of Exhibit 34.
5. Pegging Machines.
   i. Non Initial Payment.
      Exhibit 45, (adopted June, 1901) contains
         Prohibitive Clause applicable to lasting and metallic machines.
         Exclusive Use clause.
         Right to Terminate All Leases clause.
         Full Capacity clause.
         Minimum royalty $10 a month.

5. Pegging Machines—Continued.
   ii. Initial Payment.
      Exhibit 46 (adopted 1905 or 1906) contains
         Exclusive Use clause.
         Right to Terminate All Leases clause.
         Full Capacity clause.
         Initial Payments.
6. Pulling Over Machines.
   i. Non Initial Payment.
      Exhibit 36 (adopted March, 1902) contains
         Prohibitive clause applying to heeling, welting, stitching, lasting, pegging, and metallic fastening machines.
         Additional machines clause.
         Right to Terminate All Leases clause.
         Full Capacity clause.
         Return charge of $200.
         Minimum royalty of $15 a month.
      Exhibit 37 (adopted January, 1905) contains
         Exclusive Use providing for optional forfeiture of all lesases existing between the lessor and lessee in case of its violation.
         Prohibitive Clause applying to welting, stitching, turn sewing, hand-method lasting machines, pegging, metallic fastening and heeling machines.
         Additional Machines clause requiring auxiliary machines to be used exclusively with lessors' pulling over machine.
         Right to terminate all leases clause applying to "stipulation" and "provisions" as well as to "conditions."
         Full capacity clause.
         Return charge of $200.
         Minimum royalty of $20 a month.
      Defendants' Exhibit 345, (adopted 1907).
         This form is the same as Exhibit 37 except that the additional machine clause is omitted, and the exclusive use clause, while retained, gives the lessor the right only to forfeit all leases for pulling over machines.

6. Pulling Over Machines—Continued.
   i. Non Initial Payment—Continued.
      Exhibit 38 (adopted 1909).
         Covering auxiliaries to pulling over machines contains
            Prohibitive clause, including the machinery of the pulling over system held under that *and all other* leases, and prohibiting their use with independent welting, stitching, turn sewing, lasting, pegging, heeling and metallic fastening machines.
            Exclusive use clause.
            Right to terminate all leases clause.
            Full capacity clause, extending also to all pulling over machines held under these or other leases from the lessor.
            The royalty provisions are noticed just below.
   ii. Initial Payment.
      Exhibit 39 (Printed August, 1911) contains
         Full Capacity clause.
         Prohibitive Clause extending only to the use of the auxiliary machines with the principal machines.
         Exclusive use clause.
         Right to terminate all leases clause.
         Minimum royalty $20 a month.
         Initial payment.
            NOTE.—The royalty provisions of Exhibit 38 require the payment of ½ c. gross for each pair of shoes pulled over in whole or in part by machinery, plus a further payment of ¼ c. for the use of each of 6 of the 8 auxiliary machines named in the schedule, making a total payment if all the machines are used of 2 c. gross, with the proviso, however, that if the lessee shall use no lasting machines or devices except those of the defendants, the royalty shall not be more than

6. Pulling Over Machines—Continued.
ii. Initial Payment—Continued.
Exhibit 39—Continued.
Initial Payment—Continued.

$\frac{3}{4}$ c. on each pair. This royalty is in addition to all other royalties except royalty paid under other leases for pulling over machines. A minimum royalty is also required.

This lease furnishes an example of the interrelation and cumulative effect of the various parts of the defendants' leasing system. The defendants are here leasing a patented *pulling over* machine. Their net price for it is $\frac{3}{8}$ c. a pair to those who aid them to obtain a monopoly in *lasting* machines, and 1 c. a pair to those who do not.

It may be noticed, also, that under the exclusive use clause, the lessee could not have in his factory a competing pulling over machine if he could find one and the possession of this pulling over machine is conditioned upon its not being used upon any shoes which are operated upon by any welting, stitching, turn sewing, lasting, pegging, heeling, or metallic fastening machine made by any competitor of the defendants.

Exhibit 39 as is noted omits the prohibitive clause. To obtain it, however, the lessee must pay an initial payment amounting to about the value of the machine, and the royalty is $\frac{1}{2}$ c. a pair net, with no deduction for royalties paid on the lasting machine. The figures stated as net include the 50% discount for prompt payment. The net result is for lasting and pulling over under Exhibit 39, the so-called independent lease, the lessee has to pay $\frac{1}{2}$ c. a pair while under Exhibit 38, he pays only $\frac{3}{4}$ c. a pair.

7. General Department Machines.

Exhibits 40 and 41 cover these machines. It is said that they were discontinued after the filing of the Government's petition, and that the company now does not lease these general department machines, but sells them exclusively. Before the filing of the petition, manufacturers who did not use United Company machines exclusively could obtain the machines by outright purchase, but not by lease. Lessees of the United Company could obtain them upon lease. Many of these leases are still in force. Their terms are as follows:

Exhibit 40 (adopted about 1902) contains

Prohibitive clause, applying to stitching, turn sewing, lasting, pegging, and metallic machinery.

The only charge made is payment of the lease premium except that the lessee was bound to purchase repair parts from the lessor. Donham testified that the lease premium *was substantially less* than the price at which the machine was sold, but it will be observed that this lease was used as an inducement to manufacturers to take other machines.

While not containing the *right to terminate all leases* clause the lease provides for its termination upon breach of its conditions or upon breach of the conditions of any other lease from the lessor.

Exhibit 41 (adopted about 1908).

Like Exhibit 40. This lease could be obtained only by users of other machines of the United Company. It is different from Exhibit 40 in that it required an annual rental instead of a lump sum payable at the beginning.

8. Eyeletting machines.
   i. Non Initial Payment.
      Exhibit 43 (adopted about 1902).
         Full Capacity clause.
         Prohibitive clause, applying to welting, stitching, turn sewing, lasting, pegging, metallic fastening and heeling machines.
         Right to Terminate All Leases clause.
   ii. Initial Payment.
      Exhibit 42 (adopted 1902).
         Full Capacity clause.
         Initial Payment $100.
         Right to Terminate All Leases clause.
            NOTE.—In both leases, the lessor's further compensation is derived from the requirement that the lessee purchase only from the lessor the eyelets used in the machines.
9. Clicking Machines.
   Exhibit 44 (adopted about 1907) contains
      Prohibitive clause, prohibiting the use of the lessor's dies with clicking machines other than those furnished by the lessor or others' dies with lessor's machine. See note.
      Exclusive Use clause.
      Full Capacity clause.
      Right to Terminate All Leases clause.
         NOTE.—The compensation for the use of the machine in case it is used only on shoes lasted and welted or stitched on the lessor's machines is derived from the sale by the defendants of dies at a fixed price. The lease requires the lessee to pay the United Company 5 c. for each inch of cutting edge of any dies which the lessee purchases from manufacturers other than the defendants. It also provides that *1* c. per pair is to be paid for footwear lasted on machines not obtained from the lessor, and *6 c.* per pair for footwear welted, or stitched otherwise than by lessor's machines. These royalties are cumulative, but are subject to 50 per cent discount.

9. Clicking Machines—Continued.

Exhibit 44—Continued.

Right to Terminate All Leases clause—Continued.

This is a further example of the interlocking and cumulative effect of the defendants' leases. The compensation for the use of this machine in itself is definitely fixed, and is the profit upon the sale of dies at established prices, but the lessor who uses a lasting machine or a welting and stitching machine supplied by competitors of the lessor is penalized an amount ranging from ½ c. to 3½ c. a pair, net. While this penalty is stated as a charge for the use of this machine its true purpose and effect as a destroyer of competition in other types of machines is apparent.

10. McKay Sewing Machines.

i. Initial Payment.

Exhibit 170 contains

Prohibitive clause applying to all lasting machines and devices.

Royalty $5. monthly.

NOTE.—While this lease does not contain the *Right to Terminate All Leases* clause it does provide for its termination for breach of any of its conditions or for a breach of the conditions of any other lease from the lessor.

Initial Payment of $100.

APPENDIX D.

RÉSUMÉ OF LEASES IN WHICH THE VARIOUS OBJECTIONABLE CLAUSES APPEAR.

That the effect of these clauses as used in the United Company's entire system of leases may the more readily appear, the leases containing each one of them will be separately designated. In doing so, neither the leases executed by the constituent companies, nor those executed by the subsidiary companies of the United Company will be considered.

First. All the leases contain the seventeen-year term.

Second. All the leases contain the "right to terminate all leases" clause.[1]

Third. The following leases contain the "full capacity" clause:

(1) Exhibit 16, adopted September, 1900, a noninitial payment lease for the Consolidated hand-method lasting machine. (Sec. 4, III, 139.)

(2) Exhibit 15, adopted December, 1900, a noninitial payment lease for the Consolidated hand-method lasting machine. (Sec. 4, III, 131.)

(3) Exhibit 14, adopted December, 1900, an initial payment lease for the Consolidated hand-method lasting machine. (Sec. 4, III, 123.)

(4) Exhibit 17, adopted December, 1906, an initial payment lease for the Consolidated hand-method lasting machine. (Sec. 4, III, 147.)

(5) Exhibit 19, adopted June, 1901, a noninitial payment lease for the Chase lasting machine. (Sec. 4, III, 165.)

(6) Exhibit 20, adopted August, 1903, an initial payment lease for the McKay & Copeland lasting machine. (Sec. 4, III, 174.)

(7) Exhibit 18, adopted August, 1901, an initial payment lease for Ideal lasting machine. (Sec. 4, III, 156.)

---

[1] In Exhibits 40 and 170 the clause is the converse of the usual form. It is provided that the particular lease may be canceled for breach of the conditions of that or any other lease from the lessor.

(8) Exhibit 21, adopted in 1906 or 1907, a noninitial payment lease for No. 5 lasting machine. (Sec. 5, III, 184.)

(9) Exhibit 22, adopted in 1906 or 1907, an initial payment lease for No. 5 lasting machine. (Sec. 4, III, 196.)

(10) Exhibit 24, adopted January, 1905, a noninitial payment lease for Goodyear machines. (Sec. 5, III, 217.)

(11) Exhibit 26, adopted in 1905, an initial payment lease for a full set of Goodyear machines. (Sec. 4, III, 245.)

(12) Exhibit 27, adopted in 1900, a noninitial payment lease for a heeling machine. (Sec. 3, III, 256.)

(13) Exhibit 28, adopted in 1904. a noninitial payment lease for heeling machine. (Sec. 5, III, 264.)

(14) Exhibit 29, adopted March, 1900, a noninitial payment lease for metallic machines. (Sec. 3, III, 274.)

(15) Exhibit 30, adopted in June, 1900, succeeding Exhibit No. 29, a noninitial payment lease for metallic machines. (Sec. 3, III, 280.)

(16) Exhibit 31, adopted March, 1901, equivalent to an initial payment lease for metallic machines. (Sec. 6, III, 290.)

(17) Exhibits 32 and 33. No 32 is Exhibit 30 with a rider, eliminating the "prohibitive" clause, adopted June, 1900; and Exhibit 33 is a reprint of July, 1911, with the provisions of the rider incorporated in the face of the lease, which is an initial payment lease for metallic machines. (Sec 3, III, 300, 308.)

(18) Exhibit 34, adopted May, 1911, a noninitial payment lease for metallic machines. (Sec. 3, III, 316.)

(19) Exhibit 35, adopted May, 1911, a noninitial payment lease for Standard screw machine of metallic department. (Sec. 3, III, 325.)

(20) Exhibit 45, adopted June, 1901, a noninitial payment lease for Davey pegging machine. (Sec. 5, III, 416.)

(21) Exhibit 46, adopted in 1905 or 1906, an initial payment lease for Davey Pegging machine, an alternative form for Exhibit 45. (Sec. 5, III, 425.)

(22) Exhibit 36, adopted March, 1902, a noninitial payment lease for pulling over machine. (Sec. 4, III, 334.)

(23) Exhibit 37, adopted January, 1905, a noninitial payment lease for pulling over set. (Sec. 5, III, 342.)

(24) Defendants' Exhibit 345, adopted as early as 1907, a noninitial payment lease for pulling-over machines. (Sec. 5, V, 962.)

(25) Exhibit 38, adopted February, 1909, a noninitial payment lease for pulling-over machine. Clause extends to entire system. (Sec. 5, III, 354.)

(26) Exhibit 39, adopted August, 1911, an initial payment lease for pulling-over machine. (Sec. 4, III, 366.)

(27) Exhibit 42, adopted about 1902, an initial payment lease for eyeletting machine. (Sec. 4, III, 390.)

(28) Exhibit 43, adopted about 1902, a noninitial payment lease for eyeletting machine. (Sec. 5, III, 397.)

(29) Exhibit 44, adopted 1907, 1908, or 1909, a noninitial payment lease for clicking machine. (Sec. 5, III, 405.)

(30) Exhibit 52, adopted December, 1907, a noninitial payment lease for Economy insole reenforcing set. Clause applies only to principal machines. (Sec. 5, III, 453.)

This clause, therefore, appears in each of the nine leases for lasting machines, two of the four leases for Goodyear machines, both heeling-machine leases, all six of the leases for metallic machines, both of the leases for pegging machines, all five of the leases for pulling-over machines, both leases for eyeletting machines, and the one lease for clicking machines.

Fourth. The following leases contain the "additional machines" clause:

(1) Exhibit 27, adopted in 1900, a noninitial payment lease for a heeling machine. (Clause 3, III, 256.)

(2) Exhibit 29, adopted March, 1900, a noninitial payment lease for metallic machines. (Sec. 3, III, 274.)

(3) Exhibit 30, adopted June, 1900, succeeding Exhibit 29, a noninitial payment lease for metallic machines. (Sec. 3, III, 280.)

(4) Exhibit 31, adopted March, 1901, equivalent to an initial payment lease, for metallic machines. (Sec. 6, III, 290.)

(5) Exhibits 32 and 33: Exhibit 32 is the same as Exhibit 30, with rider eliminating prohibitive clause, adopted June, 1900, and Exhibit 33 is a reprint of same in July, 1900. An initial payment lease for metallic machines. (Sec. 3, III, 300, 308.)

(6) Exhibit 34, adopted May 11, 1911, a noninitial payment lease for metallic machines. (Sec. 3, III, 316.)

(7) Exhibit 35, adopted May, 1911, a noninitial payment lease for Standard screw machine of metallic department. (Sec. 3, III, 325.)

(8) Exhibit 36, adopted March, 1902, a noninitial payment lease for pulling-over machine. (Sec. 4, III, 334.)

(9) Exhibit 39, adopted January, 1905, a noninitial payment lease for pulling-over set. (Sec. 5, III, 367.)

This clause therefore appears in the first of the two leases for heeling machines, all six leases for metallic machines, and in two of the four leases for pulling-over machines.

Fifth. The following leases contain the "exclusive use" clause:

(1) Exhibit 16, adopted September, 1900, a noninitial payment lease for the Consolidated hand-method lasting machine. (Sec. 7, III, 141.)

(2) Exhibit 15, adopted December, 1900, a noninitial payment lease for Consolidated hand-method lasting machine. (Sec. 7, III, 133.)

(3) Exhibit 14, adopted December, 1900, an initial payment lease for the Consolidated hand-method lasting machine. (Sec. 7, III, 125.)

(4) Exhibit 17, adopted December, 1906, an initial payment lease for Consolidated hand-method lasting machine. (Sec. 7, III, 150.)

(5) Exhibit 19, adopted June, 1901, a noninitial payment lease for the Chase lasting machine. (Sec. 7, III, 168.)

(6) Exhibit 20, adopted August, 1903, an initial payment lease for the McKay & Copeland machine. (Sec. 7, III, 177.)

(7) Exhibit 18, adopted August, 1901, an initial payment lease for the Ideal lasting machine. (Sec. 7, III, 158.)

(8) Exhibit 21, adopted in 1906 or 1907, a noninitial payment lease for No. 5 lasting machine. (Sec. 8, III, 187.)

(9) Exhibit 22, adopted in 1906 or 1907, an initial payment lease for No. 5 lasting machine. (Sec. 7, III, 198.)

(10) Exhibit 23, adopted December, 1900, an initial payment lease for Goodyear set. Clause requires exclusive use of only welting, sewing, and outsole stitching machines, but a violation authorizes the forfeiture of all machines men-

tioned in schedule of machines held by lessee from lessor. (Sec. 7, III, 209.)

(11) Exhibit 24, adopted January, 1905, a noninitial payment lease for Goodyear machines. Clause requires exclusive use of welting, sewing, and outsole stitching machinery, and turn sewing machinery belonging to lessor, and its violation authorizes forfeiture of all Goodyear machinery. (Sec. 8, III, 221.)

(12) Exhibit 26, adopted in 1905, an initial payment lease for full Goodyear set. Clause excludes use of all but lessor's welting and turn sewing machines, but if violated authorizes forfeiture of all Goodyear department machines. (Sec. 7, III, 247.)

(13) Exhibit 25, adopted about January, 1905, a noninitial payment lease for the auxiliary machines of the Goodyear department. Clause excludes use of all but lessor's welting and turn sewing machines, but its violation authorizes forfeiture of all machines of Goodyear department. (Sec. 9, III, 234.)

(14) Exhibit 28, adopted in 1904, a noninitial payment lease for heeling machine. (Sec. 10, III, 267.)

(15) Exhibit 45, adopted June, 1901, a noninitial payment lease for Davey pegging machine. (Sec. 8, III, 418.)

(16) Exhibit 46, adopted in 1905 or 1906, an initial payment lease for Davey pegging machine, alternative form for Exhibit 45. (Sec. 8, III, 427.)

(17) Exhibit 37, adopted January, 1905, a nonitial payment lease for pulling-over set. For violation of clause the lessor is authorized to terminate "any or all leases or licenses of machinery then existing between the lessor and the lessee." (Sec. 9, III, 345.)

(18) Defendants' Exhibit 345, adopted as early as 1907. A noninitial payment lease for pulling-over machine. (Sec. 9, V, 965.)

(19) Exhibit 38, adopted in February, 1909, a noninitial payment lease for pulling-over machine. (Sec. 8, III, 358.)

(20) Exhibit 39, adopted August, 1911, an initial payment lease for pulling-over machine. (Sec. 8, III, 369.)

(21) Exhibit 44, adopted 1907, 1908, or 1909, a noninitial payment lease for clicking machine. (Sec. 9, III, 408.)

(22) Exhibit 52, adopted in December, 1907, a noninitial payment lease for Economy insole reinforcing set. (Sec. 9, III, 456.)

This clause, therefore, appears in each of the nine leases for lasting machines, the four leases for Goodyear machines, one of the two leases for heeling machines, which has been in use since 1904, both leases for pegging machines, four of the five leases for pulling-over machines, one of the leases for clicking machines, and the one lease for Economy insole machines.

Sixth. The following leases contain the "prohibitive" clause:

(1) Exhibit 16, adopted December, 1900, a noninitial payment lease for the Consolidated hand-method lasting machine. This clause applies to welting, sole stitching, turn sewing, and metallic fastening machines. (Sec. 4, III, 139.)

(2) Exhibit 15, adopted December, 1900, a noninitial payment lease for the Consolidated hand-method lasting machine. Clause applies to welting, sole stitching and turn sewing machines. (Sec. 4, III, 131.)

(3) Exhibit 19, adopted June, 1901, a noninitial payment lease for the Chase lasting machine. Clause applies to welting, sole stitching, turn sewing, and metallic machines. (Sec. 4, III, 165.)

(4) Exhibit 20, adopted August, 1903, an initial payment lease for the McKay-Copeland lasting machine. Clause applies to welting, sole stitching, and sewing, pegging, metallic, and heeling machines. (Sec. 4, III, 174.)

(5) Exhibit 18, adopted August, 1901, an initial payment lease for the Ideal lasting machine. Clause applies to welting, sole stitching, and turn sewing machines. (Sec. 4, III, 156.)

(6) Exhibit 21, adopted in 1906 or 1907, a noninitial payment lease for No. 5 lasting machine. Clause applies to welting, sole stitching, turn sewing, pulling over and metallic machines. (Sec. 5, III, 185.)

(7) Exhibit 23, adopted December, 1900, an initial payment lease for the Goodyear set. Clause prohibits the use of the machine on welt shoes not welted and sole stitched,

and turn shoes, the bottoms of which are not attached by the lessor's machinery. This lease does not tie the leased machines to other than Goodyear machines. (Sec. 4, III, 207.)

(8) Exhibit 24, adopted in January, 1905, a noninitial payment lease for Goodyear machines. Clause prohibits the use of machines except on "Goodyear welts" and "Goodyear turns," which have been welted or soles attached by certain specified machines belonging to the lessor. (Sec. 4 III, 217.)

(9) Exhibit 26, adopted in 1905, an initial payment lease for full set of Goodyear machines. Clause prohibits use of machines upon other than "Goodyear welts" and "Goodyear turns," welted or soles attached by lessor's machines (Sec. 4, III, 245.)

(10) Exhibit 25, adopted January, 1905, a noninitial payment lease for the auxiliary machines of the Goodyear department. Clause prohibits the use of machines in connection with other than designated welting, sole stitching and turn sewing machines belonging to the lessor. (Sec. 5, III, 230.)

(11) Exhibit 28, adopted in 1904, a noninitial payment lease for heeling machines. Clause prohibits use with other than lessor's welting, sole stitching, turn sewing, lasting, pegging, and metallic machines. (Sec 5, III, 264.)

(12) Exhibit 30, adopted June, 1900, succeeding Exhibit 29, which did not contain this clause. The clause applies to lasting, welting, sole stitching and turn sewing machines. (Sec. 3, III, 280.)

(13) Exhibit 34, adopted May, 1911, a noninitial payment lease for metallic machines. Clause applies to lasting, welting, sole stitching and turn sewing machines. (Sec. 3, III, 316.)

(14) Exhibit 35, adopted May, 1911, a noninitial payment lease for Standard screw machine, of metallic department. Clause applies to lasting, welting, sole stitching, and turn sewing machines. (Sec. 3, III, 325.)

(15) Exhibit 45, adopted June, 1901, a noninitial payment lease for Davey pegging machine. Clause applies to lasting and metallic machines. (Sec. 5, III, 416.)

(16) Exhibit 36, adopted March, 1902, a noninitial payment lease for pulling-over machine. Clause applies to welting, sewing and stitching, and pegging and metallic machines. (Sec. 4, III, 334.)

(17) Exhibit 37, adopted January, 1905, a noninitial payment lease for pulling-over set. Clause extends to welting, stitching, turn sewing, lasting, pegging, metallic, and heeling machines. (Sec. 6, III, 343.)

(18) Defendants' Exhibit 345, adopted as early as 1907, a noninitial payment lease for pulling-over machines. (Sec. 5, V, 962.)

(19) Exhibit 38, adopted February, 1909, a noninitial payment lease for pulling-over machines. Clause extends to welting, stitching, turn sewing, lasting, pegging, metallic, and heeling machines, and is made to apply to pulling-over machines held by or for the lessee under that or any "other lease or license agreements from the lessor." (Sec. 5, III, 354.)

(20) Exhibit 39, adopted August, 1911, an initial payment lease for pulling-over machines. Clause extends only to use of auxiliary with principal machines. (Sec. 5, III, 367.)

(21) Exhibit 40, adopted about 1902. An initial payment lease for general department machines. Clause applies to welting, sole stitching, turn sewing, lasting, pegging, and metallic machines. (Sec. 4, III, 376.)

(22) Exhibit 41, adopted about 1908. Noninitial payment lease for general department machines. Clause extends to welting, sole stitching, turn sewing, lasting, pegging, and metallic machines. (Sec. 5, III, 382.)

(23) Exhibit 43, adopted about 1902, a noninitial payment lease for eyeletting machines. Clause extends to welting, sole stitching, turn sewing, lasting, pegging, metallic and heeling machines. (Sec. 5, III, 397.)

(24) Exhibit 51, adopted December, 1900, a noninitial payment lease for Gem insole machinery. Clause applies only to welting, sewing, and stitching machines. (Sec. 4, III, 445.)

(25) Exhibit 52, adopted December, 1907, a noninitial payment lease for Economy insole reinforcing set. Clause applies as to principal machines to welt and turn sewing

machines, and as to auxiliary machines, to use with Economy insole reinforcing machine. (Sec. 5, III, 453.)

(26) Exhibit 56, adopted about 1910 or 1911, an initial payment lease for repairing machine, used to repair patent leather injured in the manufacture of the shoe. Clause applies to welting, sole stitching, turn sewing, and lasting machines. (Sec. 5, III, 487.)

(27) Exhibit 57, an initial payment lease for Miller treeing machines. Clause applies to welting, sole stitching, turn sewing, lasting, pegging and metallic machines. (Sec. 4, III, 494.)

The clause, therefore, appears in six of the nine leases for lasting machines, all four of the leases for Goodyear machines, the one of the two leases for heeling machines which has been in use ever since 1904, three of the six leases for metallic machines, all five of the leases for pulling-over machines, the two leases for general department machines, one of the two leases for Gem insole machines, the one lease for Economy insole machines, and the one lease for the Miller treeing machine.

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APPENDIX E.

Table giving paragraphs in which the tying clauses appear in the lease specimens referred to in Appendix C of our brief; also in Exhibit 170.

Lease form.	Exhibit.	Additional machinery clause.	Paragraph.	Exclusive-use clause.	Paragraph.	Prohibitive clause.	Paragraph.	Right to terminate clause.	Paragraph.	Full-capacity clause.	Paragraph.
Lasting	14			Yes	7			Yes	8	Yes	4
Do	15			Yes	7	Yes	4	Yes	8	Yes	4
Lasting, McKay	16			Yes	7	Yes	4	Yes	8	Yes	4
Lasting	17			Yes	7			Yes	8	Yes	4
Lasting, Ideal	18			Yes	7	Yes	4	Yes	8	Yes	4
Lasting, Chase	19			Yes	7	Yes	4	Yes	8	Yes	4
Lasting, McKay-Copeland	20			Yes	7	Yes	4	Yes	8	Yes	4
Lasting, No. 5	21			Yes	8	Yes	5	Yes	9	Yes	5
Do	22			Yes	7			Yes	8	Yes	4
Goodyear	23			Yes	7	Yes	4	Yes	8		
Do	24			Yes	8	Yes	5	Yes	9	Yes	5
Auxiliaries	25			Yes	9	Yes	5	Yes	10		
Full set, initial payt	26			Yes	7	Yes	4	Yes	8		
Heeling	27	Yes	3					Yes	6	Yes	3
Do	28			Yes	10	Yes	5	Yes	11	Yes	5
Metallic	29	Yes	3					Yes	6	Yes	3
Do	30	Yes	3			Yes	3	Yes	6	Yes	3
Do	31	Yes	6					Yes	7	Yes	6
Do	32	Yes	3					Yes	7	Yes	3
Do	33	Yes	3					Yes	6	Yes	3

Table giving paragraphs in which the tying clauses appear in the lease specimens referred to in Appendix C of our brief; also in Exhibit 170—Continued.

Lease form.	Exhibit.	Additional machinery clause.	Paragraph.	Exclusive-use clause.	Paragraph.	Prohibitive clause.	Paragraph.	Right to terminate clause.	Paragraph.	Full-capacity clause.	Paragraph.
Metallic	34	Yes	3			Yes	3	Yes	7	Yes	3
Standard screw	35	Yes	3			Yes	2	Yes	7	Yes	2
Pulling over	36	Yes	4			Yes	4	Yes	7	Yes	4
Do	37	Yes	5	Yes	9	Yes	6	Yes	10	Yes	5
Do	38			Yes	8	Yes	5	Yes	9	Yes	5
Do	39			Yes	8	Yes	5	Yes	9	Yes	4
General department	40					Yes	4	Yes	7		
Do	41					Yes	5	Yes	9		
Eyeletting	42							Yes	7	Yes	4
Do	43					Yes	5	Yes	8	Yes	5
Clicking	44			Yes	9			Yes	10	Yes	5
Pegging	45			Yes	8	Yes	5	Yes	8	Yes	5
Do	46			Yes	8			Yes	9	Yes	5
McKay	170					Yes	4	Yes	7		
Total	34	10		20		23		34		28	

NOTE.—Exclusive use or additional machinery clause in all leases of bottoming machines except McKay sewing machines (Ex. 170).
Donham describes the character of the various leases and the differences between them (I. 5–15).
Leases without prohibitive clauses are the so-called independent leases.
As to "Right to terminate all leases" clause in Exhibits 40 and 170, see footnote, *supra*, p. 336.

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Supreme Court of the United States

OCTOBER TERM, 1917

No. 207

THE UNITED STATES,
Appellant,

v.

UNITED SHOE MACHINERY COMPANY,
OF NEW JERSEY, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

BRIEF FOR UNITED SHOE MACHINERY COMPANY, ET AL., APPELLEES

(REARGUMENT)

FREDERICK P. FISH
CHARLES F. CHOATE, JR.
MALCOLM DONALD
of Counsel for Appellees.

BOSTON
PRESS OF GEO. H. ELLIS CO
1917

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In the Supreme Court of the United States.

OCTOBER TERM, 1917.

No. 207.

THE UNITED STATES, *Appellant*,

v.

UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL., *Appellees*.

Appeal from the District Court of the United States for the District of Massachusetts.

BRIEF FOR THE UNITED SHOE MACHINERY COMPANY ET AL.

PART ONE.

INTRODUCTORY AND GENERAL MATTERS.

I. INTRODUCTORY STATEMENT.

This is a direct appeal by the United States under the Expediting Act (32 Stat. 823, c. 544; 36 Stat. 854, c. 428) from a decree dismissing its petition by the District Court for the District of Massachusetts.

The petition was filed December 12, 1911. It charged a plan or scheme to monopolize shoe machinery, and a monopoly obtained in pursuance thereof in violation of the Sherman

Anti-Trust Act (26 Stat. 209, c. 647). It prayed for the dissolution of the defendants, United Shoe Machinery Company and United Shoe Machinery Corporation, and for other relief.

The Attorney-General filed a certificate under the Expediting Act, and the court which tried the case was composed of three judges of the first circuit—Judge Putnam, Judge Dodge, and Judge Brown (R. Vol. 1, pp. 1064, 1070).

All the evidence and the witnesses were heard by the judges in open court with the exception of certain evidence relating to patents which was heard before a special examiner (R. Vol. 2). The evidence taken in open court occupied about eleven weeks.

All three judges rendered opinions agreeing that the case was without merit and that the petition should be dismissed. Judge Putnam's opinion contained a general survey of the case (R. Vol. 1, p. 1110). Judge Dodge analyzed in detail the various transactions relied on by the United States, and as to each found in favor of the defendants; he also concurred in the opinion of Judge Brown as to the validity of the defendants' leases (R. Vol. 1, p. 1127). Judge Brown considered at length the defendants' lease system and expressed his concurrence with the opinions of his associates (R. Vol. 1, p. 1160).

In accordance with the opinions of the Court a decree was entered on May 14, 1915, dismissing the bill (R. Vol. 1, p. 1188).

The evidence taken in open court has been condensed and is contained in Vol. 1 of the Record. The evidence as to patents by direction of the court was not condensed and is contained in Vol. 2 of the Record. The exhibits are found in Vols. 3 to 5. There are also a large number of physical exhibits which could not be reproduced in the record but which it is important for the Court to examine.

II. PARTIES DEFENDANT.

The petition names twenty corporate defendants and twenty-three individual defendants.

On motion of the United States the petition was dismissed against nine of the corporate defendants prior to the taking of testimony (R. Vol. 1, pp. 1061, 1062).

The corporate defendants now parties are the following:—

United Shoe Machinery Company.
United Shoe Machinery Corporation.
United Shoe Repairing Machine Company.
United Shoe Machinery Company of Maine.
United-Xpedite Finishing Company.
O. A. Miller Treeing Machine Company.
W. W. Cross & Company, Inc.
Ross-Moyer Manufacturing Company.
J. K. Krieg Company.
Booth Brothers Company.
Ellis Lacer Company.

United Shoe Machinery Company, hereinafter called the "United Company," a New Jersey corporation, incorporated in 1899, is the principal defendant. It manufactures, leases, and sells certain types of patented shoe machinery and supplies, and has specialized in machinery for making Goodyear Welt and Goodyear Turn shoes and is the owner of the trademarks "Goodyear Welt" and "Goodyear Turn."

United Shoe Machinery Corporation, a New Jersey corporation, incorporated in 1905, owns most of the stock of the United Shoe Machinery Company. It is not an operating company, and it does not manufacture, sell, or lease machinery or supplies.

The other corporate defendants are companies which con-

duct minor departments of the United Company's business. No one of these companies competes with the United Company or with any of the others. Practically no evidence was introduced as to most of them, and they may be disregarded so far as the present argument is concerned. Their business is as follows:—

The United Shoe Repairing Machine Company was organized by the United Shoe Machinery Company to take over and carry on that part of the business of the United Shoe Machinery Company which consisted in supplying machines to cobblers and others for use in repairing shoes (R. Vol. 4, P.'s Ex. 187, p. 1239).

The United Shoe Machinery Company of Maine operates as a branch of the United Shoe Machinery Company, leasing machines in certain States of the United States (R. Vol. 4, P.'s Ex. 187, pp. 1238–1239).

The United-Xpedite Finishing Company is engaged in the business of manufacturing and dealing in a heel-finishing machine known as the Xpedite Finishing Machine (R. Vol. 4, P.'s Ex. 187, pp. 1239, 1240).

The O. A. Miller Treeing Machine Company manufactures treeing machines and shoe trees on which shoes are cleaned and polished before packing (R. Vol. 4, P.'s Ex. 187, pp. 1234–1235; R. Vol. 1, pp. 97, 98).

W. W. Cross & Company, Inc., makes tacks and nails for use in shoe machines and sells practically its entire output to the United Company (R. Vol. 4, P.'s Ex. 187, p. 1233).

The Ross-Moyer Manufacturing Company, prior to the formation of the United Company, was the agent in Ohio of two of the constituent companies taken over by the United Company. It is now the agent for the service department of the United Company in Cincinnati and Chicago. It also deals in various findings and manufacturing accessories (R. Vol. 4, P.'s Ex. 187, p. 1235; R. Vol. 1, p. 34, lines 17–18; pp. 100, 101).

The J. K. Krieg Company acts as agent for the United Company in New York and sells findings and general merchandise in New York. It took over the business of a partnership of the same name which had acted as agent for two of the constituent companies prior to the formation of the United

Company (R. Vol. 4, P.'s Ex. 187, p. 1234; R. Vol. 1, p. 34, lines 15–16; pp. 92, 93, 95, lines 30 ff.).

Booth Brothers Company makes upper beading and fudge-edge machines (R. Vol. 4, P.'s Ex. 187, p. 1232; R. Vol. 1, p. 33, lines 28–32; p. 88).

The Ellis Lacer Company has been dissolved and is out of business (R. Vol. 1, p. 35, lines 17–18).

Of the individual defendants no evidence whatever was offered against the following:—

Wallace F. Robinson,
John H. Connor,
Louis A. Coolidge,
Edwin P. Brown,
Frank L. Babbott,
Henry B. Endicott,
Edmund LeB. Gardner,
John H. Hanan,
Joseph C. Kilham,
George E. Keith,
Edward N. Chase,
Rudolph Matz,
Charles G. Rice,
Alfred R. Turner,
Samuel Weil,
Frank Wood,
William Woodward,
Harold G. Donham,

except that they were at some period directors or officers of some of the corporations originally mentioned as defendants.

The only remaining individual defendants with respect to whom there is any further evidence in the record are:—

Sidney W. Winslow,
Elmer P. Howe,
William Barbour,
Edward P. Hurd,
George W. Brown.

III. THE PETITION.

1. ALLEGATIONS OF THE PETITION.

The petition makes a general charge of a combination to monopolize the entire field of shoe machinery. The principal allegations of the petition are:—

That the defendants have combined, contracted, and conspired to restrain interstate and foreign trade and commerce, and have monopolized and attempted to monopolize the same, all as hereinafter set forth . . . (R. Vol. 1, p. 990).

That for twenty-five years, last past, practically all of the boots and shoes worn by the people of the United States have been manufactured by the aid and use of several different kinds of machines. . . . The principal essential machines are:—

Lasting Machines, for lasting the uppers of boots and shoes.

Welt Sewing Machines and Outsole Stitching Machines, for attaching the upper and welt to the insole of a welt shoe, and sewing the welt to its outsole.

Heeling Machines, for preparing and attaching heels.

Metallic Fastening Machines, for preparing and inserting metallic fastenings (R. Vol. 1, p. 991).

For many years prior to February, 1899, a large number of persons and corporations were engaged in the manufacture of shoe machinery in competition with each other. The principal concerns so engaged were:—

Goodyear Shoe Machinery Company, which, with its subsidiaries, the International Goodyear Shoe Machinery Company of Maine and the Goodyear Shoe Machinery Company of Canada, manufactured 80% of the machines made in the United States for sewing the upper and the welt to the insole, and the welt to the outsole, of a welt shoe; and 10% of the lasting machines.

The Consolidated & McKay Lasting Machine Company, which manufactured 60% of the lasting machines.

McKay Shoe Machinery Company, which manufactured 70% of the heeling machines and 80% of the metallic fastening machines.

The Eppler Welt Machine Company, and its subsidiary, the International Eppler Welt Machine Company, which manufactured 10% of the machines for sewing the upper and welt to the insole, and the welt to the outsole, of a welt shoe.

The Davey Pegging Machine Company, which manufactured 75% of the pegging machines made in the United States, and which was owned and controlled by the Consolidated & McKay Lasting Machine Company (R. Vol. 1, pp. 992–3).

Early in 1899 these companies were manufacturing their machines under Letters Patent of the United States and other countries. Many of the basic patents on the principal machines owned and controlled by them were about to expire, and, in the ordinary course of events, the general public would have acquired, in the near future, the right to the free manufacture and use of such machines. *The lawful monopoly of such machines theretofore enjoyed by virtue of the patents would have come to an end*, and the system of demanding large royalties for their use would have been replaced by their general manufacture and outright sale under competing conditions (R. Vol. 1, p. 993).

The defendants, not being satisfied with the benefit *of the lawful monopolies and rights belonging to them under Letters Patent of the United States* and of other countries, *which they had enjoyed for many years, determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery*, and through unlawful combinations and agreements to exclude all others from said trade and commerce. For the accomplishment of this purpose *they conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery, and then to refuse to sell or lease any of the essential machines to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery of whatever kind necessary or useful to such manufacturer of shoes*, and thereby *to monopolize the trade and commerce therein*

among the States and with foreign countries. The various contracts, combinations, conspiracies, and acts hereinafter described were steps in carrying out the above-mentioned unlawful project (R. Vol. 1, p. 994).

That the United Shoe Machinery Company was organized in February, 1899, and, by exchange, acquired the stock of the Goodyear Company, the Consolidated & McKay Lasting Machine Company, and McKay Shoe Machinery Company, and cash was provided to purchase the capital stock of the Eppler Company and for several other purposes (R. Vol. 1, pp. 995–6).

By the means above described the defendants acquired control of the greater portion of the manufacture and the trade and commerce in the machines included in the groups of machines above described (R. Vol. 1, p. 996).

Prior to the organization of the United Company, shoe manufacturers purchasing or leasing machines from one of the constituent companies were not compelled to use exclusively the machines of any other company. The defendants, *with the intent to acquire complete control of the business of manufacturing and selling or leasing shoe machinery, discontinued the sale to boot and shoe manufacturers of each and all of the machines included in said groups* of machines, and unlawfully adopted, and put into effect, arbitrary, oppressive, and unreasonable agreements, which boot and shoe manufacturers have been required to agree to in order to obtain from said defendants any of the machines included in said groups. These agreements contain provisions not found in their former agreements, *which compel boot and shoe manufacturers leasing any of such machines from defendants to agree to use exclusively one or more of the classes of machines included in said groups of machines owned and controlled by them,* upon penalty of having all the machines included in said groups so leased to them by defendants immediately taken away. These contracts further require boot and shoe manufacturers to take each of said machines for a period of not less than seventeen years, regardless of the terms of the patents relating thereto (R. Vol. 1, pp. 996–7).

Lessees thereafter were also required to take duplicate parts at exorbitant prices; and the defendants have continually, per-

sistently, and arbitrarily enforced the provisions of said leases (R. Vol. 1, p. 997).

The defendants, in pursuance of their original purpose, inserted in and made a part of each lease and license agreement, provisions reserving to themselves the right to forthwith terminate and cancel all existing lease and license agreements between them and the boot and shoe manufacturers, if the latter should fail or cease to use exclusively, and to their full capacity, machines leased or controlled by defendants (R. Vol. 1, pp. 997–8).

The defendants have, by misrepresentation and threats, induced customers of their competitors to abandon them; have threatened that they would use their financial resources and power to secure the patronage of such competitors, and by threats have prevented others from entering into the business with them; have acquired Letters Patent for valuable inventions, and have held the same for long periods of time without using them; have offered and granted rebates to shoe manufacturers who used exclusively one or more of the machines owned or controlled by them; have bought the business of competitors and paid exorbitant prices therefor (R. Vol. 1, p. 999).

In pursuance of their purpose to monopolize the shoe machinery industry, defendants have absorbed many competitors at exorbitant prices and driven others out of business, and have deterred and prevented others from entering the business, and thus made competition with themselves practically impossible. They have acquired some fifty-eight other businesses, and have taken from substantially all, covenants in writing not to engage for long terms in commerce in shoe machinery, and have required vendors to agree that, if they shall invent or patent machines for the manufacture of boots and shoes, they will assign all such inventions and patents to the defendants (R. Vol. 1, pp. 1000–1023).

In April, 1905, the defendants organized the United Shoe Machinery Corporation, which acquired substantially all the stock of the United Shoe Machinery Company (R. Vol. 1, p. 1024).

The result of the combinations, conspiracies, and monopolies described has been enormous and unreasonable profits (R. Vol. p. 1026).

That, by reason of the unlawful contracts and combinations above described, defendants control all the large and important establishments in the United States which were formerly engaged in the manufacture, sale, and lease of machines designed and used for attaching the bottoms to the uppers of shoes, and kindred and auxiliary machines, and have acquired a monopoly of interstate and foreign trade and commerce in shoe machinery (R. Vol. 1, p. 1027).

The prayer of the petition is for dissolution and an injunction against the practices complained of (R. Vol. 1, pp. 1029–1032).

Defendants' Answer.

The defendants denied the allegations of the petition, and further answering said (R. Vol. 1, p. 1044):—

That the organization of the defendant corporations and the acquisition of the businesses of the several constituent companies "was simply the fusion of several corporations owning non-competing, complementary machines, covered by Letters Patent of the United States, into one corporation, and was made with the expectation of an increase in business, economies in administration, and decrease in expenses, and cessation of patent litigation between the companies purchased, which had been expensive to them and annoying to shoe manufacturers; which results it was expected could be attained without increase of cost to the users of machinery . . . , and that better attention to the care of the machines and assistance to the users could be afforded. . . .

"That said organization and acquisition was nothing more than the combination of various elements of machinery all relating to the same art and the same school of manufactures, for the purpose of constructing economically and systematically, and of furnishing a lessee the whole or any part of a gradually developed system of machines for use in the manufacture of shoes, and was and is in strict and normal compliance with modern trade progress."

2. THE BASIC CHARGE OF THE PETITION.

The basic charge of the petition therefore is that

1. The constituent companies having lawful patent monopolies under which they did the greater part of the business of the country in the principal essential shoe machines, viz. (a) lasting machines, (b) welt-sewing and outsole stitching machines, (c) heeling machines, and (d) metallic-fastening machines, and finding these patents about to expire, planned to extend their monopolies unlawfully and to obtain a monopoly of all shoe machinery by

(A) Combining and acquiring all concerns engaged in the shoe machinery business, and then

(B) Refusing to sell or lease any of said so-called essential machines to a shoe manufacturer except on condition that he take from them practically all other machinery which he required and that

2. The United Company carried out said plan and thereby did acquire a monopoly of shoe machinery.

The various acts specified in the petition are alleged to be only "steps in carrying out" this unlawful project and are material only if and in so far as they afford evidence of this plan and its accomplishment.

3. ATTEMPT OF THE UNITED STATES TO LIMIT SCOPE OF THE PETITION.

The United States During the Course of the Trial Admitted of Record That It Could Not Prove Its Charge of a Monopoly of all Shoe Machinery, and Attempted to Limit the Scope of the Petition to a Charge of Monopolizing Machines for Preparing and Attaching the Bottoms to the Uppers of Shoes, Eyeletting Machines and Clicking Machines.

The petition as stated above charges a monopoly of all shoe machinery, and the United States presented its direct case on this theory.

During the introduction of the case in chief for the United States, statements were repeatedly made by counsel for the United States to the effect that the petition charged a general combination to obtain a monopoly of the entire field of shoe machinery; to illustrate:—

R. Vol. 1, p. 39, lines 4–8, Mr. Gregg, of counsel for the United States, said, referring to the so-called "acquisitions," which related not only to machinery of various kinds but to supplies and findings:—

> "Our position, if the court please, is that all of these acts of acquiring the business of other concerns were all part of a plan to monopolize the shoe machinery business.
> "PUTNAM, J. All; big and little?
> "Mr. GREGG. Big and little."

Again, Mr. Gregg said, R. Vol. 1, p. 52, lines 7–9,—

> ". . . We have alleged in the petition that each and every one of these acts, all taken together, was a part of a plan to monopolize."

Again, Mr. Gregg said, R. Vol. 1, p. 113, lines 16 ff.:—

> ". . . I suppose their defence will be: 'We didn't intend to get all the business.' . . . I assume that is what it will be: 'We didn't intend to monopolize the shoe machinery business, we were not making any attempt to get it all.' And I think this conversation with the president of the company is certainly competent to show that it was their intent at that time to monopolize the shoe machinery business, that they wanted to have it all, and that that was the very purpose of the tying clauses of the leases."

Again, R. Vol. 1, p. 202, lines 1–9, Mr. Fowler said:—

> "Here is our position: this bill attacks this concern as being a monopoly, and it is alleged that they formed this combination back in 1899, and from 1899 up to the present time they have been doing various things for the purpose and with the intent of monopolizing. . . . This particular fact [a fact which Mr. Fowler urged leave to introduce in evidence] . . . tends to show the purpose of the original organization."

As during the course of the trial the evidence presented by the United States showed that the defendants not only had no monopoly of certain large classes of machinery, but that the defendants did not even manufacture and had never attempted to manufacture many classes of important machinery, especially machinery used in sewing the uppers of shoes, and that there were scores of other machinery manufacturers greater in number and capacity than were in business when the United Company was formed, the United States undertook to limit the scope of the petition.

After the closing of the case of the United States in chief, and the opening of the defendants' case, Mr. Gregg, of counsel for the United States, made the following admission (R. Vol. 1, p. 414, lines 19 ff.):—

> "If the court please, taking the whole bill together, the only charge that we make there and the only thing that we contend for is that they have monopolized machinery designed and adapted for use in the manufacture and attaching, preparation and attaching, bottoms to the uppers of shoes, the clicking machine and the eyeletting machine."

A little later, R. Vol. 1, p. 414, lines 31–33, Mr. Gregg said,—

> "We make no contention that they designed or intended to monopolize machinery used for sewing the uppers to the shoe at all."

On R. Vol. 1, p. 435, lines 7–9, Mr. Fowler said,—

> "I never have understood that the purpose of this litigation was to go further than was stated by Mr. Gregg this morning."

And again, R. Vol. 1, p. 837, lines 40 ff., Mr. Fowler said:—

> "So far as the actual monopoly is concerned, it is limited to the machines fastening the soles and the uppers together, and to the clicking machines and the eyeletting machines. Mr. Gregg says he wants to state it.
>
> "Mr. GREGG. Machines for preparing and attaching the bottoms to the uppers of shoes, and eyeletting machines and dieing-out machines, otherwise known as

clicking machines. Machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines."

A little later the following colloquy took place between the Court and counsel for the United States, R. Vol. 1, p. 839, lines 9–22:—

"PUTNAM, J. Do you admit that you don't claim a monopoly in trade and commerce, either in the United States or foreign countries, of anything except the bottoming machinery and the eyeletting machinery?

"Mr. GREGG. Machines for preparing and attaching the bottoms to the uppers of boots and shoes, the eyeletting machines and the clicking machines, and, as I stated, when I opened the case for the Government—

"PUTNAM, J. One moment. Do you admit that that is all you claim?

"Mr. GREGG. Yes, sir. We make no contention—

"PUTNAM, J. Can that go in the record?

"Mr. GREGG. Yes, sir; I am perfectly willing for that to go in the record."

Still later, and when the defendants had nearly completed their introduction of evidence, and just before the close of the case, the United States presented a request for leave to amend its petition (R. Vol. 1, p. 881; motion to amend, R. Vol. 1, p. 1101).

The proposed amendment charges only a combination to acquire a monopoly of shoe machinery used in adjusting and attaching the upper to the last, in preparing the bottom and the heel and fastening them to the upper, and in finishing the bottom and the heel of the shoe after said operations had been performed, and the claim with respect to the extent of the monopoly actually achieved was of all the principal and auxiliary machines used for adjusting and attaching the upper to the last preparatory to attaching the upper to the bottom, for preparing the bottom and heel and attaching them to the upper, and machines for finishing the bottom and heel, and clicking and eyeletting machines.

This request for leave to amend was disallowed by the trial court (R. Vol. 1, p. 1109).

These various shifts of position made by the United States during the course of the trial show its complete failure to prove its charge as made by the petition, and its attempt to succeed by making a different case.

The defendants contended below, and still contend, that the United States was required to prove its case as charged; that the defendants' defence was directed against the charge of an attempt to monopolize and of a monopoly of all shoe machinery; and that the limitation of this charge to a charge of an intent to monopolize, and a monopoly of, only a portion of the field of shoe machinery, constituted a material variance not permissible during the course of the trial.

Without waiving this contention, the defendants submit:—

(1) The United States utterly failed to prove a combination to monopolize or a monopoly of all shoe machinery.

(2) The United States admitted of record that it claimed no monopoly of all shoe machinery, and is therefore debarred from making any such charge.

(3) The United States failed to prove a combination to monopolize or a monopoly of machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines and clicking machines, to which the United States of record limited its charge (R. Vol. 1, p. 839, lines 9–22).

IV. PRELIMINARY STATEMENT.

Formation of the United Company.

The United Company was a combination of three essentially non-competing concerns,—the Goodyear Company, the Consolidated Company, and the McKay Company.

The Goodyear Company made a welter and stitcher, 16 different kinds of welt and turn auxiliary machines used in connection with the welter and stitcher, and the Ideal Lasting Machine.

The Consolidated Company made lasting machines, and through a subsidiary, pegging machines.

The McKay Company made metallic machines and heeling machines.

Shoe machines had been i vented for a comparatively short time. All of the machir es made by these companies were patented; they were superior to any other machines which had been invented and for this reason each of these three companies furnished practically all of the machines of the classes it manufactured which were then being supplied.

The Eppler Company, which made different and inferior types of welter, stitcher, and certain auxiliary machines, cannot properly be termed one of the constituent companies. Its acquisition was not considered until after the formation of the United Company was agreed upon. Its machines were inferior and unsuccessful commercially, and as a factor in the shoe trade had no significance or standing. Its machines further infringed the Goodyear Company's patents, and suits brought by the Goodyear Company were pending to prevent their use. The Company was acquired for the purpose of settling this litigation and enabling the United Company to start business free from patent litigation.

Alleged Competition in Lasting and Welt Machines.

The United States contends that there was competition between the Ideal Lasting Machine of the Goodyear Company and the lasting machines of the Consolidated Company, and between the welt machines of the Goodyear Company and the Eppler machines. It contends that the elimination of this competition was a motive for the formation of the United Company, or, if it was not a motive, that it made the formation of the company inherently unlawful. This contention is so unsubstantial as to show the utter lack of evidence found by the United States to support its contentions.

None of the Consolidated Company's lasting machines was adapted for use or was used on women's welt shoes. The Ideal machine of the Goodyear Company was adapted for use and used almost exclusively on women's welt shoes. It was possible to use it on men's welt shoes and it was so used by a very few shoe manufacturers, but it was not adapted for such use, which was outside the field for which the machine was intended and in which it was commercially successful, and the total use on such shoes was insignificant. The lasting machines of these two companies, therefore, as the District Court found, did not compete in any practical sense.

Furthermore, the Ideal machine was only one out of 19 machines manufactured by the Goodyear Company, and its entire use on men's welt shoes which is the only use as to which it can possibly be contended it competed with the Consolidated Company's machines did not amount to more than .03 of 1 per cent. of the total shoes made. Obviously the Consolidated and Goodyear Companies were not combined to eliminate a competition which for practical purposes did not exist, but for the purpose of consolidating the welt machines of the Goodyear Company, which constituted its real business, and the lasting machines of the Consolidated Company.

The Eppler machines attached the bottoms of the soles by a welt as did the Goodyear machines, but by a different method. The company was unsuccessful, and only 30 or 40 of its welters were in use, although it had been in business since the early 90's. Its machines were doomed to failure, and are now en-

tirely obsolete. Furthermore, its machines infringed the Goodyear patents and their use would doubtless have been enjoined as a result of pending patent litigation. No competition of the slightest significance was eliminated by the acquisition of the Eppler Company and its patents. It was obviously acquired, as the defendants testified, to terminate the pending patent litigation.

Purposes for which the United Company was Formed.

The United Company was formed:—

1. To enable the United Company to provide a better service with its machines than could be furnished by either of the three constituent companies operating separately;

2. To economize in the manufacture of the machines and to standardize the machines and their parts;

3. To develop the manufacture of Goodyear welt shoes by the development and invention of new machines and new methods and thus reduce the cost of manufacturing this kind of shoe, which was admittedly the best shoe made;

4. To increase the productive efficiency of the machines of the constituent companies.

It was possible to carry out these purposes successfully by the combination of these various types of machines in a single company, which could thus adapt for use together the different kinds of machines each of which was used in the manufacture of a pair of shoes, could care for them and otherwise furnish service for them at less cost, and through its enlarged resources could undertake the inventive work necessary to improve the machines and develop new machines for operations then performed by hand, and in other ways perfect the art of shoe machinery.

The Extent to which these Purposes have been Carried Out.

That the United Company was formed for the above purposes is proved by the fact that the United Company at once undertook to carry them out and has succeeded to an extraordinary extent.

It has developed the most remarkable and efficient service which consists of furnishing skilled mechanics to repair machines, instructing operatives in their use, maintaining stations in the manufacturing districts where duplicate parts are kept for immediate use and where its skilled mechanics can be obtained, and generally acting as machinery engineers for shoe manufacturers. All this service it furnishes free of cost. Such service is essential to the effective operation of a shoe factory.

It has standardized the parts of its machines and economized by manufacturing them in a single factory.

It has undertaken the improvement of the machines manufactured by the constituent companies and the invention of new machines with such success that it has greatly improved practically every machine which was manufactured by the constituent companies, and it has developed during a period of only twelve years 150 new machines, 39 of which do work previously done by hand.

It has reduced charges for its machines materially by eliminating initial payments charged by the constituent companies, by reducing royalties in some instances and by furnishing a large number of new auxiliary machines without charging additional royalty.

By its reduction in charges and the increased efficiency of its machines it has reduced the cost of manufacturing, and thereby greatly assisted the manufacture of Goodyear welt shoes, which are admittedly the best shoes made and are the most satisfactory to the public.

As a result of the increased efficiency of its machines the new machines it has developed, and the service it renders, it has decreased the cost of manufacturing shoes by more than the royalty it charges. The machines previously put out by the constituent companies have been so improved that most of them now produce more than 50 per cent. more shoes per year than they did in 1899. Manufacturers have not only benefited by a reduction in royalties, but, owing to the increased efficiency of the machines, they are able to economize in factory space and to effect large savings in materials. Operatives on machines, who are generally piece-workers, produce over 50 per cent. more work, and thus, although the piece wages have been reduced, earn considerably more money.

The Patents.

The constituent companies' patents were not about to expire at the date of the formation of the United Company, as alleged by the United States, and their early expiration was, therefore, not a reason for the formation of the United Company, as alleged.

The United Company's machines have always been protected by patents and are more strongly protected to-day than ever before.

The Leases.

The constituent companies always leased and never sold machines. The leasing system had been adopted at the very beginning of the shoe machinery industry, because, as a method of furnishing these complicated and expensive machines, it proved most satisfactory to the shoe manufacturer and to the machinery manufacturer. The system was firmly established at the date the United Company was formed.

The clauses in the United Company's leases to which the United States objects are of the same character as those employed by the constituent companies. They are essential to enable a shoe manufacturer to lease machines under the remarkable lease system under which the United Company furnishes machines.

Under this lease system the United Company installs machines in a shoe manufacturer's factory without initial payments, charges a royalty based upon the number of shoes on which they are used, keeps the machines in repair, instructs operatives in their use, and acts as engineer for the shoe manufacturer.

The United Company has not changed the essentials of the lease system as employed by the constituent companies. The modifications it has made have been adopted from time to time to make its leases consistent or to enable it to offer better terms to lessees. On the whole it has relaxed the provisions employed by the constituent companies. The principal changes are as follows:—

1. It has eliminated the clauses contained in certain leases of the constituent companies requiring a shoe manufacturer to take additional machines if needed for his work and thus to use the lessor's machines of the kind leased exclusively.

2. It has developed and acquired various miscellaneous machines of over 170 different kinds which it has included in its General Department and which machines it has sold at the option of the shoe manufacturer, thus departing from the practice of the constituent companies, which only leased machines.

3. Where a series of different kinds of machines adapted for use together in the manufacture of shoes are used as a series, each machine returns a greater royalty and the cost of furnishing service for each machine is, of course, less. The United Company has permitted a shoe manufacturer so using a series of machines to share in the savings thus effected by granting a reduced rate to a shoe manufacturer taking machines to be used as a series. It has accomplished this in most instances by adopting alternative forms of lease under which it has eliminated the initial payments previously charged by the constituent companies and has, of course, provided that the machines so taken for use as a series shall be used as agreed upon.

The United Company has never enforced its leases arbitrarily. It has never attempted to enforce them so as to exclude competitors, nor has it adopted any provisions adapted or intended to accomplish this result.

The clauses in the leases are only such as are essential to the maintenance of this lease system, which is so highly advantageous to shoe manufacturers.

The Acquisitions.

The United Company has never acquired competitors. It has from time to time acquired:—

(*a*) Concerns manufacturing supplies such as tacks, nails, brushes, peg-wood, etc., which it did not at the time manufacture itself, but wished to furnish shoe manufacturers;

(*b*) Patented machines which it did not manufacture at the time;

(c) Patents or patented machines to enable it to improve its own machines and to settle patent litigation which stood in the way of the development of its machines.

There is absolutely no foundation in the record for any charge that the United Company's success has been due to the acquisition or elimination of competitors. On the contrary, it has declined to purchase its largest competitors, though offered to it for sale. While there were practically no competitors in the field in 1899, there are now a considerable number of good-sized competitors.

Furthermore, the United Company has made no attempt whatsoever to acquire all concerns engaged in the shoe machinery industry as alleged in the petition. On the contrary, it has declined to purchase over 75 concerns engaged in manufacturing machines and supplies and has declined to purchase hundreds of patents.

In making such acquisitions as it has made it has taken from certain of the vendors such covenants not to compete or to assign future inventions as are usual and proper in such cases. There is not the slightest foundation for a charge that such covenants were taken in pursuance of any plan to acquire a monopoly thereby.

Alleged Unfair or Monopolistic Acts.

The United States utterly failed to prove its allegations of unfair and monopolistic acts. The record shows that the United Company during the entire course of its history has acted with fairness both to competitors and lessees. As the District Court found, it has been above reproach in these respects.

The Alleged Monopoly.

The United Company has no monopoly of all shoe machinery. As admitted by the United States, there are large classes of machines which it does not even manufacture.

When the United Company was formed, the Goodyear Company, the Consolidated Company, and the McKay Company (which were combined into the United Company) were

not in competition, and each by reason of its patent monopolies furnished practically all the machines used in the country of the type in which it specialized. The machines as to which monopoly is charged are these same machines much improved by the inventions of the United Company and certain additional machines most of which have been since invented and first put upon the market by the United Company. They are all strongly protected by patents. The United Company does not furnish all the machines of these kinds now in use, as its constituent companies did, as there are now a number of competitors. It does, however, furnish a large proportion of such machines used by shoe manufacturers for the same reason that the constituent companies were successful; namely, because its machines are admittedly superior and in addition because it furnishes service with its machines of a kind furnished by no other machinery manufacturer; because it has consistently reduced its charges for machines; because it has without cost to its lessees substituted new and improved machines as rapidly as they were invented for machines then outstanding and so assured shoe manufacturers of having the most modern and up-to-date machinery; and because in many other ways it has treated its lessees with the utmost liberality.

The District Court found, and the record shows, that the United Company's success has been due to the foregoing causes. The record completely fails to show that such success has been due to the acquisition of competitors or to the adoption of clauses in its leases for the purpose of excluding competitors.

The record utterly fails to sustain the allegations of the petition that the defendants unlawfully planned to acquire all concerns engaged in the shoe machinery business and to refuse to sell or lease machines of the kind manufactured by the constituent companies unless the shoe manufacturer took all other kinds from it, or that the United Company acquired any monopoly in pursuance of any such plan.

The record further fails to show any unlawful or arbitrary acts whatsoever upon which any charge of unlawful monopoly or restraint of trade can be founded.

V. SPECIAL CONSIDERATIONS APPLICABLE TO THE PRESENT CASE.

In determining the questions involved in the present case the following considerations must be borne in mind:—

I. PRESENT CASE UNIQUE IN THAT (A) SHOE MACHINERY BUSINESS IS DOMINATED BY PATENTS, AND (B) NO COMPETITION PREVIOUSLY EXISTING WAS ELIMINATED.

The present case is unique in two important particulars: no case resembling it has ever before been decided by this Court under the Sherman Act, except the case of *United States* v. *Winslow*, 227 U. S. 202, in which the formation of the present United Company was considered and held lawful. (*A*) In the first place, in every case heretofore decided in which a monopoly has been charged the business has been one in which any one having sufficient capital might freely engage on equal terms. In the present case the product which the defendant is accused of monopolizing is protected by dominating patents which restrict competitors to the marketing of machines of a different and inferior type. (*B*) In the second place, in every other case in which a monopoly has been charged the defendant has obtained a large or dominating share of the business previously carried on by various competitors. In the present case at the time the United Company was formed, the constituent companies each did the greater portion of the business in its particular field, under lawful patent monopolies, and the United Company merely took over and continued this business. and did not eliminate any competition.

Industry Dominated by Patents.

A. In the present case the machines which the defendants is accused of monopolizing are protected by dominating patents so that competitors cannot manufacture them. There is a natural presumption that the general use of the defendants' patented machines and their success is due to their superiority over other types of machines if such exist, and not to any illegal restraint of trade. As said of these machines by the Court in *United States* v. *Winslow*, 227 U. S. 202 (p. 217),—

> "The machines are patented, making them is a monopoly in any case, the exclusion of competitors from the use of them is of the very essence of the right conferred by the patents, *Paper Bag Patent Case*, 210 U. S. 405, 429, **and it may be assumed that the success of the several groups was due to their patents having been the best.**" (Black letters ours.)

The shoe machinery industry is not one in which any person may normally engage on equal terms. It is of very recent origin. The machines do work until recently done by hand. These machines have been originated and created and are now manufactured under the protection of lawful patent monopolies. No one can enter or engage in this business successfully unless he holds patents enabling him to make machines superior to or as good as those already in the market. In such an industry no competition on equal terms is possible. The machines offered by two different manufacturers must necessarily differ, as neither can manufacture machines of the type made by the other, and inevitably one manufacturer will have an advantage due to the superiority of the patented inventions under which his machines are manufactured. It is, therefore, natural and to be expected that in such an industry the machines of one manufacturer will be superior to other machines and will be generally used by shoe manufacturers. That one manufacturer will have most, if not all, of the business is as natural as it was that the Bell Telephone Company, after the invention of the telephone, was the only company manufacturing telephones.

No Previous Competition Eliminated.

B. In the present case we do not find that previously to the formation of the United Company there were numerous competitors engaged in furnishing machines in competition to shoe manufacturers and that upon the formation of the United Company these competitors were eliminated and the United Company took over their business. In such a case there might be a natural presumption of unlawful purpose or that unlawful methods were used to acquire the monopoly which would require proof to the contrary. In the present case, however, the petition itself alleges and the record establishes that the constituent companies were essentially non-competing, and that they had lawful patent monopolies under which they did the greater part of the business of the country in the machines which they manufactured. The United Company in taking over these non-competing companies therefore lawfully acquired patent monopolies under which it did the greater part of the business of the country in these machines. It did not eliminate competitors formerly in the field; it did not create a monopoly. It merely continued a business already lawfully existing. The monopoly charged in respect to these machines is the same monopoly which the petition alleges and the record establishes was lawfully held by the constituent companies at the time of the formation of the United Company. Indeed, far from showing that the United Company has acquired a monopoly in shoe machinery, the record shows that on December 12, 1911, when the petition was filed there were more and larger shoe machinery manufacturers engaged in business in competition with the United Company than existed in 1899 outside its constituent companies.

2. CONDITIONS PECULIAR TO THE INDUSTRY MUST BE CONSIDERED.

The shoe machinery industry has special characteristics which differentiate it strikingly from any other industry in the country. These characteristics existed when the United Company was formed, and its methods of business were necessarily adapted to meet them. In considering whether the defendants' methods were "usual," "normal," and "orderly," whether they were entered into "with the legitimate purpose of reasonably forwarding personal interest and developing trade," or "on the contrary were of such a character as to give rise to the inference or presumption that they had been entered into or done" with unlawful intent (*Standard Oil Case*, 221 U. S. 1, 58), it is essential to bear in mind constantly the particular conditions with which the defendants dealt. The test in the present case is not what would be normal, reasonable and legitimate in the tobacco or cotton goods business, but solely what was normal, reasonable and legitimate in dealing with the conditions peculiar to the shoe machinery industry.

Some of the most striking characteristics of the shoe machinery industry are as follows:—

1. A great variety of different machines are used in the manufacture of each shoe. Thus on certain classes of shoes over 100 different operations are performed by different machines (Defs.' Ex. 235, R. Vol. 5, pp. 531–671).

There is also a great variety of types of shoes made, such as McKay sewed shoes, in which the upper is united to the sole by a seam running through both outsole and insole inside the shoe; the welt shoe, in which a narrow strip of welt is attached to the upper and insole, and the outsole then attached to the welt so that the foot does not rest on the seams which attach the sole; the turn shoe, which has a single sole to which the upper is sewed while the shoe is inside out, the shoe being then turned during the process of manufacture; the pegged shoe, in which the sole is attached by wooden pegs; the nailed shoe in which it is attached by nails; the Standard

Screw shoe, in which it is attached by screws; and also various modifications of these types, such as the mock welt. Each type of shoe requires to a large extent different machines.

In addition there are various styles of each type of shoe and new styles are constantly developing. Thus we have men's and women's shoes, low and high-heeled shoes, slippers, pumps, laced and button shoes, high-legged shoes and low shoes, bull-dog toes, shoes with different kinds of insoles, shoes made of different materials such as calf, kid, patent leather and canvas, and a great variety of other styles. Many of these styles require certain special machines for their manufacture.

The result is that a great variety of machines are required in the shoe trade. The United Company, which has specialized in bottoming machines and which does not manufacture any machines for sewing the uppers of shoes, and which manufactures and furnishes only from 30% to 50% of the total number of machines used in the ordinary factory, nevertheless makes over 300 different kinds of machines.

2. The shoe machinery business, as stated above, is of recent origin. Previously to 1850 or 1860 shoes were made almost entirely by hand. The development of shoe machinery began about 1863, the McKay Sewing Machine being the first important machine (R. Vol. 1, p. 521, lines 15–17). The various machines have been invented and developed gradually from that date. The Goodyear Welt Machines ran back to 1870 or 1868. They were greatly improved about 1888. However, in 1899, when the United Company was formed, welt shoes constituted only about 10% of the total number of shoes made. Since 1899 the United Company has greatly improved its welter and stitcher, and has developed 22 new welt auxiliary machines and 6 new turn auxiliary machines (*infra*, pp. 86, 428). Lasting machines date practically from 1890. In 1899 they were only partially developed, and half the shoes made were still lasted by hand (R. Vol. 1, p. 401, lines 14–30; p. 403, lines 19–32). The United Company, since its organization, has invented and put out 150 new machines (*infra*, p. 188).

Practically all of these machines have been at all times patented. In the continuous patent development of the industry the machines in use have given place to new and im-

proved machines, which do better work and have greater capacity, and new machines to take the place of hand work have been developed with the result that the best machines available, the machines which manufacturers demand and use, have at all times been effectively protected by patents (*infra*, pp. 215–230).

3. From the very beginning of the industry the principal shoe machines have been leased and not sold, the lessor depending for his return on a royalty of a certain specified sum for each pair of shoes on which the leased machine was used. Originally an initial payment was also charged to cover the cost of installing the machines and instructing operatives, but this has since been eliminated largely by the United Company.

Under this lease system the entire industry of manufacturing shoes by machinery was created and developed. It was the system under which the constituent companies furnished all their machines, at the time the United Company was formed. It had been adopted because it was found most satisfactory to the shoe manufacturer, and best suited to increase the use of the machines, and, consequently, the return to the shoe machinery manufacturer; in other words, because it was best suited to the conditions of this particular industry.

Under this system the shoe manufacturer is not obliged to invest his capital in machinery. He is, therefore, able to do a far larger business on a limited amount of capital, and his money is not tied up in machinery, which depreciates rapidly, and on which, as the testimony shows, he cannot borrow money. The lease system further enables comparatively poor men of small capital to enter the business, and thus extends the use of the machinery manufacturer's machines. The royalty payments made by the shoe manufacturer, being based on the amount of use to which the machines are put, are adjusted to the amount of business which the shoe manufacturer does. Owing to the rapid development of shoe machinery, the machines not infrequently become obsolete in a few years. If a shoe manufacturer purchased his machines outright, he might thus suffer a large loss. Under the lease system the machinery manufacturer takes this risk and not the shoe manufacturer. The principal shoe machines are extremely delicate and need constant adjustment and repairs.

Under the lease system the machinery manufacturer owns the machines, and his return being based on their use, he is interested in maintaining them in proper adjustment and repair, and he is far better qualified to give this service than is the shoe manufacturer.

For a full statement of the reasons for the adoption of the lease system, see *infra*, pp. 248–253.

4. As we have stated, a large number of different machines are used in the manufacture of each shoe. In the economical management of a shoe factory the shoes flow from one machine to another in a continuous stream, and when an important machine in the line breaks down, it interrupts this flow and, therefore, not only stops work on that machine, but also stops work on all machines coming after it in the line, and as to continue operating machines preceding it in the line would merely accumulate uncompleted work which could not be finished, it likewise stops work on those preceding machines. The capacity of shoe machines is so large that most shoe manufacturers require only one machine of certain kinds. The predicament of a shoe manufacturer, one of whose machines breaks down, is obviously very serious, and his loss is heavy unless he can obtain prompt and efficient repairs. The production of his entire factory may cease, and he will be unable to keep his contracts to deliver shoes. Furthermore, his operatives, who work by the piece, will earn nothing, and the lessors of machinery, the use of which is thereby prevented, will get no royalty.

It is, therefore, of the utmost importance that each machine in the line be well constructed and well cared for, so that it will not break down or get out of adjustment, and it is furthermore of the utmost importance that a machine be repaired at once if it does break down or get out of adjustment, so that the work will be interrupted for as short a time as possible.

The advantages of a well-constructed line or series of machines which receive proper repair service are especially pronounced in respect to the principal bottoming machines such as welters, stitchers, and lasting, metallic fastening and heeling machines, which perform delicate and difficult operations, handle material like thread, wire, and nails, and which

themselves are necessarily delicate machines, having a large number of moving parts liable to get out of adjustment or repair.

Furthermore, the machines are so complicated, and the variety of machines so great that the ordinary shoe manufacturer, who does business on a comparatively small scale, and even the large manufacturer, cannot afford to keep in his employ skilled mechanics acquainted with the intricacies of all his machines, nor can he afford to keep on hand the great variety of duplicate parts which may at any time be required for repairs and replacements. This repair service to be effective must be furnished by the shoe machinery manufacturer, who can do it on a large scale and who can maintain skilled mechanics and a stock of repair parts in or near the various shoe centers.

For a statement as to the importance of an efficient series of machines, and of an adequate service, see *infra*, pp. 171–187, 334–343.

5. Each machine in the line or series of machines must also be so organized as to operate efficiently upon the shoe in the condition in which it has been left by the preceding machine, and so as to leave the shoe in condition to be operated on by the succeeding machines. In other words, the important machines to work effectively must be adapted for use together. The machines all co-operate in a single continuous process and constitute for practical purposes parts of a single machine rather than distinct and independent machines. It is as important that each machine of the series be adapted to use with the other machines of the series, and be well constructed and maintained in proper repair, as it is that each part of a single machine be so adapted, constructed, and maintained. If an outside principal machine not adapted for use with the other principal machines of the series is interjected into the series, both the quality of the work and the speed of the machines are seriously interfered with (*infra*, p. 339).

6. Most shoe manufacturers are men of comparatively small capital, who operate on a small scale. The United Company in 1911 had over 1,000 lessees, about half of whom made less than 300 pairs of shoes per day (R. Vol. 1, pp. 454–455).

The foregoing are the conditions with which the defendants were dealing, and the various transactions must be judged in view of these particular conditions. What would be legitimate or normal in some other business—for instance, the cotton machine business or the steel business—would not be a test of what was legitimate or normal in the shoe machinery business.

3. TRANSACTIONS ARE MATERIAL ONLY IF THEY PROVE THE CHARGE OF THE UNITED STATES.

The petition charges a plan formed in 1899 and carried out by a series of steps or acts extending over a period of twelve years. An immense number of transactions covering the United Company's conduct of its business and the acts of its officers and agents during this entire period have been put in evidence. We believe the record is barren of any wrongful incident. However, if the record showed that during this extended period there were sporadic instances in which some agent or officer of the United Company exceeded his rights or some agreement was entered into not necessary for the protection of the company's rights or the development of its business, such sporadic instances would not be sufficient to show a plan to monopolize such as is charged by the petition, nor would such acts by themselves be sufficient to accomplish a wrongful monopoly as charged by the bill.

In other words these various transactions are material only in so far as they prove the charge of the petition, viz., that they were steps in carrying out the alleged plan

(1) to acquire all concerns engaged in the shoe machinery business, and then

(2) to refuse to sell or lease any so-called essential machinery to a shoe manufacturer except on condition that he take from them practically all other machinery which he required.

VI. THIS CASE WAS HEARD ORALLY, ALL MATERIAL TESTIMONY INTRODUCED BY THE UNITED STATES WAS CONTRADICTED BY THE DEFENDANTS' TESTIMONY, THE RECORD IS BEFORE THIS COURT IN A CONDENSED FORM, AND THE FINDINGS OF FACT BY THE DISTRICT COURT WHICH HEARD THE WITNESSES SHOULD BE ACCEPTED BY THIS COURT UNLESS MANIFESTLY WRONG.

1. THE LAW.

While an equity appeal brings to the Appellate Court questions both of law and of fact, the general principle has nearly always been recognized in equity appeals, whether the evidence was taken in the court of first instance by deposition or by oral testimony, that the findings on matters of fact of the lower court are presumptively correct and should not be reversed on appeal unless manifestly wrong.

Dade v. *Irwin*, 2 How. 383, 391, per Story, J.
Hewitt v. *Campbell*, 109 U. S. 103.
Lawson v. *U. S. Mining Co.*, 207 U. S. 1, 11, 12.
United States v. *Marshall*, 210 Fed. 595, 597 (C. C. A., 8th Circ.).
Tobey v. *Kilbourne*, 222 Fed. 760, 763 (C. C. A., 9th Circ.).
American Rotary Valve Co. v. *Moorehead*, 226 Fed. 202 (C. C. A., 7th Circ.).

Since the establishment of the Circuit Courts of Appeals, equity appeals have generally come before this Court after the decision of two courts below, and the rule has long been estab-

lished that the concurrent findings of two courts on questions of fact would not be reversed in this Court except in a case of manifest error.

Dun v. *Lumbermen's Credit Asso.*, 209 U. S. 20, 24, and cases cited.
First National Bank v. *Littlefield*, 226 U. S. 110.

The attitude of this Court, under the old rules, when findings of only one lower court were before it, is shown by the cases above cited.

The adoption of the new equity rules, making it the general practice to hear evidence in equity cases orally in open court, has materially changed the situation, and greatly increased the force of the presumption in favor of the trial court's findings of fact. Authorities everywhere are agreed that where the testimony in an equity case is given by witnesses in open court, with the consequent opportunity for the trial judge to see and hear the witnesses and judge of their character, bias, and credibility, this circumstance, at least on any point on which there was conflicting testimony, adds greatly to the weight which should be given to the findings of the trial judge; and many strong courts have held expressly or in effect that, whether or not the upper court would have reached the same conclusion from the printed record, findings of the trial court made under such circumstances should not be set aside on appeal if there was any evidence to justify the finding.

Espenschied v. *Baum*, 115 Fed. 793 (C. C. A., 7th Circ.).
Finlayson v. *Barrows*, 221 Fed. 936 (C. C. A., 5th Circ.).
Tobey v. *Kilbourne*, 222 Fed. 760 (C. C. A., 9th Circ.).
Nichols v. *Elken*, 225 Fed. 689 (C. C. A., 8th Circ.).
Brookheim v. *Greenbaum*, 225 Fed. 763 (C. C. A., 2d Circ.).
Gibson v. *American Graphophone Co.*, 234 Fed. 633 (C. C. A., 2d Circ.).
Gutlon v. *Marcus*, 165 Mass. 335 (per Holmes, J.).
Dickinson v. *Todd*, 172 Mass. 183.

Elmstedt v. *Nicholson*, 186 Ill. 580, 584.
Nichols v. *Hoxie*, 33 R. I. 77, 78, 81.
Shepard v. *Shepard*, 164 Mich. 183, 198.
Prötzman's Executor v. *Joseph*, 65 W. Va. 788, 789.
Khoo Sit Hoh v. *Lim Thean Tong*, (1912) A. C. 323, 325.
Smith v. *Land, etc., Corporation*, 28 Ch. Div. 7.
In re *Wagstaff*, 77 L. J. Ch. 190, 192.
Duffin v. *Duffin*, 44 Ch. Div. 76, 83.

In *Dickinson* v. *Todd*, supra, the Court said (p. 184):—

"An appeal in equity brings to the appellate court questions of fact which arise upon the record, as well as questions of law. But the practice which has long prevailed in Massachusetts of presenting the testimony in suits in equity orally instead of in writing has materially changed the effect of appeals in such suits upon questions of fact. Under the old practice of presenting all the testimony by deposition, the appellate tribunal had before it the evidence in the same form as when it was considered by the lower court. But under the present system the judge who sees and hears the witnesses has a great advantage in the search for truth over those who can only read their written or printed words. For this reason the rule has long been established that upon an appeal from a decree of a judge in equity upon questions of fact arising on oral testimony heard before him, his decision will not be reversed unless it is plainly wrong."

In *Brookheim* v. *Greenbaum*, supra, the Court said (p. 763):—

"The judge had the witnesses before him and is much better able to judge of their credibility than a court which sees only their statements on paper. We should not reverse his finding upon a pure question of fact, where the evidence justifies the finding, even if we might have reached a different conclusion upon the evidence."

In *Tobey* v. *Kilbourne*, supra, the Court said (p. 763):—

"It is the established rule that the findings of the trial court in a suit in equity must be taken as presumptively correct, and that unless an obvious error has intervened in the application of the law, or some serious or important

mistake has been made in the consideration of the evidence, the findings will not be disturbed by the appellate court. This rule is especially applicable in a case in which, as here, the testimony was taken in open court, where the trial court had the opportunity to observe the demeanor of the witnesses and their manner of testifying, and the appellate court has before it only a condensed printed statement of the evidence as it is presented under the new equity rule. Thorndyke v. Alaska Perseverance Mining Co., 164 Fed. 657, 90 C. C. A. 473; Brandt v. United States, 198 Fed. 449, 117 C. C. A. 208; Harper v. Taylor, 193 Fed. 944, 113 C. C. A. 572."

In *Smith* v. *Land, etc., Corporation*, supra, Fry, L. J., said (p. 17):—

"The second question is whether the purchasers purchased on the faith of that representation. The learned Judge has found that they did. On that question I feel the same difficulty as Lord Justice Bowen, and on the evidence as read before us I should have felt inclined to come to the conclusion that the contract was not induced by that representation; but as Mr. Justice Denman, who saw and heard Alderman Knight, was satisfied with his evidence, I cannot give my voice for reversing his decision."

In *Gutlon* v. *Marcus*, supra, the Court said (p. 335):—

"The ground of the bill is a fraudulent conspiracy. For proof it depends wholly upon oral testimony, and the judge who heard and saw the witnesses was not convinced by them. On the well known rule by which this court is governed in dealing with such evidence on appeal, we hardly need to go further to show that the plaintiff cannot prevail."

Presumably one of the most important objects sought to be secured by the change in the usual method of hearing equity cases, which was introduced by the new equity rules, was this very advantage in getting at the truth which would result from affording the trial court an opportunity to see and hear the witnesses on contested issues of fact and judge from their appearance and demeanor what weight and value should be given to their testimony. It was undoubtedly assumed that

under this practice and in accordance with the well-established rule the Federal Appellate Courts would give due weight to the advantage thus afforded to the trial judge and would not undertake to reverse his findings on conflicting testimony unless clearly unwarranted by the evidence before him. This is indicated by the provision in Rule 75 that the "evidence to be included in the record shall not be set forth in full, but shall be stated in simple and condensed form," and that as a general rule the testimony of witnesses shall be stated only in narrative form. This provision is plainly adapted to simplify very greatly the labors of the Appellate Court, provided its inquiry is in general to be limited to the question whether there was evidence to justify the findings and to the questions of law arising on the facts found; but it would place the Appellate Court at a further disadvantage as compared with the trial court if the Appellate Court were expected to try all the facts *de novo* without the strongest possible presumption in favor of the findings of the court below. It is impossible to escape the conclusion that this rule was adopted in recognition of the fact that it would serve no useful purpose to set forth all the evidence in full, for the very reason that the findings of the judge who heard the witnesses ought not to be set aside if there was evidence to support these findings.

This rule that the finding of a trial court which hears oral testimony should be accepted, if there is any evidence to sustain it, was expressly recognized in the recent case of

Adamson v. *Gilliland*, 242 U. S. 350,

a patent case heard by the District Court on oral testimony. The practical rule was said by the Court to be—

> ". . . that so far as the finding of the master or judge who saw the witnesses 'depends upon conflicting testimony, or upon the credibility of witnesses, or so far as there is any testimony consistent with the finding, it must be treated as unassailable.' *Davis* v. *Schwartz*, 155 U. S. 631, 636."

2. STRONGEST POSSIBLE REASONS IN PRESENT CASE FOR ACCEPTING FINDINGS OF FACT BY DISTRICT COURT UNLESS WHOLLY UNWARRANTED.

In the present case there are the strongest possible reasons why the findings of fact of the District Court should be accepted as decisive unless shown to be wholly unwarranted by the evidence.

Testimony Heard Orally.

1. All of the testimony was heard in open court with the exception of certain technical testimony relating to patents. The District Court, therefore, had a full opportunity to judge of the credibility of the witnesses.

Testimony Disputed and Witnesses Biassed.

2. Every issue material to the present case as to which the United States introduced testimony was disputed by the defendants. The witnesses for the United States whose testimony was material to these issues, outside of certain officials of the United Company, were practically all hostile to the United Company. The extent of their prejudice or bias, the credibility of their testimony, and the weight, if any, to be given to it, are questions which can far better be determined by the District Court which heard the testimony and observed the witnesses than it can be by the Appellate Court upon a consideration of a condensed printed record.

The United States, as the District Court observed, made "efforts which may fairly be described as extraordinary" (R. Vol. 1, p. 1152) to bring before the court all persons who felt or expressed any grievance against the United Company. Thus, the witnesses for the United States consist principally of the following classes:—

(*a*) Competitors of the United Company. These include R. H. Long, who manufactures a complete set of shoe machinery; J. J. Doidge, manager of Long's Company; C. A. Hamel,

who puts out a complete line of machines; Edwin A. Webster of the Haverhill Shoe Machinery Company, which puts out a complete line of machines; George W. Maloy, Charles S. Johnson, and John Cavanaugh of the Boylston Manufacturing Company, a competitor of the United Company; Frank W. Merrick, president, and Clarence S. Luitweiler, treasurer, of the Union Lockstitch Company; Lorenze Muther of the Peerless Machinery Company, which manufactures eyeletting machines, tip press and tip perforating machines, cementing machines, folding machines, and others; Nelson H. Seelye, who manufactures dieing-out machines; Solomon M. Cutter, who was general manager, and James N. Darrah, director and chairman of the executive committee, of the Standard Shoe Machinery Company, which manufactured a full line of bottoming machinery until it went out of business in 1901; Charles H. Morse, of the Fifield Shoe Machinery Company, which manufactured some fifty shoe machines; Alex Stone, export manager for the Atlas Works, of Leipzig, Germany, which makes a complete line of shoe machinery; William F. Donovan, president of the Atlas Tack Company, manufacturers of eyelets; all of which concerns were competitors of the United Company.

(*b*) Inventors or shoe machinery manufacturers who had endeavored to sell or entered into negotiations to sell out to the United Company and whose offers had been declined. These include Harry E. Cilley, George H. Clark, Zotique Beaudry, and Joshua S. Holt; also the following-named under paragraph (*a*), —R. H. Long, Frank W. Merrick, Clarence S. Luitweiler.

(*c*) Lessees who had violated their agreements with the United Company, or other persons with whom the United Company had had litigation or disputes. These include George R. Harsh; John E. Williams; William A. Hogan; S. Burton McNamara; Peter Tessier; Frank R. Hilliard; Ernest Bottomley; Irving A. Hadley; George A. Learned; Frank Morrison; Charles G. Ross; Abram Sochat; Herbert E. Chase; Frederick W. Herrick; Ira J. Webster; Thomas H. Shinn; Frederick W. Curtis.

(*d*) Members of the Shoe Manufacturers' Alliance, an organization of large shoe manufacturers opposed to the United

Shoe Machinery Company. This Alliance consisted of Jackson Johnson of the Roberts, Johnson & Rand Shoe Company; A. D. Brown of the Hamilton-Brown Shoe Company; George Brown of the Brown Shoe Company; Henry N. Peters of the Peters Shoe Company; Milton S. Florsheim of the Florsheim Shoe Company; Emanuel F. Selz of the Selz, Schwab Shoe Company; C. H. Jones of the Commonwealth Shoe & Leather Company (R. Vol. 1, pp. 119, 114–115); and Pearl E. Selby of the Selby Shoe Company (R. Vol. 1, p. 213). Practically all of the members of this Alliance testified for the United States against the defendants.

Since 1910 the members of this Alliance have been active in agitating against the United Company. Jones and others have appeared before Committees of Congress attacking the Company (R. Vol. 1, pp. 121–122). Their counsel has appeared before one or more Committees of Congress for the same purpose (R. Vol. 1, p. 122). Its members have been to the Department of Justice with respect to the United Company (R. Vol. 1, p. 121).

All of them are financially interested in the Boylston Manufacturing Company, which is a shoe machinery company with a capital of $500,000 or $600,000 (R. Vol. 1, p. 122).

The members of this Alliance showed in their testimony a strong bias against the United Company, due apparently to two causes: first, a desire to obtain, on account of their size, better rates of royalty than were granted to other manufacturers; and second, a desire to engage themselves in the manufacture of shoe machinery.

The change in Mr. Jones's attitude is well illustrated by the interview given by him to the Boston *Transcript* in 1906 in which he expressed the greatest satisfaction with the United Company (R. Vol. 1, pp. 130–133). At that time Jones said the only persons who could be behind attacks on the United Company must be people who wanted to manufacture machinery.

Jonathan Brown testified that Jones said to him in the summer of 1911, "It is time we big manufacturers should pay less royalty than the smaller ones" (R. Vol. 1, p. 733, lines 26–32). James W. Hitchings was present at the time and testified to the same effect (R. Vol. 1, p. 735, lines 32–37).

Immediately after the purchase by the United Company of the patents and inventions of Thomas G. Plant, Jackson Johnson, and Milton S. Florsheim, members of the Alliance, called upon Mr. Winslow, president of the United Company, and suggested that they would like to furnish the $3,000,000 that the United Company had paid Plant and that in return the United Company should give them its stock at $25 a share, the stock being worth $50 a share. In other words, their proposition was to obtain stock of the United Company worth $6,000,000 for a cash payment of $3,000,000. The substance of the talk was that some means should be found for giving the manufacturers whom they represented a large interest in the United Company, and it was said in a way that made Mr. Winslow understand that if he didn't there would be trouble (R. Vol. 1, p. 493).

Testimony as to Motives.

3. The purposes and motives which actuated the transactions in question in this suit are of the utmost materiality. Mr. Winslow, president of the United Company, Mr. Howe, one of the executive committee and its counsel, and other officials testified fully as to the intent and purposes with which the various transactions were undertaken. The District Court, which heard and observed them, was in a position to judge of their credibility.

District Court's Findings Based on over Three Months' Investigation.

4. The transactions in question in this suit involve the detailed conduct of an extremely complicated business over a period of more than twelve years, including an examination of the situation existing at the time of the formation of the United Company, the objects and purposes of the company, and the extent to which such objects and purposes have been carried out, the origin and reasons for the lease system and the causes for the modifications made therein, the reasons for the

purchase of various patents, contracts with inventors and other acquisitions, and the dealings of the United Company with over 1,000 lessees. Hundreds of transactions are involved, and an understanding of most of them is only possible upon a detailed examination of the facts relating to them. An understanding of the real purposes and motives of the Company and its officials, of the greater efficiency resulting from the formation of the United Company, and of the necessity for the lease provisions and the various acquisitions is only possible when based upon a thorough understanding of the shoe machinery industry and the difficulties involved in developing patented machines and in furnishing a vast variety of machines adapted for different uses upon a lease system.

The District Court, composed of three judges, devoted many months to this task. They heard evidence in open court for nearly three months. Their conclusion as to the intent and purposes of the United Company, the situation of the industry, and the necessity for and effect of the leases and acquisitions and of the other transactions involved in the suit, arrived at after months of study, should not be disturbed unless this Court is clearly satisfied that it cannot be sustained upon the evidence.

VII. FINDINGS OF FACT BY THE DISTRICT COURT.

The facts as found by the District Court completely refute the charges made by the petition. These findings of fact are not only fully sustained by the evidence, but necessarily follow from the evidence. Upon the basis of these facts there are no doubtful questions of law. Unless, therefore, this Court should decline to accept the facts so found, it can hardly be contended by the United States that the decree of the District Court dismissing the petition should not be affirmed.

1. THE DISTRICT COURT FOUND THAT DEFENDANTS DID NOT PLAN TO ACQUIRE A MONOPOLY OF ALL SHOE MACHINERY, AND TO REFUSE TO SELL OR LEASE ESSENTIAL MACHINES UNLESS PRACTICALLY ALL OTHER MACHINERY WAS TAKEN, WHICH IS THE CHARGE ON WHICH THE PETITION IS BASED.

We have shown (*supra*, pp. 7–8) that the charge of the petition is that the defendants having lawful patent monopolies under which they did the greater part of the business of the country in the principal essential shoe machines, viz., lasting machines, welt-sewing and outsole stitching machines, heeling machines and metallic fastening machines, and finding these patents about to expire, planned to extend their monopolies unlawfully, and to obtain an unlawful monopoly of all shoe machinery, by

(1) Acquiring all concerns engaged in the shoe machinery business, and then

(2) Refusing to sell or lease any of said so-called essential machines to a shoe manufacturer, except on condition that he take from them practically all other machinery which he required.

The various acts specified in the petition are alleged to be only steps in carrying out this unlawful project, and are material only in so far as they prove the existence of this project, and its carrying out by the defendants.

A. The District Court Found that the Defendants did not Plan to Acquire all Concerns Engaged in the Shoe Machinery Business.

As to this charge the District Court found:—

(R. Vol. 1, p. 1114.) "Referring to the allegation that the respondents 'conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery,' the utmost that the case can in any event be said to show is a purpose to acquire control of certain machinery connected with bottoming shoes, or later of certain clicking or eyeletting machines; and of this the United States became during the trial so far satisfied that it asked permission to amend the above allegation accordingly."

B. The District Court Found that the Defendants did not Plan to Acquire all Concerns Engaged in the Business of Manufacturing Bottoming Machines, as to which the United States during the Trial Limited its Charge of Monopoly.

As to this charge the District Court found:—

(R. Vol. 1, p. 1141.) "It further appears that, during the same period of time the cases wherein the business of a concern producing shoe machinery was offered to the United Company and refused by it were far more numerous than the cases of acquisition specified by the petitioner. As to several, at least, of these instances of refusal, the evidence warrants the belief that the business offered and refused much exceeded in importance to any such scheme of monopoly as now charged, any of the specified acquisitions. The cases in which inventions were offered and refused during the same period were many times more numerous than the patents or inventions acquired. If a monopoly of all machinery for attaching bottoms to up-

pers was really undertaken, it is hard to believe that opportunities would have been neglected, as they were, such as those for acquiring the Union lock-stitch machines or the welters and stitchers of the R. H. Long Company, all of them patented machines for use on welt shoes; or for acquiring a considerable business in producing McKay sewing machines, though these were unpatented and not capable of use on shoes of that kind."

C. The District Court Found that the Defendants did not Refuse to Sell or Lease Essential Machines unless practically all other Machines were Taken.

As to this charge the District Court found:—

(R. Vol. 1, p. 1155.) "As to the allegation that the defendants contemplated a policy of refusal to lease except on condition that the lessee buy or lease of them 'practically all other machinery of whatever kind necessary or useful' to him as a manufacturer of shoes, it requires no further notice, now that the charge of restraint or monopoly in 'any and all kinds of shoe machinery' has been abandoned. The evidence abundantly shows that nothing of this kind was ever contemplated, attempted, or done, and that there was never any justification for the charge as made."

2. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY WAS NOT FORMED TO ELIMINATE COMPETITION BETWEEN ITS CONSTITUENT COMPANIES AND THAT IT DID NOT ELIMINATE SUCH COMPETITION.

The United States charges that the United Company was formed to eliminate competition between its constituent companies or that the elimination of such competition made the formation of the United Company unlawful.

The only competition claimed by the United States was an alleged competition between the Ideal Lasting Machine of the Goodyear Company and the Chase machine and an experimental Hand Method Welt Lasting Machine of the Consoli-

dated Company, and between the welt machines of the Goodyear Company and the machines of the Eppler Company.

The District Court found that the real motive for the formation of the United Company was an effort after greater efficiency, and that if any competition could be said to exist between the constituent companies, it was trivial and of no practical importance.

The District Court found as to the business of the constituent companies:—

> (R. Vol. 1, p. 1128.) "Up to the time of their union each constituent concern had been dealing, generally speaking, in a line of shoe machinery for the most part distinct from that dealt in by the others."

As to the alleged competition between the Chase and the Ideal machines, the District Court, after showing that the Chase machine was adapted and used for men's welt shoes, and that the Ideal machine was adapted and almost wholly used for women's welt shoes, concluded:—

> (R. Vol. 1, p. 1130.) "That there was any attempt to put either machine into the market as against the other does not appear. No competition between the two in the usual sense of the term is shown. . . . I am unable to consider it established that competition in any practical sense was destroyed when the United Company became owner of both machines."

As to the alleged competition between the Ideal machine and the experimental Hand Method Welt Lasting Machine the District Court said:—

> (R. Vol. 1, p. 1130.) "With still another laster with which the Consolidated Company was experimenting in 1899 for use on welt shoes, we are not here concerned, because, though this laster was afterward further improved, developed, and finally furnished to users by the United Company, it had not been made an article of commerce in any practical sense when that company was formed."

With reference to the alleged competition between the Goodyear Company and the Eppler Company, the District Court

after referring to the differences between the machines of the two companies, and the differences in the character of shoes made by them respectively, and the insignificant business done by the Eppler Company, said:—

> (R. Vol. 1, p. 1131.) "The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition as rendered it unlawful."

The District Court found as to the reasons for the formation of the United Company as follows:—

> (R. Vol. 1, p. 1131.) "No reason appears for supposing that the real purpose for which the constituent companies were brought together, as disclosed not only by the evidence regarding all the circumstances as they existed in 1899, but by the evidence as to the course of development thereafter pursued by the United Company, was other than that stated in a circular letter to the Goodyear stockholders issued February 8, 1899, the day following the organization of the United Company (Petitioner's Exhibit 152). This dwelt upon the advantages to be secured by putting into one control 'the most efficient types' of shoe machinery."

The District Court stated its conclusion as follows:—

> (R. Vol. 1, p. 1132.) "For the reasons stated, I am unable to find the charge that the United Company was unlawfully formed because of competition which it destroyed sufficiently supported by the evidence. It would, in any case, be difficult to regard this as sufficient ground for a decree dissolving the company into its component parts under a bill not filed until more than twelve years had passed since the combination complained of was accomplished. During this period, as the evidence shows, investments of a very large amount had been made, not merely by the defendants but also by the outside public, in the extension and development of the company's united business, the component companies passed out of existence, and the machines as made by them in 1899 were so far developed, improved upon, or added to by

the United Company as now all to have become obsolete. To put the parties or the public back into that state of the prior art which existed in 1899 is, of course, an impossibility."

3. THE DISTRICT COURT FOUND THAT THE "BASIC" PATENTS OF THE CONSTITUENT COMPANIES WERE NOT ABOUT TO EXPIRE.

The petition charged that the patents held by the constituent companies were about to expire in 1899. This was recited as a reason for the formation of the United Company.

The District Court held that this charge was not proved and that it was not a motive for the formation of the United Company.

(R. Vol. 1, p. 1133.) "At the final arguments, however, on June 2, 1914, the statement was made by petitioner's counsel that so many machines and patents were involved that examination of more than a very few had been impossible. It seems obvious, therefore, that the allegations in question could not have been founded, when they were made, upon any adequate or complete investigation of the facts.

"Nor can it be said that they have been sustained by the evidence before the examiner. It seems unnecessary to spend time in considering what patents could and what could not properly be regarded as 'basic,' in view of the fact that, of the patents principally relied on as such by the petitioner, those protecting the welter and stitcher of the Goodyear Company, there were two, one upon its welter, the other upon its stitcher, which ran until 1908 and 1909, respectively. The petitioner's final position, indeed, as to what was proved by the evidence before the examiner, was by no means that taken in the allegations referred to, but was only that the two machines above mentioned, and others protected in 1899 by patents not insisted on as 'basic' patents, became free to anyone to make or use—without any of the patented improvements added to them by the United Company since 1899, but nevertheless capable of successful commercial use—before the filing of this petition in 1911. In view of all the above, I must regard the allegations here in question as

not sufficiently supported by proof; and hold that no such motive is shown to have prompted either the organization of the United Company, or any of its subsequent doings."

The District Court further found that the machines of the United Company have always been patented.

(R. Vol. 1, p. 1115.) "At any rate it must be accepted that from the beginning the machinery offered by the respondent corporation was, in all its essential elements, protected by patents, and that there has been no proof to the contrary. So that, for the purposes of this case, the machinery has been mainly, if not entirely, of that character."

4. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY DID NOT TAKE OVER THE CONSTITUENT COMPANIES AT EXCESSIVE PRICES.

The petition charged that the United Company took over its constituent companies "at values far in excess of real worth" (R. Vol. 1, p. 995).

The District Court found that no proof of any kind was offered in support of this charge.

(R. Vol. 1, p. 1128.) "To allegations found in the petition (p. 18) [p. 995] that the business and property of the Goodyear Company, the Consolidated Company, and the McKay Company were taken over by the United Company 'at values far in excess of real worth,' reference is made at this point only in order to state that no proof of any kind was offered in support of them, it was not argued on the petitioners' behalf that they were true, and they therefore require no further notice for any purpose in the case. There can be no doubt that each concern had an established business already of great value and possessing great possibilities of development, or that each also owned patents and property of very great value in connection with its business."

5. THE LEASES.

A. The District Court Found that the Leasing System was of Great Advantage to Shoe Manufacturers.

(R. Vol. 1, p. 1171.) "While in the early stages of the case there were some criticisms of any leasing system as opposed to a system of selling, the very great advantages to shoe manufacturers in general of being provided with machine equipment of the highest efficiency, and of being relieved of individual effort in that most costly and difficult part of manufacturing, and the general satisfaction with the system were so overwhelmingly proved, that all doubt that the leasing system in general is unimpeachable has been removed."

B. The District Court Found that the United Company did not Discontinue the Sale of Machines.

The petition charges that the United Company "discontinued the sale to boot and shoe manufacturers" of machines and devised arbitrary leases (R. Vol. 1, p. 997).

The District Court found that this charge was untrue and without justification.

(R. Vol. 1, p. 1153.) "None of the constituent companies were in 1899 selling outright the patented machines they manufactured. The bill alleges the contrary, and charges that one of the steps taken after 1899, in pursuance of the alleged scheme to restrain or monopolize, was to discontinue sales and compel leases. An attempt to support this charge by evidence wholly failed. Nothing of the kind was done, nor is it easy to see what grounds for making the charge could ever have been supposed to exist."

C. The District Court Found that the Leases did not compel a Shoe Manufacturer taking Machines previously put out by one of the Constituent Companies to take Other Machines not previously put out by such Constituent Company.

The District Court found that the evidence completely disproved this charge.

> (R. Vol. 1, p. 1162.) "The alleged plan of a refusal of what before could be had separately, as a means of compelling the taking of other machines, was a principal ground for invoking the Sherman Act.
>
> "The leases in evidence, as documents, fail to substantiate the charges either as to the contrivance of such a plan or as to its execution. It appears that after the consolidation there was no refusal or imposition of conditions as alleged, but that the defendants continued to give manufacturers terms which were substantially the same as before and in some instances better than those offered by the constituent companies before the consolidation. This is shown not only by the exhibits of 'independent' leases but by the testimony of officers of the company."
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> . . . . . .
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> (R. Vol. 1, p. 1163.) "The restricted or prohibitive leases do not in themselves as documents prove the denial of the right to procure, as before, independent leases for individual machines. As matter of fact, independent leases which did give the right to use the machines with machines of other kinds, made by other machinery manufacturers, were always procurable. This was the general rule, and if there were any exceptions they were, so far as appears, inconsiderable.
>
> "It is a result of the consolidation that the United Company offers more attractive contracts for a group of machines of different kinds than for machines of one kind only; but as it still offers the contract for machines of one kind on as good terms as before it is difficult to see how that is detrimental to the shoe manufacturers.
>
> "The charge of this supposed scheme to deprive former customers of the right to use some machines unless they would also use others seems to have originated either in the erroneous assumption that a prohibitive lease was the only kind procurable, and that the former customer had

no choice, or in disregard of the fact that it was merely an alternative form of lease. As the leases prove no such plan, whether of the extent alleged or of less extent, and as the evidence proves the exact contrary of what is charged, we think that the United Shoe Machinery Company is, upon the merits, entitled to a full clearance from this charge."

D. The District Court Found that the Provisions in the Leases were not Adopted by the United Company for the Purpose of Monopolizing or Excluding the Use of Competitors' Machines.

The District Court found that the United Company made no changes in the leases as used by the constituent companies in pursuance of any arbitrary plan, but, on the contrary, the changes in each case were made because special circumstances had come to render it desirable; that the changes made in general tended to relax previous restrictions and to reduce the cost to lessees of installing the machines (R. Vol. 1, p. 1158); that the provisions were obviously prompted by the purpose of developing the company's business by offering the machines on terms more advantageous to users and were not intended to accomplish an arbitrary exclusion of competitors' machines. The District Court further found that the provisions in the leases were auxiliary to asserting rights unquestionably belonging to the lessor. It also found that there were sound mechanical and business reasons for grouping together machinery as it is grouped by the defendants' leases.

The following are a few extracts from the Court's findings on this subject:—

(R. Vol. 1, p. 1159.) "Considering the clauses objected to in the light of what preceded them, and of the circumstances attending their adoption by the defendants, the petitioner has not, in my opinion, proved that the defendants' object in adopting them was the prevention of competition by others. Such prevention might, indeed, follow from the more favorable terms offered lessees, but modifications made in the existing system for the direct

purpose of otherwise better adapting it to exclude competitors, would have been different in character from the modifications represented by these clauses.

"Not only would it have been unreasonable, as has been said, to expect the defendants to substitute a wholly different system from the leasing system which they found in use, but the evidence affords no reason to believe that anything of the kind was desired by manufacturers in general. The advantages to them of not having to tie up capital in patented machines, and of paying for the privilege of their use only according to the amount of use, were advantages which they cannot be supposed desirous of surrendering.

"Modifications in the contracts offered them tending, as these are shown to have done, to enable the company, through provisions adapted to increase the number of shoes worked on by each machine, to lessen the royalty charged per pair, and to diminish or dispense with the initial payment before required, were so obviously prompted by the purpose of developing the company's business through the perfectly legitimate method of offering them on terms more advantageous to users, that it would be unjust to treat them, on evidence no stronger than that here presented, as really intended to accomplish an arbitrary exclusion of users from any dealings with others.

"If it were made to appear that the leases containing these clauses accomplished in and of themselves an unlawful restraint of trade, or necessarily secured to the defendants an unlawful monopoly, the intent to accomplish these results would, of course, be imputed to the defendants without regard to their actual purpose in adopting and using them. But the evidence seems to me insufficient for the conclusion that such results are so accomplished. The contention that they are fails, in my opinion, to take into account the defendants' rights in the field lawfully secured to them in the various patented improvements they had lawfully controlled and combined; and fails also to concede them proper scope for the rights properly incidental to their control of said improvements, to make such agreements with their lessees as would best promote the efficiency in combined operation of the machines leased, and thereby best enhance and safeguard their just return therefrom in the form of royalties."

. . . . . .

(R. Vol. 1, p. 1187.) "The clauses objected to are all subordinate and auxiliary to maintaining rights which

unquestionably belong to the defendants; to charge their own prices and to choose as customers those who will pay those prices.

"The attack of the United States is not upon these rights, but upon the particular mode in which they have sought to exercise them. Other modes, such as the requirement of arbitrary payment for the full period of the patents, would escape all such attacks. The attack arises from the attempt to adjust the payments to the amount of use which particular manufacturers may have for the patented inventions."

. . . . . .

(R. Vol. 1, p. 1184.) "If leases for machines for use as a group are offered and accepted for sound business reasons, and if, because of the greater productivity of a group and of the less cost of maintenance, better prices can be made, the defendants and the shoe manufacturers need not forego the making of such contracts for the sake of possible competitors who may have only single machines to offer. Contracts for large equipments of machinery, furniture, and other articles are too common to be condemned for such reason. . . .

"The grouping of machines in order that some may aid others in turning out a product affords a sufficient mechanical reason for installing them as groups and a sufficient business reason for dealing with them as groups.

"That there are sound mechanical and business reasons for grouping together machinery as it is grouped by a series of prohibitive leases is abundantly established. The United States fails to show that the grouping of the machines is in fact made merely as an unlawful artifice and not because of sound mechanical and business reasons. It has referred to certain leases in which there appears to be no necessary mechanical relation between some of the machines grouped. Thus to a limited extent it may be true that the grouping is for the purpose of trade or of contract rather than because of the close relation of the machines in process of manufacture; but this is insufficient to show that the principal purpose was not, as is contended by the defendants, to secure by efficient co-operation of machines a larger production of shoes."

E. The District Court Found that the Leases did not Result in the Arbitrary Exclusion of Competitors' Machines whatever the Intent with which they were Adopted.

The District Court found that the defendants' machines were used because of their merits and not to any substantial extent because of the lease clauses.

> (R. Vol. 1, p. 1187.) "It is impossible to believe that the defendants' equipment is in so many shoe factories for any other substantial reason than the merits of what they have had to offer. To say that this is due, in any substantial degree, to the fact that its leases run beyond the terms of patents, or because of the exclusive use, prohibitive or cancellation clauses, rests largely, if not entirely, upon assumption. But that the business of these defendants rests upon the lease provisions objected to in such a substantial amount as to constitute any factor of independent force in securing or maintaining a monopoly does not appear."

F. The District Court Found that the United Company did not Exact Exorbitant Prices for Duplicate Parts and Exorbitant Return Charges.

The petition charges that the United Company's leases required lessees to obtain duplicate parts used in repairing the United Company's machines from the United Company and exacted "exorbitant prices" for such parts. It also charged that the leases required payment of return charges upon the termination of the lease which in some cases amounted to approximately the original cost of building the machines (R. Vol. 1, p. 997).

The District Court held there was no evidence justifying these charges.

> (R. Vol. 1, p. 1155.) "The evidence failed to show that lessees from the United Company had ever been compelled to pay exorbitant charges for repair parts, etc., or to pay any unreasonable return charges on leased machines."

G. The District Court Found that the Leases have not been Arbitrarily Enforced.

The petition charges that the leases were continually, persistently, and arbitrarily enforced (R. Vol. 1, p. 997).

The District Court found that there was no proof of this charge and that, on the contrary, it appeared that the United Company had been moderate with respect to such enforcement.

> (R. Vol. 1, p. 1114.) "There is no proof that the United Shoe Company has enforced its leases in any arbitrary or unreasonable manner. On the whole, it seems to have been moderate with reference to such enforcements, and the number of cases in which anything in the way of a forfeiture has been demanded has been so small that, on looking over the great mass of the operations of the United Shoe Company, such enforcements have been so few as to be practically negligible; and there is no evidence that the duplicate parts, extras, and other incidentals furnished by the United Shoe Company have been sold at exorbitant prices fixed by it, or that the cost involved in the return of machinery has, in any way, approximated its original cost, unless, possibly, in some exceptional instances which have not caught the eye of the court. We do not think the case as developed has turned on these particular allegations."

6. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY DID NOT MAKE ACQUISITIONS OF COMPETING CONCERNS WITH INTENT TO MONOPOLIZE.

The petition charges that the defendants in pursuance of their purpose to monopolize the shoe machinery industry absorbed many competitors. A list of 59 such acquisitions is set forth in the petition.

The District Court considered the purchase of the patents from Thomas G. Plant separately. As to the 58 other acquisitions it found that the greater part of them were acquisitions of concerns dealing in supplies or machines not made by the United Company and, therefore, not competing with the

United Company, and that as to the few remaining acquisitions it was not shown in any case that actual competition existed between the device or machine acquired and any machine then being produced or experimented with by the United Company of such consequence as justifies either the conclusion that the acquisition was for the purpose of suppressing competition or the conclusion that a material restraint of trade was thereby accomplished, or that such acquisition contributed anything essentially important to the success obtained by the United Company.

The court after dismissing as immaterial a number of unimportant acquisitions because not related to the classes of machines to which the United States now limits its claim of monopoly or because no foundation for a charge of competition with the United Company existed, said:—

> (R. Vol. 1, p. 1139.) "The instances then remaining in which the United Company was at the time producing or trying to develop for production a patented machine for doing work more or less similar to that for which the invention of the machine acquired was intended, are the only ones capable of being regarded as of any possible significance for the purposes of the petitioner's case. In all such cases it appears that the acquisitions made were of patented improvements, whether or not embodied in an actual machine, enabling the United Company to increase the efficiency of its own machines, or to complete the development of others with which it was then experimenting or had not yet succeeding[ed] in rendering commercially successful.
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> "No case, however, is found among the acquisitions of the character last described wherein it has fairly been made to appear that actual competition existed between the device or machine acquired and any machine then being produced or experimented with by the United Company, of such consequence as justifies either the conclusion that the acquisition was for the purpose of suppressing such competition, or the conclusion that a material restraint of trade was thereby accomplished. In most of the cases of this sort the machine or device acquired was claimed to infringe patents belonging to the United Company, or the patent acquired was one which some machine belonging to it was claimed to infringe, or the application acquired was in interference with applications of its own; and the object of the acquisition is shown to have been

the avoidance or compromise of pending or threatened litigation. In such cases it is still less possible to say that any wrongful absorption of a 'competitor's' business has been proved.

"The acquisitions above regarded as the only ones of any possible significance in the case were made at various separated times during the period of eleven years or thereabouts above referred to. It can not be said that the later ones were in contemplation when the earlier acquisitions were made, because there is nothing to show that the circumstances attending any of them were such as could have been anticipated as likely to occur at the time of the preceding acquisitions. The most that can be said is, that as, in the progress of events, the needs of the United Company became manifest and these opportunities presented themselves, they were availed of.

"Taken together, the acquisitions of this class are, in importance and amount, only of a consequence relatively small in proportion to the entire field then lawfully belonging to the United Company. It does not appear that they contributed anything essentially important to that degree of commercial success obtained by the company as above. If they assisted in obtaining it, it was by assisting the development of the machines to whose ultimate efficiency it was due. It can hardly be said as to any of them that they afforded anything more than a basis whereon to build. Speaking of them generally, it may be said that the invention or machine obtained required further development in the company's hands before it could be properly used."

7. THE DISTRICT COURT FOUND THAT THE PURCHASE FROM THOMAS G. PLANT WAS NOT MADE IN PURSUANCE OF THE ALLEGED SCHEME TO MONOPOLIZE.

The District Court found that the purchase of patents from Thomas G. Plant in 1910 was made by the United Company to obtain the benefit of Plant's inventions and to settle and avoid serious patent litigation, and not for the purpose of suppressing competition.

(R. Vol. 1, p. 1142.) "The evidence does not show Plant to have been a competitor in the ordinary sense. He was not carrying on any going business in shoe ma-

chinery. He was neither producing his machines nor supplying them to users upon any commercial scale, nor was he prepared so to supply them, though he had issued an illustrated catalogue of them. The petition alleges that he had been inventing and patenting his improvements for at least two years before 1910. In one factory only were machines embodying them being operated; this belonged to the Thomas G. Plant Company, whereof he owned a majority of the stock. He installed them there in May, 1910, displacing the United Company's machines previously used there in order to do so. Before he installed them there, he had offered to equip two other factories with them without requiring royalties for their use, but these offers had been declined."

. . . . . .

(R. Vol. 1, p. 1143.) "The evidence regarding Plant's negotiations with the defendants sufficiently proves that they were never sought by the defendants and that there was never any attempt on their part to get Plant to sell them his inventions or machines or anything else; but that, on the contrary, all the efforts toward such a purchase were made by him. The first overtures toward it came from him; he began them soon after he had put his machines into the Plant factory; they led to interviews, all of which he sought and at which his proposals were declined without encouragement to renew them. Nowhere in the evidence is any indication found that before Plant's overtures were thus made any purchase whatever from him had been suggested to or considered by the defendants.

"Whatever the merit of Plant's inventions, these machines in which he had first embodied them are not shown by the evidence to have been commercially successful in September, 1910, or to have been capable of such success in their then stage of development. They are shown to have been lightly built, not adapted to produce men's shoes, and by no means satisfactory in making women's shoes, the kind of work to which the Plant factory was devoted. The evidence is uncontradicted that, while operated there, they fell behind the United Company's machines, which they had supplanted, in efficiency—that breaking down and defective work was more frequent with them—and the cost per pair of making shoes with them distinctly greater. Though some of them, as later developed and improved by the United Company, proved to have merit, the most that can be fairly said of them in 1910, on the evidence, is that they were more or less

promising experimental machines. There was no complete set of them for combined operation; for that purpose several important machines were yet to be developed. In the state in which the United Company took them over, they were not found capable of profitable use. Nothing is found in the evidence which affords reasonable support for the petitioner's contention that they were 'right at the threshold of extensive competition with the United Company.'"

. . . . . .

(R. Vol. 1, p. 1144.) "The terms finally agreed on with Plant were so much more favorable to the United Company than any he offered when he first approached them, and so inconsistent with his previous attitude toward them, as to leave no reasonable ground for believing that the defendants had ever sought, expected, or planned for the transaction as carried out. And in what they were thus unexpectedly enabled to acquire from him, there was included so much that was plainly of far greater consequence to them than could have been the avoidance of such competition as they can reasonably be supposed to have apprehended from his incomplete and undeveloped line of inventions—patents and machines also included—as to leave no sufficient ground for believing that avoidance of competition was their principal motive in accepting the opportunity offered. The normal, natural, and obvious business reasons, of wholly different kinds, why they should accept instead of refusing it, appear to have been so complete and sufficient as to render the conclusion unreasonable that it was accepted in order to escape competition."

. . . . . .

(R. Vol. 1, p. 1145.) "The evidence that among these patented improvements obtained from Plant there were enough of sufficient value, in the defendants' hands and used as they only could have used them in further developing and perfecting the machines they were then producing or trying to produce, to make this part of the total acquisition extremely profitable to the United Company, was not met by any sufficient proof to the contrary. The agreement to take the patents and inventions was not made until after a careful examination and report as to their merits. The belief thereon founded that, used as above, they would be worth acquiring upon the terms proposed, is shown to have been justified by the result, and the acquisition can not be criticised so far as it was

occasioned by that belief. As developed and added to its own machines by the United Company, some of the inventions acquired have proved to be of a value such as fairly justifies their claim that the patents acquired were the controlling feature of the purchase.

"The evidence shows also, without serious contradiction, that one result of the bargain made with Plant was to relieve the United Company from an amount of litigation, then pending or in prospect, which would otherwise have burdened and hindered it to an extent far greater than it had ever had reason to apprehend from any litigation with which it had before been concerned."

. . . . . .

(R. Vol. 1, p. 1145.) "It was part of the bargain with Plant, or followed from it as a result, that the above controversies were settled or avoided. That the prospect of accomplishing this result was a further normal, natural, and powerful inducement to the agreement made with him can not be reasonably doubted. In so far as the agreement was thus intended, no criticism of it can be valid.

"The above reasons, none of them open to any charge of illegality, seem to me to have been the really operative reasons which must have induced the defendants to enter into the Plant bargain upon the terms which he finally offered them. They appear so adequate as legitimate business reasons for doing this as in my opinion to leave no reasonable ground for holding, against the defendants' denial, that it was really a purchase to suppress competition. No such competition or prospect of competition at the time is proved as would justify such a conclusion. The competition threatened by Plant and his efforts to induce the defendants, in order to avoid it, to buy his machines and patents by themselves were wholly ineffectual. They met with nothing but refusal on the defendants' part to consider his proposals. It was not until he offered, through the intermediary he last employed (Smith), the shoe manufacturing business of the Plant Company as well that the defendants consented to deal with him.

"While it may have been his plan to realize a profit by threatening competition, it was not until this proposition, based upon tangible property of substantial value and of patent rights, was made, that any sale was effected. The property acquired being proved to have been worth the amount paid, the argument that the defendants were so anxious to hold a monopoly as to be willing to pay

$6,000,000 or any other large sum, in order to get rid of a competitor, or that this was done in pursuance of a general plan conceived in 1899, fails completely."

8. THE DISTRICT COURT FOUND THAT THE ACQUISITIONS WERE NOT MADE AT EXORBITANT PRICES.

The District Court held that this charge was not established.

(R. Vol. 1, p. 1147.) "The charge that competitors have been bought out at 'exorbitant prices' is found not established in the case of the Plant acquisition, as has just been stated. Nor is evidence found sufficient to establish it in the case of any one of the numerous minor acquisitions specified in the petition. It has not been insisted on in argument that this charge is proved as to any one of them."

9. THE DISTRICT COURT FOUND THAT UNLAWFUL COVENANTS WERE NOT TAKEN FROM THOSE WHOSE BUSINESS WAS PURCHASED OBLIGATING THEM NOT TO COMPETE AND TO ASSIGN INVENTIONS TO UNITED COMPANY.

The District Court held that these covenants did not exceed what the law sanctions as necessary to protect the parties.

(R. Vol. 1, p. 1141.) "The petition charges generally that covenants in writing were taken from substantially all those whose business was acquired as specified, (1) not to engage for long terms of years in competition with the defendants in commerce in shoe machinery, (2) to convey all inventions or patents in shoe machinery which they might make or acquire during such terms to the defendants.

"These charges are not justified by the documents themselves, which have been produced. They are by no means uniform in their terms, there was no generally prescribed form for them, nor were they all the work of the same hands. Each was framed according to the circumstances of the particular transaction. In many cases, at least, the agreements required only that there should

be no competition in the line of business involved in the particular transaction, or that all patents or inventions thereafter made in the particular line to which the acquired invention belonged should be transferred. There are enough of the agreements in these cases which are without covenants of the kind described, to leave the allegation unjustified that such covenants were required in substantially all. And of the instances wherein covenants are found in any degree answering the alleged description, it may be said generally that none are clearly shown to have exceeded what the law permits. Still less reasonable would it be to regard what is found in them as indicating a consistent purpose on the defendants' part to exclude all those with whom the agreements were made from all possible future competition with the United Company."

10. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY DID NOT COMMIT OTHER ALLEGED UNFAIR, MONOPOLISTIC OR OPPRESSIVE ACTS.

In paragraph VI of the petition (R. Vol. 1, p. 999) the defendants are charged with committing various other acts described as "unfair, oppressive," and "monopolistic." These acts are not specified in the petition. A bill of particulars setting forth such alleged acts relied on by the United States was filed during the trial (R. Vol. 1, p. 1075). As to the majority of acts so specified in the bill of particulars no evidence whatsoever was introduced by the United States. As to those acts in support of which the United States attempted to introduce evidence, comparatively few were relied upon in the argument before the District Court or in the brief of the petitioner filed in the District Court (R. Vol. 1, pp. 1146–1147).

The District Court set forth in its opinion the facts in respect to those transactions which were relied upon by the United States at R. Vol. 1, pages 1147–1152. It then summarized its findings in respect to these charges as follows:—

(R. Vol. 1, p. 1152.) "The history of the proceedings in this case indicates that efforts which may fairly be described as extraordinary have been made to bring before

the court, so far as possible, all sayings or doings of any of the numerous defendants or their representatives, during the period beginning with 1899 and ending with 1911, which might afford ground for charging them with oppressive, coercive, or like unfair conduct toward competitors of the United Company or the public. In view of the long period and wide fields thus searched, the numerous abandoned attempts to prove something of the kind above indicated, and the insignificant result of the evidence actually offered and finally relied on, the conclusion seems fully justified that the policy and methods pursued by the defendants and by the United Company have been, in general, above reproach in any of these respects."

II. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY DID NOT MAKE ENORMOUS AND UNREASONABLE PROFITS.

The petition charges that the United Company made "enormous and unreasonable profits" as a result of the alleged unlawful acts charged in the petition (R. Vol. 1, p. 1026). The District Court held that this charge was not established:

(R. Vol. 1, p. 1135.) "No support is found in the evidence, for the charge in the petition (Par. X) that 'enormous and unreasonable profits' have been made. This allegation is made in connection with and apparently depends upon the allegation of which, as above stated, there is no proof, that the properties combined in 1899 were taken over at excessive valuations. Nothing shown by the evidence warrants the conclusion that profits unreasonably out of proportion to the extremely large cost at which the business has been developed and is maintained, the great investment of capital it has required, and the enterprise, inventive skill, and business ability devoted to it, have been realized. Nor has it been made to appear that the charges made for the privilege of using the machines are exorbitant or unreasonable; especially in view of the great benefit to manufacturers using them, in lessening their cost of production."

12. THE DISTRICT COURT FOUND THAT THE DEFENDANTS DID NOT HAVE AN UNLAWFUL PLAN AND PURPOSE.

The petition charges an unlawful plan to monopolize shoe machinery (R. Vol. 1, p. 994). The United States contended in the District Court that, even if all the acts and transactions as to which evidence was introduced were lawful if considered singly, the unlawful plan in pursuance of which it was alleged they were carried out made them unlawful.

The District Court held that there was no direct evidence of such unlawful plan, that whether it existed must be judged by "the necessary results of all the steps proved to have been taken by them [the defendants], as a whole" (R. Vol. 1, p. 1133), and that the evidence disclosed no unlawful purpose.

> (R. Vol. 1, p. 1133.) "Of their actual intent in forming it and in taking the various steps which they have taken as above in connection with it, there is no direct proof overcoming their denial that it was such as the petition charges, and no way of judging except from the necessary results of all the steps proved to have been taken by them, as a whole."
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> . . . . . .
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> (R. Vol. 1, p. 1119.) "Nevertheless, we fail to find in the development of the United Shoe Machinery Company, and its operations, any support for the alleged charges in the bill of intended oppression, arbitrary conduct, or anything of that nature, especially so far as any allegations cover any attempts to destroy or cripple competitors. Looking at the great mass of facts proven in the case, and the immense number of transactions of the United Shoe Machinery Company, the evidence offered in that direction is so ineffectual that its weakness furnishes of itself satisfactory proof against what was intended to be established thereby. We find no evidence of what was shown especially in the Tobacco Company cases, namely, a purpose to destroy what could not be acquired by straightforward methods. The fact that the United Shoe Company has acquired so large a percentage of the business of the country to which it devoted itself comes so largely from the use of extraordinarily competent methods as to shut out from the eyes of the impartial

investigator suggestions of other methods. So we lay aside that part of the case, and deal only with the proven facts, and the legitimate results of those facts, with little consideration, however, for any charges in this connection, or elsewhere, of intended oppression or unreasonable course of procedure, or of results which can be attributed to any unworthy motive."

13. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY HAS NOT OBTAINED AN UNLAWFUL MONOPOLY.

A. The District Court Found that the United Company has no Monopoly of all Shoe Machinery.

The petition charges a plan to monopolize all shoe machinery and that such monopoly has been obtained. As we have stated above, the United States has abandoned this charge during the course of the trial. The District Court said:—

(R. Vol. 1, p. 1127.) "The restraint or monopoly alleged in the petition is restraint or monopoly of interstate commerce in 'any and all kinds of shoe machinery,' *i.e.*, in shoe machinery generally.

"But it appeared early in the trial that no such charge could be proved, because neither the business of the component companies in 1899 nor that of the United Shoe Company from its beginning until the bill was filed related to 'all kinds of shoe machinery.' Both were always limited to certain kinds only. This was finally conceded, and the field of trade in shoe machinery with which this case is concerned limited by concession of the complainant's counsel to machines of the following kinds: (1) Lasting or 'pulling-over' machines, used for adjusting and attaching the upper of a shoe in process to a last; (2) machines for preparing bottoms and heels and fastening them to uppers; (3) machines for finishing bottoms and heels after they have been so fastened; (4) eyeletting machines for inserting eyelets in uppers; (5) 'clicking machines' for cutting out uppers. The 'shoe machinery' as to which restraint or monopoly is charged, therefore, includes machines of the above kinds only, for the purposes of all questions hereinafter considered. It is to be

noted that such machines are insufficient for the making of a complete shoe, and that no attempt to control machines for stitching uppers is charged."

B. The District Court Found that the United Company has no Monopoly of Bottoming Machines to which the United States Limited its Charge during the Trial.

The District Court found on this point:—

(R. Vol. 1, p. 1135.) "It is nevertheless true that, considering the whole field of machinery for stitching together the bottoms and uppers of shoes, there has all the time been free competition. The use of other machinery to accomplish the purpose has always been open to shoe manufacturers. In that part of the field of trade in shoe machinery to which the case is now limited as above, the defendants have been not monopolists but competitors. Their only means for holding the field have been legitimate means—better machines. Their specialization in machines for bottoming shoes, and not a monopoly of such machines, has been the cause of their success."

C. The District Court Found that the United Company's Success has been Due solely to the Merits of its Patented Machines and the Service it Renders with Them.

The District Court found that the success of the United Company's machines was due to the merits of the machines themselves and the service rendered with them, and that the "proof is complete" that such success "has been in fact reached by the use of methods entirely lawful" (R. Vol. 1, p. 1136).

(R. Vol. 1, p. 1187.) "It is impossible to believe that the defendants' equipment is in so many shoe factories for any other substantial reason than the merits of what they have had to offer."

. . . . . .

(R. Vol. 1, p. 1134.) "The combined business of the component companies as conducted and developed since 1899 by the United Company, related most largely to the machines used in producing welt shoes. The use

of such machines (and thereby the production of and demand for such shoes) is shown to have been very greatly promoted by patented improvements made upon the machines of 1899 by that company, greatly increasing their efficiency and capacity, and by improvements effected by that company since 1899 in the methods of manufacturing them. It appears that the total number of welt shoes produced in this country in 1899 was about 17 million pairs; in 1910 about 86 million; the total production of all kinds of shoes increasing during the same period from about 175 to about 280 million; the Goodyear welt shoe being all this time in direct competition with the McKay sewed shoe.

"It is further shown that the above improvements in the machines and their manufacture were accomplished by means of constant investigation, experiment, testing, and invention by competent experts employed by this company, involving a very large expenditure on its part. These efforts were directed not only toward making each machine as efficient as possible by itself, but also toward increasing its efficiency for so performing its own operation upon a shoe as best to combine it with the work upon the same shoe by the numerous other machines required for performing the remaining necessary operations, in order that all the many successive operations performed should cooperate toward the most economical and efficient accomplishment of the best final result in product. And besides thus developing and improving the machines of 1899, the company kept pace with the requirements of manufacturers by the invention and production of many other machines or improvements, unknown in 1899, as the need for them became apparent.

"There is no question that the above-described development of the United Company's business has resulted in a very great commercial success. Its machines, as was the case with those produced by the component companies in 1899, have ever since been those which shoe manufacturers in general can use to the best advantage and therefore prefer. The increase in the number of its machines in the hands of users has been very large. Nor is there any question that of all the machines, of the kinds to which this case relates, in use when the petition was filed, those of the United Company constituted all but a very small proportion.

. . . . . .

(R. Vol. 1, p. 1135.) "If there is any sense in which the result attained as above can be called a 'monopoly,'

it does not follow, in view of the circumstances shown, that the defendants have either restrained trade or been guilty of monopolizing or attempting to monopolize within the meaning of the act. Nor can I regard the case as one in which any presumption arises, from the fact that so large a proportion of the users of these machines use the defendants'—that the defendants have committed any of the above forbidden acts in accomplishing the above result. The proof is too complete that it has been in fact reached by the use of methods entirely lawful, the leading features whereof are below indicated. As has been said, the field they have occupied is a special field, and the product for which their machinery is adapted is of higher price and quality than the product of the machinery of others.

"The business which the defendants have developed and established is not, and has never been, one in which everybody might freely engage. No one else could lawfully make or use machines containing improvements covered by the defendants' patents. Nor can it be said that the demand for such machines which they have supplied existed independently of the defendants; on the contrary, they have created it by the new methods of shoe manufacture which their improvements have educated and enabled manufacturers to follow. It cannot justly be said that the case is one in which a field of commerce normally belonging to all has been captured by a single concern. The principles applying in such cases can not justly be applied here. In so far as the defendants' occupation of the field has been due to the greater desirability of their patented machines and to the superiority of their methods of making and supplying users with such machines, no reason appears for holding it unlawful, whatever its extent.

"Supplementing the production and development of its various patented machines, methods introduced by the United Company for keeping them in efficient operating condition while in the hands of their various users throughout the country have most effectively aided the development of its business. It has undertaken not only to train operatives in the proper use of the machines and to secure the prompt repair of any machine disabled in use, but also to supply each user from time to time with the latest improvements, either by adding them to the machines or by substituting improved for superseded machines, without extra cost to the user. This service it has furnished by maintaining at central points bodies of competent employees who attend to the above matters whenever and

wherever they are notified by users that such attention is desired.

"A system of standardization, introduced since 1899, whereby corresponding parts of the various machines have been so constructed as to be interchangeable whenever possible, has, in connection with the service furnished as above, effected a great reduction in the time lost by machines in waiting for repair. The introduction of such a system could not have been effected by the component companies because each carried on the manufacture of its machines at a different place. While each of them rendered to its users some service of the character described, this was done to a limited extent only; and the maintenance of any such system of rendering it as the United Company has pursued would have been impossible to them because of the heavy outlay involved.

"The service secured to users of the machines by the system just described has been furnished to users without charge in addition to the royalties paid by them under the leases of their machines. For duplicate parts, extras, etc., required in operation, repair, or renewal, the terms of the leases required payment. Allegations in the petition that exorbitant prices were charged for such duplicate parts, etc., were not sustained by the evidence, and have not been insisted on in argument.

"That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question. It is not disputed that, when the petition was filed, its machines represented, in number and amount, the highest development ever reached in the art to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason."

VIII. GENERAL APPLICATION OF THE SHERMAN ACT TO THE PRESENT CASE.

Only such transactions are condemned by the Sherman Act as prejudice the public interests because by their inherent nature they materially and unduly restrict competition or obstruct the course of trade, or because by reason of the intent with which they are done they accomplish this result.

Transactions which are normal and usual, which seek to further trade by normal or reasonable methods, or which are entered into and performed for the legitimate purpose of reasonably forwarding personal interest and developing trade are not within the act.

In *Standard Oil Company* v. *United States*, 221 U. S. 1, the Court said (pp. 58, 62):—

> "Without going into detail and but very briefly surveying the whole field, it may be with accuracy said that the dread of enhancement of prices and of other wrongs which it was thought would flow from the undue limitation on competitive conditions caused by contracts or other acts of individuals or corporations, led, as a matter of public policy, to the prohibition or treating as illegal all contracts or acts which were unreasonably restrictive of competitive conditions, either from the nature or character of the contract or act or where the surrounding circumstances were such as to justify the conclusion that they had not been entered into or performed with the legitimate purpose of reasonably forwarding personal interest and developing trade, but on the contrary were of such a character as to give rise to the inference or presumption that they had been entered into or done with the intent to do wrong to the general public and to limit the right of individuals, thus restraining the free flow of commerce and tending to bring about the evils, such as enhancement of prices, which were considered to be against public policy."
>
> ". . . And it is worthy of observation, as we have previously remarked concerning the common law, that although the statute by the comprehensiveness of the enu-

> merations embodied in both the first and second sections makes it certain that its purpose was to prevent undue restraints of every kind or nature, nevertheless by the omission of any direct prohibition against monopoly in the concrete it indicates a consciousness that the freedom of the individual right to contract when not unduly or improperly exercised was the most efficient means for the prevention of monopoly, since the operation of the centrifugal and centripetal forces resulting from the right to freely contract was the means by which monopoly would be inevitably prevented if no extraneous or sovereign power imposed it and no right to make unlawful contracts having a monopolistic tendency were permitted. In other words that freedom to contract was the essence of freedom from undue restraint on the right to contract."

In *United States* v. *American Tobacco Co.*, 221 U. S. 106, the Court said (p. 179):—

> "Applying the rule of reason to the construction of the statute, it was held in the *Standard Oil Case* that as the words 'restraint of trade' at common law and in the law of this country at the time of the adoption of the Anti-trust Act only embraced acts or contracts or agreements or combinations which operated to the prejudice of the public interests by unduly restricting competition or unduly obstructing the due course of trade or which, either because of their inherent nature or effect or because of the evident purpose of the acts, etc., injuriously restrained trade, that the words as used in the statute were designed to have and did have but a like significance. It was therefore pointed out that the statute did not forbid or restrain the power to make normal and usual contracts to further trade by resorting to all normal methods, whether by agreement or otherwise, to accomplish such purpose."

In *Nash* v. *United States*, 229 U. S. 373, the Court, referring to the Standard Oil and Tobacco Cases, said (p. 376),—

> "Those cases may be taken to have established that only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade."

In *Eastern States Lumber Ass'n* v. *United States*, 234 U. S. 600, the Court said (pp. 609–610):—

> "It [the Sherman Act] broadly condemns all combinations and conspiracies which restrain the free and natural flow of trade in the channels of interstate commerce. It is true that this court held in the *Standard Oil* and *Tobacco Cases*, *supra*, and in the subsequent cases following them, that in its proper construction the act was not intended to reach normal and usual contracts incident to lawful purposes and intended to further legitimate trade. . . ."

Public Interest must be Prejudiced.

It is essential that the public interest be prejudiced. A restraint which is not of such a character as to prejudice the public interests is not covered by the statute.

In *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, the Court said (p. 174),—

> "In other words, founded upon broad conceptions of public policy, the prohibitions of the statute were enacted to prevent not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented, and hence not only the prohibitions of the statute but the remedies which it provided were co-extensive with such conceptions."

Sherman Act must be Interpreted to Carry out its Purpose.

The statute is general in its terms and as held in the Standard Oil and Tobacco Cases must be interpreted so as to carry out the public policy which it manifests. In the Tobacco Case the Court said (p. 181):—

> ". . . it was pointed out [in the Standard Oil Case] that the generic designation of the first and second sections of the law, when taken together, embraced every conceivable act which could possibly come within the spirit or purpose of the prohibitions of the law, without regard to the garb in which such acts were clothed. That is to say, it was held that in view of the general language of the

statute and the public policy which it manifested, there was no possibility of frustrating that policy by resorting to any disguise or subterfuge of form, since resort to reason rendered it impossible to escape by any indirection the prohibitions of the statute."

For the same reason it follows that no transactions whatever their garb and whether new or old in character are condemned unless they are prohibited by the spirit or purpose of the statute. In other words, the particular circumstances of each case must be examined to determine the character of the acts.

Incidental Restraints not Unlawful.

All restraints are not covered by the act. Those that are incidental to a legitimate purpose, which are the result of reasonable normal or usual transactions entered into for the legitimate purpose of furthering trade or personal interests, are permissible. As said in *United States* v. *Joint Traffic Asso.*, 171 U. S. 505 (p. 568):—

"... to treat the act as condemning all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased, would enlarge the application of the act far beyond the fair meaning of the language used. The effect upon interstate commerce must not be indirect or incidental only. An agreement entered into for the purpose of promoting the legitimate business of an individual or corporation, with no purpose to thereby affect or restrain interstate commerce, and which does not directly restrain such commerce, is not, as we think, covered by the act, although the agreement may indirectly and remotely affect that commerce."

Importance of Intent.

Certain acts by their very nature are of such a character as necessarily to prejudice the public interests and unduly restrain trade or create a monopoly. In such instances the intent to violate the statute may be conclusive.

In all other instances the intent to accomplish the unlawful purpose must be shown either directly or inferentially from the circumstances of the case.

Thus where the acts alone might not produce the unlawful result such intent is required.

Swift & Co. v. *United States*, 196 U. S. 375.

Where the transaction is of a doubtful character, that is, where the transaction might be entered into for the purpose of prejudicing the public and wrongfully restraining trade or excluding others from the business or might be undertaken for the legitimate purpose of fostering trade, the intent as shown by direct evidence or by inference from the circumstances of the case may determine the legality of the transaction.

Thus in *United States* v. *Reading Co.*, 226 U. S. 324 (p. 370), the Court said:—

> "Whether a particular act, contract or agreement was a reasonable and normal method in furtherance of trade and commerce may, in doubtful cases, turn upon the intent to be inferred from the extent of the control thereby secured over the commerce affected, as well as by the method which was used. Of course, if the necessary result is materially to restrain trade between the States, the intent with which the thing was done is of no consequence. But when there is only a probability, the intent to produce the consequences may become important. *United States* v. *St. Louis Terminal Association*, 224 U. S. 383, 394; *Swift & Co.* v. *United States*, 196 U. S. 375."

The Standard Oil Case and the Tobacco Case also show the importance of intent.

In the Standard Oil Case it appeared that the Standard Oil Company had acquired by purchase and combination a large and controlling portion of the oil business of the country and eliminated competition between the companies acquired. This alone, however, was not held to constitute an illegal restraint of trade or monopoly. The Court held that these circumstances gave rise in and of themselves, "in the absence of countervailing circumstances, to say the least, to the *prima facie* presumption of intent and purpose to maintain the dominancy over the oil industry, not as a result of normal methods of industrial development . . ." (221 U. S. 75), and that this "*prima facie* presumption of intent to restrain trade, to monopolize and to bring about monopolization" was "made con-

clusive by considering" the conduct of the persons and corporations, the proof as to what was done under the various agreements and the modes in which the power vested in the Standard Oil Company was exerted and the results arising from them (221 U. S. 75). It was held that the transactions prior to the formation of the trust agreements of 1879 and 1882, including those agreements showed

> "an intent and purpose to exclude others which was frequently manifested by acts and dealings wholly inconsistent with the theory that they were made with the single conception of advancing the development of business power by usual methods, but which on the contrary necessarily involved the intent to drive others from the field and to exclude them from their right to trade and thus accomplish the mastery which was the end in view" (221 U. S. 76).

The transactions up to the time of the formation of the New Jersey Corporation were held to make manifest "the continued existence of the intent," and the exercise of the power of the corporation was likewise held to show this purpose and intent (221 U. S. 76, 77).

In the American Tobacco Case the American Tobacco Company had by purchase and combination acquired a dominating control of the tobacco industry. Here again the Court reached the conclusion of wrongful purpose. It said (221 U. S. 182):—

> "We say these conclusions are inevitable, not because of the vast amount of property aggregated by the combination, not because alone of the many corporations which the proof shows were united by resort to one device or another. Again, not alone because of the dominion and control over the tobacco trade which actually exists, but because we think the conclusion of wrongful purpose and illegal combination is overwhelmingly established by the following considerations:"

The Court then goes on to recite the circumstances showing an "ever-present manifestation . . . of the purpose to restrain others and to monopolize . . . trade" (221 U. S. 182).

PART TWO.

FACTS AND ARGUMENT.

I.

FORMATION OF THE UNITED COMPANY.

1. THE CONSOLIDATION OF THE GOODYEAR SHOE MACHINERY COMPANY AND ITS SUBSIDIARY COMPANIES WITH THE CONSOLIDATED & McKAY LASTING MACHINE COMPANY AND THE McKAY SHOE MACHINERY COMPANY INTO THE UNITED COMPANY IS THE SAME CONSOLIDATION HELD LAWFUL AND VALID AND NOT CONTRARY TO THE SHERMAN ACT IN UNITED STATES *v.* WINSLOW, 227 U. S. 202.

In *United States* v. *Winslow*, supra, the indictment charged that for twenty-five years last past practically all the shoes worn by people of the United States were manufactured by the aid of several different kinds of machines, namely,

lasting machines,
welt sewing machines,
outsole stitching machines,
heeling machines,
metallic fastening machines;

that the Goodyear Shoe Machinery Company manufactured 80% of all the welt sewing and outsole stitching machines, and 10% of all the lasting machines; that the Consolidated &

McKay Lasting Machine Company manufactured 60% of all the lasting machines, and the McKay Shoe Machinery Company manufactured 70% of all the heeling machines and 80% of all the metallic fastening machines, and that these companies manufactured their machines under United States patents, that they were combined into the United Company in pursuance of a conspiracy to extend the defendants' monopolies and rights unlawfully, to oppress shoe manufacturers and restrain trade, and that their combination in the United Shoe Machinery Company was an unlawful combination in violation of the Sherman Act.

In the present case the petition charges almost in the language of the indictment that for twenty-five years all boots and shoes worn by people of the United States had been manufactured by the aid of machinery; that the principal machines so used are lasting machines, welt sewing machines and outsole stitching machines, heeling machines and metallic fastening machines; that some of such shoe machinery is manufactured under letters patent; that prior to February, 1899, a large number of persons and corporations were engaged in the manufacture of shoe machinery in competition with each other; that the principal concerns so engaged were the Goodyear Shoe Machinery Company and its subsidiaries, manufacturing 80% of welt sewing and outsole stitching machines and 10% of the lasting machines, the Consolidated & McKay Lasting Machine Company, manufacturing 60% of all the lasting machines, and the McKay Shoe Machinery Company, manufacturing 70% of all heeling machines and 80% of all metallic fastening machines, and the Eppler Welt Machine Company, manufacturing 10% of the welt sewing and outsole stitching machines, and the Davey Pegging Machine Company, manufacturing 75% of the pegging machines, and that all the above-named companies manufactured their machines under letters patent of the United States; that many of the "basic" patents were about to expire and the lawful monopoly of such machines about to come to an end; and the individual defendants as owners of the above-mentioned companies, not being satisfied with the benefit of the lawful monoplies and rights belonging to them under letters patent, combined and conspired to acquire a monopoly in the manufacture of shoe machinery.

There is no allegation in the petition that the companies that were combined in the United Shoe Machinery Company were in competition with each other, and the only difference between the two cases so far as the organization of the United Shoe Machinery Company is concerned is that the petition adds the name of the Eppler Welt Machine Company, which it is claimed manufactured 10% of the welt sewing and outsole stitching machines, and the Davey Pegging Machine Company, which manufactured 75% of the pegging machines and which on the face of the petition was not in competition with any of the other companies. (This last-named company at the time of the consolidation and for a long time prior thereto was wholly owned by the Consolidated & McKay Lasting Machine Company and it did not compete with any of the other companies.—R. Vol. 1, p. 32, line 30.)

In *United States* v. *Winslow*, supra, the Court said, page 217:—

> "On the face of it the combination was simply an effort after greater efficiency. The business of the several groups that combined, as it existed before the combination, is assumed to have been legal. . . . The disintegration aimed at by the statute does not extend to reducing all manufacture to isolated units of the lowest degree. It is as lawful for one corporation to make every part of a steam engine and to put the machine together as it would be for one to make the boilers and another to make the wheels. Until the one intent is nearer accomplishment than it is by such a juxtaposition alone, no intent could raise the conduct to the dignity of an attempt."
>
> (*Ib.* p. 217.) "The machines are patented, making them is a monopoly in any case, the exclusion of competitors from the use of them is of the very essence of the right conferred by the patents, *Paper Bag Patent Case*, 210 U. S. 405, 429, and it may be assumed that the success of the several groups was due to their patents having been the best. . . . It is said that from seventy to eighty per cent of all the shoe machinery business was put into a single hand. This is inaccurate, since the machines in question are not alleged to be types of all the machines used in making shoes, and since the defendants' share in commerce among the states does not appear. But taking it as true we can see no greater objection to one corporation manufacturing seventy per cent. of three non-competing groups of patented machines collectively used for

making a single product than to three corporations making the same proportion of one group each."

The United States now seeks to differentiate the petition in the case at bar from the indictment by claiming that there was competition between the Eppler Company, which the petition alleges made 10% of the welting and outsole stitching machines, and the Goodyear Company, which the petition alleges made 80% of the welting and outsole stitching machines; and also by making a very much belated claim that there was competition between the Ideal Laster of the Goodyear Company and the Chase Laster of the Consolidated & McKay Company, and that elimination of this competition was the motive for the consolidation of these companies into the United Shoe Machinery Company.

Upon this point the District Court, which saw and heard the witnesses and is the best judge of their credibility, said, by Dodge, J. (R. Vol. 1, p. 1130):—

"(1) As to the alleged competition in lasting machines, it is not claimed that there was any, so far as two of the three kinds made by the Consolidated Company are concerned. These are the 'McKay-Copeland' laster for lasting heavy metallic fastened or pegged shoes or brogans and the 'hand method McKay' laster for McKay sewed shoes; and neither of them could be used to last welt shoes, for which purpose alone the Goodyear Company's 'Ideal' laster was adapted. The only question here is whether the latter machine can be regarded as competing with the remaining laster of the Consolidated Company (the 'Chase'). With still another laster with which the Consolidated Company was experimenting in 1899 for use on welt shoes, we are not here concerned, because, though this laster was afterward further improved, developed, and finally furnished to users by the United Company, it had not been made an article of commerce in any practical sense when that company was formed.

"There is no proof of any actual use of the 'Chase' laster otherwise than for its intended purpose of lasting men's welt shoes. It could not work well for use with the lighter leather whereof women's shoes are made. The 'Ideal' laster, used almost exclusively for its intended purpose of lasting women's welt shoes, could not be relied on to work well with the heavier leather whereof

men's shoes are made. The proof relied on to show that it competed with the 'Chase' went no further than to show that a number of 'Ideal' machines, small in proportion to the total number then in use, were being used in a few factories on men's shoes, notwithstanding their want of adaptation to such use. That there was any attempt to put either machine into the market as against the other, does not appear. No competition between the two in the usual sense of the term is shown. After the consolidation, by the addition of a patented 'hold down attachment' added by the United Company to the 'Ideal' in 1901 or 1902, some of the defects referred to were removed, but not until then can it be said to have been commercially successful for work on men's shoes. Before this improvement, it possessed at most a limited possibility of such use. I am unable to consider it established that competition in any practical sense was destroyed when the United Company became owner of both machines.

"(2) As to the alleged competition in welt-sewing machines, the question is to what extent the Eppler welting machinery can be regarded as competing with the Goodyear welting machinery. Outside of that produced by these two concerns, no other welting machinery appears to have been on the market at the time.

"The Eppler machines were adapted to produce men's thick-soled welt shoes only. They could not produce women's welt shoes (except perhaps those having the thickest soles), nor turn shoes of any kind, nor Goodyear welt shoes, either men's or women's, because of the difference between the respective machines in the character and position of the seam left in the inner sole of the shoe. The Goodyear machines could produce shoes of all the above kinds. The differences referred to resulted from differences in the character and operation of the machinery belonging to the different systems. These differences in character and in possible field of use had resulted when the United Company was formed in 1899 in the fact that over 2,500 Goodyear welting machines were in use, as against thirty or forty Eppler machines, one-third of these being used in the factory of the president of the Eppler Company. The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition

as rendered it unlawful. The Eppler machines were not suppressed by the United Company. It continued to supply them until the progress of improvement in such machinery superseded them. The patents covering them have long since expired, and it is open to anyone to make and use such machines if he desires. There is no present monopoly in them, and no action taken by the court could restore them to the field of competition, or encourage or create competition by them.

"Nor, if such competition as is shown to have existed between the 'Chase' and the 'Ideal' laster be taken together with that shown to have existed between the Eppler welting machinery and the Goodyear welting machinery, do I find it credible that the avoidance of both amounted to a consideration of any substantial importance, so far as the formation of the United Company was concerned. No reason appears for supposing that the real purpose for which the constituent companies were brought together, as disclosed not only by the evidence regarding all the circumstances as they existed in 1899, but by the evidence as to the course of development thereafter pursued by the United Company, was other than that stated in a circular letter to the Goodyear stockholders issued February 8, 1899, the day following the organization of the United Company. (Petitioner's Exhibit 152.) This dwelt upon the advantages to be secured by putting into one control 'the most efficient types' of shoe machinery. In *U. S.* v. *Winslow*, above cited, which was decided more than a year after the present bill was filed, it was said that the combination here in question was, on its face, 'simply an effort after greater efficiency,' and the legality of combination for such a purpose is fully recognized.

"Under their respective patents upon the 'Chase' and the 'Ideal' lasters there was litigation pending in 1899 between the Consolidated Company and the Goodyear Company, each claiming that the other's machine infringed its patents. Also, under the patents covering their welt-sewing machines there was similar litigation pending between the Eppler Company and the Goodyear Company. A result sought to be attained by both parties to these controversies, and accomplished by them through the acquisition of all the patents by the United Company, was the termination of all this litigation. Reference is made below to other later acquisitions by the United Company, an important feature of which was that litigation, troublesome and expensive on both sides, was avoided

or terminated. In so far as any of the defendants' transactions were in order to accomplish results of this kind, it can not be said that their purpose was unlawful.

"For the reasons stated, I am unable to find the charge that the United Company was unlawfully formed because of competition which it destroyed sufficiently supported by the evidence. It would, in any case, be difficult to regard this as sufficient ground for a decree dissolving the company into its component parts under a bill not filed until more than twelve years had passed since the combination complained of was accomplished. During this period, as the evidence shows, investments of a very large amount had been made, not merely by the defendants but also by the outside public, in the extension and development of the company's united business, the component companies passed out of existence, and the machines as made by them in 1899 were so far developed, improved upon, or added to by the United Company as now all to have become obsolete. To put the parties or the public back into that state of the prior art which existed in 1899 is, of course, an impossibility."

To Aid the Court in an Examination of the Issue thus Decided by the District Court, We Shall Consider Below:—

The Business Done by the Constituent Companies;

The Organization of the United Company;

The Evidence Relating to the Alleged Competition Between the Constituent Companies;

The Purposes for Which the United Company was Formed, and the Manner in Which These Purposes have been Carried Out.

2. BUSINESS DONE BY THE CONSTITUENT COMPANIES WHICH FORMED THE UNITED COMPANY.

The United Company was organized February 7, 1899, to take over and continue the business of the Goodyear Shoe Machinery Company (hereafter called the Goodyear Company), the Consolidated & McKay Lasting Machine Company (hereafter called the Consolidated Company), and the McKay Shoe Machinery Company (hereafter called the McKay Company), essentially non-competing concerns engaged in making different types of machines used for different purposes.

The Goodyear Company made Welt Machines. It also furnished a comparatively few Ideal Lasting Machines designed for lasting women's welt shoes.

The Consolidated Company made lasting machines designed for lasting McKay shoes, brogans, and men's welt shoes. It had no machines which could be used successfully on women's welt shoes. Through a subsidiary company, it also made Pegging Machines.

The McKay Company made Metallic Machines and Heeling Machines.

A more complete statement of the business of those companies is given below.

A. The Goodyear Company.

The Goodyear Company manufactured and leased machines for attaching the welt to the upper and insole and the outsole to the welt of Goodyear Welt shoes. It had two principal machines—the Goodyear Welt and Turn Machine (called the welter) for attaching the welt to the upper and insole, and the Goodyear Outsole Rapid Lockstitch Machine (the stitcher)

for attaching the outsole to the welt. The welter was used also in the manufacture of Goodyear Turn shoes. The Goodyear Company had also thirteen auxiliary machines used in connection with its welter and stitcher in the manufacture of Goodyear Welt shoes, and three auxiliary machines used in connection with its welter in the manufacture of Goodyear Turn shoes (R. Vol. 5, Defs.' Ex. 242, p. 681; Defs.' Ex. 244, p. 683).

The Goodyear Company also manufactured and leased the Ideal Lasting Machine. The Ideal was designed and adapted for lasting women's welt shoes, which no machine in the market at the time it was developed could do successfully (R. Vol. 1, p. 397, lines 41–43; p. 626, lines 44–45). It was not adapted for lasting men's welt shoes commercially (R. Vol. 1, p. 398, line 32). The Ideal Machine had a comparatively small use. Only 248 Ideal Machines were outstanding out of a total of 4,300 lasting machines of all kinds outstanding, and only 0.77 of 1% of the shoes lasted on machines in 1899 were lasted on the Ideal (R. Vol. 1, p. 975, lines 34–45).

The Goodyear system for welt and turn shoes ran back to 1870 or 1868 (R. Vol. 1, p. 625, line 20).

Prior to the development of the Goodyear System there was no system for making welt shoes by machinery. The machines of the Goodyear Company, including the auxiliary machines, were adapted to making welt shoes only and could not be used on any other kind of shoes (R. Vol. 1, p. 18, lines 11–14; p. 470, lines 5–7; p. 625, lines 17–19; p. 626, line 3), except that the welter was used on turn shoes and three of the auxiliaries were designed for use on turn shoes, and except that the Hadaway Stitch Separator, an auxiliary machine, could be used also in pricking imitation stitches on mock welts or McKay welts (R. Vol. 1, p. 625, lines 15–17).

The auxiliary machines were designed and adapted to assist the work of the principal machines, the welter and stitcher, by preparing the work for the operation of these machines or finishing it afterwards (R. Vol. 1, pp. 624–625).

Prior to the invention of the Goodyear Welt System welt shoes were made by hand. The Goodyear System imitated the exact process by which a hand workman made a welted shoe (R. Vol. 1, p. 626, lines 3–8).

The Goodyear Company owned as a trademark the name

"Goodyear Welt" as applied to shoes made by its machines. Its lessees of shoe machinery were given the right to use that trademark on shoes made by the Goodyear machines (R. Vol. 1, p. 625, line 44; p. 626, line 2).

Shortly after 1888 the Goodyear Welter and Stitcher were both greatly improved and the Goodyear Company's business developed rapidly (R. Vol. 1, pp. 691–692). The Goodyear Welt shoe was a better grade of shoe than the McKay sewed, pegged or Standard Screw shoes, which were the classes of shoes generally made by machines, but the Goodyear Welt shoe was more expensive to manufacture. It gradually proved its merit, but in 1899 only 22,700,000 pairs of welt shoes were made out of a total production in the country of 172,786,000 pairs of shoes of all kinds, of which 82,457,000 were McKays (R. Vol. 5, Defs.' Ex. 215, p. 322). In 1898, just prior to the formation of the United Company, only about 17,000,000 pairs of welt shoes were made (R. Vol. 1, p. 414, lines 36–37).

The Goodyear Company, therefore, occupied a comparatively limited and special field which it had itself created and which it lawfully controlled by reason of its patents. The process of making Goodyear Welts is only one of a number of methods of attaching the soles to the uppers of shoes by machinery, and this method was used in 1898 on only about 10% of the total shoes manufactured in that year.

B. The Consolidated & McKay Lasting Machine Company.

This company manufactured and leased three kinds of lasting machines, namely, the Chase, the McKay & Copeland, and the Hand Method McKay Machine.

The Chase Machine was especially adapted to and was developed for lasting men's welt shoes (R. Vol. 1, p. 397, lines 39–40).

The McKay & Copeland Machine was commercially adapted only for lasting heavy brogans (R. Vol. 1, p. 399, lines 13–14), that is, very heavy coarse shoes (R. Vol. 1, p. 397, line 14).

The Hand Method McKay Machine was designed and adapted for lasting McKay sewed shoes (R. Vol. 1, p. 399,

line 22). It could not be used for lasting welt shoes (R. Vol. 1, pp. 399–400).

The Consolidated Company in 1899 had been endeavoring to develop a hand method welt lasting machine. This machine had been developed to a point where it could last the heel, shank and ball of the shoe satisfactorily, but it could not last the toes satisfactorily (R. Vol. 1, p. 400, lines 27–32). A few machines had been placed in factories, but they were experimental and not successful commercially (R. Vol. 1, p. 524, lines 1–11).

The Consolidated Company also furnished a few minor auxiliary machines used in lasting (R. Vol. 1, p. 400, line 40).

The use of machines for lasting shoes was of a very recent development. In 1890 very few shoes were lasted by machinery, except heavy shoes lasted on the McKay and Copeland machine. Manufacturers and operatives were at that time sceptical as to the possibility of developing a machine which would last shoes. Lasting was a real handicraft operation requiring great skill. There was also considerable difficulty in introducing lasting machines, due to the opposition of the operatives. After machines were introduced and the operatives instructed in their use the operatives would strike or agree to last by hand for a reduction in pay and the machines would be stopped (R. Vol. 1, pp. 401–402). The result was that by 1899 only about one-half the shoes made were lasted by machine (R. Vol. 1, p. 402, lines 14–18).

The Davey Pegging Machine Company, which was owned by the Consolidated Company, made machines for attaching the soles of shoes by wooden pegs (R. Vol. 1, p. 415, lines 18–20; p. 534, lines 45–46).

C. The McKay Shoe Machinery Company.

This company manufactured and leased metallic fastening machines, used to insert metallic fastenings, and heeling machines, used for the preparation and attaching of heels. It operated through the McKay-Bigelow Heeling Machine Association and the McKay Metallic Fastening Association, both of which it owned (R. Vol. 1, p. 4, lines 23–36).

D. The Machines Manufactured by the Constituent Companies were Protected by Patents, were the Best Machines Made, and, therefore, were Used principally by Shoe Manufacturers for the Purposes for which they were Adapted.

The petition alleges,—

> "Early in 1899 the companies above mentioned and described were manufacturing their machines, and parts thereof, under letters patent of the United States and of other countries" (R. Vol. 1, p. 993).

The petition further alleges that the principal concerns engaged in the business were the constituent companies (R. Vol. 1, p. 992), and that the United Company by the acquisition of the constituent companies "acquired control of the greater portion of the manufacture of, and trade and commerce in, the machines included in each and all of the groups of machines hereinbefore mentioned" (R. Vol. 1, p. 996).

A full discussion of the strong patents covering the machines is given at pages 199–232 of the Brief.

The machines put out by the constituent companies had been gradually developed by them or their predecessors in accordance with patents covering the machines. Each company had a lawful monopoly granted by the patent law covering the manufacture of its own machines, and of course no one else could manufacture these machines.

The shoe machinery industry was of very recent origin, all the work on shoes having previously been done by hand. The trade in machines of the kind manufactured by the constituent companies had been created by reason of and under the inventions for which the constituent companies held patents. No one else had invented other types of machines which could do equally good work, and the machines put out by the constituent companies were, therefore, the best machines in the market (R. Vol. 1, p. 532, lines 16–18, 29–32). As a result, at the time of the formation of the United Company the Goodyear Company's machines were doing practically all the welt sewing and outsole stitching, the Consolidated Com-

pany's machines were doing practically all the lasting, and the McKay Company's machines were doing practically all the metallic fastening that was being done in the United States (R. Vol. 1, p. 537, lines 32–37). The McKay Company was also putting out all of the heeling machines that were being made in the United States at that time (R. Vol. 1, p. 851, lines 27–30).

E. Acquisition of the Eppler Welt Machine Company.

The Eppler Company is referred to by the United States as one of the constituent companies. It cannot properly be so termed. Although it had been organized for a number of years, it was doing practically no business and it was inevitably doomed to failure. Its machines infringed the Goodyear Company's patents, and patent suits brought by the Goodyear Company were pending to enjoin their use which counsel for the Goodyear Company were confident would succeed (*infra*, pp. 136–138). After the formation of the United Company was agreed upon, it was found that the Eppler Company could be acquired and the patent litigation thus settled. The Eppler Company was accordingly acquired, not for the purpose of taking over its business, as it had practically no business, but to enable the United Company to start free from litigation (*infra*, p. 134).

The Eppler Company manufactured and leased a welter, stitcher, and a few auxiliary machines used in connection therewith. These machines attached the welt and sole to a shoe according to the Eppler welt process. The Eppler shoe so made was of an entirely different construction from the Goodyear welt shoe, which was made by the Goodyear machines and which could not be made by the Eppler machines (*infra*, p. 139).

In the Eppler process the bulky double thread of the chainstitch was laid in the prepared channel in the bottom of the insole and under the surface on which the foot rests. This bulky double chain was likely to cause a ridge under the foot and made the Eppler welt shoe much inferior to the Goodyear welt shoe. This difference in construction also made it im-

possible to use the Eppler machine on women's welt shoes, which have light inner soles, or on turn shoes. The Eppler machines were also inferior in construction to the Goodyear machines. The Eppler Company had no complete or satisfactory set of auxiliary machines and it was necessary in an Eppler shoe to use an unnecessarily thick and expensive insole to prevent the seam from hurting the foot, which added greatly to the expense of making Eppler welt shoes (*infra*, pp. 141–143).

Owing to the above causes the Eppler Company had not proved a commercial success. It had outstanding only between 30 and 40 welt machines, one-third of which were in the factory of the president of the company (R. Vol. 1, p. 389, lines 6–9).

The Eppler machines, therefore, were inferior to the Goodyear machines; the Eppler shoe was much inferior to the Goodyear shoe; and, consequently, the Eppler Company was doing little or no business and was doomed to failure. Further, as we have stated, its machines infringed the Goodyear Company's patents.

3. ORGANIZATION OF THE UNITED COMPANY.

The United Company was organized on February 7, 1899.

The preliminary arrangements were made by Mr. Winslow, who was a member of the Executive Committee of the Consolidated Company (R. Vol. 1, p. 406, line 25), and Mr. Howe, who was vice-president of the Goodyear Company and in general charge of its business (R. Vol. 1, p. 466, lines 32–39).

Some time about July, 1898, they first discussed consolidating the businesses of the Goodyear Company and the Consolidated Company (R. Vol. 1, p. 629, line 19). This consolidation was agreed upon some time in January, 1899 (R. Vol. 1, p. 629, line 34). It was not originally planned to take over the McKay Company, and this question was only taken up after the formation of the United Company and the acquisition by it of the Goodyear and Consolidated Companies had been arranged (R. Vol. 1, p. 406, lines 36–40). It was not until the United Company had been agreed upon and about the time that it was organized that it was found the Eppler Company could be purchased and arrangements were made for its acquisition (R. Vol. 1, p. 633, line 5).

The United Company was organized with $25,000,000 authorized capital stock, of which $12,500,000 was preferred and $12,500,000 was common (R. Vol. 3, P.'s Ex. 1, p. 4).

The United Company at once took over the stock and later the properties of the Goodyear Company, the Consolidated Company, and the McKay Company, and likewise the International Goodyear Company, the Goodyear Company of Canada, and the Davey Pegging Machine Company, which were affiliated with the three principal companies. In March it took over the Eppler Company and the International Eppler Company.

The Goodyear Company, Consolidated Company, and the McKay Company, and such stock of the International Goodyear Company as was not owned by the Goodyear Company itself were paid for in stock of the United Company. In addition stockholders of the Consolidated Company received a small cash payment to adjust dividends. $2,395,435 of stock

was issued for cash which was used to pay the expenses of organization, the floating debts of all the constituent companies, the purchase of the capital stock of the Eppler Company, the International Eppler Company, and the Goodyear Company of Canada, and to provide $500,000 working capital for the United Company (R. Vol. 1, pp. 31–33).

The stock of the United Company was issued as follows:—

For $3,000,000 stock of the Goodyear Company	$4,631,560
For minority stock of the International Goodyear Company not owned by the Goodyear Company	287,105
For $2,850,000 stock of the Consolidated Company	4,432,900
For $5,000,000 stock of the McKay Company	5,500,000
To Syndicate for cash at par used to purchase Eppler Company, International Eppler Company, Goodyear Company of Canada, for payments of debts, organization expenses, and $500,000 working capital	2,395,435
Total,	$17,247,000

A. No Watered Stock was Issued.

The petition alleges that the constituent companies were taken over "at values far in excess of real worth" (R. Vol. 1, p. 995). This charge is absolutely unfounded.

The stock of the United Company was issued for value and was not watered (R. Vol. 1, p. 533, lines 31–32). The book values of the Goodyear and Consolidated Companies, so far as could be judged, were far in excess of the prices paid by the United Company (R. Vol. 1, pp. 629–630). The stock of both companies had sold above par for a long time (R. Vol. 1, p. 533, lines 38–40). The McKay Company stock had sold at $8 or $9, but it was worth at least $11 a share, on which basis it was taken in (R. Vol. 1, p. 533, line 40–p. 534, line 4; p. 633, lines 41–44). The stock issued to the syndicate was paid for in cash at par (R. Vol. 1, p. 32, lines 1–4).

The first statement of the United Company, issued in 1901, shows that it carried no item of good-will, and that it carried its valuable patents at only $745,269.27, and that the Company had a substantial surplus (R. Vol. 4, P.'s Ex. 180, p. 1225).

B. Machines not Manufactured by the Constituent Companies.

The machines manufactured by the constituent companies which were acquired by the United Company covered only a portion of the shoe machinery field, and, as we have stated above, each had its own particular field which it had developed under its own patent monopolies. The constituent companies did not even manufacture all the machines used in bottoming shoes. Thus they did not manufacture the McKay Sewing Machine used to attach the soles to McKay shoes, which constituted substantially one-half the total number of shoes manufactured in 1899. They manufactured no machinery for cutting out or stitching or making uppers. They made no General Department machines, of which a large number were then manufactured, and of which the United Company now manufactures over one hundred and seventy different kinds.

Defendants' Exhibit 221A (R. Vol. 5, p. 370A) gives a list of eighty-five different dealers in machinery findings and supplies advertising in the trade papers in the years 1899 to 1902, which the United Company did not purchase and made no attempt to purchase. This list includes such important companies as the Wheeler & Wilson Sewing Machine Company, which supplied probably 90% of the machines which united the parts of the upper of the shoe (R. Vol. 1, p. 415, lines 12–14), and the Reece Buttonhole Machine Company, which furnished probably every machine used for making buttonholes in shoes and for finishing the buttonholes (R. Vol. 1, p. 415, lines 15–17). The United Company also did not take over the Stanley Manufacturing Company, which put out the McKay Sewing Machine used to attach the soles of about one-half the shoes made (R. Vol. 1, p. 415, lines 4–12).

The fact that the United Company took over companies occupying only a portion of the shoe machinery field and made no attempt to acquire these other important companies establishes conclusively that the United Company was not formed to obtain a monopoly of all shoe machinery as charged in the petition.

4. ALLEGED COMPETITION BETWEEN GOODYEAR AND CONSOLIDATED COMPANIES AND BETWEEN GOODYEAR AND EPPLER COMPANIES.

The United States contends that there was competition between the Goodyear Company and the Consolidated Company, and also between the Goodyear Company and the Eppler Company which made the formation of the United Company unlawful.

The brief statement given above of the business conducted by these companies shows the unsubstantial character of this contention. However, as the United States has claimed that there was competition, we will consider it in detail.

The competition which the United States contends existed was (1) between the Ideal Lasting Machine made by the Goodyear Company and the lasting machines of the Consolidated Company, and (2) the welt machines of the Goodyear Company and the welt machines of the Eppler Company.

It is admitted that the McKay Company did not compete with any of the other companies.

A. ALLEGED LASTING MACHINE COMPETITION BETWEEN THE GOODYEAR COMPANY AND THE CONSOLIDATED & McKAY LASTING MACHINE COMPANY.

(1) INTRODUCTORY STATEMENT.

The only claim of competition in 1899 between the Consolidated & McKay Company and the Goodyear Company is the claim of the United States that there was competition between lasting machines of these companies. It is admitted that the great bulk of the business of the Goodyear Company was in welt sewing and outsole stitching machines and their auxiliaries, and that the sole business of the Consolidated &

McKay Company was in lasting machines. Indeed, so comparatively insignificant was the lasting machine business of the Goodyear Company that, as Mr. Howe testified, it treated its lasting machine "as an auxiliary to its welt and turn machine and its outsole stitcher" (R. Vol. 1, p. 626, lines 42–43).

The Consolidated Company in 1899 was putting out three different lasting machines:—

The McKay & Copeland Machine;
The Chase Machine;
The Hand Method McKay Machine.

It was also experimenting on a hand method welt machine.

The Goodyear Company was putting out the Ideal lasting machine (R. Vol. 1, p. 526, line 46).

All of these machines were patented (R. Vol. 2, pp. 2365, 2383, 2387–9, 2391–3, 2400–2).

The McKay & Copeland machine was designed and adapted for men's heavy standard screw, pegged and loose nailed shoes (R. Vol. 1, p. 523). The hand method McKay machine was designed and adapted for McKay sewed shoes (R. Vol. 1, p. 524, lines 1–3; Vol. 2, p. 2399). It is admitted that the use of each of these machines was confined to the particular field for which it was designed and that neither competed with the Ideal machine of the Goodyear Company. The United States contends, however, that there was competition between the Ideal machine of the Goodyear Company and the Chase machine of the Consolidated Company, and also that the hand method welt lasting machine on which the Consolidated Company was experimenting offered competition to the Ideal machine.

In considering the contention that there was competition between lasting machines of the Consolidated & McKay Company and the Ideal lasting machine of the Goodyear Company, the Court will, of course, bear in mind that this case relates to a highly specialized industry in which hundreds of entirely different machines are used on the various types of shoes, and that each kind of shoe requires for its successful manufacture machines designed *particularly just for that kind of shoe.* Nothing is more thoroughly established by the

record than these vital and fundamental facts. And the record further shows their specific application to lasting machines (R. Vol. 2, p. 2399).

The case of the United States on this issue depends primarily on the assumption that merely because two different machines were called lasting machines and were used in lasting shoes, each of them as a matter of course could be used in lasting any kind of shoes, despite the fact that one was designed for use on one particular and peculiar type of shoes and the other for use on another particular and peculiar type of shoes. This is hardly more reasonable than it would be to contend that the welt sewing and outsole stitching machines of the United Company compete or could compete with the upper stitching machines of the Singer Sewing Machine Company because all of these machines sew together parts of boots and shoes.

Obviously, to establish that in February, 1899, there was existing or potential lasting machine competition between the Goodyear Company and the Consolidated Company, it must be clearly proved that a lasting machine of one of those companies was actually used in 1899, or at that time plainly could be used, to do with commercial success the work of a lasting machine of the other company, or that such competing use was then imminent or threatened. We shall show that the contrary was proved.

That the alleged lasting machine competition was utterly trivial and insignificant will be shown by reviewing evidence proving that the overlapping use of the Ideal machine in 1899 testified to by witnesses for the United States did not exceed .06 of 1% of all the shoes lasted by machines, or .03 of 1% of all the shoes made in 1899, and that there was no overlapping use of the few hand method welt lasting machines that were out in 1899, which, moreover, were merely experimental and were unsuccessful

Since the indictment which was before the Court in *United States* v. *Winslow* charged that the Consolidated & McKay Company made 60% of all the lasting machines made in the United States and that the Goodyear Company made 10% of all the lasting machines, it would seem a waste of time to argue about alleged competition so trivial and insignificant

as we have indicated; but in view of the contentions of the United States on this issue, and since the Court is entitled to assistance in reviewing the considerable amount of evidence of more or less technical character, it seems to be necessary to review and correlate this evidence.

It is proposed to discuss first the alleged competition between the Ideal lasting machine and the Chase lasting machine.

(2) THE EVIDENCE AFFORDS NO FOUNDATION FOR THE CLAIM OF THE UNITED STATES THAT THERE WAS ANY COMPETITION BETWEEN THE IDEAL LASTING MACHINE OF THE GOODYEAR COMPANY AND THE CHASE LASTING MACHINE OF THE CONSOLIDATED & McKAY COMPANY.

(a) Introductory Statement.

With regard to the field of the Ideal lasting machine in 1899, Mr. Winslow testified,—

> "The Ideal lasting machine was developed for the express purpose of lasting women's welt shoes, there being at that time no machine in the market which was adapted to that purpose" (R. Vol. 1, p. 397, lines 40–43).

Mr. Howe testified:—

> "The Ideal laster was adapted to work on women's welts, light leather which no machine in the market at that time would do successfully. . . . The machine was designed and almost wholly used for lasting women's welts" (R. Vol. 1, p. 626, lines 44–45; p. 627, lines 1–3).

Mr. Howard testified:—

> "It was especially designed for the lasting of women's welt shoes and in February, 1899, substantially all women's

welt shoes which were lasted by machine were being lasted upon the Ideal lasting machine" (R. Vol. 2, p. 2387).

"That machine practically had the women's welt shoe field to itself" (R. Vol. 1, p. 966, lines 22–23).

Mr. Donham testified,—

"It [the Goodyear Company] also had a specially designed lasting machine, which it had originated for the purpose of enabling women's Goodyear welt shoes to be lasted by machine, there being at that time no other lasting machine adapted for lasting that class of work". (R. Vol. 1, p. 2, lines 19–22).

The Chase lasting machine was primarily adapted and used almost exclusively for lasting men's welt shoes.

Mr. Winslow testified that—

"the Chase lasting machine was especially adapted to and was developed for the lasting of men's welt shoes" (R. Vol. 1, p. 397, lines 39–40).

Martin E. Welch, a witness for the defendants, who manufactured women's shoes, testified,—

"We did not use the Chase lasting machine; we don't use it on women's work" (R. Vol. 1, p. 711, lines 32–33).

Mr. Howe testified,—

"The Chase machine was designed for and used almost exclusively on men's welts" (R. Vol. 1, p. 627, lines 12–13).

It is not disputed that the Ideal lasting machine was developed, especially designed, and principally used for lasting women's welt shoes. It is also not disputed that the Chase lasting machine was developed, especially adapted, and principally used for lasting men's welt shoes.

The United States claims, however, that the Chase was also used in the field of the Ideal and that, conversely, the Ideal was also used in the field of the Chase.

That its claim of competition between the Chase and Ideal

lasting machines was not taken seriously even by the United States is at least indicated by its belated attempt to prove such competition. Throughout its direct case it offered no evidence showing any use of either of these machines in the field of the other.

In its rebuttal case, the United States made an effort to show some use of each of these lasting machines in the field of the other. It called three witnesses to establish use of the Chase machine in the field of the Ideal machine, O'Keefe, Lemay and Springer (R. Vol. 1, pp. 934, 947). We shall show that none of these witnesses testified that the Chase machine was used on women's *welt* shoes, the field of the Ideal, and that the most that can be said of their testimony is that two of them merely expressed opinions that it could be so used. Such opinions in the light of strong evidence that it was not adapted for such use, obviously have no probative value.

In its rebuttal case the United States also called nine witnesses, Snow (R. Vol. 1, p. 895), Worsencroft (R. Vol. 1, p. 913), Whitman (R. Vol. 1, p. 915), Heffernan (R. Vol. 1, p. 917), Jordan (R. Vol. 1, p. 932), Murphy (R. Vol. 1, p. 933), O'Keefe (R. Vol. 1, p. 934), Florsheim (R. Vol. 1, p. 935), Fletcher (R. Vol. 1, p. 937), in an effort to show use of the Ideal machine in the field of the Chase on men's welt shoes, but the greater part of their testimony either related to use of the machine *after 1899*,—that is, after the United Company was formed,—with the addition of improvements which better adapted the machine for men's welt shoes, and upon a new shape of shoe which was introduced after 1899; or it related only to use of the Copeland Rapid laster, which was practically obsolete before the United Company was formed and which the Goodyear Company was not putting out at all. Some of these witnesses did testify to use of a few Ideal machines on men's shoes prior to 1899, but this evidence in no way refutes the testimony of defendants' witnesses, corroborated by several witnesses for the United States, that the Ideal machine was developed and designed and chiefly used for lasting women's welt shoes, and that while it actually was used to a small extent on men's welt shoes, it was not adapted for that use and such use was utterly insignificant.

(b) The Chase Lasting Machine was Neither Used nor Adapted for Use in Lasting Women's Welt Shoes and therefore was not Used at all in the Field of the Ideal Lasting Machine.

There is absolutely no proof in the record that the Chase lasting machine was ever used for lasting women's *welt* shoes.

On the contrary, such slight use of the Chase lasting machine on women's shoes as the record shows was altogether on women's *McKay-sewed* shoes, the field of the Consolidated Company's hand method machine.

In its effort to show use of the Chase machine in the field of the Ideal machine the United States relies upon four witnesses, O'Keefe, Lemay, Springer and Selz, but not one of them testified to any such use. Only two of them even went so far as to express an opinion that the Chase machine could be used in the field of the Ideal.

O'Keefe, a witness for the United States, after naming four different factories in each of which he testified he had used Chase lasting machines for lasting *men's welt* shoes, testified that in one only of those factories were Chase lasting machines used on women's work. That use was "for a short time" only (R. Vol. 1, p. 934, lines 36–40; p. 935, lines 8–9, 18–20). There is no intimation in O'Keefe's testimony that those women's shoes were *welt* shoes.

Lemay, a witness for the United States, testified,—

> "I know of no reason why the Chase machine could not be used successfully in lasting women's shoes" (R. Vol. 1, p. 947, lines 37–39).

But that mere statement of opinion does not in the least discriminate between women's *welt* and women's *McKay* shoes, and such statement of mere opinion on the part of a witness who, so far as the record shows, *never even saw a woman's shoe of any sort lasted on a Chase machine* is obviously entitled to no weight. Further, the only women's shoes made in any factory where he worked were McKays and were lasted on the hand method McKay lasting machine (R. Vol. 1, p. 947, lines 25–36).

The only use of the Chase lasting machine on women's work testified to by Springer, a witness for the United States, was used in lasting women's *McKay-sewed* shoes. The shoes made in that factory were mostly men's McKays, and the making of women's McKays was an experiment and was confined to a year. They only made a few thousand pairs and used the same machines they had (R. Vol. 1, p. 948, lines 42–44; p. 949, lines 5–6, 18–24, 32–33). The only testimony Springer gave with regard to possibility of use of the Chase lasting machine on *women's welts* was a bare statement of opinion:—

> "*Q.* Do you know of any reason why it cannot be used on women's welt shoes the same as on men's?
> "*A.* No, sir" (R. Vol. 1, p. 948, lines 17–19).

This statement of opinion, like Lemay's, obviously has no probative value. Indeed on cross-examination Springer testified,—

> "I am not undertaking to give any very well-studied opinion as to the various uses that the Chase machines may be commercially put to successfully" (R. Vol. 1, p. 949, lines 24–26).

In Selz's testimony regarding the use of the Chase machine women's welt shoes were not even mentioned (R. Vol. 1, p. 142, lines 1–18; p. 148, lines 40–41). His testimony is, therefore, irrelevant to this issue.

Thus, not only did the witnesses for the United States fail to establish any use of the Chase lasting machine in the field of the Ideal either before or since 1899, but their testimony supplements defendants' evidence establishing that the Chase machine was neither used nor adapted for use in lasting women's welt shoes.

Mr. Winslow testified on cross-examination that the Chase lasting machine was *not used* on women's welt shoes:—

> "*A.* No; it wasn't used on women's welts.
> "*Q.* Was it used at all on women's welts?
> "*A.* I don't know of a single factory or a single machine that was being used to last women's welt shoes" (R. Vol. 1, p. 525, lines 15–18).

Mr. Howard testified:—

> "So far as I can learn the Chase lasting machine was never used, either before or after 1899, in lasting women's welt shoes. There was not one Chase lasting machine in Lynn, the great women's shoe center, in January, 1899. So far as I know, there has never been one there" (R. Vol. 1, p. 971, lines 10–14).

Welch, a Lynn shoe manufacturer, testified,—

> "We did not use the Chase lasting machine; *we don't use it on women's work*" (italics ours) (R. Vol. 1, p. 708, line 39; p. 711, lines 32–33).

Not only did the United States fail entirely to offer any evidence of any *use* of the Chase lasting machine for lasting women's welt shoes, but the evidence proves that the Chase lasting machine was *structurally not adapted* for that work. Mr. Winslow testified:—

> "The Chase machine was not adapted for lasting women's welt shoes. The reason why it was not is that it is a practical impossibility up to the present time to last the leather that is used in the manufacture of women's shoes over the toe by any bed machine which does not previously wipe it up over the toe before coming in over the last. . . . The Chase machine . . . did not have that function" (R. Vol. 1, p. 398, lines 41–44; p. 399, lines 1–3).

Another structural difficulty in the use of the Chase lasting machine for women's welt shoes arose from the use in that machine of a retarder which, as explained by Mr. Howard,—

> "worked satisfactorily on the heavier leathers of men's shoes, but on the lighter leathers of women's shoes it would pull the stock along the centre of the shoe and would result in bowing or bending the tip seam forwardly, which of course was bad shoemaking and spoiled the shoe" (R. Vol. 1, p. 968, lines 36–40).

Counsel for the United States read into the record an advertisement of the Chase machine advertising it for use on women's shoes (R. Vol. 1, p. 960). But this advertise-

ment does not even purport to claim that the Chase machine could be used on women's *welt* shoes, that is, in the field of the Ideal. Presumably the advertisement had reference to women's McKay shoes, on which the record shows a slight use of the Chase machine (*supra*, pp. 100–101). That use, however, was in the field of the hand method McKay machine of the Consolidated Company and evidence regarding it is not relevant to any issue in this case. But even if it should be assumed that the advertisement intended to offer the Chase machine for women's welt shoes, it would merely show an attempt to introduce the machine in that field, and the complete failure of the attempt confirms the defendants, testimony that the machine was structurally unfitted for such use.

There is, therefore, no evidence that the Chase machine was ever used on women's welt shoes and there is evidence that it was not so used and that for structural reasons it could not be so used successfully. The record, accordingly, establishes clearly that the Chase machine did not compete with the Ideal machine in the lasting of women's welt shoes.

(c) The Evidence also refutes the Claim of the United States that the Ideal Machine was Competing with the Chase Machine in the Field of the Chase, that is, in Lasting Men's Welt Shoes.

The United States contends that the Ideal machine could be used and actually was used on men's welt shoes, and, therefore, that it did compete with the Chase machine. That it was possible so to use it, and that it was so used to a slight extent, is not disputed by the defendants. Their contention is that it was not adapted for such use and could not be so used successfully in a commercial sense and that such overlapping use as existed was negligible and did not constitute competition in any true sense.

Mr. Winslow testified that the Ideal machine was not adapted for lasting men's welt shoes successfully, except possibly some shoes made of very light leather (R. Vol. 1, p. 398, lines 32–40).

Mr. Howe testified that the Ideal machine might as a feat be used on men's welts, particularly if they were made of thin leather, but the machine was designed and almost wholly used for lasting women's welts (R. Vol. 1, p. 627, lines 1–3).

> "As a feat you could use the Ideal laster, which was designed for women's welts, on men's shoes, but that no one would think of doing so unless they were forced to" (R. Vol. 1, p. 679, lines 35–37).

Robert P. Hazzard, a witness for the defendants, who manufactured men's Goodyear welts exclusively, 5,000 pairs a day (R. Vol. p. 641, line 10), testified on cross-examination:—

> "Before the United Company was formed we lasted welt work on the Chase machine and by hand. I never used an Ideal machine. I don't know what kind of work the Ideal did. I always assumed it was used more for women's work. That is, it was always considered that the Ideal machine was for women's work. I never tried, and never saw an effort made, to use it on men's work" (R. Vol. 1, p. 649, lines 40–43; p. 650, lines 1–3).

There were Fundamental Structural Characteristics of the Ideal Lasting Machine which Rendered it Unadapted for Use with Commercial Success on Men's Welt Shoes.

Mr. Howard, who qualified as a practical expert, as well as a patent expert (R. Vol. 2, pp. 2239–2241), testified that on account of its peculiar organization the machine was *not strong enough* to last men's shoes and *frequently broke* when it was used on men's shoes. Mr. Howard further testified that when the Ideal machine was used on men's shoes:—

> "Owing to the fact that the wipers were supported so far from their acting edges, and that there was lack of support for the toe-lasting head directly under the wipers, the wipers sprung so that they would not seat the upper materials properly against the lip of the insole, and owing to the strain *there was frequent breakage.*
>
> "That weakness in the organization of the machine which I have described didn't affect its successful opera-

tion in operating on women's shoes. The strain is so much less than that which the machine encounters in lasting men's shoes that the machine was strong enough for its operation upon women's shoes. But when it came to deal with the heavier leather of men's shoes, then the difficulty disclosed itself" (italics ours) (R. Vol. 1, p. 968, lines 13–27).

Mr. Howard further explained the organization of the Ideal machine by referring to the drawings of a patent showing the construction of the machine, pointing out on those drawings a part which "was frequently breaking in the operation of the machine on men's shoes" (R. Vol. 1, p. 967, lines 40–45; p. 968, lines 1–13).

On cross-examination Mr. Howard further explained that the Ideal lasting machine could not be used successfully on men's shoes—

> "because the dimensions of a man's shoe and a woman's shoe are substantially different. The power required for lasting a man's shoe is much greater than that required for lasting a woman's shoe" (R. Vol. 1, p. 972, lines 43–44; p. 973, lines 1–2).

Mr. Howard also testified that another important difference between men's shoes and women's shoes, which added to the difficulties encountered in attempting to use the Ideal machine on men's shoes, was that in a man's shoe the box toe must be heavier and stiffer, because it has so much more to do. Practically all men's shoes have box toes; if they didn't they would fall in at the toe (R. Vol. 1, p. 973, lines 16–31).

Snow, a witness for the United States, testified:—

> "The Ideal machine could not be used successfully in lasting men's heavy shoes, because in wiping over the toe, the shoe lifted from the toe piece" (R. Vol. 1, p. 896, lines 12–14).
>
> "When we wiped up over the toe of the shoe the toe would lift off the toe-rest" (R. Vol. 1, p. 896, lines 36–37).
>
> "*Q.* That was the defect with the Ideal when it worked on anything except very light leather?
>
> "*A.* Yes" (R. Vol. 1, p. 897, lines 4–6).

In 1901 Mr. Snow made two important improvements in the Ideal machine (R. Vol. 1, pp. 896–898, 900) about which he testified,—

> "I think it was these two improvements that changed the machine from an unsuccessful machine into a successful one" (R. Vol. 1, p. 900, lines 11–12).

Snow further testified that before he made his improvements the Ideal would not last men's shoes successfully even if the operation were repeated two or three times. It would not even last patent leather shoes successfully (R. Vol. 1, p. 899, lines 27–42).

Fletcher, a witness for the United States, testified that he knew about Snow's putting one of his improvements, the hold-down, on Ideal machines, and that—

> "without the hold down the Ideal machine continually allowed the toe to rise, which caused the tip to pull ahead and to bow" (R. Vol. 1, p. 939, lines 1–6).

But it should be noted that these improvements merely improved the *mode of operation* of the Ideal machine on men's shoes, as we shall show (*infra*, pp. 111–113); they did not in any way remedy the *structural weaknesses* which were explained by Mr. Howard (*supra*, pp. 104–106).

Much of the Evidence Relied upon by the United States to Show Use of the Ideal on Men's Shoes is not Directed to the Ideal at all, but Relates to the Copeland Rapid Laster, a radically Different Machine which was practically Obsolete in 1899.

The United States has very much confused this issue by referring to considerable testimony which does not relate at all to the Ideal lasting machine, but deals only with the Copeland Rapid lasting machine, which was an old machine formerly put out by the Goodyear Company, but which was obsolete in 1899. The Copeland machine became out of date with the revolution in styles and shapes of lasts about 1895, at which time the new high-speed Chase lasting machine and

the Ideal lasting machine were produced. The Ideal was the only lasting machine which the Goodyear Company was putting out immediately before the United Company was organized (R. Vol. 1, p. 972, lines 19–38; R. Vol. 2, pp. 2366–7, 2387).

Florsheim, a witness for the United States, *did not mention* the Ideal machine. He testified only regarding the obsolete Copeland Rapid machine (R. Vol. 1, p. 158, line 22).

A large part of the testimony of Worsencroft, Jordan and Murphy, witnesses for the United States, relates to the Copeland machine (R. Vol. 1, p. 913, lines 40–44; p. 914, lines 9–11, 27–34; p. 932, lines 35–36, 40–41; p. 933, lines 37–42).

It is true that some of the witnesses for the United States testified that there was not much difference between the Copeland machine and the Ideal machine; but their testimony is discredited by their own admissions.

Worsencroft, a witness for the United States, admitted on cross-examination that he had had only a limited experience with lasting machines incidental to his principal business of operating welt-sewing machines (R. Vol. 1, p. 914, lines 40–44; p. 915, lines 10–13, 21–23, 33–37). He also said that the Copeland Rapid machine "was succeeded by the Ideal lasting machine" (R. Vol. 1, p. 913, line 44; p. 914, line 1).

Heffernan, a witness for the United States, admitted an important structural difference between the Copeland Rapid laster and the Ideal (R. Vol. 1, p. 918, lines 3–4).

Jones, a witness for the United States, after testifying that the Copeland Rapid laster and the Ideal were two modifications of the same machine, or "adaptations of the same machine for slightly different classes of work," brought out strikingly the radically different uses of the two machines by explaining that by "slightly different classes of work" he meant—

> "that the Copeland Rapid was used for men's and the Ideal for women's."

He also said:—

> "*Q.* Well, could either machine do the work of the other; that is, could one machine be used for both men's and women's shoes?

"*A.* I wouldn't answer that at this moment from my knowledge. My recollection isn't clear enough" (R. Vol. 1, p. 107, lines 39–43; p. 108, lines 23–33).

The irrelevance of testimony relating to the Copeland Rapid laster and the absurdity of the claim of identity between the Copeland Rapid laster and the Ideal are further proved by Mr. Howard's testimony:—

"*Q.* Was there any difference between the Copeland Rapid and the Ideal?

"*A.* There was a great deal of difference.

"*Q.* What was it?

"*A.* *Practically the only similarity was the fact that both machines were organized for the upward wipe at the toe, and the constructions by which that effect was obtained were substantially different, radically different in the two machines. In all other respects the machines were substantially different; in most respects radically different*" (italics ours) (R. Vol. 1, p. 972, lines 22–31).

Moreover, Mr. Howard testified that the Copeland Rapid laster "was practically obsolete in 1899" and that—

"The Copeland had practically been killed by the new high speed Chase lasting machine, which was introduced in 1895" (R. Vol. 1, p. 972, lines 20–21, 36–38).

Since the Copeland Rapid lasting machine was out of date and obsolete and had been discarded by the Goodyear Company, which in 1899 and for some time previously had been putting out the Ideal machine exclusively, it is clear that any testimony as to use of some Copeland machines which were still out at that time is not in any way pertinent to the issue and is immaterial.

The record indicates that the reliance of the United States upon testimony relating to the obsolete Copeland Rapid machine was an afterthought, doubtless due to its failure to make out a case as to the Ideal machine. This position is not consistent with the petition as construed by the counsel who drew it and who tried the case.

"PUTNAM, J. Your petition alleges that the Goodyear lasted ten per cent. . . .

"Mr. GREGG. That was the Ideal machine" (R. Vol. 1, p. 968, lines 41–45).

Nearly all of the Evidence Relied upon by the United States to Show Use of the Ideal on Men's Shoes Relates to Alleged Use of the Ideal after February, 1899.

The greater part of the testimony relating to use of the Ideal machine on men's shoes upon which the United States relies relates to use of the machine *after 1899*. This testimony was not supported by any evidence that defendants had any reason to anticipate that use of the machine after 1899 and accordingly it is irrelevant. *Overlapping of the fields of the lasting machines of the Goodyear Company and the Consolidated & McKay Company after 1899 clearly has no bearing upon this issue in the absence of evidence that there was good reason "early in 1899" to anticipate that there might later be such overlapping.*

Of the witnesses put on by the United States in its attempt to show use of the Ideal in the field of the Chase, Snow (R. Vol. 1, p. 895 *et seq.*) and O'Keefe (R. Vol. 1, p. 934 *et seq.*) did not testify *at all* as to use of the Ideal on men's work *prior to February, 1899*. Testimony of Heffernan (R. Vol. 1, p. 917 *et seq.*), Fletcher (R. Vol. 1, p. 937 *et seq.*), Jordan (R. Vol. 1, p. 932 *et seq.*) and Worsencroft (R. Vol. 1, p. 913 *et seq.*), all witnesses for the United States, dealt largely or almost entirely with conditions *after 1899*. The testimony of both Whitman (R. Vol. 1, p. 915 *et seq.*) and Heffernan relates to one factory only, the Whitman & Keith factory, as does also much of the testimony of Worsencroft, Jordan and Murphy (R. Vol. 1, p. 933 *et seq.*). It does not appear whether Murphy's testimony as to the Ideal machine relates to conditions before or after 1899.

After the formation of the United Company there was a slightly greater use of Ideal machines on men's welt shoes, but that use was due, first, to a change in styles of shoes and, secondly, to the invention of improvements which remedied the defects in the organization of the Ideal machine that had rendered it unadapted for men's shoes. It cannot be assumed that defendants had any reason in February, 1899, to anticipate this change in the styles of shoes and much less can it be assumed that they had any reason to believe that inventions would be made which would better adapt the Ideal machine for men's work.

The slightly Increased Use of the Ideal Lasting Machine after 1899 was Due to the Introduction of the High-toed Last and to Inventions which better Adapted the Ideal Machine for Men's Work.

The slightly increased use of Ideal machines on men's shoes after 1899 was due to a radical change in the styles of shoes—the introduction of the so-called bull-dog toe which was made on a high-toed last. This is explained in the testimony of George E. Keith, a shoe manufacturer at Brockton:—

> "I did not have an Ideal lasting machine in my factory before the organization of the United Company in February, 1899. I put in the first Ideal machines in my factory in November, 1899.
>
> "The occasion for my taking any Ideal machines at that time was that that was about the time of a radical change in the style of shoes; it was the era of what they call the bull-dog toe. The bull-dog toe originated in Brockton, and so far as I know there was no manufacturer in Brockton ahead of me in the introduction of the high-toed last.
>
> "The idea of getting the Ideal machine to try on the high-toed last was because it wiped up on the side of the last better than the Chase and then with the adjustable head helped us to overcome the height and width of the toe. That was the reason that led me to take and try the Ideal" (R. Vol. 1, p. 964, lines 31–44).

Jordan, a witness for the United States, testified that "the high box toe requires a differently adjusted machine" (R. Vol. 1, p. 933, lines 16–17).

There can be no question as to the date when the high-toed shoe was introduced. Howard said that the high toe started in 1899 and he produced a last which was used from 1899 to 1901 (R. Vol. 1, p. 966, lines 39–41; Vol. 2, pp. 2367–2368).

Fletcher, a witness for the United States, said the high-toed last "was started by George Keith in Brockton" (R. Vol. 1, p. 938, lines 42–45).

But Even for this Special Work on Men's Shoes the Ideal Lasting Machine was not Successful until Patented Improvements were Embodied in the Machine long after February, 1899.

Mr. Keith further testified:—

> "When we first used the Ideal laster on men's shoes we couldn't get the result that we expected or wanted. The difficulty was that the machine being so light the last would lift as you came up on the sides of the toe. . . . It would rise, so that it was impossible to do the work. . . . As it came up over the sides of the last the last would spring up. As a result, we could not complete the job. This required the operator to keep repeating the operation a number of times and that slowed him down, and it creased fine leather or patent leather so that the shoe would be almost ruined" (R. Vol. 1, p. 965, lines 1–29).

Snow, a witness for the United States, testified emphatically to the same effect:—

> "*Q.* By going over it two or three times, it was done all right?
>
> "*A.* No; it wasn't done all right then. The more you wipe up a toe the worse it is" (R. Vol. 1, p. 899, lines 38–40).

Snow further testified that in 1901 he invented a hold-down which was put on the Ideal machines in the Keith and Douglas factories in Brockton and which prevented the shoe from being lifted off the toe rest (R. Vol. 1, p. 896, lines 22–44; p. 897, lines 1–13; p. 899, lines 10–11.)

Keith testified as to this hold-down:—

> "A device was developed in my factory to be attached to the Ideal machine to help it in lasting men's shoes. This was an attachment that could be swung around to hold the last down in its place so that the work could be performed better and so that the last could not rise. . . .
>
> "Until that was done, in my opinion, the Ideal machine would not be commercially a success, under the conditions that were on the market at that time. Before we put on the hold down the trouble was with bringing the upper

smoothly on a last that had a wide edge—to bring that up smooth before it was wiped over" (R. Vol. 1, p. 965, lines 8–24).

Whitman, a witness for the United States, testified:—

"*Q.* And it is a problem with the old-fashioned Ideal laster to last those high-toed shoes without the lasts slipping up?

"*A.* Yes, sir.

"*Q.* Unless you have this hold-down?

"*A.* Yes, sir.

"*Q.* And without the hold-down you can't last those high-toed shoes as a good shoemaker wants to have it?

"*A.* *Not satisfactorily; no, sir*" (italics ours) (R. Vol. 1, p. 917, lines 7–14).

With regard to the difficulties encountered in the Whitman & Keith factory in the use of the Ideal lasting machine on men's shoes *before* the invention of the hold-down, Heffernan, a witness for the United States, testified that the hold-down was applied "because of the bowing of the tips and flattening of the heels."

Heffernan also testified:—

"*Q.* What does 'bowing of the tips' mean?

"*A.* Pulling up the tip of the shoe, pulling that cap line out of true. . . .

"*Q.* What happens to the heel?

"*A.* It flattens the back of the heel—flattens it in. . . ."

"I had to keep after the operators all the time, regulate the machines myself, put pressure on the heel pads to see that I could hold them down there and make them press on the shoe while they were trying to last the toe" (R. Vol. 1, p. 918, lines 35–43; p. 919, lines 1–5, 43–44; p. 920, lines 1–2).

Heffernan further testified that since this hold-down was applied to the machines in the Whitman & Keith factory—

"I don't have one tip bowed in a month now, whereas before I would get a dozen shoes in a case" (R. Vol. 1, p. 920, lines 8–9).

A case of men's shoes is *24* pairs (R. Vol. 1, p. 193, line 14).

Snow also made another improvement on the Ideal machine, the patent on which is Defendants' Exhibit 338 (R. Vol. 1, p. 897, lines 14–16; Vol. 5, p. 937). He testified that before this improvement was added to the Ideal machine—

> "the heel band would not bring the corners of the counters in.
>
> "*Q.* The heel band of the Ideal machine?
>
> "*A.* Yes; would not bring the end of the counters in. I made a something that would bring them in" (R. Vol. 1, p. 897, lines 30–34).
>
> "*Q.* Now, it was with these two devices and improvements attached that Mr. Douglas used the Ideal laster on men's shoes?
>
> "*A.* Successfully; yes.
>
> "*Q.* And without those the Ideal would not last men's shoes successfully, would it?
>
> "*A.* No, sir" (R. Vol. 1, p. 898, lines 35–40).

Heffernan testified that they had had the heel band improvement on the machines in the Whitman & Keith factory "for over twelve years" (R. Vol. 1, p. 918, lines 19–23).

The United States relies upon the testimony of Jordan that the hold-downs were used at Douglas's only a short time and were then taken off. The credibility of Jordan's testimony may be judged from the fact that he testified that he worked at the George E. Keith factory after the record shows beyond question that the hold-downs were put on all the Ideals in that factory (*supra*, p. 111), but says that the hold-downs were not on the machines when he worked there and that he did not remember that the hold-downs were ever used at the George E. Keith factory (R. Vol. 1, p. 933, lines 18–32).

We submit that this limited use of the Ideal machine *after 1899* which was occasioned by a radically new style of shoe that was not made in February, 1899, and which was made possible only by embodying in the machine inventions made long after that date, has no bearing upon this case. No one can reasonably anticipate to-day that a given patentable invention will be made to-morrow; that invention may not be made for ten years; it may never be made. If the record

had shown, as it does not, that officials of the Consolidated & McKay and Goodyear Companies had any reason to anticipate the introduction of high toes for men's shoes, by no possibility could it have been shown that they had any reason to believe that inventions would be made several years later which would adapt the Ideal lasting machine for that development in the industry.

In February, 1899, there was only the most Trivial and Incidental Overlapping of the Ideal and Chase Machines through Use of the Ideal in the Field of the Chase, and that Overlapping Use was Absolutely Insignificant and Utterly Negligible.

The contention of the United States that the Ideal machine was used on men's welt shoes *before 1899* is supported by evidence that the machines in the Whitman & Keith, Cushman and Duquesne factories, eighteen at the most, were being used on men's shoes before 1899.

Prior to the organization of the United Company the Goodyear Company had put out only 248 Ideal machines (R. Vol. 1, p. 966, lines 14–15).

The total number of lasting machines of all kinds out on January 1, 1899, was between 4,200 and 4,300. The Ideal machines, therefore, constituted about 5 or 6% of all lasting machines outstanding (R. Vol. 1, p. 975, lines 42–45). The total number of shoes operated on in 1899 by both the Ideal and the Copeland Rapid was .77 of 1% of all shoes lasted by machines (R. Vol. 1, p. 975, lines 35–41). Not more than one-half of the total number of shoes made in 1899 were lasted by machines (R. Vol. 1, p. 402, lines 14–18), so that less than .40 of 1% of all shoes made in 1899 were lasted on both the Copeland Rapid and the Ideal. As the United States has proved that at the most only eighteen Ideal machines were used on men's welt shoes, the total number of men's welt shoes on which the Ideal machine operated was about .03 of 1% of all the shoes made in 1899. This is certainly a meagre showing of competition by a machine which had been on the market for nearly four years (R. Vol. 2, p. 2387).

With regard to the extent of this field which was occupied by the Ideal lasting machine it will not be forgotten that the bulk of women's welt shoes were lasted by hand in 1899, comparatively few being lasted by machine (R. Vol. 1, p. 525, lines 42–45).

(d) In the Normal and Natural Development of the Industry both the Chase Lasting Machine and the Ideal Lasting Machine have been Superseded and have become Obsolete. Accordingly any Question of their Possible Competition has become a Moot Point.

As a result of the development of the modern shapes of shoes, made on "crooked lasts," a few years after 1899 the Ideal and Chase machines both proved inadequate for satisfactory work in lasting shoes made upon modern lasts (R. Vol. 1, p. 933, lines 13–16; Vol. 2, pp. 2372–7, 2389–90). This situation was recognized by the United Company, and it met the demand for a machine which would successfully last shoes made upon these modern lasts by the development of a greatly improved lasting machine of radically different organization from either the Ideal or the Chase machine. The work of that new machine, the "No. 5," was so far superior and its capacity so much greater that it immediately superseded both the Chase and the Ideal machines, and there was no longer any demand for those machines. Mr. Howard testified:—

> "The Ideal machine, like the Chase machine, was not adapted for satisfactory work in lasting shoes made upon modern lasts such as have been used in the past eight or ten years" (R. Vol. 2, p. 2389).
>
> "After the No. 5 lasting machine was developed the demand from shoe manufacturers for Ideal machines ceased altogether and most of them have been returned in exchange for No. 5 machines. It was just the same in the case of the Chase machine" (R. Vol. 1, p. 971, lines 5–8).

Mr. Howard further testified:—

> "After manufacturers became acquainted with this No. 5 lasting machine the company was overwhelmed with

orders. In February, 1911, the company was over 400 machines behind in its orders for No. 5 lasting machines, although it was building and shipping machines as fast as the facilities of its manufacturing plant would admit. For example, in April, 1911, the company shipped 208 machines. At no time since the machine was introduced has the company been able to catch up with its orders, and even as late as August, 1913, which is the date of the last report I have, the company was 82 machines behind in filling its orders. On that date 4,204 of these No. 5 lasting machines had been shipped. On December 1, 1911, over 3,000 of these machines were in use in shoe factories.

"From the beginning, the No. 5 lasting machine has been adapted for lasting either men's or women's welt shoes. It has superseded the Ideal lasting machine as well as the Chase lasting machine, and it is now the standard commercial bed lasting machine supplied to manufacturers by the United Shoe Machinery Company" (R. Vol. 2, pp. 2380–1).

Florsheim, a witness for the United States, testified that he substituted the No. 5 machines for his Chase machines because the No. 5 is "a better machine" than the Chase, "does better work" and will last "about ten per cent more shoes" (R. Vol. 1, p. 159, lines 39–41; p. 169, lines 12–14).

The ridiculous contention of Heffernan, Whitman and Murphy, witnesses for the United States, that the Ideal machine had as great capacity as the No. 5 lasting machine was completely answered by Mr. Howard's testimony as to actual conditions in the Whitman & Keith factory, to which the testimony of those witnesses relates. He testified that four of the Ideal machines in that factory had been entirely idle, while they had been using all their three No. 5 machines constantly since they were installed, and that the royalty returns giving the actual output of both types of machines showed that the average output of the No. 5 machine in that factory was much greater than that of the Ideal machine (R. Vol. 1, p. 967, lines 1–31). Mr. Howard concluded,—

"For several years, and since some time prior to the beginning of this suit, it has been an accepted fact in the industry that the No. 5 machine did better work and more of it than the Ideal" (R. Vol. 1, p. 970, lines 5–8).

The absurd contention that the Ideal machine was as good as the No. 5 machine was further answered by witnesses for the United States. Cunningham said of the No. 5 machine: "It is a better machine." Fletcher said: "The No. 5 is superior to the Ideal" (R. Vol. 1, p. 289, lines 42–43; p. 938, line 21).

It thus appears that both the Ideal and Chase machines have become obsolete, and any question of their possible competition has become a moot point. No decree of this Court could restore such competition if it ever existed.

(e) The Finding of the District Court as to Competition between the Chase and the Ideal Machines.

The District Court found in its opinion as follows:—

> "There is no proof of any actual use of the 'Chase' laster otherwise than for its intended purpose of lasting men's welt shoes. It could not work well for use with the lighter leather whereof women's shoes are made. The 'Ideal' laster, used almost exclusively for its intended purpose of lasting women's welt shoes, could not be relied on to work well with the heavier leather whereof men's shoes are made. The proof relied on to show that it competed with the 'Chase' went no further than to show that a number of 'Ideal' machines, small in proportion to the total number then in use, were being used in a few factories on men's shoes, notwithstanding their want of adaptation to such use. That there was any attempt to put either machine into the market as against the other does not appear. No competition between the two in the usual sense of the term is shown. After the consolidation, by the addition of a patented 'hold down attachment' added by the United Company to the 'Ideal' in 1901 or 1902, some of the defects referred to were removed, but not until then can it be said to have been commercially successful for work on men's shoes. Before this improvement, it possessed at most a limited possibility of such use. I am unable to consider it established that competition in any practical sense was destroyed when the United Company became owner of both machines" (Dodge, J., R. Vol. 1, p. 1130).

(3) THE EVIDENCE AFFORDS NO FOUNDATION WHATEVER FOR THE CLAIM THAT THERE WAS COMPETITION IN 1899 BETWEEN THE IDEAL LASTING MACHINE OF THE GOODYEAR COMPANY AND THE HAND METHOD WELT LASTING MACHINE OF THE CONSOLIDATED & McKAY COMPANY.

(a) Introductory Statement.

The Chase and Ideal lasting machines and the hand method lasting machine were of radically different types. The Chase and Ideal were of the "bed" type, in which the last and shoe are supported by a heel support and a toe rest, and the upper materials are worked over into lasted position at the heel and toe by "wipers." This type also includes a "heel band" for forcing the upper materials, including the stiff "counter," around the heel end of the last. In this type of machine the tacks which secure the upper in lasted position are driven by a "hand tacker" except around the toes of welt shoes where the upper is secured by wire (R. Vol. 2, pp. 2362-3).

In the "hand method" type the upper is worked over the last and automatically tacked in a step-by-step operation, and the operator holds the shoe in his hands while the machine is operating upon it (R. Vol. 2, p. 2363).

When the United Company was formed the Consolidated was putting out the hand method McKay lasting machine. That machine could not be used for the lasting of welt shoes owing to the radical differences between McKay shoes and welt shoes, as explained by Mr. Howard:—

> "The lasting of welt shoes is a very different operation from the lasting of McKay shoes. . . . The insole of a McKay sewed shoe is flat, and in the lasting of such a shoe it is only necessary that the upper stock be worked properly over the edge of the last, laid down upon the flat insole, and tacked. The insole of a welt shoe, on the other hand, is formed with a channel lip or rib extending all the way around the shank, forepart and toe.

> The narrow strip between this lip or rib and the edge of the sole is known as the 'feather edge.' . . . In order that the shoe may be in proper condition for the welt-sewing operation, the upper must, in the lasting operation, be forced into the angle formed by the feather edge and the upturned lip, and must be secured in that position. The hand method lasting machine supplied for the lasting of McKay sewed shoes had no provision whatever for getting the upper into this angle between the feather edge and the lip, and for securing it in that position snugly against the lip. Not only was the hand method lasting machine for McKay work unsuited for the lasting of welt shoes satisfactorily, but in fact it could not possibly be used commercially for that work" (R. Vol. 2, pp. 2399–2400).

For some time prior to 1899 the Consolidated Company had been endeavoring to construct a hand method machine which would last welt shoes, but,—

(b) In February, 1899, the Hand Method Welt Lasting Machine was only an Unsuccessful Experimental Machine.

Mr. Winslow testified:—

> "At the date of the formation of the United Company in 1899 the Consolidated & McKay Company were at work endeavoring to adapt or improve that machine so that it could last welt shoes. It did have out experimentally in the factories of manufacturers a very few machines. I don't think there were twenty of them, but at the date of the formation of the United Company *it was not a successful welt lasting machine. It would not last the toes of the welt shoes properly*" (italics ours) (R. Vol. 1, p. 524, lines 4–11).

Mr. Winslow further testified:—

> "And while it is true that we had machines out it is true that they were not being accepted by the manufacturers and they were being sent out and coming back. We were trying all the time to keep them going. . . . We were trying to hold them in the field, but we knew that they were not commercially successful" (R. Vol. 1, p. 978, lines 2–5, 11–13).

Mr. Howard testified:—

> "The machines were being knocked around from pillar to post. They didn't stick. They would be sent out on trial and they wouldn't stay" (R. Vol. 1, p. 969, lines 4–6).

Mr. Winslow explained why the machine could not be successfully used on a welt shoe:—

> "The inner sole is channeled, as shown in Defendants' Exhibit 145, and in lasting the upper has to be forced against the shoulder of the channel. In order to do this some form of wiper must be used and in the hand-method machine there was no wiper which would push the upper in up to the shoulder of the inner sole. The years of experimentation which we carried on were for the purpose of producing a wiper which would do that" (R. Vol. 1, p. 399, lines 34–41).

Mr. Winslow further testified that early in 1898 in the lasting of welt shoes by the bed machines the taping of the toes was adopted, thereby doing away entirely with the use of tacks to hold the toe, which is a great advantage to the welt sewing operation. The result of this was that the hand method welt machine became even less desirable by comparison with the bed machines (R. Vol. 1, p. 977, lines 40–45; p. 978, line 1).

Mr. Howard testified:—

> "In order to last a toe properly it was frequently desirable to give several pulls upon the same portion of the stock at the toe by the pinchers, and that could not be done, because since the machine drove a tack at every operation of the pinchers, the tacks would be driven one upon another. If they attempted to take hold of a portion of the stock near that or closely adjacent to that just acted upon, the tacks would be driven so close together that they would cut the stock and spoil the leather. Then, of course, the presence of some of those lasting tacks or of stay tacks, if they were driven to take their places, interfered seriously with the operation of the welting machine. The needles would break.
>
> "And more than that, until this wiring attachment was placed upon the machine [*infra*, p. 121] the machine

> would not force the upper properly against the rib of the inner sole, and it was necessary to perform a subsequent hand operation upon the shoe by means of what was known as a 'banging iron,' one of which is Defendants' Exhibit 340. . . . That was a subsequent additional hand operation for which operators were paid two and one-half cents per dozen" (R. Vol. 1, p. 969, lines 13–30, 36–38).

Counsel for the United States read into the record certain advertisements of the Consolidated Company in a trade paper in December, 1898, advertising the hand method lasting machine for lasting welt shoes (R. Vol. 1, p. 960, lines 24–28).

These advertisements do not state that the machine was intended for women's welt shoes, the field of the Ideal machine. But apart from this, they merely show an attempt by the Consolidated Company to introduce the machine. They in no wise refute the testimony referred to above, showing that this attempt of the Consolidated Company had failed, and that the machine was not commercially successful.

(c) The Hand Method Welt Lasting Machine did not become Commercially Successful until a New Wiring Device was Invented and Incorporated in it after the Formation of the United Company.

Mr. Howard testified:—

> "The attachment for placing wire instead of tacks around the toe was first adopted and applied to the hand method welt lasting machine in January, 1900, in its original form. The wire attachment was improved a year later, but the machine really reached a point of commercial success with the adoption of the first wire attachment" (R. Vol. 1, p. 969, lines 41–44; p. 970, lines 1–2).

This wiring device performed the same function which the taping device performed on the bed machine (R. Vol. 1, p. 978, lines 6–8). It obviated the difficulties which had previously made the hand method welt machine unsatisfactory.

(d) There is no Evidence Whatever that the Few Experimental Hand Method Welt Lasting Machines which were out in 1899 were ever Used in the Field of the Ideal Machine, that is, on Women's Welt Shoes.

The record does not show that there was any use whatever of the few experimental hand method welt lasting machines which had been put out before February, 1899, in the field of the Ideal machine, that is, in lasting women's welt shoes. The only witness who testified to any use of that machine prior to 1899 was Eaton, and he used the machine on the cheapest grade of *men's* welts (R. Vol. 1, p. 752, lines 16–17; p. 755, lines 6–7).

It is important to note that such use of the hand method welt lasting machine on women's shoes as is shown by the record was all *long after 1899*, and after the machine had been made commercially successful by embodying in it improvements invented after 1899, as has just been explained (*supra*, p. 121).

(e) Accordingly the Hand Method Welt Lasting Machine did not Offer either Existing or Potential Competition in 1899.

With respect, therefore, to the claim that the hand method welt lasting machine offered competition the record shows that the situation when the United Company was formed was as follows:—

Only a few hand method welt machines had been put out up to February, 1899, compared with between 4,200 and 4,300 lasting machines of all kinds then in use; these machines were only experimental, their use amounted to nothing more than shoe factory trials of the machine, and those trials showed the machine to be unsuccessful. Such use as was made of those experimental machines was not in the field of the Ideal machine. In spite of continuous and aggressive efforts for several years to make the machine successful, it was a flat failure in February, 1899, because it could not last satisfactorily the toes of welt shoes.

At that time not only was the hand method welt machine in a state of experimental development only and a commercial failure, but there was absolutely nothing in sight upon which even to hazard a reasonable guess that the hand method welt machine *ever would become a success.* The toe-wiring mechanism to which the hand method welt machine owed its entire commercial success, first applied to the machine in 1900, was a radically new departure not even dreamed of in February, 1899. No one could then reasonably anticipate that mechanism would be invented which could be incorporated in that highly organized automatic machine and would successfully apply wire around the toe during the step-by-step operation of the machine. If those inventions—and there were two of them before a successful organization was produced (R. Vol. 2, p. 2403)—had not been made, the hand method lasting machine for welt work would never have been heard of in this suit.

It is absolutely clear, therefore, if anything is clear from the record, that in February, 1899, the hand method welt machine did not offer either existing or potential competition worthy of the slightest notice.

(f) Even after the Hand Method Welt Lasting Machine became Commercially Successful in 1900 It had a Field of its own Distinct from the Field of the Bed Lasting Machines, such as the Ideal.

Furthermore, owing to the very radical differences between the hand method type of lasting machine and the bed type of lasting machine such as the Ideal (*supra*, p. 118), the hand method welt machine, after it became commercially successful, naturally found a field of its own distinct from the bed lasting machine field, manufacturers who preferred speed to quality employing the hand method welt machine and manufacturers who preferred quality to speed employing a bed machine. As explained by Mr. Howard:—

> "There is a difference of opinion among shoe manufacturers as to the desirability of using the hand method machine or the bed type of lasting machine for welt shoes.

> Those manufacturers who believe that they can secure better lasting upon the bed type of lasting machine prefer, and are supplied with, Lasting Machine No. 5, USMC, the United Company's standard commercial bed lasting machine, which was introduced in 1908. Other manufacturers who are satisfied with the quality of the work done on the hand method lasting machine for welt work prefer that machine because they can get twice the amount of work from it as from the bed type of lasting machine. Either type is supplied to the manufacturer by the United Company, according to his preference" (R. Vol. 2, pp. 2406, 2407).

As stated by Mr. Winslow:—

> "Wherever they can last a welt shoe satisfactorily by the hand method machine they use that in preference, because it is a speedier machine for lasting than any of the other machines, but the quality of work which can be done by that machine, especially around the toe, is not considered by the manufacturers so high grade as when you can use the bed machine" (R. Vol. 1, p. 526, lines 16–22).

Thus the record shows that the hand method welt machine was an entirely different type of machine from the bed lasting machines, such as the Ideal, and that accordingly and as was to be expected it found a field of its own. The United Company, therefore, would not have been able to supply the machines its customers preferred for different classes of work if it had not acquired both the bed machines and the hand method welt machine.

Even if the hand method welt lasting machine, experimental and unsuccessful in 1899, had offered any competition to the Ideal machine, which it did not (*supra*, pp. 122–123), there can be no question that the United Company could lawfully acquire these two radically different machines which did their work in wholly different ways and were preferred and found best suited for different grades of work. To deny the right to acquire both machines would deny the United Company the right to supply these different types of machines, both of which were desired by its customers, since both machines were patented and could be supplied only if the United Company owned the patents.

(g) Finding of the District Court as to the Alleged Competition between the Ideal and Hand Method Welt Machines.

The District Court held with respect to this alleged competition (Dodge, J.) (R. Vol. 1, p. 1130):—

> "With still another laster with which the Consolidated Company was experimenting in 1899 for use on welt shoes, we are not here concerned, because, though this laster was afterward further improved, developed, and finally furnished to users by the United Company, it had not been made an article of commerce in any practical sense when that company was formed."

(4) SUCH INSIGNIFICANT AND INCIDENTAL LASTING MACHINE COMPETITION, IF ANY, AS EXISTED IN FEBRUARY, 1899, INVOLVED INFRINGEMENT BY EACH COMPANY OF THE OTHER'S PATENTS AND ACCORDINGLY WAS AT LEAST PRIMA FACIE UNLAWFUL.

Serious patent litigation between the Consolidated Company and the Goodyear Company was pending at the time of the formation of the United Company. This patent litigation involved important features common to the machines of both companies. Numerous infringement suits had been brought, in some of which one and some of which the other company was the defendant. Suits were also pending against users of the different machines who were largely the customers of both companies (R. Vol. 1, p. 632, lines 14–41).

(5) THE SETTLEMENT OF THIS LITIGATION WAS ALONE A SUFFICIENT JUSTIFICATION FOR COMBINING THE PATENTS OF THE TWO COMPANIES.

The District Court found (R. Vol. 1, p. 1132):—

> "Under their respective patents upon the 'Chase' and the 'Ideal' lasters there was litigation pending in 1899 between the Consolidated Company and the Goodyear

Company, each claiming that the other's machine infringed its patents. Also, under the patents covering their welt-sewing machines there was similar litigation pending between the Eppler Company and the Goodyear Company. A result sought to be attained by both parties to these controversies, and accomplished by them through the acquisition of all the patents by the United Company, was the termination of all this litigation. Reference is made below to other later acquisitions by the United Company, an important feature of which was that litigation, troublesome and expensive on both sides, was avoided or terminated. In so far as any of the defendants' transactions were in order to accomplish results of this kind, it can not be said that their purpose was unlawful."

In *Bement* v. *National Harrow Company*, 186 U. S. 70, it was said by this Court (p. 93):—

"There had been, as the referee finds, a large amount of litigation between the many parties claiming to own various patents covering these implements. Suits for infringements and for injunction had been frequent, and it was desirable to prevent them in the future. This execution of these contracts did in fact settle a large amount of litigation regarding the validity of many patents as found by the referee. This was a legitimate and desirable result in itself."

(6) THE CLAIM OF THE UNITED STATES THAT ITS CONTENTIONS ARE SUPPORTED BY THE TESTIMONY OF "SIXTEEN PRACTICAL MEN."

At the first argument of this case before this Court the junior counsel for the United States stated that fifteen practical shoemakers testified to the actual use in shoe factories of the lasting machines put out by the Goodyear Company, and that that use was necessarily in competition with the lasting machines of the Consolidated Company. The senior counsel for the United States made statements to the effect that sixteen practical men testified that they used for many years in some eleven factories the Ideal, the Copeland Rapid

and the Chase lasting machines, that they used these machines together in their factories, that they did the same work, that the Ideal lasted men's welts and that the Chase lasted women's welts.

These statements were not supported by the record.

Instead of sixteen practical men testifying that the Chase machine lasted women's welts, the fact is that *not a single witness so testified* (*supra*, p. 100).

Again, eight of these "sixteen practical men" did not testify to *any use whatever* of the Ideal machine on men's welts. Three others did not testify to any use of the Ideal machine before 1899, so that their testimony is not relevant to the issue, as has been explained (*supra*, p. 109). *Five witnesses only* testified to any use of the Ideal machine on men's welts before 1899 and they testified to such use in *three factories only* (*supra*, p. 114), and testimony of two of those witnesses, Heffernan and Fletcher, was to the effect that the Ideal was not satisfactory on men's shoes until the hold-down was invented, *after 1899* (*supra*, pp. 112, 106).

Further, ten of these sixteen witnesses did not testify to any use of the Copeland Rapid lasting machine, although this fact is important only as showing added inaccuracy in the arguments for the United States at the former hearing; as we have shown (*supra*, pp. 106, 108), evidence regarding that machine is not relevant to any issue in this case.

(7) GENERAL STATEMENT OF THE SITUATION IN RESPECT TO THE ALLEGED LASTING MACHINE COMPETITION.

The true situation as to the lasting machine conditions in February, 1899, with respect to the Ideal lasting machine and the lasting machines of the Consolidated & McKay Company was thus stated by Mr. Howe:—

> "Whatever competition there was was due to their respective fields lapping over" (R. Vol. 1, p. 629, lines 14–15).
>
> "They really occupied separate fields. It was competi-

tion which might be described as incidental or as negligible" (R. Vol. 1, p. 629, lines 17–18).

"Each had its separate field for which it was designed, but in the cases of all machines of a genus the specific varieties will overlap" (R. Vol. 1, p. 627, lines 17–19).

As stated by Mr. Winslow:—

"Very soon after a given machine had been introduced they settled into their natural positions" (R. Vol. 1, p. 404, lines 37–38).

"These machines have the fields which I have described and they naturally belong to them. No manufacturer to-day would think of using them outside of those fields" (R. Vol. 1, p. 405, lines 3–6).

(8) SUMMARY OF THE EVIDENCE AS TO THE ALLEGED LASTING MACHINE COMPETITION.

1. The lasting machines being put out by the Consolidated & McKay Company and the Goodyear Company were all patented.

2. Neither the McKay & Copeland machine nor the hand method McKay machine (both put out by the Consolidated Company) could be used on welt shoes, so that neither competed or could compete with the Ideal machine of the Goodyear Company. This has not been denied.

3. The Chase machine put out by the Consolidated Company was adapted for use and was used almost exclusively for lasting men's welt shoes.

Such slight use as was made of that machine in lasting women's shoes was on women's *McKay* shoes. The evidence shows that the Chase machine was structurally not adapted for use on women's welt shoes, and there is not a bit of evidence that it was ever used in lasting women's *welt* shoes. It, therefore, did not compete with the Ideal machine of the Goodyear Company in lasting women's welt shoes, which was the field of the Ideal machine.

4. The Ideal machine of the Goodyear Company was adapted to and developed for the purpose of lasting women's

welt shoes. It was possible to use it on men's welt shoes, but it was not commercially practicable for such use.

The insignificant use of the Ideal machine on men's welt shoes did not show that there was competition between the Ideal machine and the Chase machine, but only showed an incidental overlapping of the fields of the two machines which were primarily intended, adapted, and used in different and distinct fields.

In 1899 the Ideal machines constituted only 5 or 6% of all the lasting machines in use. The machines lasted only .77 of 1% of all shoes lasted by machines in 1899. The United States has proved that at the most eighteen machines were used in lasting men's welt shoes. The alleged competition by the Ideal machine, therefore, was in lasting approximately .06 of 1% of the shoes lasted by machines in 1899. As only about one-half the shoes made in 1899 were lasted by machines, the actual use of the Ideal machine in alleged competition with the Chase machine is reduced to the use of the machine on .03 of 1% of all the shoes made in 1899.

It is obvious that the alleged competition was entirely insignificant.

5. The slightly increased use of the Ideal machine on men's welt shoes after 1899 was made possible by new inventions made long after the formation of the United Company which overcame some of the practical difficulties in using the machine on men's welt shoes, and the occasion for that use was the introduction of a radically new style of shoe which was made upon a new type of last.

6. The hand method welt machine of the Consolidated Company was only in an experimental stage in 1899, with no promise of ultimate success. Only a few machines were used and they were being constantly returned. Even as to these machines there is no evidence that they were used on women's welt shoes, the field of the Ideal machine. The machine did not become a commercial success until 1900, when a new mechanism was adopted which had not been invented and could not have been foreseen in 1899.

The machine, therefore, did not offer any actual competition to the Ideal machine in 1899 or any prospective competition which could have been foreseen.

7. Even after the hand method welt machine became commercially successful in 1900, it had a field of its own, distinct from that of the bed lasting machines. Manufacturers preferring speed to quality used the hand method machine, and those preferring quality to speed used the Ideal machine or the Chase machine, according to the character of their work. If the United Company had not acquired that machine as well as the Ideal and Chase machines, it would not have been able to supply all its customers with the machines which they desired.

8. The patent litigation between the Goodyear Company and the Consolidated Company shows that if a trivial and insignificant competition may be said to have existed, it involved infringement by each company of the patents owned by the other and accordingly it was at least *prima facie* unlawful.

9. In the natural and normal development of the industry both the Ideal machine and the Chase machine have become obsolete. If any competition ever existed it could not be recreated.

(9) THE ACQUIRING OF BOTH THE IDEAL MACHINE OF THE GOODYEAR COMPANY AND THE LASTING MACHINES OF THE CONSOLIDATED COMPANY DID NOT MAKE THE ORGANIZATION OF THE UNITED COMPANY UNLAWFUL NOR DID IT SHOW ANY WRONGFUL INTENT.

The acquisition by the United Company of the Ideal machine of the Goodyear Company and the Chase machine and the experimental hand method welt machine of the Consolidated Company could not make the formation of the United Company unlawful, unless by its necessary effect or by reason of the intent with which it was done it prejudiced the public interest by unduly restraining trade or creating a monopoly.

As we have shown, there is no evidence of anything which could be dignified by the name of competition between the

machines of the two companies. So far as the Ideal and Chase machines are concerned there was only a slight overlapping of the fields of use of two machines adapted for different purposes. The slight experimental use of the hand method welt machine was negligible and did not overlap at all.

It cannot be seriously contended that this slight overlapping of the fields of the Ideal and Chase machines and the insignificant and non-competing use of the experimental hand method welt lasting machine necessarily created an unlawful restraint of trade and made the formation of the United Company inherently unlawful.

Nor does this acquisition show any intent by the parties to eliminate competition. The manufacture of the Ideal machine was a negligible part of the business of the Goodyear Company. It is self-evident that its acquisition by the United Company was purely incidental to the acquisition of the machines for making welt and turn shoes, the manufacture of which constituted the principal business of the Goodyear Company. There is absolutely no justification for contending that the elimination of this trivial competition, if indeed any actual competition did exist, was an actuating motive in the formation of the United Company.

The real purpose of the parties was to create a more efficient organization by combining the Goodyear welt machines with the lasting, heeling and metallic machines of the other companies. An incidental elimination of an almost insignificant competition between two different types of patented machines would not be sufficient to make unlawful the consummation of this lawful purpose.

Moreover, even if the Ideal machine had been the only machine owned by the Goodyear Company, so that its acquisition had been, not an incidental result of acquiring the Goodyear Company's welt machines, but the direct purpose of the acquisition, it would have been lawful.

The United Company naturally and properly desired to furnish the best and most efficient types of lasting machines. It obtained, through the Consolidated Company, the patents on, and therefore the right to supply the Chase machine, the McKay & Copeland and the Hand Method machines. No

one of these, however, lasted women's welt shoes successfully. It naturally desired to furnish a machine for lasting women's welt shoes, and the Ideal machine was the only machine for that work on the market. The Ideal was patented, and the United Company, therefore, could not furnish the Ideal unless it acquired the patents which the machine embodied. Until it acquired these patents it was absolutely restrained from furnishing this type of machine, and as the Ideal machine was the only machine then invented which could last women's welt shoes, the United Company was absolutely restrained from furnishing any machine for that work. It was, therefore, normal and strictly in furtherance of its legitimate business for the United Company to acquire these patents. To hold otherwise would be to hold that the United Company could not furnish a machine for lasting women's welt shoes, merely because such machine could also be used, or was used to a slight extent, for lasting men's welt shoes.

Furthermore, the settlement of the infringement suits between the parties justified the combination of the patents covering them. If, for example, the Goodyear Company had lost these suits, it might have been compelled to abandon the Ideal machine entirely. It was entitled by combination with the Consolidated Company to avoid infringement suits brought against users of this machine. An acquisition of both sets of patents for this purpose alone would have been a legitimate normal transaction not forbidden by the Sherman Act.

B. ALLEGED COMPETITION BETWEEN THE GOODYEAR COMPANY AND THE EPPLER COMPANY.

(1) INTRODUCTORY STATEMENT.

The welt shoe differs from other kinds of shoes in the method by which the sole is attached to the upper. In pegged and metallic fastened shoes the sole is attached to the upper by wooden pegs or nails. In McKay shoes the sole is attached by a seam which runs through the outsole and insole so that it appears on the inside surface of the shoe. In the case of pegged, nailed, and McKay shoes, as the fastening material or seam appears on the inside of the insole it comes in contact with the sole of the foot and may cause annoyance and discomfort.

In the welt shoe, a welt or narrow strip of leather is attached to the outside of the upper and to the insole, and the outsole is sewed to this welt.

In the manufacture of the Goodyear Welt shoe the Goodyear Welter first sews together the upper, the welt, and the insole. This seam, instead of being sewed through the insole, is sewed sideways by a curved needle in a prepared channel in the exterior of the insole. A light single thread lies in this channel, and the double thread or chain is laid on the welt outside the surface on which the foot rests. The outsole is then sewed to the welt by the Goodyear Stitcher. As a result, neither the chain of the stitch which attaches the welt to the upper nor the seam which attaches the outsole to the welt appears on the inside of the shoe or under the portion of the insole on which the foot rests.

In the manufacture of the Eppler Welt shoe the bulky double thread of the chain-stitch was laid in the prepared channel in the bottom of the insole underneath the surface on which the foot rests and not on the welt, as in the Goodyear method (R. Vol. 1, p. 353, lines 4–20; p. 391, lines 7–17; p. 469, lines 36–41).

The Eppler machine was so organized that it could only make the shoe in this way, so that it was impossible to use the Eppler machine on women's shoes or turn shoes, and it was much inferior to the Goodyear machine on men's shoes.

The Goodyear System was the first system ever used for making welt shoes by machinery (R. Vol. 1, p. 626, lines 3–8). The Goodyear method ran back to 1870 or 1868 (R. Vol. 1, p. 625, line 20). The Goodyear Company, however, revolutionized its machines about 1890 by the use of new inventions (R. Vol. 1, p. 678, lines 6–9). In 1899 its machines were recognized as superior to any others in use; it had under lease approximately 2,500 welters and stitchers (R. Vol. 5, p. 424, Defs.' Ex. 226).

The Eppler Company, which first put out its machines in the early nineties (R. Vol. 1, p. 679, line 7), used a method which had been tried and abandoned years before by the Goodyear Company (R. Vol. 1, p. 625, lines 21–28). The Eppler Company had been unsuccessful in putting out its machines, having only between thirty and forty welters outstanding in 1899, of which about one-third were in the factory of the president of the company. The number of stitchers out was even less (R. Vol. 1, p. 389, lines 6–10).

(2) PURPOSE OF THE ACQUISITION OF THE EPPLER COMPANY.

Mr. Winslow testified that the reason for acquiring the Eppler Company was to get rid of the litigation between the Goodyear and Eppler companies in the starting out of the new company, and that it was acquired for no other purpose (R. Vol. 1, p. 416, lines 25–29; p. 531, lines 34–35).

Mr. Howe testified that the Eppler Company was acquired principally to get rid of this litigation (R. Vol. 1, p. 633, lines 15–17). Another subsidiary reason in Mr. Howe's mind was that the Eppler Company made a different kind of machine for making a different kind of shoe (R. Vol. 1, p. 633, lines 13–14). He felt it would be desirable to be able to furnish this machine if any customers desired it.

The machines of the Eppler Company infringed the Goodyear Company's patents, and, as we shall show later, a considerable number of patent suits brought by the Goodyear Company were pending. In conducting this litigation suits were brought against shoe manufacturers using the Eppler machines. The defendants in such suits were also lessees of lasting, heeling, and metallic machines taken over by the United Company, which was thus placed in the disagreeable position of being obliged to sue its own customers if the litigation against the Eppler Company were continued (R. Vol. 1, p. 417, lines 1–8; p. 633, lines 18–26). As Mr. Howe testified, this "made very unpleasant relations" (R. Vol. 1, p. 633, lines 25–26). The situation was the more embarrassing because the officers and managers of the United Company were the men who had formerly been officers and managers of the Lasting Machine Company (R. Vol. 1, p. 629, lines 2–11; P.'s Ex. 274, R. Vol. 4, p. 1524), and those men were threatened, at the critical period when the United Company was just getting started, with the interruption by this litigation of the friendly relations which they had established between the Lasting Machine Company and its customers.

The testimony of Mr. Winslow and Mr. Howe that the purpose in acquiring the Eppler Company was to end this embarrassing and annoying litigation is confirmed by the circular letters which were sent in February, 1899, by the directors of the Goodyear Company and the Consolidated & McKay Lasting Machine Company to the respective stockholders of those companies. In the circular letter to the stockholders of the Goodyear Company dated February 8, 1899, which was signed by the directors of the Goodyear Company, including Mr. Howe, the litigation between the various companies before 1899 was characterized as having been "expensive to them and annoying to shoe manufacturers" (P.'s Ex. 152, R. Vol. 4, p. 1097; p. 1099, lines 30–32). There was a similar statement in the circular letter to the stockholders of the Lasting Machine Company dated February 11, 1899, which was signed by the directors of that company, including Messrs. Winslow and Brown, who were respectively the president and the treasurer and general manager of the United Company (P.'s Ex. 175, R. Vol. 4, p. 1198; p. 1199, lines 12, 16, 23–25).

That it was entirely proper to terminate this litigation by acquiring the Eppler Company's patents is shown by *Bement* v. *National Harrow Company*, 186 U. S. 70, where it was said by this Court (p. 93):—

> "There had been, as the referee finds, a large amount of litigation between the many parties claiming to own various patents covering these implements. Suits for infringements and for injunction had been frequent, and it was desirable to prevent them in the future. This execution of these contracts did in fact settle a large amount of litigation regarding the validity of many patents as found by the referee. This was a legitimate and desirable result in itself."

(3) PATENT LITIGATION BETWEEN GOODYEAR AND EPPLER COMPANIES ON ACCOUNT OF WHICH THE EPPLER COMPANY WAS ACQUIRED.

George E. Keith, who had been the president of the Eppler Company, testified that there was patent litigation affecting all the machines of the Eppler Company from the time it first started business (R. Vol. 1, p. 392, lines 13–24).

Mr. Howe testified:—

> "There was extensive litigation between the Goodyear Company and the Eppler Company prior to 1899. . . . As to the prospects of the ultimate result, on my side I thought we should succeed in all our cases" (R. Vol. 1, p. 470, lines 11–12, 21–22).

In 1899 there were pending eight patent suits brought by the Goodyear Company against the Eppler Company or users of its machines for infringement of Goodyear patents (R. Vol. 1, pp. 471, 673, 674).

In one suit the Goodyear Company charged the Eppler Company's welt machine with infringing the Briggs patent for forming chain-stitches, which was owned by the Goodyear Company (R. Vol. 1, p. 673, lines 34–37). In three suits the Goodyear Company charged that the Eppler outsole

stitcher infringed a French and Meyer patent owned by the Goodyear Company (R. Vol. 1, p. 674, lines 9–21).

In another suit the Goodyear Company charged infringement of a patent belonging to it by the Eppler rounding and channeling machine, and in two others the Goodyear Company charged infringement of its Hadaway patent by the Eppler stitch separating and indenting machine (R. Vol. 1, p. 471, lines 30–33; p. 674, lines 23–32). In still another, infringement by the Eppler welt beating machine was charged by the Goodyear Company (R. Vol. 1, p. 673, lines 17–33). In nearly all of those suits testimony was being taken (R. Vol. 1, pp. 673–4). Mr. Howe had carefully examined all the Eppler machines (R. Vol. 1, p. 677, lines 7–8).

The United States has endeavored to belittle the infringement of the Briggs patent by the Eppler welter and has attempted to distort the testimony of Mr. Howe that in his opinion—

> "the infringing devices were very material in the construction of the Eppler Company's machines, except the welt sewing machine" (R. Vol. 1, p. 623, lines 31–33).

In this effort the United States lost sight of the fact that Mr. Howe was testifying specifically about "infringing *devices*" and that this testimony has no bearing at all upon the infringement by the Eppler welter of the Briggs *method* patent,—a method which could be performed by hand (R. Vol. 1, p. 691, lines 30–31). His testimony as to that was as follows:—

> "The Eppler welter infringed the Briggs method patent on an invention *which accomplished the sewing of a tight seam*" (italics ours) (R. Vol. 1, p. 678, lines 5–6).
>
> "That revolutionized the art with respect to the Goodyear machine because *it would sew a tight seam, which the old method did not*" (italics ours) (R. Vol. 1, p. 691, lines 32–34).

A tight seam is very important because it prevents ripping of the seam and leaking of water into the shoe, and the Briggs method also made it possible to use less expensive insoles than before (R. Vol. 1, p. 691, lines 22–29, 35–42). A tight seam "is indispensable in the inseam of a welt shoe" (R. Vol. 2, p. 2251).

The United States offered no testimony whatever controverting defendants' evidence as to any of the infringements above set forth.

This patent litigation was a serious embarrassment to the United Company, as, if it was continued against the Eppler Company, the United Company would be obliged, as explained above, to sue its own customers, such as Mr. Keith. To avoid this litigation was a normal and natural reason for the acquisition of the Eppler Company. Its acquisition can give rise to no inference of an unlawful intent to eliminate competition.

(4) THE PURCHASE OF THE EPPLER COMPANY WAS NOT CONSIDERED UNTIL AFTER THE FORMATION OF THE UNITED COMPANY WAS AGREED UPON.

The Eppler Company was acquired out of the proceeds of the funds supplied by the syndicate which took stock in the United Company (R. Vol. 1, p. 32, lines 6–7). It was actually acquired in March, 1899 (R. Vol. 1, p. 17, lines 12–13), a month after the United Company was organized.

Both Mr. Winslow and Mr. Howe testified that there was no discussion of the Eppler Company until after the arrangements between the Goodyear Company and the Consolidated Company to unite had all been settled (R. Vol. 1, p. 529, lines 12–15; p. 530, lines 22–25; p. 633, lines 5–7; p. 675, lines 34–35).

The United States apparently contends that elimination of competition between the Eppler Company and the Goodyear Company was one of the motives for the formation of the United Company. As this acquisition was not discussed or thought of until after the formation of the United Company was agreed to, it follows that the acquisition of the Eppler Company and the elimination of this alleged competition could not have been a motive for the formation of the United Company as charged by the United States.

(5) IF ANY COMPETITION EXISTED BETWEEN THE EPPLER COMPANY AND THE GOODYEAR COMPANY, SUCH COMPETITION WAS TRIVIAL AND NEGLIGIBLE.

Field of Competition.

The Goodyear machines made Goodyear welt shoes, the Eppler machines made Eppler welt shoes (R. Vol. 1, p. 417, lines 5–21). The upper and insole were differently attached in the two shoes, and, therefore, the machines did a different class of work. The Eppler machines were restricted by the leases of that company to use in the manufacture of the "Eppler Welt Shoes" (R. Vol. 3, P.'s Ex. 59, p. 512).

So the Eppler machines could not make Goodyear shoes and the Goodyear machines could not make Eppler shoes (R. Vol. 1, p. 417, lines 20–21).

The frivolous argument of the United States that the only reason why the Eppler machines could not produce Goodyear welt shoes was because "Goodyear Welt" was a trade name for shoes produced on Goodyear machines, not only has no support in the record but is directly at variance with uncontradicted evidence showing that the difference between the Eppler welt shoe and the Goodyear welt shoe was a difference in the *structure* of the shoe (*supra*, p. 133). As Mr. Howe explained, the Goodyear welt shoe—

> "was the hand sewed shoe, sewed by machinery. The Eppler welt shoe was a shoe made in a different way, different from what a hand workman would make it" (R. Vol. 1, p. 678, lines 25–28).

Mr. Howe also testified that the Eppler machines could not make a Goodyear welt shoe because of the construction of the machines (R. Vol. 1, p. 469, lines 33–36).

The United States apparently contends that both machines made welt shoes; that the Goodyear Company did most of the welt machine business in the United States; and that by the acquisition of the Eppler Company, even though it did a very small business, some possible competition was eliminated.

The welt method was only one method of attaching the

soles to the uppers of shoes. Until the Goodyear method was devised no welt shoes were made except by hand. Among other methods of attaching the soles were pegging, nailing, and McKay sewing. Also there were other kinds of welt shoes than the Goodyear and Eppler, such as the mock welt shoe and the McKay welt shoe (R. Vol. 1, p. 199, line 26; p. 214, line 11; p. 698, line 8; p. 824, lines 28–31). In making a McKay welt shoe the welt was sewed to the upper and insole on the McKay sewing machine (R. Vol. 1, p. 206, lines 22–24; p. 225, lines 14–18; p. 249, lines 7–17), but in this case the seam appeared on the inside of the insole next to the foot and, as above explained, it was the distinguishing characteristic of the Goodyear welt shoe that there was no seam next to the foot. In 1898 less than 10% of the shoes made had their soles attached by the welt method, while nearly half were sewed on McKay machines (R. Vol. 1, p. 414, lines 36–41). So far, then, as any competition can be said to exist between machines making different kinds of shoes the real competition of the Goodyear machines was with the McKay machines. In acquiring both the Goodyear Company and the Eppler Company, therefore, the United Company acquired patents on machines which by two distinct methods attached the soles of only a small proportion of the total shoes made in the country. And the Eppler Company occupied only a portion of that small field since its welter could not be used on turn shoes, on women's welts or on shoes made with reinforced insoles (*infra*, p. 142).

The Eppler Machines were Distinctly Inferior to the Goodyear Machines, Offered No Real Competition, and were Certain to Succumb to the Goodyear in the Survival of the Fittest.

In the late eighties Andrew Eppler, who had at one time worked for the Goodyear Company, took up a method of making a double chain-stitch which had been abandoned by the Goodyear Company and applied it to a machine for welting men's shoes (R. Vol. 1, p. 625, lines 20–28).

At first the Eppler Company had no outsole stitching ma-

chine, but outsoles for its shoes were attached by a harness machine or by hand stitching (R. Vol. 1, p. 625, lines 29–34).

The Eppler Company developed a few auxiliary machines inferior in design and quality of work to the Goodyear auxiliaries (R. Vol. 1, p. 631, lines 9–15).

The Eppler Company at the date of the formation of the United Company had been putting out its machines for seven years or more and had only succeeded in disposing of between thirty and forty welt machines, of which about one-third were in the factory of the president of the Company, Mr. George E. Keith (R. Vol. 1, p. 389, lines 6–12). The Eppler machines were not commercially successful as profit-makers (R. Vol. 1, p. 392, lines 9–12). The Goodyear Company, on the contrary, had outstanding 2,531 welters and stitchers on March 1, 1900, the nearest date in evidence (R. Vol. 5, Defs.' Ex. 226, p. 424). The reason is clearly established by the record: the Eppler machines were decidedly inferior and did not make as good a shoe.

As explained above, the Eppler machine laid a double chain-stitch in the channel of the insole under the portion thereof on which the foot rested, while the Goodyear machine laid a light single thread in the channel so that the double thread of the chain-stitch seam was not under the portion of the insole on which the foot rested (R. Vol. 1, p. 415, lines 26–36). The importance of this distinction in the construction of the Goodyear and Eppler shoes runs through the successful progress of the Goodyear System and the failure and final elimination of the Eppler System.

Mr. Keith, the president of the Eppler Company, testified that this double stitch on the inside of the sole "had a tendency to raise a ridge or lump around the inside of the sole against the foot, which had the effect both of lessening the durability of the shoe and of making it uncomfortable" (R. Vol. 1, p. 391, lines 10–17).

Charles S. Smith, a witness for the United States, testified that the chain-stitch of the Eppler machine, "being larger and more bulky than the single stitch, occupied more room and was likely to leave a ridge around the inside of the shoe, which would come against the foot." This would cause discomfort to the wearer (R. Vol. 1, p. 353, lines 6–20).

For this reason **the Eppler machine could not be used on turn shoes,** in which the sole must be thin in order that the shoe may be turned after sewing (R. Vol. 1, p. 415, line 44; p. 416, line 5; p. 469, line 42; p. 470, line 4). The Goodyear Welt machine, on the other hand, was used to make both welt and turn shoes (R. Vol. 1, p. 470, lines 5–7). For the same reason, **the Eppler machine could not be used successfully on women's welts,** which have thin insoles. Mr. Winslow testified that he did not know of any women's welt shoes made by Eppler machines (R. Vol. 1, p. 531, lines 4–5).

Mr. McElroy, a witness for the United States, after testifying that he did not know whether the Eppler machine could be used on women's shoes, said that it could have been so used. But the context shows that he meant no more than that as a mechanical operation it was possible to sew a woman's shoe on the Eppler machine, and that he did not mean to express any opinion as to the quality or salability of the shoe operated upon. He never used an Eppler machine and merely examined it once (R. Vol. 1, p. 187, lines 33–34; p. 188, lines 2–22). There was no evidence that the Eppler machine ever had been used on women's shoes and no other witness even expressed an opinion that it could have been so used. The Goodyear Welter was used on both men's and women's welts with equal success.

The fact that the Eppler machine could not be used for turn shoes and was not adapted and was never used for women's welt shoes was a serious disadvantage, especially in those factories constituting more than one-half the factories in the country whose production required only a single machine of this character.

Furthermore, the necessity of using an unnecessarily thick and expensive insole on an Eppler shoe merely to prevent the seam from hurting the foot added greatly to the expense of making Eppler Welt shoes, and this thick insole did not add to the value or wear of the shoe. Light substitutes for insoles, or canvas reinforced insoles, could not be used on Eppler shoes (R. Vol. 1, p. 415, lines 36–43).

The Eppler machines were also inferior in construction to the Goodyear machines (R. Vol. 1, p. 677, lines 17–21).

Furthermore, **the Eppler Company did not have a com-**

plete or satisfactory set of auxiliary machines. George E. Keith, the president of the Eppler Company, testified that the Company did not manufacture a full set of machines for making welt shoes and he named only two auxiliary machines, the rough rounder and stitch separator (R. Vol. 1, p. 389, lines 15–17; p. 390, lines 37–43). The rough rounder was not a satisfactory machine (R. Vol. 1, p. 389, lines 19–20). The Company did not have a satisfactory stitch separator (R. Vol. 1, p. 391, lines 39–41). This operation is necessary to make the shoe "complete in appearance" (R. Vol. 1, p. 391, lines 34–38).

Auxiliary machines are essential to the successful manufacture of welt shoes. As an illustration of their importance, the stitch separator, the rough rounder and channeler, and the automatic leveling machine were included in the limited number of machines which the United States selected for discussion before the special examiner on the issue of "basic" patents (R. Vol. 2, pp. 2201–08). The invention of the rough rounder of the Goodyear Company had revolutionized the manufacture of welt shoes (R. Vol. 1, p. 793, lines 23–33). The Eppler Company had no leveling machine of its own (R. Vol. 1, p. 416, line 38). The Eppler Company, therefore, lacked very important auxiliary machines such as were supplied by the Goodyear Company and were essential to the commercial success of the welt process.

For the various reasons outlined above the Eppler machines were not satisfactory and they did not make as good shoes as the Goodyear machines.

George E. Keith, the president of the Eppler Company, testified that the Goodyear machine did decidedly better work than the Eppler (R. Vol. 1, p. 385, lines 22–24; p. 392, lines 2–8).

James H. Cunningham, a shoe manufacturer and a witness for the United States, testified that "everything about the Goodyear was better" and it "did the work better" (R. Vol. 1, p. 288, lines 32–34; p. 289, lines 19, 23).

Ira E. Fletcher, a factory superintendent and a witness for the United States, testified that "the Goodyear welter was the best," and that the seam made by the Eppler machine was loose and weak and "it would make a bad shoe" (R. Vol.

1, p. 937, lines 36–37; p. 938, lines 2–3; p. 939, lines 15–22). As to the importance of a tight seam, see *supra*, p. 137.

George Strong, a shoe manufacturer and a witness for the United States, said that the Goodyear welter was better and did better work; and specifically that the seam made by the Goodyear machine was flatter (R. Vol. 1, p. 931, line 43; p. 932, lines 22–25).

William P. Whitman, a shoe manufacturer and a witness for the United States, said that the Goodyear "did better work on the shoe" (R. Vol. 1, p. 915, lines 40–41; p. 916, line 16).

Edward W. Burt, a shoe manufacturer, had an Eppler Welter and an Eppler Stitcher when he started business. He tried them out thoroughly for about a year and found them inefficient for making high-grade shoes: "They were not anywhere near as satisfactory as the United Company machines." The soles of the shoes made on the Eppler machines "ripped off continuously." He changed to Goodyear machines because he "could not afford to have the shoes wear out on account of imperfect construction." The change was his "own idea" because he "wanted the best machines" he could get (R. Vol. 1, p. 739, lines 17–33).

Mr. Winslow testified that personally he had no doubt that the Goodyear system was better and would survive. The Eppler machine would not make as good a shoe (R. Vol. 1, p. 417, lines 9–11; p. 531, lines 25–27).

The "Twelve Witnesses" upon Whom the United States Relies.

At the first argument of this case in this Court the senior counsel for the United States made statements to the effect that twelve witnesses testified that they had used both the Eppler and Goodyear welters for many years and that they said that you could not tell the difference between the shoes when they had come from the machine.

The record does not support these statements.

Not one of those twelve witnesses testified that you could not tell the difference between the shoes when they had come

from the machine. On the contrary, seven of them, all witnesses for the United States, testified that the work done by the Goodyear welter was superior to that done by the Eppler welter. We will first summarize the testimony of those seven witnesses.

Emanuel F. Selz, a witness for the United States, testified on direct examination that the Goodyear and Eppler machines were doing exactly the same work and that there was no material difference in the quality of the work or the rapidity of operation of the two machines (R. Vol. 1, p. 143, lines 18–32), but there was a difference in the character of shoe made. He admitted on cross-examination that he tried the Eppler for less than a year prior to 1896 and abandoned it.

> "We gave up the Epplers because we were sewing razor toes at that time and the Eppler would not sew the razor toes as well as the Goodyear. We never reinstated the Eppler" (R. Vol. 1, p. 152, lines 38–44).

Charles S. Smith, a witness for the United States, testified that the Eppler machines could be and were used for the same purpose as the Goodyear machines; but on cross-examination he testified that the Goodyear was superior on account of the bulky chain-stitch which the Eppler laid in the channel of the insole and which was likely to form a ridge in the inside of the shoe that would come against the foot and cause discomfort to the wearer (R. Vol. 1, p. 352, lines 21–23; p. 353, lines 4–20).

William P. Whitman, a witness for the United States, used one Eppler welter for three or four years along with the Goodyear and then exchanged it for a Goodyear machine. There is not a word in his testimony which indicates that he found the Eppler machine satisfactory. On the contrary, he testified,—

> "I consider the Goodyear welt system the best system; it did better work on the shoe" (R. Vol. 1, p. 916, lines 11–18).

George Strong, a witness for the United States, testified that he had used both Eppler stitchers and welters and, while

he said that the Eppler stitcher did satisfactory work, he testified that the Goodyear machines did better work than the Eppler machines and said that he thought the Goodyear welter was better and sewed a flatter seam. He also said that they exchanged the Eppler machines for Goodyear machines about 1900 and that then the Eppler machines "were practically gone by," although they had been used only about five years (R. Vol. 1, p. 932, lines 3–26). Strong was treasurer and a director of the Eppler Company (R. Vol. 1, p. 388, lines 35–39; Vol. 4, p. 1202).

George E. Keith, a witness for the United States, who was president of the Eppler Company and is now a director of the United Company, testified that he used Eppler machines in his factory and also used one Goodyear machine, and that the Goodyear machine did decidedly better work (R. Vol. 1, p. 392, lines 2–8).

James H. Cunningham, a witness for the United States, testified that the Eppler welt machine was satisfactory, but the outsole stitcher was not. That obviously meant no more than that he could get along with the machine, in view of his refusal to say that the Eppler machine did its work as effectively as the Goodyear, and his further statement that the Goodyear did the work better and everything about it was better. His company discontinued the Eppler machines and substituted Goodyear machines about 1900 (R. Vol. 1, p. 289, lines 7, 13–23; p. 290, lines 2–3). W. H. Stacy of Cunningham's company was a director in the Eppler Company (R. Vol. 1, p. 388, lines 35–39).

Ira E. Fletcher, a witness for the United States, testified that W. L. Douglas used twelve Eppler and eight Goodyear machines for at least three years and that they ran side by side. But he also testified on direct examination that the Goodyear welter and stitcher were the best, and on cross-examination he testified that the seam made by the Eppler machine was loose and weak, and "it would make a bad shoe." For this reason and because they thought the Goodyears were the better machines, they changed from Eppler machines to Goodyear machines (R. Vol. 1, p. 937, lines 38–43; p. 938, lines 1–4; p. 939, lines 15–22).

Of the remaining five witnesses, upon whose testimony

the United States relies, Charles H. Jones and Warren F. McElroy never used the Eppler machines.

Jones merely testified that the Goodyear and Eppler welters were both used to perform the welting operation and that the Goodyear and Eppler stitchers were both used to perform the outsole stitching operation. He did not compare the machines or the quality of their work (R. Vol. 1, p. 110, lines 38–46; p. 111, lines 11–18).

McElroy merely examined the Eppler machine once at the solicitation of an agent of the Eppler Company. He said that the work looked equally as good as the work of the Goodyear machine. As already stated, he never used the machine (R. Vol. 1, p. 187, lines 33–40). His expression of opinion that it could be used on women's shoes has already been discussed (*supra*, p. 142).

Milton S. Florsheim testified that in 1899 he had one line of the Eppler machines, a welter, a stitcher and a rounder, that he used them "only to a very slight extent" and that he was "merely trying them out" (R. Vol. 1, p. 159, lines 7–12). He said that in his opinion the work of the Eppler welter and stitcher was as well done as the work of the Goodyear welter and stitcher and that as good shoes as were made at that time were made on Eppler machines (R. Vol. 1, p. 935, lines 37–42). But Florsheim traded in his Eppler machines after the formation of the United Company, and while he testified that he tried to obtain the Epplers for a lower royalty, he evidently preferred the Goodyear machines at the same royalty (R. Vol. 1, p. 159, lines 16–30).

Florsheim, Selz and Jones were stockholders in the Boylston Manufacturing Company, a competing shoe machinery concern (R. Vol. 1, p. 122, lines 28–35; also see *infra*, pp. 529–530).

Fred F. Field, a witness for the United States, took Eppler welters from the United Company in 1902, three years after the United Company was formed, and used them for eight or ten years, at the same time using some Goodyear welters. He said that they put in the Eppler machine because they thought the Eppler was better; but he said that "the Eppler machine sewed a somewhat looser and weaker seam than the Goodyear." As to the importance of a tight seam, see *supra*, p. 137. They changed the Epplers for the new Model K

machines but they wanted to change some time before on account of the weak seam sewed by the Eppler; under the advice of the United Company they waited for the new machine. It is important to note that Field did not have Eppler stitchers or Eppler auxiliaries. He said,—

> "That is, we had five Eppler welting machines which were assisted and helped out by the Goodyear machines that completed the operation of uniting the sole of a welt shoe to the upper" (R. Vol. 1, p. 930, lines 24–44; p. 931, lines 13–31).

Field's opinion that the Eppler machine sewed a flatter seam was of course wrong. For example, Strong, a witness for the United States, testified that "you get a flatter seam on the Goodyear welter" (R. Vol. 1, p. 932, line 25).

Richard H. Long had Eppler machines from September, 1898, until shortly after the United Company was formed; but he was not using Goodyear machines at the same time. He did not testify at all as to the character of the Eppler machines or the quality of their work, and went no further than to say that the Goodyear machines which he obtained in place of the Eppler machines were used for performing the same work that he had performed with the Eppler machines (R. Vol. 1, p. 226, lines 15–17, 24; p. 227, lines 33–35, 41–44; p. 250, lines 1–9; Defs.' Ex. 44, Vol. 5, p. 54). Long is a competing shoe machinery manufacturer making a full line of machines (R. Vol. 1, p. 232, lines 2–6; Defs.' Physical Exs. 72, 73).

Thus it appears that the Eppler machines were decidedly inferior to the Goodyear machines and the Eppler shoe was inferior to the Goodyear shoe, and that in consequence the Eppler machines were used to an insignificant extent and presented no real competition, present or prospective, to the Goodyear Company.

(6) OTHER EVIDENCE SUBMITTED BY THE UNITED STATES IN RESPECT TO THE EPPLER PURCHASE.

The Price.

The United States sought to prove that an exorbitant price had been paid for the Eppler Company, apparently for the purpose of showing the importance attached to the purchase. There was, however, no direct evidence as to the price paid.

William B. Arnold testified that about the time of the organization of the United Company his impression was that he sold one hundred shares of Eppler stock at $6 a share either to Mr. Brown, vice-president of the United Company, or to Mr. E. P. Hurd, but he would not be positive. He could not fix the date, however, within a year (R. Vol. 1, p. 952, lines 21–31). Both Mr. Brown and Mr. Hurd denied making the purchase (R. Vol. 1, p. 961, lines 9–16, 21–29).

Willard G. Brackett testified that February 15, 1899, he sold six hundred shares for $6.50 a share. He did not remember to whom. The par value was $10 a share (R. Vol. 1, p. 949, lines 38–42).

Mr. Keith testified he got $20,000 for his stock, but did not remember how much he had (R. Vol. 1, p. 385, line 32–p. 386, line 10).

Mr. Winslow had no recollection as to how much the Eppler stockholders were paid. He had no doubt it was as much as $100,000, but could not state whether it was as much as $200,000 (R. Vol. 1, p. 531, lines 37–41).

The United States lays much stress upon the fact that the officers of the United Company were unable to state the exact amount paid for the stock of the Eppler Company. But the record explains why. The Eppler Company stock was acquired in the first instance by a syndicate which was formed at the time the United Company was organized and which also bought the stock of the International Eppler Welt Machine Company and the Goodyear Shoe Machinery Company of Canada, and in addition provided funds for various needs of the United Company at that time. The United Company simply took over those properties, including the

Eppler Company stock, from the syndicate for a lump sum. No separate valuation was placed on the Eppler stock (R. Vol. 1, p. 32, lines 1–13; p. 33, lines 2–17). The United Company's records, therefore, only show the total sum paid for all the properties, and do not show what proportion of the total was paid for the Eppler stock, nor of course do they show what the syndicate which sold the stock to the United Company paid for it (R. Vol. 1, p. 32, lines 36–38; p. 33, lines 6–8).

But, whether the syndicate paid $200,000, or twice that sum, for the Eppler stock, it cannot be regarded as an exorbitant price and justify an inference of unlawful intent, since this purchase (1) enabled the United Company to start free from the most extensive litigation that it had inherited from its constituent companies, (2) made it possible to furnish to its customers machines for making a different kind of welt shoe, should a demand for that kind of shoe continue, and (3) secured for the United Company patents which proved to be of substantial value in the development of new machines when combined with its own patents (*infra*, p. 156).

The Papers Offered by the United States Exhibits B, C and D, for Identification (see R. Vol. 4, pp. 1200 to 1212) were properly Excluded by the District Court and should not be Considered as Evidence.

The United States claimed that these "Certificates of Condition," which purported to show the assets and liabilities of the Eppler Company, were copies of papers on file in the office of the Massachusetts Commissioner of Corporations. But they were not properly authenticated.

> "Copies of books, papers, documents and records in the executive or other departments of the commonwealth, or of any city or town, authenticated by the attestation of the officer who has charge of the same, shall be competent evidence in all cases equally with the originals thereof, if the genuineness of the signature of such officer is attested by the secretary of the commonwealth under its seal or by the clerk of such city or town, as the case may be" (Revised Laws of Mass. Ch. 175, Sect. 74).

And see *Commonwealth* v. *Corkery*, 175 Mass. 460.

The papers were not certified as true copies by the Commissioner of Corporations and the genuineness of the signature of the Commissioner was not attested by the Secretary of State. The customary form for such attestation is well known in Massachusetts,

see *Commonwealth* v. *Corkery*, supra,

and these papers were not attested according to that or any lawful form.

But it does not appear that even if these papers were admissible they would support the contentions of the United States. The 1898 report, for example (R. Vol. 4, pp. 1207, 1209), was obviously made up in such manner that the assets should balance the capital stock and other liabilities. Patent rights were carried at $245,853.61, and the machines placed at a figure which with the other assets would be sufficient to equalize the total liabilities. The report does not in any way disprove the testimony of the president of the Eppler Company that it had put out only between thirty and forty welters and a smaller number of stitchers, or the testimony that the machines were unsuccessful, nor is it any test of what the assets of the company were actually worth if sold or what the stock of this company, which was not making any money, was worth, or what was paid for it by the United Company.

Royalties Rebated by Eppler Company.

The United States showed that, while the regular royalty charged for Eppler machines was the same as for Goodyear machines, the Eppler Company in two instances granted a rebate of 25 per cent. (R. Vol. 1, p. 159, lines 24–27; p. 250, lines 24–38). But Mr. Winslow testified,—

> "There were sporadic instances of special rebates given by the Eppler Company, *but their regular rate was the same as the Goodyear*" (italics ours) (R. Vol. 1, p. 417, lines 29–35).

This was confirmed by Mr. Howe (R. Vol. 1, p. 470, lines 24–29).

Of the three executed leases of Eppler machines which are in evidence, two (P.'s Ex. 59, R. Vol. 3, pp. 507, 509, 510;

and Defs.' Ex. 269, R. Vol. 5, pp. 716, 718, 719) provided for a net royalty of *four cents* per pair for men's shoes, the same as the Goodyear royalty, while the third lease (Defs.' Ex. 44, R. Vol. 5, p. 54), as printed, provided (pp. 56, 57) for a royalty of four cents, and a provision for a discount was written into the lease in red ink (R. Vol. 1, p. 250, lines 30–38). In the face of this documentary evidence it certainly cannot be successfully contended that the Eppler royalty was lower than the Goodyear royalty or that the United Company raised the Eppler royalty after the acquisition.

Nor does the fact that the United Company, after it had acquired the Eppler Company, maintained the regular Eppler royalty rate, granting no discounts to favored individuals, show any intent to suppress the Eppler machines. The policy of the United Company has always been to maintain the same rates for all customers, and its maintenance of the regular Eppler rate on all Eppler machines was merely "to make the rate uniform among all users and gives no special advantages to anybody" (R. Vol. 1, p. 417, lines 44–45).

(7) IF ANY COMPETITION EXISTED BETWEEN THE EPPLER COMPANY AND THE GOODYEAR COMPANY, IT WAS ILLEGAL ON THE PART OF THE EPPLER COMPANY AND COULD PROPERLY BE ELIMINATED BY THE UNITED COMPANY.

We have shown above that the Goodyear Company had brought eight suits for infringement against the Eppler Company on its welter and its stitcher and its auxiliary machines (*supra*, pp. 136–137). Mr. Howe expected the Goodyear Company would succeed in all these cases (R. Vol. 1, p. 470, lines 21–22).

The Eppler Welter infringed the Briggs Method patent on an invention which accomplished the sewing of a tight seam and revolutionized the industry (R. Vol. 1, p. 678, lines 5–10). The Stitcher, the Welt-beater, the Stitch-separator, and the Rounder and Channeler, which also infringed Goodyear Patents (R. Vol. 1, p. 677, lines 17–21), were essential to the success of the Eppler Company (*supra*, p. 143).

It thus appears that such slight use as was made of Eppler machines was made possible only by the fact that they infringed Goodyear patents. If, therefore, the Eppler machines presented any competition, it was an illegal competition in violation of the Goodyear Company's rights and could be lawfully stopped by the Goodyear Company or by the United Company either by a prosecution of the patent suits brought by the Goodyear Company, or by purchase.

(8) THE EPPLER COMPANY WAS NOT SUCCESSFUL AND IT WOULD NOT HAVE SURVIVED.

The United States contends that the Eppler Company was a successful competitor, relying upon evidence that it had been in business for seven years and that it was advertising shortly before the United Company was formed.

But this goes to prove, not that the Eppler Company was successful, but quite the contrary. The fact that, despite the long time that the Eppler Company had been in business and the efforts it had been making to put its machines into factories, it had succeeded in installing only between thirty and forty welters—of which one-third were in the factory of the president of the company and others in the factories of the directors of the company—and a less number of stitchers (R. Vol. 1, p. 288, lines 31 *et seq.;* p. 388, lines 35–39; p. 389, lines 8–11; p. 931, lines 43 *et seq.;* Vol. 4, p. 1202) is certainly strong evidence both that the machines were unsatisfactory and that the company's business was not successful. Mr. Keith, the president of the company, testified that the Eppler Company had not been financially successful (R. Vol. 1, p. 392, lines 9–12).

This evidence also completely answers the argument that the Eppler Company offered potential competition. Disregarding the bearing upon possible future competition of the facts that the Eppler machines infringed the Goodyear Company's patents and that eight infringement suits had been brought, the evidence that the Eppler Company after seven years of strenuous efforts had not succeeded in doing more than an insignificant amount of business and had not made

any money proves that it did not offer even potential competition. For surely there had been ample time for the development of all the possibilities of competition that existed.

(9) THE UNITED COMPANY CONTINUED TO PUT OUT THE EPPLER MACHINES SO FAR AS SHOE MANUFACTURERS DESIRED THEM.

Whenever a call was made for an Eppler machine of any kind the United Company supplied it, and it also supplied all calls and demands for machines, parts, and service as soon as possible (King, R. Vol. 1, p. 696, lines 38–41; Winslow, R. Vol. 1, p. 417, lines 22–28).

The United Company, during the five or six years after it was formed, put out more than forty Eppler Welters and more than twenty Eppler Stitchers (R. Vol. 1, p. 702, lines 9–10, 16–19).

Mr. Field obtained his Eppler machines from the United Company in 1902 and continued to use them up to a few years ago (R. Vol. 1, p. 930, lines 27–29; p. 931, lines 6–7, 36). He testified that the United Company furnished him whichever machines he chose and treated him just as well in respect to the Epplers as when he had the Goodyears (R. Vol. 1, p. 931, lines 7–11).

The United States endeavored to prove by Richard H. Long that the United Company failed to provide parts for the Eppler machines (R. Vol. 1, p. 226, lines 34–40; p. 227, line 31). But Long's testimony was untrue and distorted by exaggeration and bias. The United States does not now rely upon that testimony, so it may be dismissed with the statement that it was disproved by his own admissions on cross-examination (R. Vol. 1, pp. 253–259), by the testimony of the clerks who kept the records of service rendered and parts supplied for Eppler machines and who testified specifically, referring to those records, as to the promptness in rendering service and supplying parts for Long's machines (R. Vol. 1, pp. 693–696); and by the manager of the United Company's Goodyear Department (R. Vol. 1, p. 699, lines 19–21).

The reliance to be placed on Long's testimony is illustrated further by his testimony relative to Chase lasting machines.

He stated that shortly after the United Company was formed it refused to let him have any more Chase machines (R. Vol. 1, p. 228, lines 1–26), but on cross-examination he admitted obtaining about eleven Chase machines after that date (R. Vol. 1, pp. 262–265; Defs.' Ex. 70C, R. Vol. 5, pp. 105, 106).

(10) THE EPPLER MACHINES WERE PATENTED MACHINES OF A DIFFERENT KIND FROM THE GOODYEAR MACHINES AND MADE A DIFFERENT KIND OF SHOE. THE UNITED COMPANY WAS ENTITLED TO ACQUIRE THE PATENTS ON THE EPPLER MACHINES.

The petition itself (R. Vol. 1, pp. 993, 996) and the record (R. Vol. 1, p. 634, lines 36–43; P.'s Ex. 59, Vol. 3, p. 507) show that the Eppler machines were patented. While they infringed the Goodyear patents, they also differed in structure from the Goodyear machines. As we have shown, they also made a shoe of a different structure from the Goodyear Welt shoe made by the Goodyear machines. "The Goodyear machines could not make an Eppler welt and the Eppler machines could not make a Goodyear welt" (R. Vol. 1, p. 417, lines 20–21).

A secondary reason in Mr. Howe's mind for acquiring the Eppler Company was to enable the United Company to furnish Eppler machines for making Eppler welts to those shoe manufacturers, if any, who wanted to make Eppler welt shoes (R. Vol. 1, p. 630, lines 32–34). The United Company could not do this, unless it acquired the Eppler patents, without infringing those patents. A manufacturer has the right to acquire patents covering another radically different machine, even if such machine can be used for a purpose similar to that for which he already has a machine. To hold otherwise would be to hold that a manufacturer could not furnish all types of machines and thus engage in the business without restraint. In the present case it would mean that the United Company could not furnish machines for making other styles of welt shoes even though its customers desired to make such shoes.

It is important to note that, while the Eppler machines proved themselves of little value and have become obsolete, some of the Eppler patents proved to be of great value when combined with other patents owned by the United Company. Thus patent 613,228 issued to the Eppler Company in 1898 (Defs.' Physical Ex. 198) covered an important invention which proved the basis not only of one of the United Company's own machines later developed (R. Vol. 2, p. 2645), but also of the Plant Heel Seat Dinker (Defs.' Ex. 273, R. Vol. 5, p. 740). Another of the patents some years after its acquisition by the United Company was embodied in a new welter (R. Vol. 2, pp. 2252, 2766).

(11) DEMAND FOR THE EPPLER MACHINES CEASED LONG AGO AND THEY ARE OBSOLETE. ANY QUESTION OF THEIR POSSIBLE COMPETITION HAS BECOME A MOOT POINT.

The United Company furnished Eppler machines to any manufacturer who asked for them, but none of the machines has been put out since about 1905 and no one is using any of the machines now (R. Vol. 1, p. 702, lines 13, 16–19, 22–24; p. 416, lines 17–24; p. 417, lines 22–26). The machines are obsolete and any question of their possible competition has become a moot point. No decree of this Court could restore such competition, if it ever existed, or create competition by the Eppler machines.

(12) FINDING OF THE DISTRICT COURT AS TO THE EPPLER ACQUISITION.

The District Court said with reference to the acquisition of the Eppler Company (R. Vol. 1, p. 1131):—

> "The Eppler machines were adapted to produce men's thick-soled welt shoes only. They could not produce women's welt shoes (except perhaps those having the thickest soles), nor turn shoes of any kind, nor Goodyear

welt shoes, either men's or women's, because of the difference between the respective machines in the character and position of the seam left in the inner sole of the shoe. The Goodyear machines could produce shoes of all the above kinds. The differences referred to resulted from differences in the character and operation of the machinery belonging to the different systems. These differences in character and in possible field of use had resulted when the United Company was formed in 1899 in the fact that over 2,500 Goodyear welting machines were in use, as against thirty or forty Eppler machines, one-third of these being used in the factory of the president of the Eppler Company. The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition as rendered it unlawful. The Eppler machines were not suppressed by the United Company. It continued to supply them until the progress of improvement in such machinery superseded them. The patents covering them have long since expired, and it is open to anyone to make and use such machines if he desires. There is no present monopoly in them, and no action taken by the court could restore them to the field of competition, or encourage or create competition by them."

(13) CONCLUSION AS TO ACQUISITION OF THE EPPLER COMPANY.

We submit that the record establishes:—

1. That the machines made by the Eppler Company were decidedly inferior to the Goodyear machines, and the Eppler Company had no complete or satisfactory system of auxiliary machines; that the Eppler shoe was inferior to the Goodyear shoe; that the Eppler Company after seven years was commercially unsuccessful and had placed an insignificant number of machines, both when compared to the number of Goodyear machines outstanding and to the total number of machines used to attach the soles to the uppers of shoes, including the McKay machines; and that if any competition existed be-

tween the Goodyear and Eppler companies it was insignificant in amount and did not make the acquisition of the Eppler Company inherently unlawful.

2. That the Goodyear Company had brought patent suits against the Eppler Company and its lessees for infringement of Goodyear patents by all the machines of the Eppler Company, and believed it would succeed in this litigation; that the primary reason for acquiring the Eppler Company was to get rid of this litigation, which would have proved troublesome to the United Company's customers and therefore would most certainly have created friction between them and the United Company.

3. That the Eppler machines were patented and made a shoe of a different character from that made by the Goodyear machines; that a secondary purpose in acquiring the Eppler Company was to enable the United Company to furnish machines for making this different class of shoe, and that the United Company was entitled to acquire the Eppler Company for this purpose.

4. That the acquisition of the Eppler Company was first proposed after the formation of the United Company was agreed upon, and its acquisition was not a motive for the formation of the United Company.

5. That all the Eppler Company's machines infringed the Goodyear Company's patents, so that if the Eppler machines competed with the Goodyear machines such competition was unlawful.

6. That the United Company did not suppress the Eppler machines, but continued to furnish them to all shoe manufacturers desiring them until they became obsolete due to the superiority of the Goodyear machines.

7. That the Eppler machines have become obsolete and no manufacturer to-day would use them, so that the question of their possible competition has become a moot point.

We, therefore, submit that the purchase of the Eppler Company was not inherently unlawful; that it was acquired for normal and legitimate reasons; and that the transaction is barren of any incident which can give rise to an inference of unlawful purpose or intent to monopolize or exclude others unlawfully

5. THE PURPOSES FOR WHICH THE UNITED COMPANY WAS FORMED, AND THE MANNER IN WHICH SUCH PURPOSES HAVE BEEN ACCOMPLISHED.

A. REASONS FOR FORMATION OF UNITED COMPANY AS TESTIFIED TO BY MR. WINSLOW AND MR. HOWE.

The fundamental reasons for the formation of the United Company by the proposed union of the Goodyear and Consolidated Companies were stated as follows by Mr. Winslow:—

> "The first was to increase the productive efficiency of the machines that were in the hands of shoe manufacturers. Second, to economize in the manufacture of the machinery itself by bringing that manufacture into one modern factory and standardizing the manufacture. Third, to encourage and increase the manufacture of Goodyear Welt shoes by the development of new machines to assist in that manufacture and new methods to lower the cost, to aid and assist those manufacturers who were making those shoes, and induce other manufacturers who were not making welt shoes to enter into their manufacture. It was contemplated in this connection to lower the cost of installation of the Goodyear machines and instruct manufacturers in the manufacture of welt shoes. And fourth, to develop a better service for the instruction of operatives in the use of machines and service for maintenance of the machines in condition to operate regularly, and at the same time decrease the proportionate expense of that service by avoiding the duplication of the depots and men who were employed in that work" (R. Vol. 1, p. 407, lines 18–36).

Mr. Howe testified:—

> "Well, we had many conferences, . . . and . . . they related entirely to the economies which we could get if

the two complementary machines were handled by the same company—the economies, first, in the administration of the two companies; the economies due to manufacturing the machines themselves and the parts and the auxiliary machines in one factory where we could get a modern up-to-date factory; the economies that could be attained by consolidating our service. . . . I thought, particularly . . . that if we could in some way bring about a harmonious arrangement between the Lasting Machine Company and the Goodyear Company we could make a great saving and give the service with greater efficiency in all the branch offices and also, as I have said, in the manufacture of machines and the running of a factory. Proportionately to the amount of business done there would be less overhead charges" (R. Vol. 1, p. 628, line 21–p. 629, line 1).

The same reasons which caused Mr. Winslow and Mr. Howe to deem it highly desirable that the Goodyear and Consolidated Companies should be united, of course, applied equally to the consolidation with them of the McKay Company, which made heeling and metallic machines, the two other principal elements required in a series of bottoming machines.

After the consolidation of the Goodyear Company and the Consolidated Company was agreed upon, but before it was consummated, the McKay Company was, therefore, approached and agreed to unite with the others.

Mr. Winslow testified (R. Vol. 1, p. 529, lines 27–39):—

"The McKay people were approached because I advised it, and I advised it because I believed that with the metallic and heeling machines and the Goodyear machines and the lasting machines we could give better service, get a better product from the machines, and give better results both to the manufacturers and to ourselves.

"It is true that there would be a broader field to operate in. But the real reason was, first, to give the service of all of these machines and get a better result from the co-operative action of the machines together. That is to say, the unification of the service would allow those machines to be kept in continuous operation, giving a larger productive capacity to them and at less expense than in any other way."

Another reason for the consolidation of these companies was that Mr. Howe, who was the real manager of the Goodyear Company, and Mr. Brooks, who managed the McKay Company, could not devote much of their time to the business and wished to withdraw. By combining these businesses with the Consolidated Company the services of the men active in that company were obtained.

Mr. Howe testified that the management of the Goodyear Company's business fell largely on him, but he was practising law (R. Vol. 1, p. 466, lines 34–40) and wished to get out (R. Vol. 1, p. 629, line 2). He further knew that Mr. Winslow and Mr. Brown of the Consolidated Company, who could give their whole time to the business, would secure a far better and more efficient management than the Goodyear Company then had (R. Vol. 1, p. 629, lines 3–7). Mr. Winslow and Mr. Brown were well known as efficient managers for the Consolidated Company (R. Vol. 1, p. 629, lines 8–11).

Mr. Brooks, who was the head of the McKay Company, was seventy years old and was anxious to retire from business and spend all his time at his country home. He only devoted one or two days a week to the business (R. Vol. 1, p. 467, lines 8–13).

B. REASONS FOR FORMATION OF THE UNITED COMPANY AS STATED IN CIRCULARS TO STOCKHOLDERS.

The directors of the three principal constituent companies sent out circulars to their stockholders announcing the formation of the United Company and recommending the exchange of stock. All the circulars stated that Winslow would be president and Brown treasurer of the United Company, and the board of directors included Gordon McKay, Louis D. Brandeis and other well-known names. The McKay circular was signed by James W. Brooks, Louis D. Brandeis and other directors (R. Vol. 4, P.'s Ex. 151, pp. 1094–6). The Consolidated Company's circular, signed by Winslow, Brown, and other directors, contained the following statement:—

> "The undersigned Directors of the Consolidated & McKay Lasting Machine Company believe that the United Shoe Machinery Company will show much larger net earnings than the aggregate net earnings of the several companies whose stock is to be acquired, by reason of increase in business, economies in administration and decrease in expenses, and cessation of patent litigation between the Companies, which has been expensive to them and annoying to shoe manufacturers; and believe that these results can be attained without increase of cost to the users of machinery made by the Company, and that better attention to the care of machines and greater assistance to the users can be afforded" (R. Vol. 4, P.'s Ex. 175, pp. 1198–1200).

The Goodyear Company's circular, signed by Howe, Barbour and other directors, contained the same statement (R. Vol. 4, P.'s Ex. 152, pp. 1097–1100).

The Goodyear circular also contained the following statement:—

> "The great advantages to be secured by the control in one corporation, both in the United States and in foreign countries, of the most efficient types of shoe machinery, have been for several years recognized by the officers of the principal shoe machinery companies" (p. 1097).
>
> "The United Company will also from time to time acquire other shoe machinery properties, either by direct ownership or by purchase of shares of their stock" (p. 1098).

This statement the United States contends shows an unlawful attempt to monopolize. But it was in truth and fact, as was said in *United States* v. *Winslow*, supra, only "an effort after greater efficiency" and so the District Court found (R. Vol. 1, p. 1132). It must be remembered that there was a large field of shoe machinery, partly developed and partly undeveloped, which was not occupied by the constituent companies which were taken over by the United Company, and the Goodyear Company's circular merely shows an intention, if opportunity offered, to put out other machines not manufactured by the constituent companies.

Mr. Howe, who drew the Goodyear circular, testified that he had in mind in drawing this clause that if the United

Company was a success it would naturally take on new machines and go into other fields which would supplement the business of the constituent companies. This was proper and lawful just as it was proper and lawful to acquire lasting, metallic, heeling, and welting machines in one company. Indeed, as held in *United States* v. *Winslow*, supra, no intent could make such acquisition unlawful. The probability which Mr. Howe had in mind, therefore, can give rise to no inference of unlawful intent as contended by the United States.

C. SPECIFIC DENIALS OF INTENT TO MONOPOLIZE SHOE MACHINERY AS CHARGED IN THE PETITION.

Mr. Winslow testified that there had never been any intent on his part to acquire complete control of the shoe machinery business as charged in the bill, and that no such project was "ever discussed or considered by any persons interested" (R. Vol. 1, p. 407, lines 3–12). He further testified that he had no intent to exclude all others from the shoe machinery business, and that there was no discussion among any of the persons interested in the organization of the company directed towards such a purpose (R. Vol. 1, pp. 407–8). He denied any intent as charged in the bill to enhance the value of shoe machinery at the expense of shoe manufacturers and the public, to use the same as a means for unlawfully controlling interstate commerce, or to acquire a complete monopoly of shoe machinery and destroy existing competition (R. Vol. 1, p. 414, lines 1–18).

Mr. Howe denied any intent to acquire complete control of the shoe machinery business and to exclude others. There was no discussion of obtaining control of the entire field of shoe machinery (R. Vol. 1, p. 631, lines 29–42; R. Vol. 1, p. 634, lines 18–31).

D. CERTAIN EVIDENCE RELIED ON BY THE UNITED STATES TO SHOW UNLAWFUL INTENT IN THE FORMATION OF THE UNITED COMPANY.

The United States, in its brief filed at the former hearing in this Court, contended that a certain recital in a contract between Peabody & Co. of Australia and the United Company, dated September 11, 1899, shows an intent to monopolize, existing shortly after the formation of the United Company. This contract appointed Peabody & Co. the United Company's brokers or commission agents in Australia to take orders for its machines and shoe findings in Australia. The preamble clause recites that the United Company has acquired certain specified companies and then recites that the United Company contemplates "acquiring the control of other lines of boot and shoe and leather working machinery and boot and shoe findings" (R. Vol. 4, P.'s Ex. 189, p. 1250).

Mr. Winslow was abroad when this contract was executed and knew nothing about the language or the contract until long after it was made (R. Vol. 1, p. 536, lines 19–24). Mr. Howe, who drew the contract, testified that Peabody & Company were commission merchants in shoe machinery and shoe findings in Australia, and they wanted an assurance that the United Company would give them enough business to warrant their entering into an agency contract. The United Company then had in mind the purchase of some other lines of shoe machinery and findings which, if acquired, would tend to increase the business of Peabody & Co. as agents for the United Company. He had in mind especially blackings, cements and stains which Peabody & Co. previously had difficulty in supplying themselves with (R. Vol. 1, pp. 672–673, lines 21–22, 35–45, 1–13).

It is obvious that Peabody & Co. were interested in knowing whether the United Company might furnish additional machines or supplies, especially additional supplies which, as Mr. Howe testified, they had previously had difficulty in supplying themselves. They were not interested in knowing whether the United Company contemplated acquiring com-

peting concerns. This provision was inserted as an assurance to Peabody & Co. that they might expect to be agents not only for the then product of the United Company, but certain additional supplies which would tend to increase their business as agents. The acquisition of such additional lines of supplies or of additional machines which the United Company did not then furnish was wholly lawful and proper.

The attempt of the United States to construe this recital into an admission of unlawful purpose to acquire competing concerns shows the lack of evidence it found to support its contentions.

The United States, at the former hearing, also laid stress on a statement made by Mr. Howe that he was opposed to having merely "a harmonious arrangement, a sort of working agreement between the Lasting Machine Company and the Goodyear Company, because I had a sort of indefinite idea that it might be deemed to be a combination in restraint of trade" (R. Vol. 1, p. 629, lines 20–24).

The United States attempts to construe this statement into an admission on Mr. Howe's part of unlawful purpose. It is insinuated that Mr. Howe recognized that the combination of the constituent companies would suppress competition and restrain trade, but that he erroneously believed that a consolidation in corporate form would avoid the penalties of the Sherman Act.

This construction of Mr. Howe's testimony is entirely unjustified. Mr. Howe explained his meaning further, saying:—

> "By my previous reference to something being in restraint of trade I meant that I had an indefinite fear that if the two companies remained separate, but, for instance, had a joint factory and joint branch offices, there might be something in the way of restraint of trade. I insisted for that reason that there should be a complete merger and consolidation" (R. Vol. 1, p. 630, lines 3–8).

Mr. Howe, at this point in his testimony, was referring to an arrangement between the Goodyear and the Consolidated Companies which it was first proposed should be consolidated. What he obviously meant by his statement was not that he feared that the end sought to be accomplished, namely, the

manufacture of the machines of both companies in a single factory and the furnishing of service by a single organization was unlawful or a restraint of trade, but that an agreement between two companies whereby they agreed to obligate themselves to maintain a single factory and service might be held unlawful on the ground that corporations representing numerous stockholders ought not to limit themselves to doing business in one specified way, which practically amounted to a partnership between them, even if such method of doing business was lawful. For example, a company dealing in locomotive wheels and a company dealing in locomotive bodies can lawfully consolidate, but Mr. Howe had a vague idea that there might be some question whether contracts between such companies under which they remained separate and yet obligated themselves to act as though consolidated might not impose restrictions which independent corporations ought not to incur. There is no suggestion in Mr. Howe's testimony that he thought the consolidation of the two companies would eliminate competition or restrain commerce in shoe machinery. On the contrary, he testified that there was no actual competition between them.

His testimony was obviously intended to meet a possible contention of the United States. One of the principal purposes for the formation of the United Company was to have the service for the different machines furnished by a single organization and to have the machines manufactured at a single plant where the parts could be standardized. The United States might have argued that this result could have been accomplished by agreement between the parties without an actual consolidation. Mr. Howe's testimony was intended to show one reason why he thought it inadvisable to attempt to accomplish this lawful result by agreement without an actual consolidation.

The attempt to construe this explanation into an admission of wrongful purpose has no foundation.

E. METHODS BY WHICH AND EXTENT TO WHICH UNITED COMPANY CARRIED OUT AND REALIZED THE PURPOSES FOR WHICH IT WAS ORGANIZED.

It is important at the outset to show the methods by which and the extent to which the United Company carried out and realized the purposes for which it was organized.

The peculiar character of the shoe machinery business permitted the United Company by uniting the businesses of manufacturing the various machines previously conducted by the constituent companies to effect not only great economies but also a vast improvement in the character of the service and the machines furnished customers which would probably not have been possible in any other business in the country.

The opportunities for improvement in machines, service, and economies made possible by the formation of the United Company and the success of the United Company in improving these opportunities show conclusively that the United Company was organized for the purpose of "greater efficiency," as this Court, in *United States* v. *Winslow*, supra, held appeared on its face, and as the defendants Mr. Winslow and Mr. Howe testified.

Furthermore, it shows that the excellence of the United Company's patented machines and the efficient service it has rendered its customers fully account for its success and exclude any inference that such success was attained by wrongful means. In 1899, when the United Company was formed, the constituent companies furnished the greater part of the machines used in the particular fields for which their machines were adapted, because such machines were the best machines made and because they were patented so that others could not furnish them. The shoe machinery business was a comparatively new business, and the business done by the constituent companies had been created by them through the excellence of their patented machines.

The evidence shows that the vast improvement in the character of the service rendered users of its machines, the im-

provement of its machines, and the invention of new machines fully account for the continuance of its success, and exclude the inference that the continuance of this success has been due to unlawful means.

As said by Judge Dodge (R. Vol. 1, p. 1137):—

> "That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question. It is not disputed that, when the petition was filed, its machines represented, in number and amount, the highest development ever reached in the art to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason.
>
> "So little room for doubt does the evidence leave that the success and preponderance referred to are the natural and legitimate result of the intrinsic merit of the patented machinery and service furnished as to require clear and convincing proof of any assertion that they are due to causes other than these."

(1) CONCENTRATION IN ONE FACTORY AND STANDARDIZATION.

The United Company concentrated the manufacture of its machines in one factory, and standardized the parts of its various machines. It thus effected a great saving in manufacturing expense, and obviated the necessity of carrying so great a variety of parts for use in repairing its machines, which not only saved expense, but was of course a great convenience to users of machines.

Mr. WINSLOW testified:—

> "Another reason which I stated for the formation of the United Company was to economize in the manufacture of machinery by bringing that manufacture into one

modern factory and standardizing the methods of manufacture.

"Prior to 1899 the Goodyear Company was manufacturing in a factory on Albany Street, in Boston; the Lasting Machine Company at Beverly, Mass., and the McKay Company at Winchester, Mass. The Goodyear Company was employing less than 200 men; about 300 were employed at Beverly, and about 500 at Winchester; in all about 1000 men in 1899.

"In the manufacture of the machines of these three companies there were many parts in common, but they could not be interchanged. Screws, for example, might be used on ten different machines where the same strength was required, but the screw made for one machine would not fit any of the others. This is only an illustration of what was true of a great many parts which could be standardized and made interchangeable, and have been. This resulted in a very large saving in the number of parts to be carried in different places. The bringing together of these factories also enabled us to establish our own foundry. Since the United Company was formed, for the first time in the history of shoe machinery iron patterns for casting have been developed and are almost universally used now, reducing the cost of manufacture.

"It was intended and expected that the consolidation would effect a very large saving in the management expenses and it so resulted. There were three superintendents at that time in the factories. The time of two of those superintendents is available today for the development of the art of making machinery. They are not used as superintendents of manufacturing. While, broadly speaking, we made no saving by discharging men, their time became available in other directions, so that their productivity was availed of to economize and develop the business" (R. Vol. 1, p. 412, line 41–p. 413, line 30).

Again WINSLOW testified:—

"In carrying out our purpose of consolidating the manufacturing of the machines in one modern factory and standardizing the methods of manufacturing, about January, 1900, a committee of our manufacturing men was appointed to visit the various manufacturing plants throughout the United States and gather data as to the best methods of manufacture, the most efficient machines, the most efficient arrangement for carrying on the manu-

facture from one department to another, and the best character of factory for the operatives. After that committee had worked about a year we began to build a large factory at Beverly, Massachusetts.

"To avoid any possibility of the tools for duplicating parts of machines being subject to destruction by fire we built the factory of concrete, and I think at the time that was the largest concrete building in the world. A great deal of care and thought was put into the arrangement of the floors and rooms to eliminate waste in carrying machines from one part of the factory to another for different operations. In factories that had been built up to that time for the manufacture of shoe machinery nothing of that sort had been gone into; while the buildings were modern in construction, they were not modern in their arrangements of the parts of the factory with reference to the economy of production. The Beverly factory has been added to from time to time.

"The facilities for manufacturing the different kinds of machines were transferred to that plant successively from the old factory at Beverly, from the Winchester factory, and from the Goodyear factory. None of the three factories of the constituent companies prior to 1899 was adequate for the occupation of all of them, and there was no land connected with any of them, except possibly Winchester. The Beverly factory was not owned by the Lasting Machine Company, there wasn't room to develop the Goodyear plant, and Winchester was a poor place to manufacture on account of the lack of labor. It was not a manufacturing community. Labor had to be developed there. Beverly has about 75,000 people within a five-cent fare.

"At the new plant in Beverly we continued to manufacture all of the machines which we had been marketing before and we employed more labor from time to time. About 1,000 men were employed in 1899, and at the beginning of this suit there were over 4,000 men employed at the Beverly factory. There has been a gradual increase right along" (R. Vol. 1, p. 423, lines 5–46).

(2) INAUGURATION AND MAINTENANCE OF AN EFFICIENT REPAIR SERVICE WITH ITS MACHINES.

(a) Necessity for the Service.

The service rendered by the United Company in connection with its machines is of the utmost importance, not only to the shoe manufacturer, but also to the operative and the United Company. In no other industry are so many different machines of so delicate a character used in the manufacture of a single product, and, therefore, in no other industry is service of this nature of such vital consequence. Its importance must be emphasized and explained at some length because its necessity underlies the methods of marketing machines which have prevailed and proved themselves most satisfactory in the shoe machinery industry, and because the need of perfecting this service was one of the principal motives for the formation of the United Company, and because the excellence of the service rendered by the United Company accounts in considerable part for its success. This service can be rendered adequately only by a company like the United, which furnishes a large number of different machines. It was impossible for the constituent companies prior to the formation of the United Company to furnish a satisfactory service.

The service rendered by the United Company consists in maintaining experienced mechanics at convenient places to repair machines and replace worn parts immediately upon request of the shoe manufacturer and to adjust the machines frequently in order to keep them in the highest state of efficiency; in maintaining depots of extra parts at convenient places so that they may be immediately available, and in instructing operatives in the use of machines. The United Company, as part of this service also, acts as engineer for the shoe manufacturer, advising and assisting him in the laying out of his plant.

The importance of this service is due to causes peculiar to the shoe machinery industry. The principal machines fur-

nished by the United Company are extremely delicate. They need constant adjustment by a skilled mechanic to maintain them in proper working order. The wearing parts also require frequent replacement. This necessitates not only having a stock of extra parts near at hand, but also the services of a skilled mechanic to insert and adjust the new parts. The ordinary shoe manufacturer could not afford to maintain skilled mechanics for this purpose, nor the large stock of parts which would be required to guard against his needs. If such service and new parts are not immediately available in case of need, the machines do imperfect work or cannot be used at all.

The importance of maintaining the machines in efficient condition is multiplied many fold by the fact that a great many different machines are used on each shoe manufactured. The work in the shoe factory is planned to travel from one room to another in fixed quantities. A certain number of pairs of shoes are started each day and an equal number are finished each day. In other words, there is a regular flow of shoes through the factory from one machine to another machine. No large number of shoes are kept prepared ready for the operation of each machine. The cost of doing so would be prohibitive, as it would necessitate having a large amount of capital invested in material and in lasts and would require too much space to store the partially prepared shoes. Furthermore, shoes in process of manufacture must be in "temper," that is, the soles and heel must be artificially moistened for the operations involved in lasting and in preparing and attaching them to the upper. Once in "temper" the shoe ought to be completed as rapidly as possible. Therefore, shoe factories, so far as possible, are run on the basis of having shoes in the process of manufacture travel from machine to machine without any substantial interruption. Only so can economical work be done.

When one machine breaks down, it, therefore, not only stops the work on that particular machine, but it also stops the work on all machines coming after it; and since, as explained above, it does not pay to prepare a large number of shoes which cannot be finished, it also stops the work on machines which come before it. Thus the effect of a single

machine getting out of order is not confined to stopping work on that particular machine but the effect is to stop the work on the entire line of machines of which that particular machine forms a part. Where there is only one machine of the kind in the factory, the entire production of the factory ceases (*infra*, pp. 334–338).

Not only does the shoe manufacturer suffer when the machine breaks down, but his operatives and the United Company, which leases the machines, suffer also. The operatives are paid by piece work; when, therefore, they cannot work their compensation ceases. The United Company derives its income from royalties received for the use of its machines; this income ceases when the machines are not operated.

The daily capacity of many of the important machines furnished by the United Company is very large. As most of the shoe factories in the country have a comparatively small production, many, if not most of them, require only one machine of certain kinds. Thus nearly one-fourth of the 1,150 shoe factories in the country in 1911 made 100 pairs or less per day; 636 or more than one-half made 500 or less pairs per day, and only 169 made more than 1,500 pairs per day (R. Vol. 1, p. 455, lines 1–19). In a factory making only 450 pairs per day, only 1 Pulling-over Machine, 1 Heeling Machine, 1 Slugging Machine, and 1 Loose Nailing Machine are required (R. Vol. 5, Defs.' Ex. 230, p. 442). If one of these machines should break down in a factory of this size, the entire production of the factory would stop. Only 1 Slugging Machine, 1 Loose Nailing Machine, and 1 Heel Pricking Machine, are required in a factory having a total production of 1,200 pairs of turn shoes per day (R. Vol. 5, Defs.' Ex. 249, p. 693).

The constant need of service is illustrated by its use. In 1911 shoe manufacturers called upon the United Company for repair service 192,524 times and 1,110,593 hours of its road men's time were occupied in this work (R. Vol. 5, Defs.' Ex. 214, p. 311). Its importance is further emphasized by the fact that such service, costing, in 1911, $1,196,494.86 (R. Vol. 1, p. 974, line 22), was rendered free of charge by the United Company (R. Vol. 1, p. 421, lines 18–23) because of its importance in increasing the reputation and productive efficiency of its machines and the consequent return to the United Company in the way of royalties.

Referring to the necessity for this service, Mr. WINSLOW testified (R. Vol. 1, pp. 410–11, lines 41–14):—

> "This factor of service is at the very base of the successful operation of a shoe factory. The work is planned to travel from one room to another in fixed quantities. So many pair go in in the morning—so many pair come out at night. The operatives are dependent upon that work traveling along regularly to them. The breaking down of some of these machines will in many of the factories block the entire flow of the work. Of course, in any factory it will throw out of regularity the production of the factory and throw out of work many times the operator that follows the particular operator on the machine that has broken down or got out of adjustment. Of course, the operators in shoe factories are paid by the piece almost entirely. From the standpoint of the shoe machinery manufacturer and the shoe manufacturer and the operative, the ability of the factory as a whole to turn out its work right along regularly as if it were going through one machine is vital. Factory space is economized; the earning capacity of the investment in the machinery is vitally affected; the operatives' pay has as its foundation, of course, the regularity of the work."

FREDERICK W. CURTIS, president of the Curtis & Jones Company, shoe manufacturers at Reading, Pennsylvania, testified, as a witness for the United States (R. Vol. 1, p. 377, lines 27–28; p. 379, line 12; p. 382, lines 26–45):—

> "The question of repairing and furnishing parts is an important consideration to the shoe manufacturer. We want to keep the volume of product moving steadily through our factory without any interruption. If an important machine, like a stitcher or welt-sewing machine, breaks down it stops the flow of the product, keeps the machines behind it idle, dams up the product right there at that point, to the general disarrangement of our factory, as well as throwing men who are on machines behind the disabled one out of work.
>
> "The margin of profit in making shoes is such that it is very essential that our machinery should work smoothly, regularly, and with continuity, and economies in the manufacture of shoes often make the difference between a successful manufacturer and one who is not successful. One of the most important economies is to have our machin-

ery working with continuity and with the highest efficiency and turning out our product with the utmost regularity day after day, just as we want to get it, so that there won't be any hitch anywhere in the flow of product through our factory."

The instruction of operators is also of great importance to shoe manufacturers. Just as the breaking down of one machine may stop all work in the factory, or work on an entire line of machines, so the lack of a single operator—say a laster or a welter—may stop all work on an entire line of machines. Again, the character of the work done on the machines depends on the skill of the operator. Again, the already skilled operators must be instructed in the use of new or improved machines as they are put out. In consequence the Service Department of the United Company, by instructing operators for shoe manufacturers, and by furnishing one or more of its own men in an emergency to operate a machine, is of the greatest value to shoe manufacturers and greatly increases the productive efficiency of the machines. The value of this service is shown by the fact that a total of 8,889 operators were taught by the United Company in the year 1911 alone (R. Vol. 5, Defs.' Ex. 214, p. 312).

(b) Inadequate Service Rendered by Constituent Companies Prior to the Formation of the United Company.

The absolute necessity of service for shoe machinery of the character produced by the constituent companies, if such machinery was to prove satisfactory, had led the constituent companies, prior to the formation of the United Company, to institute such service as was possible under the circumstances.

The Consolidated Company was furnishing men to instruct operatives how to use its machines and men to keep the machines in adjustment so far as it could within its financial resources. It had no offices, however, except in Boston and Brockton. In Philadelphia, Cincinnati, Chicago, Haverhill, and Lynn there were concerns who carried parts for the Con-

solidated Company's machines and received notice of calls for service. The Consolidated Company's men called at these places to receive such notices (R. Vol. 1, p. 408).

The McKay Company furnished about the same amount of service as the Consolidated Company. In Chicago, Cincinnati, Haverhill and Lynn parts were carried for its machines by the same concerns which acted as agents for the Consolidated Company. In New York and Brockton it had some arrangements with agents (R. Vol. 1, pp. 408–409).

The Goodyear Company furnished the best service of the three companies. It had its own offices in Auburn, Maine, Lynn, Haverhill, Brockton, Worcester, New York, Philadelphia, Burlington, N.J., Cincinnati, Chicago, St. Louis, New Orleans and Rochester, N.Y. It carried its own parts and had its own men located in each of these offices and also had a system of traveling men to instruct operatives and keep the machines in adjustment (R. Vol. 1, p. 408). However, none of the companies gave a good service (R. Vol. 1, p. 411, lines 40–41; p. 412, lines 3–4). Moreover, since the effective use of the machines of any one of the companies was dependent upon the efficiency of the machines of the other companies (since, as explained above, the machines of one company could not be used unless the machines of the other companies were in use) the efficiency of the service rendered by the three companies was regulated by the company which rendered the worst service. As Mr. WINSLOW testified,—

> "In other words, the entire continuity of operation, the regularity of operation of the factory, was dependent upon that service that was rendered by that one of three companies that gave the least efficient service" (R. Vol. 1, p. 409, lines 38–41).

Furthermore, there was an unnecessary duplication of expense involved in the maintenance of this service.

> "Each of these three companies was employing its own traveling mechanics and instructors, who in many instances were traveling to the same places, visiting the same factories, and carrying parts to the same places, but each set working on their own particular machines" (Winslow, R. Vol. 1, p. 409, lines 14–18).

The unsatisfactory condition of this service, and the increased efficiency in productiveness which would result from more efficient service, was, as stated, one of the main purposes for the formation of the United Company. Thus Mr. WINSLOW testified:—

> "Both Mr. Howe and myself recognized that condition, and it seemed that by bringing our two companies together we could get a uniform service that would produce a great deal higher percentage of efficiency of the machines than if a given factory was dependent upon an independent call to us and an independent call to their office. If the service was brought into one office, if the entire service was unified, a call coming in there would be attended to at once, no matter upon what machine it was needed. The regularity and continuous operation of the machines is dependent upon what may be termed instantaneous service" (R. Vol. 1, pp. 409–410, lines 41–8).
>
> "Another reason which I gave for the consolidation was our purpose to increase the productive efficiency of the machines in shoe factories. In speaking of the productive efficiency of the machines I had in mind the amount of shoes upon which the machine would operate in a given day or week or year; in other words, the productiveness of the machine in the work that could be done upon it. A machine might have a capacity to do a thousand pairs a day, but for some reason other than the ability of the machine to do the work it would not produce its work. The operative himself might not be efficient. The way in which the work came to that particular machine might not be right. The machine itself might be broken down. The manufacturer might have only one machine, and that operative might be out, in which case we frequently found him a man. The many ways in which this service has been used had led to the conclusion on the part of some of the men who were familiar with the practical side of the business that a service could be furnished which would very materially increase the productivity of the machines daily, so that less machines would be needed, less floor space, a given investment in the machines would earn more money, the operatives themselves could earn better wages, and the result of that is productive efficiency; in other words, we did produce an ability on the part of the machines to increase the number of shoes that would go through them" (R. Vol. 1, p. 412, lines 17–40).

FREDERICK ALLEN, president of the Allen, Foster, Willett Company of Lynn, testified:—

> "I can remember ten years ago, twelve years ago, when we did have some machines from the independent companies—some of the Bresnahan machinery, I believe—it would sometimes take us three or four days, if a machine broke down, before we could get it fixed up and repaired. At the present time there is a corps of experts in Lynn there who are efficient on each and every machine that we have, and if it is necessary within half an hour I can have a man over there and the machine fixed up right away, and with one machine being dependent upon the running of another—that is, one machine breaking down will throw out the entire line—that is a very big advantage" (R. Vol. 1, p. 722, lines 23–33).

JONATHAN BROWN, Jr., a manufacturer of Salem, Mass., making 7,500 pairs of shoes a day, testified:—

> "We have had experience with that situation, and it is a matter of record that everyone knows who has been connected with manufacturing shoes for a number of years that before the United Shoe Machinery Company was formed, where we would have machines from these different individual companies, a machine, the capacity of which may have been five, six, or seven hundred pair a day, would break down and we would send for some one to have the machine repaired, and it might be three days, four days, a week, or ten days before we would get anyone to put that machine in order. The consequence was that all the operations beyond that machine which were waiting for that 500, 600, or 700 pair of shoes were simply lying idle" (R. Vol. 1, p. 731, lines 13–24).

(c) Improvements in Service by United Company.

Almost immediately after the formation of the United Company the plans with reference to the improvements in the service commenced to be put into effect. Each territory was studied and the best man put in charge of that district (R. Vol. 1, p. 418, lines 22–31). Where previously the service

had been rendered from different offices, these were amalgamated into a single office.

In 1911 the United Company had 18 offices situated in the following places: Auburn, Maine; Haverhill, Mass.; Lynn, Mass.; Manchester, New Hampshire; Marlboro, Mass.; Brockton, Mass.; New York City, New York; Rochester, New York; Lestershire, New York; Philadelphia, Pennsylvania; Harrisburg, Pennsylvania; Cincinnati, Ohio; Chicago, Illinois; Milwaukee, Wisconsin; St. Paul, Minnesota; St. Louis, Missouri; New Orleans, Louisiana; San Francisco, California.

It had also sub-stations at—Augusta, Maine; Gardiner, Maine; Rochester, New Hampshire; Nashua, New Hampshire; Derry, New Hampshire; Newburyport, Mass.; Auburn, New York; Baltimore, Maryland; and Lancaster, Ohio.

This makes a total of 27 stations in 13 different states. At each of these places men were stationed to repair machines and instruct operators (R. Vol. 1, p. 974, lines 4–20). These men answer calls for service from shoe manufacturers situated in their district, immediately traveling to the shoe manufacturer's factory. In some instances they have to go several hundred miles (R. Vol. 1, pp. 420–1).

There is a stock of parts in each of these depots for practically every machine which the United Company produces, so that the men are in a position to repair any machine immediately (R. Vol. 1, p. 421, lines 35–39). The investment in parts carried by the United Company in 1911 for the service alone (not including any parts for new machines) was $1,415,474.49 (R. Vol. 1, p. 974, line 23; p. 979, lines 3–11).

The number of roadmen employed in this service increased from 237, employed by the United Company in 1899, to 689 employed in 1913, and the number of branch office managers and assistants increased from 12 to 31 (R. Vol. 5, Defs.' Ex. 211, p. 293). The total calls answered in the year 1911 were 192,524, and including calls for instruction to operatives 201,413. The time of the roadmen occupied in this work consumed 1,365,384 hours (R. Vol. 5, Defs.' Ex. 214, pp. 311–2).

The number of operatives taught during 1911 was as follows:

Goodyear operators taught	2,209
Metallic operators taught	956
Heeling operators taught	1,006
Lasting operators taught	1,359
Pulling-over operators taught	956
Eyelet and general operators taught	2,403
Total operators taught	8,889

Defendants' Exhibit 214 (R. Vol. 5, p. 311) shows in detail the number of calls made by each office, the number of operatives taught through each office, and the number of hours consumed in this service.*

The foregoing service is rendered absolutely without charge to shoe manufacturers. The shoe manufacturer is not even charged with the traveling expenses of the roadmen. All he pays is the cost of new parts (R. Vol. 1, p. 421, lines 18–23). This service cost the United Company for the year 1911, $1,196,494.86 (R. Vol. 1, p. 974, line 22).

The United Company is practically the only shoe machinery company which furnishes service (R. Vol. 1, p. 423, lines 1–4).

As to the character of the service and its improvements since 1899, Mr. WINSLOW testified as follows:—

> "As to the development of the service for shoe manufacturers since 1899, the service is now so far ahead of what existed in 1899 that there is really no comparison. At each depot is a general manager and a body of men who are experts in the adjustment and repair of all the machines. These men are at the call of the manufacturers by telephone at any moment of the day and are at their service nights, if necessary, to rearrange their factories or readjust their machines. There are men to teach new operatives how to run the machines and how to take care of them. That service is complete in each shoe manufacturing district in the country.
>
> "In addition we have men who are treated by the manufacturers as their engineers and who act in an advisory capacity as to the re-arrangement of factories and

* Defs.' Ex. 212 (R. Vol. 5, p. 294) shows in detail the calls for service made by E. W. Burt & Co., Inc., for 1911, and Defs.' Ex. 213 (R. Vol. 5, p. 298) shows the calls made for service by L. A. Crossett, Inc., for the period July 1, 1911, to January 1, 1912. E. W. Burt & Co., a small manufacturer averaging 123 pairs per day, received in 1911 the services of the United Company 102 times. L. A. Crossett, Inc., for the year 1911 received the service of the United Company 1,150 times.

the improved processes of manufacture. We send these men around to the factories to call the attention of manufacturers to opportunities to improve their methods of manufacture. This service always includes the instruction of operatives. There is also a service in continually supervising and watching the operation of the machines by our experts, and in order for the manufacturer to keep a given set of machines in constant operation these men have to be acquainted with the manufacture of the particular kind of shoes made in each factory because the requirements as to the work of the same machines may be very different in one factory from the requirements in another factory.

"These men have to know how to run the machines themselves, how to adjust them, repair them, take them apart and put in parts" (R. Vol. 1, p. 420, line 35–p. 421, line 17).

(d) Testimony of Shoe Manufacturers as to Importance of the Service Rendered by the United Company.

ALANSON C. BROWN, president of the Hamilton-Brown Shoe Company, of St. Louis, manufacturer of 25,000 pairs of shoes a day, testified:—

"The service furnished by the United Company has helped us to educate our workmen and teach them how to run the machines. If a machine breaks down they send a man at any time to repair it or fix it up and keep us running, and they have furnished parts so that we didn't have to keep any supply of parts.

"The United Company has instructed a good many operators for us. They instruct operators for us right along without any charge to us. As to the importance of that to us, the operatives struck in five of our factories a little over a year ago and we had to get practically all new operatives in all of those factories. Those operatives were instructed by the United Company's men without charge. The company also keeps our machines running. If one of the machines should be out of order it would clog up and congest that department until we got the machine running again. As fast as the United Company gets up a new machine which we think is an improvement over the old machine, we try to get them to install it in our

factory and take out the old one. They have done this in every case without charge to us, except the freight" (R. Vol. 1, pp. 617–8, lines 32–8).

"The United Company is helping us instruct operators almost daily. We have green help in our factories right along and they send an instructor who helps instruct these operators. During our labor trouble we tried the system of having some teachers ourselves. We didn't have enough instructors from the United Company and had one or two of our foremen try it. As to whether they could instruct all right, it would be a big expense to us if we had to do that. We never adopted a system of keeping our own instructors on hand and instructing new operators as they came in. This United Company system of instructing operators is a good thing all the time. We employ it practically all the time" (R. Vol. 1, p. 619, lines 19–30).

Robert P. Hazzard, a shoe manufacturer of Gardiner, Maine, making about 5,000 pairs of welt shoes a day (R. Vol. 1, p. 641, lines 4–10), testified:—

"The United Company's service is one of the greatest necessities for the economical running of a modern shoe factory. That service consists of men who specialize on certain classes of machines and who are located conveniently to the manufacturing centres. We are served to a certain extent from the Auburn, Maine, office, but there are several resident United Company men in Gardiner who are under the jurisdiction of the Auburn office, but who are located in Gardiner so as to be more available when we need them. If those men are busy at one of the other factories, or if there is anything that they cannot handle, we telephone Auburn and inside of an hour and a half we have a man from Auburn. Those men do anything that seems desirable in putting the machines in shape to do the maximum amount of work of good quality.

". . . The failure of a company to give efficient service is detrimental both to one's nervous system and to the smooth running of the factory.

"As to the importance of efficient service, the shoe business is peculiar because it is dependent on succeeding operations . . . and because an even production in all operations all the time is absolutely necessary for efficiency. That efficiency wants intelligent action and it wants it quick, and may be compared to the fire department in case of fire.

"When manufacturers get that service it not only means bigger wages for the employees, but it means better results for the manufacturer and cheaper shoes for the consumer. In my judgment, with the United Company's service the consumer is buying shoes cheaper than he could if the royalty were done away with and efficient service were not furnished" (R. Vol. 1, p. 643, line 16–p. 644, line 3).

Mr. Hazzard has between $50,000 and $60,000 invested in lasts. A last is in a shoe about 5 days. It is of the utmost importance to get the shoes through the factory quickly so that too much money will not be tied up in lasts (R. Vol. 1, p. 644, lines 4–10). He further testified that operators were not allowed to have a large accumulation of shoes on any operation, because it would tie up too much money in lasts and stock and there would not be room to make the shoes, so that "every man is working right from rack to rack to the man ahead of him. These shoes are moved in racks of 24 pairs, and when one machine shuts down it is like breaking a link in a chain" (R. Vol. 1, p. 644, lines 17–23).

FREDERICK ALLEN, of Lynn, who has been manufacturing shoes for about 17 years (R. Vol. 1, p. 721, lines 36–7) and whose factory has a capacity of about 6,000 pairs a day (R. Vol. 1, p. 724, line 1), testified that 10 or 12 years ago when he had some machines from other companies, "it would sometimes take us three or four days, if a machine broke down, before we could get it fixed up and repaired" (R. Vol. 1, p. 722, lines 23–27).

"At the present time there is a corps of experts in Lynn there who are efficient on each and every machine that we have, and if it is necessary within half an hour I can have a man over there and the machine fixed up right away, and with one machine being dependent upon the running of another—that is, one machine breaking down will throw out the entire line—that is a very big advantage" (R. Vol. 1, p. 722, lines 27–33).

JONATHAN BROWN, Jr., a shoe manufacturer of Salem, Massachusetts, making about 7,500 pairs a day (R. Vol. 1, p. 730, lines 9–15), testified:—

". . . If we had our choice in the matter, we wished that every machine we had in our establishment was under the control of the United Shoe Machinery Company. That is because we get such excellent service; we get it promptly; we get it cheap, and it allows us to go ahead with our production and figure down to a minimum cost for our shoes and go ahead and manufacture them without having the delays that we are subjected to whenever we have other machines.

"We have had experience with that situation, and it is a matter of record that everyone knows who has been connected with manufacturing shoes for a number of years that before the United Shoe Machinery Company was formed, where we would have machines from these different individual companies, a machine, the capacity of which may have been five, six, or seven hundred pair a day, would break down and we would send for someone to have the machine repaired, and it might be three days, four days, a week, or ten days before we would get any one to put that machine in order. The consequence was that all the operations beyond that machine which were waiting for that five hundred, six hundred, or seven hundred pair of shoes were simply lying idle. Today, if any of our machines break down—that is, any of the United Shoe Machinery Company's machines—we telephone over there, and inside of three minutes we have someone to put it in order. The consequence is we can figure on our production at the lowest minimum cost" (R. Vol. 1, p. 731, lines 4–29).

"To my knowledge no other company which supplies machinery to shoe manufacturers furnishes any service in any way comparable to that of the United Company. Assuming that machines were of equal merit, this factor of service would be an important element in deciding which company to trade with. There would be no question. You would simply go to the United Company because of the service. It certainly is as vital as that" (R. Vol. 1, p. 732, line 40–p. 733, line 3).

EDWARD W. BURT, a shoe manufacturer of Lynn (R. Vol. 1, p. 738, lines 33-34), testified as follows:—

"As to how large a factor the service which they give is in the successful manufacture of shoes, personally I believe that one of the chief things that a manufacturer should consider in the making of shoes is the service given

in keeping the machines in continuous operation" (R. Vol. 1, p. 739, lines 11–15).

"The United Company has furnished prompt and excellent service. That is absolutely important to the successful manufacture of shoes. We must have it. If our machine breaks down, every hour means so many shoes piled up behind that machine" (R. Vol. 1, p. 740, lines 42–45).

JOHN STROOTMAN, a shoe manufacturer of Buffalo, New York, making from 800 to 1,200 pairs per day (R. Vol. 1, p. 742, lines 41–3), testified:—

"The service which the United Company gives us is excellent, and it is an all-important factor in the manufacture of shoes. We could not run a factory without the Company's skilled men to keep the machines in order and keep them running. So far as I know, no other company furnishing shoe machines gives service of that kind" (R. Vol. 1, p. 744, lines 12–17).

CHARLES A. EATON, of Brockton, making 2,400 pairs a day (R. Vol. 1, p. 751, lines 18–20), testified:—

"The service which we have received from the United Company has been very satisfactory indeed. All manufacturers depend very largely upon it, and in our own case we have considered it of vital importance" (R. Vol. 1, p. 753, lines 23–26).

He further testifie that there were continually little annoying problems which the United Company solved for him by putting him in touch with some method used in another factory (R. Vol. 1, p. 753, lines 27–34).

FRANK C. RAND, of St. Louis, vice-president of the International Shoe Company and a director of the Boylston Shoe Machinery Company, testified, as a witness for the United States (R. Vol. 1, p. 178, lines 19–20; p. 183, lines 18–19; p. 186, lines 31–34):—

"They teach our operatives without charge, and furnish them in times of strikes without charge, at our request. It was a mutual proposition—if we didn't run

the machines we didn't get any shoes and they didn't get any royalty."

C. WILLIS BENNETT, a shoe manufacturer of Fitchburg, Mass., making from 800 to 1,400 pairs a day (R. Vol. 1, p. 757, lines 32–33, 42–43), testified:—

> "As to my experience with them with reference to service, why, their service has been, I might say, indispensable. I don't know what I should do without their service. Whenever I have a machine break down, I immediately telephone to their branch office at Marlboro, and they have a man come up there from Marlboro, who is an expert on that particular machine, to put the machine in order, and they do all this without any expense to me, aside, of course, from the cost of the broken part of the machine, if there are any parts broken" (R. Vol. 1, p. 758, lines 36–44).

He further testified that when he started business in Fitchburg there was only one shoe factory there and there were no operatives outside of that factory, and consequently, he had to teach a good many operatives. The United Company furnished agents and expert instructors to instruct these operatives, making no charge for their services (R. Vol. 1, p. 759, lines 1–5). He also testified that the United Company's agents assisted him as to improved methods of manufacture by telling him of such methods seen in other factories (R. Vol. 1, p. 759, lines 5–8).

As to the services of the United Company in acting as engineers in laying out his plant, he testified as follows:—

> ". . . I went to the United Shoe Machinery Company to see if they would give me a line of machines, and they stated they would, and I had a few samples made down in Lynn and went on the road and sold some shoes. During my absence the United Shoe Machinery [Company] had their expert mechanics there laying out my factory and setting up the machines, and when I returned . . . with orders for shoes, they had my factory all equipped ready for me to start; and all those who visit my factory say that I have one of the best equipped and up-to-date factories in the state, and I want to say also that they did this without any expense to me.

"As to how detailed the work of their experts was in laying out my factory, in the first place they had an expert come there who thoroughly understood laying out a factory, and told me what size shafting I would require, what size pulleys I would require for running different machines. They chalked out on the floor the location of the different machines that would make my work go along in the best manner from one operation to another, and, as I say, when the whole factory was completed I had a thoroughly equipped factory.

"I was free to exercise my own judgment in the selection of machines, as to taking their machines or the machines of others, and I did so. Whatever machines I took I found had been arranged for and set up by the United Company, and they had my factory ready to run" (R. Vol. 1, p. 758, lines 10–35).

CHARLES H. JONES, a prominent witness for the United States, under cross-examination, admitted that he had said of the service of the United Company,—

"It has certainly given more faithful care and attention to the running of the machines and keeping them in order; and in our country factories, where we employ a large proportion of inexperienced help, they have given us more constant and faithful attention in instructing new operators, and in the supervision of the machinery under trying conditions, than we ever obtained from any of the constituent companies" (R. Vol. 1, p. 131, lines 14–21; Vol. 4, p. 1075).

(3) INVENTIONS AND IMPROVEMENTS IN MACHINES MADE BY THE UNITED COMPANY.

Mr. WINSLOW testified:—

"Soon after the formation of the [United] Company the development of inventions and improvements of machines was placed in the hands of a committee comprising three or four of the inventors experienced in shoe machinery inventing. Every new idea or suggestion was submitted to that committee, who made an investigation and reported their findings to the heads of the respective departments; and a decision was made according to which

a man was put at work to develop the idea, or it was filed as not being practicable" (R. Vol. 1, p. 424, line 40–p. 425, line 3).

In this experimental work the United Company has expended very large sums of money. For example, from 1907 to 1911, a total of $2,267,954.70 was spent, an average of $453,590.94 per year (R. Vol. 1, p. 426, lines 25–39).

Defendants' Exhibit 217 (R. Vol. 5, pp. 323–51) is a typical report showing the experimental work done during the month of October, 1911. It shows that experimental work was done on 61 different machines or parts of machines. The report sets out in detail each of the machines on which work was done and the expenditure on each.

In addition to conducting its own Experimental Department the company has purchased from others any inventions which it was thought would improve its machines.

The result of this effort and expenditure of money has been a remarkable development in the art of shoe machinery.

The United Company has, since 1899, brought out at least an average of 7 or 8 new machines a year (R. Vol. 1, p. 427, lines 12–13).

Mr. Winslow testified that since 1899 the United Company has invented and put out to its customers 150 new machines. These are shown in a list—Defendants' Exhibit 246 (R. Vol. 5, p. 683). The list comprises five machines in the Eyeletting Department; 41 in the Goodyear Department; 11 in the Heeling Department; 4 in the Lasting Department; 7 in the Metallic Department; 15 in the Pulling-over Department; 64 in the General Department and 3 in the Fitting Room Department. These machines have all been offered to the public by the United Company by sale or lease (R. Vol. 1, p. 503, lines 7–23). 39 of these machines do work previously done by hand (Defs.' Ex. 247, R. Vol. 5, p. 690).

Again Mr. WINSLOW testified:—

"That work has been carried on consistently and continuously, until now there is a very large organization that gives its entire time and attention to the develop-

ment of ideas of our own men, or ideas that are suggested to us, or to consideration of inventions which are submitted to us.

"From almost the beginning of the company to the present time we have done everything we know how to do to advance the art of making shoes by machinery.

"As soon as we had developed a new machine which performed an operation then being done by machines in the shoe factories, that machine was built in a wholesale way and was placed in the hands of the manufacturers without any charge whatever for the improvements or for the new machines, and the old machines were taken back and scrapped. No charge was made for substituting the new machine and taking out the old one. If the improvement was an attachment, that was added to the manufacturer's machines without any charge to him" (R. Vol. 1, p. 425, lines 4–20).

Among the striking illustrations of new machines which the company has invented and given to the trade is the Rex Pulling-over Machine and the auxiliary machines used with it. The Pulling-over Machine does the work formerly done by the hand operator in preparing the shoe for the lasting machine. It draws the upper over the last at the center and at each side of the toe and attaches it temporarily to the innersole, all at one operation, so that the operator can bring the seam of the tip in a right line across the toe and locate the heel seam directly in the center of the heel. Unless these two lines are made correct the shoes will not be salable (R. Vol. 1, p. 425, lines 21–34). The auxiliaries of the pulling-over system assemble the upper, innersole, counter and last (R. Vol. 1, p. 425, lines 35–40).

The clicking machine, developed by the United Company, enables the manufacturer to cut his uppers accurately with the least loss of stock. It saves every bit of the waste that was caused by the hand knife cutting and increases the product of the workman by at least twofold. The quality of the work is infinitely better. At the same time it cuts the parts of the uppers it makes marks to facilitate the assembling of the parts. Before this machine was invented manufacturers used a pattern of zinc or leatherboard which the cutter placed upon the stock and then cut around it with a hand knife. The knife

always cut by the corners of the pattern and where the leather had been cut by the knife passing the corners the stock could not be used and was wasted. It saves more money to the manufacturer than any other machine which has been produced (R. Vol. 1, p. 425, line 43–p. 426, line 20).

Another illustration is the stapling machine, which saves the manufacturer the cost of a great many needles and a lot of cost for damage caused to machines when needles break (R. Vol. 1, p. 427, lines 20–23).

In the Goodyear Department nearly all the machines have been replaced by new and improved machines (R. Vol. 1, p. 430, lines 32–5). In addition a large number of new auxiliary machines have been developed. Thus in 1899 the United Company supplied 13 Auxiliary Machines for use in making welt shoes, while in 1911 it supplied 35 such Auxiliary Machines. In 1899 it supplied 3 Goodyear Auxiliary Machines for use in making turn shoes, while in 1911 it supplied 9 such Auxiliary Machines (R. Vol. 5, Defs.' Exs. 242–5, pp. 681–3).

The United Company has also developed a large line of so-called General Department Machines which it leased or sold at the option of the shoe manufacturer until 1911, after which time it has sold them only (R. Vol. 1, p. 12, line 37 *et seq.*). A list of 172 such machines is set out in Defendants' Exhibit 227 (R. Vol. 5, p. 425).

Everything that the United Company has known how to do to advance the art of making shoes by machinery has been done from the organization of the Company to the present time.

Furthermore, as soon as a new or improved machine has been developed which performs an operation already performed by some machine held by lessees, the new machine has been substituted for the old machine without charge, and the old machine has been taken back and scrapped. As Charles A. Eaton testified (R. Vol. 1, pp. 751–752, lines 39–43, 1–2):—

> "... Their policy has been very liberal, and they have kept the machines up to date. As new machines were brought out they have exchanged the old ones without any return payment or any charge to us, except for missing or worn parts and freight charges. Those are all the charges that have been made to us on account of the replacement of machines during these years of development since we have done business with the company."

(4) INCREASED EFFICIENCY OF MACHINES RESULTING FROM INVENTIONS AND SERVICE FURNISHED BY UNITED COMPANY.

The improvement in the United Company's machines, the addition of new machines to assist in the work of the principal machines and the service which the United Company has been able to render in connection with its machines have resulted in a remarkable increase in their efficiency. The result has been that each machine has been able to turn out a greatly increased number of shoes.

For example, each Goodyear Welt Sewing Machine in 1910 sewed 66.7 per cent. more shoes than in 1899; each Goodyear Outsole Stitching Machine sewed 69.5 per cent. more shoes in 1910 than in 1899; each Goodyear Welt Sewing Machine used for turn sewing sewed 54.3 per cent. more shoes in 1910 than in 1899; each Heel-Attaching Machine attached 62.3 per cent. more shoes in 1910 than in 1899; each Lasting Machine lasted 24 per cent. more shoes in 1910 than in 1899 (R. Vol. 1, pp. 428–29).

The difficulty of lasting high-toed shoes now in use has reduced the increased efficiency of the Lasting Machines. Prior to the introduction of this new style of shoe these machines showed a higher percentage of efficiency compared with the machines of 1899 than that stated above (R. Vol. 1, p. 429, lines 7–20).

(5) SAVINGS OF SHOE MANUFACTURERS FROM INCREASED EFFICIENCY OF MACHINES AND FROM DECREASE OF ROYALTIES AND INSTALLATION CHARGES.

Shoe manufacturers have benefited from the increased efficiency of the United Company's machines and from the development of new machines, both directly and indirectly. They have benefited directly because of the saving in material

and cost of manufacture which has resulted, and also because of the reduction in royalties and other charges which the United Company has made. They have benefited indirectly because, owing to the constant service rendered by the United Company, the machines have been maintained in an efficient condition capable of working without interruption and because the increased efficiency of the machines has, as shown above, materially reduced the number of machines required to do a specified amount of work. The value of these indirect benefits, as testified to by shoe manufacturers, has been referred to above. The saving it has effected in reducing the amount of capital required to conduct the business by reducing the amount of space required for manufacturing purposes, and thus the rental paid by the shoe manufacturer, and by avoiding interruption to the operation of the factories, cannot, of course, be estimated exactly, but it is unquestionably very large.

The direct savings are also large. Mr. Winslow testified that the machines produced by the Experimental Department of the United Company alone had reduced the cost of manufacturing the welt shoe more than the total royalty that the United Company receives from its machines used in manufacturing such shoes (R. Vol. 1, p. 427, lines 26–29).

Mr. Winslow testified:—

> "The savings effected, as between 1899 and 1911, in the cost of manufacture of the Goodyear welt shoe by increased efficiency of the machines and by decrease in royalties . . . amounted to eight and one-quarter cents per pair. Of this saving the decrease in royalties amounted to three-quarters of a cent, comprising a quarter of a cent that had been paid to the company making the sole-laying machine and one-half a cent which had been paid to the Gem insole company for the use of its machines; that was before we acquired those companies. After we acquired those machines we credited the royalty to the manufacturers, so that there was a direct reduction of three-quarters of a cent per pair on the welt shoes made by the use of those machines" (R. Vol. 1, p. 430, lines 4–17).
>
> "On turn shoes there has also been a direct reduction of three-quarters of a cent on women's shoes and one-half a cent on children's shoes, amounting to 50 per cent.

of the royalty. That reduction was in 1900" (R. Vol. 1, p. 430, lines 18–21).

"On Goodyear welt shoes the saving in cost of manufacture, resulting from the introduction of new machines and improvements in other machines that existed in 1899 and which we improved after the formation of the company, amounts to about seven and a half cents" (R. Vol. 1, p. 430, lines 27–31).

"The improved machines have resulted in savings in the cost of operation, or in the material used, or in the cost of maintenance and the reduction of equipment required, or in the improved quality of the work" (R. Vol. 1, p. 430, lines 36–39).

"Of the saving, a cent and three-quarters per pair in the cost of manufacture is effected by the group of machines comprising the new welter, new stitcher, new rough rounder, new power grooving and beveling machine, the new Universal channeling machine, tack puller and resetter, new welt beating and slashing machine, the welt indenting and burnishing machine, the impression stitch burnishing machine No. 2, and the Goodyear jointing machine. The savings by these machines result from the increased speed of operation of the new welter, the new stitcher, and the new rough rounder, and from the pulling of tacks and resetting of tacks on the tack pulling and resetting machine, always before done by hand. These savings include the savings accomplished by the Plant improvements on the welter. Without the Plant improvements the savings would be somewhere between three-eighths of a cent and a half a cent less than that.

"It is entirely untrue that the modern welter and stitcher do not operate any faster than the old machines. They are at least 50 per cent. faster in average speed than the old machines; that is, they will sew 50 per cent. more stitches in a minute than the old ones would.

"The next group of machines which effected a saving in the manufacture of welt shoes are the Ideal clicking machine, the Duplex eyeletting machine, the Ensign lacing machine, the lining cementing machine, and the improved skiving machine. I have credited three cents per pair saving as effected by those machines, but that is less than the manufacturers of welt shoes have said their saving was in leather by the use of the Ideal clicking machine alone. Three cents is well within the actual saving effected by those machines.

"A saving of two cents is effected by the group of machines comprising the insole heel seat rounder, the insole

tacking machine, the Rex pulling-over machine, the Rex assembling machine, the Rex pounding machine, the upper trimming machine, and the No. 5 lasting machine" (R. Vol. 1, p. 430, line 40–p. 431, line 30).

"It is almost impossible to calculate the amount of savings effected by these machines on high-toed shoes. On those shoes probably the saving in lasting alone by the No. 5 lasting machine was two cents a pair, without reckoning the savings for the other machines" (R. Vol. 1, p. 431, lines 31–35).

"A quarter of a cent saving has been effected by the hand method lasting machine which we have furnished for lasting the sides of shoes the toes and heels of which are lasted on the No. 5 Lasting Machine" (R. Vol. 1, p. 431, line 42–p. 432, line 1).

"I have allotted a quarter of a cent saving to the Crest heel blacking machine, the channel cementing machine, and the tip scouring machine.

"All of the machines in these groups are new machines which the company has invented and brought out and the savings effected by them amount to a total of seven and one-half cents. Adding our reduction in royalties, the sum is eight and one-quarter cents" (R. Vol. 1, p. 432, lines 7-14).

Mr. WINSLOW also testified:—

"The amounts paid per pair of shoes for the use of all the principal royalty machines furnished by the United Company, when accounts are paid within thirty days, are for Goodyear welts, men's work, 5.694 cents; for Goodyear welts, women's work, 4.694 cents; for Goodyear Turn shoes, women's and misses', 1.972 cents; for children's Goodyear Turn shoes, half a cent; for men's and women's McKay shoes, 1.746 cents; for children's McKay sewed shoes, 1.391 cents (R. Vol. 1, p. 503, lines 29–36).

"The average royalty paid by a shoe manufacturer for the use of all machines furnished by the United Company for the manufacture of all types and grades of shoes is less than two and two-thirds cents per pair" (R. Vol. 1, p. 866, lines 29–32).

"The United Company has suppressed absolutely no machines, no inventions and no improvements.

"In no instance when an initial premium is charged has that been increased over what was charged prior to 1899 and in no instance has the royalty charged on any

machine been increased over that charged in 1899" (R. Vol. 1, p. 433, lines 27–32).

"Throughout our business dealings our prices, service, and forms of lease have been the same to everyone; we have made no price for any royalty or for any material or in any way that was not open to every lessee the day it was made" (R. Vol. 1, p. 439, lines 39–42).

"Our royalties have been the same to all, whether they used a thousand machines or one; they are charged by the pair and the service is exactly the same. No lease or modification of lease is adopted at any time that is not open to all lessees at the date of its adoption" (R. Vol. 1, p. 440, lines 2–6).

"As an illustration of the reductions made in prices of articles furnished by the United Company, I have had compiled the reductions made in the prices of the forepart and edge cutters acquired from the Boston Shoe Tool Company and the Globe Shoe Tool Company (defendants' Exhibit 239, Record, p. [678]). The prices charged by those companies compared with prices subsequently charged by us are as follows:

"The price of the heel cutter with blades in January, 1899, was $3.25; we reduced the price on March 1, 1900, to $2.25. In January, 1899, the price of the blades alone was $2; on March 1, 1900, we reduced the price for the blades alone to $1. The price of forepart and shank cutters in January, 1899, was thirty-five cents each, in small quantities, and twenty-five cents each in quantities of 100; on March 1, 1900, we reduced the price to twenty-five cents each in any quantity. The price of edge irons in January, 1899, was fifty cents; on March 1, 1900, we reduced the price to twenty-five cents" (R. Vol. 1, p. 479, lines 3–19).

The United Company has put out many of its new and improved machines without charging any additional royalty. Thus, for example, the shoe manufacturer of to-day gets the use of the Welter and Stitcher of the Goodyear Department and the 36 Auxiliary Machines without initial payment and for exactly the same royalty as was charged in 1899 for the use of a far less efficient Welter and Stitcher, and only 13 Welt Auxiliary Machines. For turn shoes he gets the Stitcher and 9 auxiliaries without initial payment and for one-half the royalty charged in 1899 for a much less efficient Welter and 3 Auxiliaries. Certain machines acquired from others for which

the shoe manufacturer previously paid a substantial charge have been added to the Goodyear Auxiliary set without increasing the royalty.

Thus the Company owning the Sole Laying Machine, previous to its acquisition by the United Company, charged a royalty of one-quarter cent per pair.

The United Company acquired this machine and included it in its Auxiliary Goodyear Set without any additional royalty. So in the case of the Gem Insole Machine on which the charge had been one-half cent per pair (R. Vol. 1, p. 430, lines 10–13).

The United Company has reduced or eliminated the initial charges made in 1899, thus reducing materially the cost to the shoe manufacturer of his machinery. The initial charge for an equipment of machines to manufacture 300 pairs of Goodyear Welt shoes per day was in 1899, $6,930.50. In 1911 the improved machines of the same character and 18 additional Auxiliary or General Department machines were furnished by the United Company for $1,430, a saving to the manufacturer of $5,500.50. The initial charge for an equipment to make 1,000 pairs of shoes per day was, in 1899, $11,300.50. Prior to 1911 the United Company had reduced the charge to $2,467.50, a saving to the manufacturer of $8,833 (R. Vol. 1, pp. 432–3). More than 50 per cent. of the manufacturers make 300 pairs or less per day (R. Vol. 1, pp. 454–5).

The royalties now charged for the United Company's machines are extremely small and hardly affect at all the prices charged the public for the completed shoes. As stated above, the average royalty paid by a shoe manufacturer for the use of all machines furnished by the United Company for the manufacture of all types and grades of shoes is less than 2⅔ cents per pair (*supra*, p. 194).

In addition, certain nominal annual rentals are charged for the use of certain auxiliary or General Department machines. These are not charged as a substantial compensation for the machines, but in order that a shoe manufacturer shall not take these machines for which no independent royalty is charged, unless he really has a use for them. The total cost per pair of shoes of such rentals is almost infinitesimal,

and adds no appreciable amount to the royalty charged per pair of shoes. Take, for instance, the rental of $15 per year for the Goodyear Universal Channeling Machine (Def.'s Ex. 230A, R. Vol. 5, p. 443). The normal capacity of this machine is about 1,600 pairs of shoes per day (R. Vol. 2, p. 2329; Vol. 1, p. 658, lines 32–42), and hence if used for three hundred days in the year, the cost would be .003 of a cent per pair of shoes.

For these very small charges the United Company installs in the shoe manufacturer's factory all these expensive patented bottoming machines that the shoe manufacturer needs; it charges no royalty unless the shoe manufacturer has work for the machines to perform; it sends its mechanics to maintain the machines in efficient operating condition and to repair them without cost to the shoe manufacturer, except for the new parts supplied; it instructs the shoe manufacturer's operatives in the use of the machines; and it furnishes new or improved machines, or improved attachments whenever developed.

(6) BENEFITS TO OPERATIVES OF THE MACHINES RESULTING FROM INVENTIONS AND SERVICE OF UNITED COMPANY.

Operatives of shoe machines are generally paid by the piece, that is, a certain amount for each pair of shoes operated on by them. Any increase in the efficiency of the machines tending to a larger production per machine thus increases the number of shoes worked on by each operative. The increased efficiency of the United Company's machines has resulted in an increase in the compensation paid operatives, although shoe manufacturers have in many instances actually reduced the piece price.

Thus the testimony shows that the average output of Model K Welter is 40 dozen pairs a day instead of about 25 dozen pairs on the old machine and that an operative as a result can earn 20 per cent. to 36 per cent. more on the new welter, although the piece price on the old welter was one-third more than on the new (R. Vol. 1, pp. 646–8, 658–60, 710, 723, 753).

On the Model M Stitcher the operatives can earn 24 to 45 per cent. more than on the old stitcher, although the piece price is 40 per cent. less than on the old stitcher (R. Vol. 1, pp. 647, 753).

(7) THE DEVELOPMENT BY UNITED COMPANY OF GOODYEAR METHOD OF MAKING SHOES.

One of the purposes in forming the United Company, as testified to by Mr. Winslow, was to encourage and increase the manufacture of Goodyear Welt shoes. This was to be done by the development of new machines to assist in that manufacture, by lowering the cost of installation of the Goodyear machines and by instructing operators in their use (R. Vol. 1, p. 407, lines 22–30). The United Company has constantly carried out this purpose and may be said to have specialized in machinery for making the Goodyear Welt shoes.

It has, in the first place, enormously increased the efficiency of its Welter and Stitcher, the two principal machines used in this process. It has greatly increased the number of Auxiliary Machines furnished with its Welter and Stitcher (*infra*, p. 428). It has reduced or eliminated the initial charges made in 1899 on its principal machines, resulting in a large saving to the shoe manufacturer (*supra*, p. 196).

There has resulted a great increase in the production of Goodyear Welt shoes. In 1899, 22,700,000 pairs of welt shoes were made out of a total of 172,786,000. In 1910, 86,231,000 pairs of welt shoes were made out of a total of 278,916,000 (R. Vol. 1, p. 424, lines 24–35).

II.

THE EVIDENCE REGARDING DEFENDANTS' PATENTS.

1. INTRODUCTORY STATEMENT.

The petition sets forth that the companies which came together to form the United Company were early in 1899 manufacturing their machines under patents. Then follows the allegation that—

> "*many of the basic patents on the principal machines* owned and controlled by them *were about to expire*, and, in the ordinary course of events, the general public would have acquired *in the near future* the right to the free manufacture and use of such machines, the lawful monopoly of such machines theretofore enjoyed by virtue of the patents would have come to an end, . . ." (italics ours) (R. Vol. 1, p. 993).

Testimony with respect to this allegation of the petition was taken before a special examiner under the order of June 27, 1913 (R. Vol. 1, p. 1090), and is contained in Volume 2 of the record.

That order provided for the taking of testimony—

> "with respect to the allegations of the petition set forth in the paragraph beginning at the bottom of page 15 [R. Vol. 1, p. 993] *and ending at the beginning of Section IV* on page 16 [994], of the printed petition in the above-entitled cause" (italics ours) (R. Vol. 1, p. 1090).

The allegations of the petition referred to in this order, in addition to that above quoted, comprise the following:—

> "and the system of demanding large royalties for their use would have been replaced by their general manufacture and outright sale under competitive conditions.

> Furthermore, under the conditions then existing, new patents were being constantly taken out by others, and new and improved machines for performing the principal operations in the manufacture of boots and shoes by the aid and use of machinery were being placed upon the market, either upon a smaller royalty than had theretofore been charged for machines doing similar work or for sale outright to boot and shoe manufacturers" (R. Vol. 1, pp. 993–4).

The United States did not offer any evidence whatever in support of these latter allegations.

The charge that early in 1899 the basic patents were about to expire was not mentioned in the briefs or arguments for the United States at the first hearing in this Court. While it may accordingly be assumed that the United States has abandoned this contention, it is important that the attention of the Court should be called to evidence showing that there was no ground whatever for this charge; that it was disproved by the very evidence which the United States introduced in its support, which showed as to machines selected by the United States that early in 1899 "basic patents" were *not* about to expire; that defendants proved that of the important patents early in 1899 on each of the "principal machines" selected by the United States the latest had *over fourteen years to run*, and, in general, that the machines being put out in 1899 were protected by strong patents having long terms to run; that in the rapid development of the industry since 1899 the machines of that day have been superseded by greatly superior machines which do better work and have greater capacity; and that since 1899 a great number of new machines have been developed by the United Company, many of which perform operations which in 1899 were performed by hand; so that the machines which the United Company was putting out when this suit was begun and the machines which it is now putting out were and are protected by strong patents of recent date, by which the United States has secured to the United Company a lawful monopoly of the machines which its customers demand and use.

2. THE EVIDENCE OF THE UNITED STATES IN SUPPORT OF THE ALLEGATION OF THE PETITION THAT EARLY IN 1899 MANY OF THE BASIC PATENTS ON THE PRINCIPAL MACHINES WERE ABOUT TO EXPIRE.

A. The Claim of the United States that Early in 1899 Many of the "Basic" Patents were About to Expire was Disproved by its Own Patent Expert.

In its *prima facie* case in support of this allegation the patent expert for the United States, Mr. Chapman, mentioned patents on four machines only. The machines and the patents which he testified claimed improvements incorporated in the machines are as follows:—

Shoe Machine: Goodyear Welt and Turn ("Welter") (R. Vol. 2, pp. 2141–44):—

No. 412,704, Oct. 8, 1889 (expiring Oct. 8, 1906*).
No. 461,793, Oct. 20, 1891 (Method) (expiring Oct. 20, 1908*).
No. 488,505, Dec. 20, 1892 (expiring Dec. 20, 1909).
No. 518,911, Apr. 24, 1894 (*expiring Apr. 24, 1911*).

Lockstitch Machine: Goodyear Outsole Rapid ("Stitcher") (R. Vol. 2, pp. 2145–6):—

No. 473,874, Apr. 26, 1892 (expiring Apr. 26, 1909).
No. 474,774, May 10, 1892 (*expiring May 10, 1909*).

Lasting Machine: Chase (R. Vol. 2, pp. 2199–2201):—

No. 340,860, Apr. 27, 1886 (expiring Apr. 27, 1903).
No. 364,088, May 31, 1887 (expiring May 31, 1904).
No. 376,368, Jan. 10, 1888 (expiring Jan. 10, 1905).
No. 483,375, Sept. 27, 1892 (*expiring Sept. 27, 1909*).

Rounding and Channeling Machine: Goodyear Universal (R. Vol. 2, pp. 2201–4):—

No. 463,982, Nov. 24, 1891 (expiring Nov. 24, 1908).
No. 599,602, Feb. 22, 1898 (expiring Feb. 22, 1915†).
No. 600,883, Mar. 22, 1898 (*expiring Mar. 22, 1915*†).

*As to Mr. Chapman's contention that these patents expired prematurely because of the expiration of a British patent, see *infra*, pp. 212–215.

† As to Mr. Chapman's contention that these patents expired in 1910 with a British patent, see *infra*, p. 215.

At the conclusion of his testimony regarding the welter and the stitcher Mr. Chapman expressed his views as to the character of the patents on those machines which he had discussed and which are enumerated above, as follows:—

> "*Int.* 13. Should you say, from your knowledge, study and experience, that the patents to which you have referred in your deposition might properly be termed 'basic patents' early in 1899, in reference to the machines in question, welters and stitchers? . . .
>
> "*Ans.* Yes, with the exception of a few detailed claims contained in some of the patents examined by me" . . . (R. Vol. 2, pp. 2146–7).

As to the Chase lasting machine and the rounding and channeling machine Mr. Chapman in his *prima facie* testimony drew no distinctions as to the "basic" character of the patents on those machines. On rebuttal he testified that *none* of the patents on those machines early in 1899 was "basic."

In addition to the four machines listed above, Mr. Chapman discussed six other machines, but in those discussions he *mentioned no patents*, so that obviously his testimony regarding those six other machines cannot possibly be helpful on this issue and may be entirely disregarded.

Thus the *prima facie* case of the United States in support of the allegation of the petition that early in 1899 basic patents were about to expire established (1) that of the patents, alleged to be "basic," on two machines, the welter and the stitcher, the latest patent expired on April 24, 1911, and May 10, 1909, respectively; and (2) that patents, *not* "basic," on the Chase lasting machine and the rounding and channeling machine expired more than ten years after February, 1899.

The welter and stitcher were both put out "early in 1899" by the Goodyear Company, the Chase lasting machine was one of the three lasting machines being put out early in 1899 by the Consolidated & McKay Lasting Machine Company, and the rounding and channeling machine was an auxiliary machine being put out by the Goodyear Company (R. Vol. 1, p. 2, lines 12–18; p. 3, lines 15–39; p. 625, lines 38–39); no machine put out by the McKay Shoe Machinery Company was even mentioned by the patent expert for the United States.

The proposition that patents which in February, 1899, had over ten years to run,—much more than half their terms,—were "about to expire" is too ridiculous for discussion. But this extraordinary position was not taken by the United States without due warning of its unreasonableness. On the first day of the taking of testimony before the examiner on this issue, a week before Mr. Chapman began to testify, a discussion was precipitated by the following interrogatory propounded by the patent counsel for the United States to defendants' patent expert Howard, then a witness for the United States,—

> "*Int.* 4. Kindly read to the magistrate the number, title, date and name of inventor of each patent on the Chase lasting machine, which patents *expired prior to the filing of the petition in this case*" (italics ours) (R. Vol. 2, p. 2102).

Defendants' counsel objected to this question "as not within the scope of this order," adding:—

> "But your order does not entitle you to make any such inquiry. It is limited to proof of Letters Patent under which the defendants were manufacturing their machines in 1899, and proof that many of those patents were about to expire. . . . The bill suggests a certain situation: that in 1899 the patents which had existed were about to expire, and that that was the occasion for doing something, which something was a conspiracy and combination which the bill charges. It does not seem to us that that opens to you the opportunity for an inquiry as to what patents expired *all the way from 1899 up to 1911*" (italics ours) (R. Vol. 2, pp. 2102–3).

B. The Final Position of the United States as to Expiration of Basic Patents.

In its rebuttal evidence,—

the United States definitely limited its claim that early in 1899 many of the basic patents on the principal machines were about to expire to two machines, both put out by one company only, the Goodyear Shoe Machinery Company, and then only as employed on welt shoes, constituting less than 10 per cent. of the shoes made in 1898.

Mr. Chapman, expert for the United States, was asked what machines were "essential or necessary for the bottoming of *welt shoes* in the commercial manufacture of shoes by machinery under the Goodyear process" (italics ours). Mr. Chapman's answer was:—

> "There are but two absolutely essential or indispensable machines necessary to the production of a Goodyear welt and turn shoe made in accordance with the so-called Goodyear process. Those machines are the machine which is familiarly known as welt and turn machine and out-sole rapid stitcher" (R. Vol. 2, pp. 2793–4, Int. 2).

This statement was later referred to by the patent counsel for the United States as,—

> "your statement that welters and stitchers are the only indispensable machines required for the commercial bottoming of shoes by machinery" (R. Vol. 2, p. 2808, Int. 10).

The position thus taken by the United States was emphasized as follows (R. Vol. 2, p. 2809):—

> (Mr. WEBSTER): "*Int.* 11. In the commercial manufacture of shoes by machinery, what machines are of secondary importance in the bottoming of shoes?"
>
> (Mr. CHAPMAN): "*Ans. The machines of secondary importance* are a machine for insole channeling, *a machine for lasting*, a machine for sole laying, a machine for rough rounding and channeling, *a machine for heel-seat nailing*, and *such machines as are ordinarily employed in the heeling operation* generically considered, a machine for edge trimming."
>
> (Mr. WEBSTER): "*Int.* 12. I notice you omit from the list machines for leveling or beating soles. Are they properly included in the list of secondary machines?
>
> (Mr. CHAPMAN): "*Ans.* They may be considered of secondary importance" (italics ours).

Machines for lasting were all that the Consolidated & McKay Company was putting out early in 1899; and "a machine for heel seat nailing" (the loose nailing machine), and "such machines as are ordinarily employed in the heeling

operation" were principal machines which the McKay Shoe Machinery Company was putting out (R. Vol. 1, p. 4, lines 19–21, 23–27).

Machines of "secondary importance" cannot of course be included with the "principal machines" referred to in the allegation of the petition now under discussion. Accordingly, *The United States limited its claim* that early in 1899 many of the basic patents on the principal machines were about to expire to TWO MACHINES, *both put out by one company only, the* GOODYEAR COMPANY, *and expressly excluded from its case* (1) *all machines* put out by the CONSOLIDATED & MCKAY COMPANY, (2) *all machines* put out by the MCKAY SHOE MACHINERY COMPANY, (3) *all machines*, other than the welter and stitcher, put out by the GOODYEAR COMPANY, and (4) *all machines of all kinds used in the manufacture of over 90 per cent. of all shoes made, i.e.*, all kinds of shoes other than Goodyear welt shoes. Less than 10 per cent. of the shoes made in the United States in 1898 were Goodyear Welt shoes (R. Vol. 1, p. 414, lines 36–40).

The United States having proved defendants' case they might well be content to submit this issue on that showing; but their case is even stronger than that which the United States has established, as its patent counsel, Mr. Webster, doubtless anticipated when he said:—

> "I would like to show by Mr. Howard, unless we can agree upon it, what patents were owned by the United Company and its associate companies, which patents expired prior to the filing of the petition in this case. . . . I simply care for those which have expired. *I don't care for those which were alive at the time of the filing of the bill*" (italics ours) (R. Vol. 2, pp. 2093–97).

Consistently with this frank statement Mr. Webster, in examining defendants' patent expert Howard, called as a witness for the United States, requested him to produce lists of patents owned by the United Company on specified machines, "*which patents expired prior to the filing of the petition in this case*" (italics ours) (R. Vol. 2, pp. 2101–9).

3. DEFENDANTS' EVIDENCE AS TO THE PATENTS EARLY IN 1899 ON THE MACHINES DISCUSSED BY THE EXPERT FOR THE UNITED STATES.

Defendants' testimony showed that "early in 1899" there were important patents on the four machines discussed by the expert for the United States *which had more than fourteen years to run* and did not expire *until after this suit was begun in December, 1911.* Mr. Howard, defendants' patent expert, who has been head of the United Company's Patent Department since the Company was organized (R. Vol. 2, pp. 2239–41) testified that there were patents on those machines when the United Company was formed, *in addition to those enumerated by Mr. Chapman* (*supra*, p. 201), as follows:—

Shoe Machine: Goodyear Welt and Turn ("Welter") (R. Vol. 2, p. 2249, Int. 10; p. 2722, Int. 240; p. 2723, Ints. 241, 242; p. 2726, Ints. 256, 258):

No. 495,452, Apr. 11, 1893 (expiring Apr. 11, 1910).
No. 561,386, June 2, 1896 (*expiring June 2, 1913*).

Lockstitch Machine: Goodyear Outsole Rapid ("Stitcher") (R. Vol. 2, p. 2279; p. 2284, Int. 25):—

Re. No. 11,578, reissued Dec. 8, 1896 (original patent No. 549,124, Nov. 5, 1895, expiring Nov. 5, 1912).
No. 563,471, July 7, 1896 (expiring July 7, 1913).
No. 563,472, July 7, 1896 (expiring July 7, 1913).
No. 582,510, May 11, 1897 (*expiring May 11, 1914*).
(*Also* No. 675,783, June 4, 1901, application pending in February, 1899 (*will expire June 4, 1918*);
No. 704,457, July 8, 1902, application pending in February, 1899 (*will expire July 8, 1919*).)

Lasting Machine: Chase (R. Vol. 2, pp. 2365–72):—

No. 545,052, Aug. 27, 1895 (expiring Aug. 27, 1912).
No. 566,831, Sept. 1, 1896 (expiring Sept. 1, 1913).
No. 569,182, Oct. 13, 1896 (expiring Oct. 13, 1913).
No. 569,231, Oct. 13, 1896 (expiring Oct. 13, 1913).
No. 571,339, Nov. 17, 1896 (expiring Nov. 17, 1913).
No. 571,404, Nov. 17, 1896 (expiring Nov. 17, 1913).
No. 571,429, Nov. 17, 1896 (*expiring Nov. 17, 1913*).

Rounding and Channeling Machine: Goodyear Universal (R. Vol. 2, pp. 2304–6):—

No. 595,764, Dec. 21, 1897 (expiring Dec. 21, 1914).
No. 625,633, May 23, 1899 (expiring May 23, 1916).
No. 630,339, Aug. 8, 1899 (*expiring Aug. 8, 1916*).

As we have stated (*supra*, p. 202), Mr. Chapman in the *prima facie* case of the United States discussed six other machines, but did not refer to any patents on those machines, so that his testimony regarding those machines is of course not pertinent to this issue. It may interest the Court, however, to know what the patents on those machines were "early in 1899." They were:—

Channeling Machine: Goodyear (insole and turn) (R. Vol. 2, pp. 2318–22):—

No. 550,402, Nov. 26, 1895 (*expiring Nov. 26, 1912*).

Leveling Machine: Goodyear Automatic Sole (R. Vol. 2, pp. 2332–5):—

No. 540,222, May 28, 1895 (expiring May 28, 1912).
No. 540,223, May 28, 1895 (expiring May 28, 1912).
No. 541,988, July 2, 1895 (expiring July 2, 1912).
No. 546,211, Sept. 10, 1895 (expiring Sept. 10, 1912).
No. 555,548, Mar. 3, 1896 (expiring Mar. 3, 1913).
No. 580,746, Apr. 13, 1897 (expiring Apr. 13, 1914).
No. 610,314, Sept. 6, 1898 (*expiring Sept. 6, 1915*).

Pegging Machine: Davey (R. Vol. 2, pp. 2351–2):—

No. 581,066, Apr. 20, 1897 (*expiring Apr. 20, 1914*).

Separating Machine: Hadaway Stitch (R. Vol. 2, pp. 2339–42):—

Re. No. 11,538, reissued May 12, 1896 (original patent 521,978, June 26, 1894) (expiring June 26, 1911).
No. 537,823, Apr. 23, 1895 (expiring Apr. 23, 1912).
No. 543,012, July 23, 1895 (*expiring July 23, 1912*).

Skiving Machine: Amazeen (R. Vol. 2, pp. 2356–9):—

No. 518,774, Apr. 24, 1894 (expiring Apr. 24, 1911).
No. 609,868, Aug. 30, 1898 (expiring Aug. 30, 1915).
No. 632,984, Sept. 12, 1899 (expiring Sept. 12, 1916).
No. 636,942, Nov. 14, 1899 (*expiring Nov. 14, 1916*).

(The applications for the last two patents were filed before February, 1899 (Defs.' Ex. 130).)

Channeling Machine: Goodyear Outsole, is omitted from the above list because that machine became obsolete when the rounding and channeling machine went into use, several years before 1899 (R. Vol. 2, p. 2330, Int. 40; p. 2764, Int. 375).

4. THE ATTEMPT OF THE UNITED STATES TO BELITTLE THE IMPORTANCE OF THE LATER PATENTS ON THE WELTER AND STITCHER "EARLY IN 1899."

Before referring to Mr. Chapman's efforts in his rebuttal testimony to show that the later patents, which Mr. Howard testified claimed important improvements embodied in the welter and stitcher "early in 1899," were of comparatively little importance, attention should be called to Mr. Chapman's admissions as to the character of his work in preparation for giving his testimony.

At the outset of his discussion of the stitcher Mr. Chapman said,—

> "Since the testimony of Mr. Howard closed it has been a physical and mental impossibility for me or for counsel to go into the various patents with a view to determining their bearing on the questions at issue . . ." (R. Vol 2, p. 2798).

Also, when asked whether the structures of any of the claims of outsole stitcher patents which he had just been discussing were "necessary to the successful operation" of the stitcher of 1899, he said,—

> "I cannot answer that question with reference to all the claims of all the patents referred to, for the reason that I have been unable to go through the patents in detail sufficiently to give a comprehensive answer . . ." (R. Vol. 2, p. 2802, Int. 7).

And again,—

> "As heretofore stated, I have had very little opportunity to study or go into the prior state of the art having reference to or bearing upon those patents to which Mr. Howard has made reference . . ." (R. Vol. 2, p. 2810).

These statements were made by Mr. Chapman on the first day of his rebuttal deposition, November 12, 1913 (R. Vol. 2, p. 2793), nearly four months after Mr. Howard, as witness for the United States, read into the record on July 23, 1913, lists of the patents on the welter and stitcher (R. Vol. 2, pp. 2116–9), and five weeks after Mr. Howard, as witness for defendants, testified in detail regarding those patents on October 6 and 7, 1913 (R. Vol. 2, pp. 2247–2302).

If any doubt remains as to the superficial character of Mr. Chapman's work on this case, attention is called to the discussion of his misstatements of fact in his testimony regarding the Plant purchase (*infra*, pp. 579–580).

A. The Later Patents on the Welter "Early in 1899."

As we have seen, Mr. Chapman testified in the *prima facie* case of the United States that "early in 1899" there were four "basic" patents on the welter (*supra*, pp. 201–202). In his rebuttal testimony, without a word to explain his inconsistency, he testified that only two of those patents were basic, viz., No. 412,704, October 8, 1889, and No. 461,793, October 20, 1891 (R. Vol. 2, pp. 2794–5, Ints. 3, 4), and he stated that later patents on the welter, including two which he had previously characterized as "basic," No. 488,505 and No. 518,911, and also including No. 561,386, June 2, 1896, which Mr. Howard had testified about, "relate to and cover by claim mere details of construction" (R. Vol. 2, p. 2795).

But the record does not support this contention.

Mr. HOWARD testified:—

> "I have never seen a welt and turn machine of 1899 which did not embody in its organization the mechanisms set forth in the LaChapelle patent No. 488,505, Briggs patent No. 518,911 and French patent No. 561,386. I know that the mechanisms set forth in those later patents are very useful in the machine and I am certain that no customer of the United Company would have accepted at any time since February, 1899, the welt and turn machine of 1899 which did not embody in its organization the improvements of those patents" (R. Vol. 2, p. 2725, Int. 249).

He also testified that the machine was never commercially used until it incorporated the mechanisms claimed in those patents (R. Vol. 2, p. 2723, Int. 245).

Further, as to patent No. 488,505 Mr. Howard testified that he considered,—

> "That the mechanism of the LaChapelle patent No. 488,505 is important to the commercial success of the welt and turn machine of 1899" (R. Vol. 2, p. 2725, Int. 252).

In regard to patent No. 518,911, Bannican, a witness for the United States, testified on cross-examination that the "auxiliary take-up" of that patent keeps the thread from dropping off the needle and prevents the machine from skipping stitches, which would make imperfect work (R. Vol. 2, pp. 2830-1, Ints. 57-63).

Mr. Howard explained in detail the advantages of the improvement of patent No. 561,386, June 2, 1896 (R. Vol. 2, p. 2249, Int. 10), and stated that in a machine not provided with the mechanism of that patent there would be frequent breakage of the thread, and on cross-examination he said,—

> "The improvement of patent No. 561,386, June 2, 1896, French, contributed substantially to the successful commercial operation of the welt and turn machine of 1899 and overcame serious difficulties which had been experienced in the commercial use of welt-sewing machines before this improvement was made" (R. Vol. 2, p. 2727, Int. 260).

B. The Later Patents on the Stitcher "Early in 1899."

In his rebuttal deposition Mr. Chapman adhered to his original position that two "basic" patents on the stitcher expired in April and May, 1909. Then, after making the statement above quoted to the effect that it had been an "impossibility" for him to examine the patents "with a view to determining their bearing on the questions at issue" (R. Vol. 2, p. 2798), Mr. Chapman attempted to decry the importance of the four patents on the extension edge organization of the 1899 stitcher, No. 563,471, No. 563,472, No. 582,510

and No. 675,783, expiring in 1913, 1914 and 1918 (*supra*, p. 206) (R. Vol. 2, p. 2799).

But the record establishes beyond any doubt that the inventions of those patents were extremely important.

In his discussion of the improvements of those patents Mr. Howard explained that nearly all welt shoes have extension edges, that prior to 1895 extension edge shoes had been made by hand because up to that time there were no machines which were organized to sew the outsoles of shoes provided with extension edges, and that the four patents in question claimed improvements which for the first time adapted an outsole stitcher for attaching the soles of extension edge shoes. Mr. Howard also explained the practical advantages of the extension edge sole and the character of the organization which adapted the 1899 stitcher for making extension edge shoes, and he concluded his extended discussion (R. Vol. 2, pp. 2279-83) with the following statement:—

> "Finally, as to the importance and value of an organization in an outsole stitching machine which will enable it to attach the soles of extension edge shoes, I should state that in my opinion it is quite as important that the machine should be able to handle the shoe properly in such manner as to locate the line of stitching where good shoemaking requires that it should be located, as it is that the machine should properly form the stitch; and I regard the extension edge organization as important and as essential a part of an outsole stitching machine under modern conditions as are the needle and awl."

Mr. Warren testified to the same effect (R. Vol. 1, p. 794, lines 41–44; p. 795, lines 1–11).

It is submitted that the broadest of these patents, which will not expire until 1918 (R. Vol. 2, p. 2282), may fairly be characterized as a pioneer patent.

In regard to the improvement claimed in reissued patent No. 11,578 and in patent No. 704,457 (application filed June 3, 1898; Defs.' Ex. 113), expiring respectively November 5, 1912, and July 8, 1919, which improvement was made in the outsole stitcher "just prior to 1899" (R. Vol. 2, p. 2284, Int. 25), Mr. Chapman testified that that organization "while probably convenient, is not essential to the fundamental organization" of the 1899 stitcher (R. Vol. 2, p. 2799).

Mr. Howard testified that the embodiment in the outsole stitcher of this improvement adapted the machine to—

> "perform the welt beveling and the stitching operation simultaneously, thus obviating the necessity on such work of performing the welt beveling operation subsequently, either by hand or by another machine operation" (R. Vol. 2, p. 2284, Int. 25).

5. THE CONTENTION OF THE UNITED STATES THAT CERTAIN PATENTS ON THE WELTER AND THE ROUNDING AND CHANNELING MACHINE EXPIRED PREMATURELY OR WERE ANTICIPATED.

Defendants are confident that it will be accepted without question that the patents which the United Company acquired from its component companies were, for the purposes of this suit, valid and in force for their full seventeen year terms. It does not appear that any of them had been held to be invalid or that any of them had been held to have expired before the end of its full term. Accordingly those patents were *prima facie* valid for their full terms, and defendants had a right to assume that they were valid and would be in force to the ends of their terms. That any of those patents was, years after the United Company was formed, held to be invalid or to have expired prematurely, or that a patent expert expressed an opinion, fourteen years after, that any of those patents was anticipated or had expired prematurely, is not of the slightest consequence. We anticipate, therefore, that the efforts of the United States to show such a situation in regard to two machines will be dismissed as of no importance whatever.

So far, however, as the United States raised the issue of the validity of defendants' patents it may interest the Court to know what defendants' position is.

The United States contended that patents No. 412,704 and No. 461,793 on the welter expired on September 17, 1902, with British patent No. 13,366, September 17, 1888 (R. Vol. 2, pp. 2144, 2145, 2197, 2198).

Defendants' position as to this contention is as follows:—

A. The statement that patent No. 412,704, October 8,

1889, was held, in an opinion of the Circuit Court of Appeals for the First Circuit rendered *August 2, 1907*, in a suit *begun December 21, 1903* (P.'s Ex. 219, R. Vol. 4, p. 1277), to have expired on September 17, 1902, with British patent No. 13,366 of September 17, 1888, French & Meyer, defendants do not deny. BUT, *in the absence of the slightest indication on the record that prior to the organization of the United Company on February 7, 1899, any of the officials of the predecessor companies had any knowledge, or even any suspicion, that the term of this patent, No. 412,704, was limited by that British patent, the United States has absolutely failed to show that the fact that this patent expired on September 17, 1902, is of any consequence whatever in this suit. It is clear that for the purposes of this case this patent did not expire until October 8, 1906.*

B. Defendants most vigorously deny the claim that patent No. 461,793, October 20, 1891, expired with British patent No. 13,366, September 17, 1888.

(1) Patent No. 461,793 was granted October 20, 1891, to the Goodyear Shoe Machinery Company as assignee of Henry Briggs, and British patent No. 13,366, dated September 17, 1888, was granted to Zachary Taylor French and William Cristian Meyer. Thus it appears from the patents themselves that *they were issued to different inventors*, and the record contains no suggestion that the British patent was "obtained by the American patentee or with his consent" (*Hobbs* v. *Beach*, 180 U. S. 383, 397). Accordingly, the contention is answered by the patents themselves.

(2) Mr. Chapman's assertion that the subject-matter of claims four and five of the French & Meyer British patent is "substantially that of the claim of the United States Briggs patent" (R. Vol. 2, p. 2198, Int. 50) was completely answered by Mr. Howard (R. Vol. 2, pp. 2273–4, Int. 17), who first pointed out that the Briggs method, as stated in its title, is a "method of forming chain stitches," while the method set forth in claims four and five of the British patent is a particular method to be practised in the manufacture of boots and shoes, and *includes only one step of the method defined in the claim of the Briggs patent.* Mr. Howard further testified:—

> "A machine could be built and used which would infringe the claim of the Briggs patent without infringing

the claims 4 and 5 of the British patent No. 13,366 of 1888; while, on the other hand, a machine could be built and used which would infringe the method defined in claims 4 and 5 of the British patent, but would not infringe the claims of the Briggs patent. . . .

"More than this, the single claim of the Briggs patent includes as an important and essential step in its method a step which is not set forth in claims 4 and 5 of the British patent, and the claims in the Briggs patent would have been patentable if a machine practising the methods defined in claims 4 and 5 of the British patent had been a part of the prior art at the time the Briggs invention was made" (R. Vol. 2, p. 2274).

But here also, as in the case of the French and Meyer patent No. 412,704 above discussed, even if the United States had proved its contention that Briggs patent No. 461,793 expired with the British patent in 1902, *it would be of no importance in this suit, because the record fails to afford the slightest suggestion that, prior to the organization of the United Company in February, 1899, any official of the predecessor companies believed, or had the least suspicion, that the Briggs patent expired before the end of its natural life on October 20, 1908.*

In another attack on Briggs patent No. 461,793 Mr. Chapman took a most extraordinary position. He asserted in 1913 that this patent, which had expired October 20, 1908, more than five years before he testified, was anticipated (R. Vol. 2, p. 2144, Int. 9). Since this contention was not mentioned in the briefs or arguments either in the District Court or at the first hearing in this Court, it may be assumed that it was abandoned and should not receive even passing notice. It was completely answered by Mr. Howard (R. Vol. 2, pp. 2270-3), who concluded his discussion of the alleged anticipation as follows:—

"I never heard of the Stickel patent until it was mentioned by Mr. Chapman in his testimony, *and it has never in any way been mentioned in connection with any litigation involving the Briggs patent No. 461,793*" (italics ours).

Even assuming that Mr. Chapman was correct, it is submitted that testimony that this Briggs patent which expired in 1908 was anticipated by a patent which was never cited in

any of the eleven suits on the Briggs patent and of which the owners of the Briggs patent had no knowledge until 1913, is not of the slightest consequence in this suit; the discovery of an anticipation *now* could have absolutely no bearing upon defendants' state of mind or intent in February, 1899.

Again, Mr. Chapman contended (R. Vol. 2, pp. 2203–4) that two of the patents which protected the rounding and channeling machine in 1899, No. 599,602, Feb. 22, 1898, and No. 600,883, Mar. 22, 1898, expired in 1910 with British patent No. 3497, of 1896, but the United States nowhere charges defendants with knowledge thereof in 1899. The facts regarding these two patents are as follows:

(1) Patent No. 599,602, February 22, 1898, French & Meyer, did *not* expire with British patent No. 3497 of 1896, because it shows and claims an *improvement* upon the machine shown in that British patent. The British patent which *does* correspond to patent No. 599,602 is No. 4426 of 1898, the application for which was filed February 22, 1898, the date upon which the United States patent issued. These facts are obvious upon comparing the patents.

(2) Patent No. 600,883, March 22, 1898, French & Meyer, is dominated by another patent on the rounding and channeling machine, No. 595,764, December 21, 1897, Cole, which was assigned to the Goodyear Company after it was granted (R. Vol. 2, p. 2305, Int. 30).

6. THE EVIDENCE OF THE UNITED STATES THAT PATENTS ON MACHINES "EARLY IN 1899," OTHER THAN THE WELTER AND STITCHER, WERE NOT "BASIC" PATENTS, BUT THAT EARLIER PATENTS, MOST OF WHICH HAD EXPIRED, WERE THE BASIC PATENTS.

In his rebuttal testimony, after concluding his discussion of the welter and stitcher, Mr. Chapman completely abandoned the allegation of the petition that "early in 1899" many of the basic patents on the principal machines were about to expire. He then devoted his efforts to showing that the

patents in 1899 on a number of machines, including the Chase lasting machine and the rounding and channeling machine, which he discussed in his first deposition, were not "basic" patents at all, but that earlier patents which had expired before 1899 were the basic patents (R. Vol. 2, pp. 2809–18).

For example, in discussing the Chase lasting machine, Mr. Chapman enumerated five lasting machine patents dated from October 4, 1859, to June 1, 1869, the latest of which expired in 1886, and said that the inventions of those patents "are clearly of pioneer character," and that in view of them the patents he had previously referred to (*supra*, p. 201) and those which Mr. Howard had discussed were "necessarily limited" (R. Vol. 2, pp. 2811–12). He also testified that all the patents in 1899 on the rounding and channeling machine, another of the four machines selected by the United States for its *prima facie* case, were "anticipated" by a patent granted in 1880 and,—

> "must necessarily, in their claims, run to details of construction and limited features of invention" (R. Vol. 2, p. 2816).

In elaborating this theory the United States, by its own expert or on cross-examination of defendants' expert, proved that all the machines discussed by its own expert (*including the welter and stitcher* and excepting only the stitch separating machine, produced in 1895 for performing an operation always before performed by hand), and many others discussed by Mr. Howard, were improved machines for performing operations which had been performed many years before by machines the patents on which had expired prior to 1899 (R. Vol. 2, pp. 2719–20, 2733, 2734, 2743, 2746, 2758, 2760–1, 2763, 2764, 2809–18).

How the United States could conceive that that evidence would be helpful in proving the allegation of the petition that early in 1899 many of the basic patents were about to expire is beyond understanding; the allegation is disproved by that evidence alone.

Moreover that evidence supplements and strongly corroborates defendants' evidence establishing that,—

7. THE PATENTS ON THE MACHINES "EARLY IN 1899" REPRESENTED MERELY THE 1899 STAGE IN THE CONTINUOUS AND CONTINUOUSLY PATENTED DEVELOPMENT OF SHOE MACHINERY.

The record shows that in nearly all instances the 1899 machines were not the first machines for performing their respective operations; that in fact there had been several machines in succession for performing each operation, each successive machine being better than its predecessor, before the 1899 machines had their turn as the best machines available at that time; but that under the constant pressure of continuous improvement and development those 1899 machines have in their turn been superseded by machines which do more work and better work and which are much easier for the workmen to operate and enable them to earn higher wages. The record also shows that from the beginning and all the way through this continuous development down to the present day the best machines have been patented; and that now, as at every stage in the development of the industry, manufacturers insist upon having the greatly superior patented machines and will not use the obsolete machines upon which the patents have expired.

The patents on the machines in 1899 represented the 1899 stage in the continuous patented development of the industry, —nothing more. The machines of the earlier expired patents had been superseded before 1899 by the improved patented machines of that day, and before December, 1911, when this suit was begun, the 1899 machines in their turn were in almost every case dead and buried and a new generation of much better patented machines had taken their places.

This steady and continuously patented development of shoe machinery may be illustrated by summarizing briefly the evidence showing the history of the welt and turn machine (the "welter") and the outsole stitcher, the two machines which the United States regarded as "the only indispensable machines required for the commercial bottoming of shoes by machinery" (R. Vol. 2, pp. 2793–4; p. 2808, Int. 10).

A. Welt Sewing Machines.

The first machine for sewing the welt and upper to the insole was constructed under patent No. 34,413, February 18, 1862, Destouy, reissued as No. 3635, September 7, 1869. The fourth claim of the reissue is as follows:—

> "4. A sewing-mechanism, adapted to unite, by machinery, the upper, welt and sole, substantially as described, so as to produce a machine-made welted boot or shoe."

The Destouy machine, a lockstitch machine, was transformed into a chain-stitch machine by the improvements of patent No. 93,731, August 17, 1869, Mills. That machine was succeeded by the improved chain-stitch machine of patent No. 170,547, November 30, 1875, Goodyear and Hadley, which laid the chain on the welt instead of in the channel (R. Vol. 2, p. 2248, Int. 9). The machine of the Goodyear and Hadley patent, after being extensively used for some years, was in turn succeeded by the machine of patent No. 190,709, May 15, 1877, Dancel. The machine of the Dancel patent was used until it was superseded by the welt and turn machine of 1899 (R. Vol. 2, p. 2248, Int. 9; p. 2720, Ints. 222–225).

Development Since 1899.

All the time since 1899 the United Company has been continuously engaged in aggressive and effective experimental work in developing improved welt sewing machines. In the course of this work a number of new machines have in succession been constructed and supplied to shoe manufacturers. Each of these machines was an advance in the art and an important step in the continuous development which, after a long period of inventing, experimenting, trying out and further improving, finally resulted in the wonderful Model K welter, which was the commercial machine when this suit was begun.

The first new welter put out by the United Company was a lockstitch welter known as "Sewing Machine: Goodyear

Universal Inseam," which was first put out in June, 1899. This machine was protected by ten patents, of which six were granted after 1901 (R. Vol. 2, pp. 2250–1).

The United Company then concentrated its efforts on the production of an improved chain-stitch welter, and in July, 1902, put out an entirely new machine known as "Shoe Machine—Model E: Goodyear Welt and Turn." A large number of these machines were put out, all of which embodied improvements claimed in nine patents, six of which were granted after 1900 (R. Vol. 2, pp. 2252–3).

After years of continuous experimental work in the endeavor to produce a still better and faster welting machine, resulting in the construction in succession of several machines which were tried out, one after another, and in turn abandoned, the United Company finally produced in 1906 two experimental machines from which was eventually developed Shoe Machine—Model G: Goodyear Welt and Turn, an entirely new machine which was first put into commercial use in October, 1908 (R. Vol. 2, pp. 2253–4). Although many of the improvements embodied in this machine had not yet been patented when the testimony was taken, there were seventeen patents claiming the organization of the machine, of which thirteen had been granted since January 1, 1910 (R. Vol. 2, pp. 2258, 2836(70)).

The Model G machine was run regularly at a speed of 500 stitches per minute as compared with the speed of 375 stitches per minute of the 1899 welter. Some of the many problems which had to be solved in producing a machine which would be capable of successful commercial use at so high a speed and the inventions which solved those problems were explained by Mr. Howard (R. Vol. 2, pp. 2254–7). Mr. Winslow testified that the Model G machine was—

> "the highest development of sewing mechanism for attaching the welt, inner sole, and upper together that had been developed in the world up to that time" (R. Vol. 1, p. 560, lines 34–36).

Over 1,400 Model G machines were put out. The demand for it was so great that the company always had ahead unfilled orders for a large number of machines—more than 200

for a long period. It was the standard commercial machine until "it was superseded in June, 1911, by still another improved machine" (R. Vol. 2, pp. 2258–9).

After the acquisition of the Plant patents in September, 1910, the Model G machine was reorganized to incorporate the extremely valuable Plant inventions, together with important improvements made on those inventions by United Company inventors. The new machine, Shoe Machine—Model K: Goodyear Welt and Turn, was first put out for commercial use in June, 1911, and is now the standard commercial welter (Howard, R. Vol. 2, pp. 2259–66). On January 1, 1914, there were 1,024 Model K welters in use (R. Vol. 1, p. 863, lines 3–4).

This new Model K machine embodies improvements claimed in twenty-five patents, of which eighteen have been granted since January 1, 1910 (R. Vol. 2, pp. 2266–7, 2836(69)), and there are many pending applications (R. Vol. 1, p. 812, line 42; R. Vol. 2, p. 2117). The value and importance of these improvements were fully explained by Mr. Howard (R. Vol. 2, pp. 2259–68). This evidence is strongly supported by testimony of manufacturers and operators.

Testimony of shoe manufacturers and of welter operators which will be reviewed in our discussion of the Plant purchase (*infra*, pp. 544–549) shows that the average output of the Model K welter is forty dozen pairs of shoes per day, while the average output of the old welter was only twenty-five dozen pairs; that the new welter sews a tighter seam; that there is a saving in welting on the new machine which amounts to five or six hundred dollars a year on each machine; that the new machine saves the operator's time and strength and that he can earn from 20 per cent. to 36 per cent. more on the new welter than he could on the old one, although the piece price on the old welter was one-third more than that on the new welter (R. Vol. 1, pp. 646–8, 658–60, 710, 723, 753).

The demand for the Model K welter has been so great that the United Company has always been unable to keep up with the orders for the machine; on March 1, 1913, it was 197 machines behind in filling its orders (R. Vol. 2, pp. 2268–9).

B. Outsole Stitching Machines.

The first patent for a machine for sewing the outsole to the welt was No. 127,423, June 4, 1872, Mills (R. Vol. 2, p. 2277). This machine was succeeded by a chain-stitch machine and by the lockstitch machine of patent No. 253,156, January 31, 1882, Campbell (R. Vol. 2, pp. 2278, 2734). Both those machines were superseded by the machine of patent No. 366,935, July 19, 1887, Dancel, while the machine of the Dancel patent was in turn superseded by Lockstitch Machine: Goodyear Outsole Rapid, which was the commercial machine "early in 1899."

Development Since 1899.

Until the 1899 stitcher was in turn superseded by a better machine it was being continuously improved. One of the important improvements was organizing the machine to adapt it for stitching the outsole to the welt by the "fudge stitch," a practice which was introduced by shoe manufacturers about 1905 and was soon generally adopted. By 1908 and ever since over 75 per cent. of men's black shoes and nearly all women's black shoes have been fudge stitched. The advantages of making shoes in that way and the importance of the improvements which enabled the machine to do that work were explained by Mr. Howard (R. Vol. 2, pp. 2285–7). Those improvements are broadly claimed in five patents granted from 1908 to 1912, the broadest in 1910 (R. Vol. 2, p. 2286).

Other very useful patented improvements were incorporated in the machine in 1905, 1907, 1908, 1909 and 1910 (R. Vol. 2, pp. 2284–9).

During all this period after 1899 the United Company had a number of inventors engaged in experimental work in an effort to develop an entirely new outsole stitching machine which would do more and better work. Their endeavors finally resulted in a radically new machine, known as Lockstitch Machine—Model K: Goodyear Outsole Rapid, which was first put out for commercial use in May, 1910, and immediately superseded the 1899 machine (R. Vol. 2, pp. 2284,

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2289, 2290). The Model K machine was regularly operated at 540 to 560 stitches per minute as compared with 375 stitches per minute of the 1899 machine. In addition to this greatly increased capacity it did better work and was more convenient for the operator. Its numerous improvements were explained in detail by Mr. Howard (R. Vol. 2, pp. 2290–4). Besides many improvements for which patents had not yet been granted when the testimony was taken, the organization of this machine is set forth in the claims of twenty patents, of which seventeen have been granted since December 1, 1908 (R. Vol. 2, pp. 2294, 2836(73)). 543 Model K stitchers were put out in a single year, and the demand for the machine was so urgent that the company was always behind in filling the orders; for example, it was 145 machines behind in May, 1911 (R. Vol. 2, p. 2295).

Immediately after the acquisition of the Plant patents and inventions in September, 1910, including his valuable stitcher inventions (R. Vol. 1, p. 787, lines 16–30), the United Company put to work five different inventors upon the problem of embodying those Plant inventions in satisfactory mechanical form and adapting them for the Model K stitcher (R. Vol. 2, p. 2297). When that machine had been reorganized by incorporating in it the Plant inventions, much improved by the United Company's inventors, the new machine was called the Model M and was first put out for commercial use in June, 1911 (R. Vol. 1, p. 798, lines 20–23; R. Vol. 2, pp. 2297, 2836 (42)). The improvements incorporated in the machine give it a capacity of eight per cent. more than the Model K machine and 22 per cent. more than the 1899 stitcher. The commercial importance of those improvements were explained in detail by Mr. Howard (R. Vol. 2, pp. 2295–2301).

Both shoe manufacturers and stitcher operators testified to the practical advantages of the Model M machine. Ryan, a stitcher operator who had worked on the successive models of the United Company's stitcher, explained in detail the difficulties in operating the 1899 stitcher and the advantages of the Model M machine from the operator's standpoint (R. Vol. 1, p. 705, lines 1–38). He testified that he averaged fifty pairs a day more on the Model M stitcher than on the old machine, and that:—

"The work on the Model M stitcher is a great deal easier. I earn more money. I will average fifty to seventy-five cents a day more on the Model M stitcher than on the old stitcher; and that is in less hours than I worked on the old stitcher, nine hours at the most. Lots of times I don't work nine hours" (R. Vol. 1, p. 706, lines 2–9).

Comparing the Model M and the Model K machines Ryan testified:—

"The Model M machine does more rapid work than the Model K. . . . I can make from 30 to 50 pairs more a day on the Model M machine than on the Model K. The Model M machine has devices which enable the operator to work with more convenience and which save his time" (R. Vol. 1, p. 707, lines 21, 25–28).

Shoe manufacturers testified that the increased capacity of the Model M machine was from 15 to 20 per cent. and that the operators of the Model M machine were earning from 24 to 45 per cent. more than they earned on the old stitcher, although the piece price was 40 per cent. less on the Model M than on the old stitcher (R. Vol. 1, p. 753, lines 16–18; p. 647, lines 10–14, 21–23; p. 743, lines 5–7).

On January 1, 1914, 1,158 Model M stitchers were in use (R. Vol. 1, p. 863, lines 5–7). Mr. Howard testified:—

"The facilities of the Company's factory for building this machine have been overtaxed all the time since it was introduced, and on the first of January, 1913, the Company was 256 machines behind in filling its orders for Model M machines" (R. Vol. 2, p. 2301).

The Model M machine is protected by twenty-two patents, of which sixteen have been granted since January 1, 1909, and a number of applications are still pending (R. Vol. 2, pp. 2299, 2836(67), 2836(73), 2119).

C. Other 1899 Machines.

The record shows that these two machines, the welter and the stitcher, are typical of nearly all the machines being put out "early in 1899." Other examples of those machines are:—

Rounding and Channeling Machine: Goodyear Universal (R. Vol. 2, pp. 2303–2317, 2738, 2816); Channeling Machine: Goodyear (insole and turn) (R. Vol. 2, pp. 2321–2330, 2810); Leveling Machine: Goodyear Automatic Sole (R. Vol. 2, pp. 2332–2339, 2743); Separating Machine: Hadaway Stitch (R. Vol. 2, pp. 2340–2345); Pegging Machine: Davey (R. Vol. 2, pp. 2346–2355); Skiving Machine: Amazeen (R. Vol. 2, pp. 2355–2362, 2818); Lasting Machine: Chase (R. Vol. 2, pp. 2362–2382, 2811); Lasting Machine: McKay & Copeland (R. Vol. 2, p. 2364, Int. 72; pp. 2382–2387, 2760–2761); Lasting Machine: Ideal (R. Vol. 2, p. 2364, Int. 72; pp. 2387–2390; R. Vol. 1, p. 972, lines 19–34); Lasting Machine: Consolidated Hand Method (R. Vol. 2, pp. 2390–2421); Compressing and Loading Machine: Automatic Heel (R. Vol. 2, pp. 2423–2434, Int. 80; p. 2764, Int. 377); Compressing Machine: Fisher (R. Vol. 2, pp. 2423–2434; p. 2764, Int. 377); Nailing Machine: Loose (R. Vol. 2, pp. 2434–2443); Loading and Attaching Machine: McKay Automatic Heel ("Improved Rapid Nailer") (R. Vol. 2, pp. 2444–2451, 2459–2463; 2764, Int. 376); Nailing Machine: American Lightning (R. Vol. 2, pp. 2452–2459; 2764, Int. 376); Slugging Machine: Universal (R. Vol. 2, pp. 2464–2472; 2767, Int. 393); Turning Machine: Gem Lip (R. Vol. 2, pp. 2483–2486); Flexible Insole Machine: Gem (R. Vol. 2, pp. 2486–2494); Beating Machine: Goodyear Universal Welt (R. Vol. 2, pp. 2495–2502, 2817); Trimming Machine: Goodyear Universal Inseam (R. Vol. 2, pp. 2502–2511); Skiving Machine: Goodyear Universal Shank (R. Vol. 2, pp. 2511–2516).

As to all these machines there was a strong patent situation in 1899 and there has been continuous and important patented development ever since, the details of which will be found in the testimony above referred to in connection with each machine.

It is perfectly clear on this record that the patents on the 1899 machines, far from being "basic patents" in any significant sense, represented merely the 1899 stage in the development of an old art; that the 1899 machines had in turn been superseded before December, 1911; that just as the 1899 machines were superior to the machines which preceded them, so were the machines of December, 1911, much better machines

than those which they had superseded; and that at every stage in the development of shoe machinery the machines which shoe manufacturers wished to use and demanded were protected by strong patents. Again, just as in 1899, manufacturers could not afford to use the older machines which had been superseded, now the demand for the machines of 1899 has ceased and manufacturers demand the greatly superior modern machines.

The record further shows that during the period since February, 1899, there has been more important and more rapid development in shoe machinery than during any corresponding period in its history, and that this has been due to the remarkably aggressive and effective experimental work which has been continuously and consistently carried on by the United Company at enormous expense (R. Vol. 1, p. 424, lines 40–45; p. 425, lines 1–11; p. 426, lines 29–39; p. 427, lines 26–37).

D. New Machines Produced Since 1899.

As a result one hundred and fifty entirely new machines have been produced by the United Company (R. Vol. 1, p. 503, lines 7–9, 17; Defs.' Ex. 246, R. Vol. 5, p. 683), and it has developed thirty-nine machines which perform operations which in 1899 were performed by hand or not at all.

Among those thirty-nine machines are important machines such as pulling-over machine, assembling machine, welt-beating and slashing machine, clicking machine, lacing machine, pounding and trimming machine, tack-pulling and resetting machine, shank reducing machine, shank welt-skiving machine, upper stapling machine, upper trimming machine, forepart turning machine, heel turning machine (R. Vol. 2, pp. 2671–2675). All these thirty-nine machines are patented, and the patents on them are "basic patents," if ever there were such.

The breadth and importance of the patents on the new machines which have been produced by the United Company were explained by Mr. Howard, in the case of the more important machines with great detail. For example: Rounding and Channeling Machine—Model E: Goodyear Universal

(R. Vol. 2, pp. 2309–2316); Channeling Machine: Goodyear Universal (Welt Work) (R. Vol. 2, pp. 2323–2326); Channeling Machine: Goodyear Universal (Turn Work) (R. Vol. 2, pp. 2327–2330); Lasting Machine: No. 5 USMC (R. Vol. 2, pp. 2375–2382); Compressing Machine—Model No. 4; Automatic Heel (R. Vol. 2, pp. 2425–2434); Nailing Machine: No. 2 Loose (R. Vol. 2, pp. 2438–2443); Loading and Attaching Machine—Model B: McKay Automatic Heel (R. Vol. 2, pp. 2459–2464); Nailing Machine: Alpha Wood Heel (R. Vol. 2, pp. 2464, 2836(71)); Slugging Machine: No. 5 (Ziz) (R. Vol. 2, pp. 2468–2472); Heel Breasting Machine—Model B: Imperial (R. Vol. 2, pp. 2473–2476); Turning and Slashing Machine: Goodyear Lip (R. Vol. 2, pp. 2485–2486); Reinforcing Machine: Economy Insole (R. Vol. 2, pp. 2491–2492); Stitching Machine: Economy Insole (R. Vol. 2, pp. 2492–2493); Channeling Machine: Economy Insole (R. Vol. 2, pp. 2493–2495); Beating and Slashing Machine: Goodyear Welt (R. Vol. 2, pp. 2497–2501); Skiving Machine: Goodyear Shank Welt (R. Vol. 2, pp. 2512–2514); Reducing Machine: Goodyear Outsole Channel Shank (R. Vol. 2, pp. 2514–2516, 2836(75)); Indenting and Burnishing Machine: Goodyear Welt (R. Vol. 2, pp. 2517–2519); Trimming Machine—Model H: Rex Upper (R. Vol. 2, pp. 2523–2525); Pulling and Resetting Machine: Goodyear Tack (R. Vol. 2, pp. 2525–2528, 2836(75)); Stapling Machine: Goodyear Upper (R. Vol. 2, pp. 2528–2530); Pulling Machine: Goodyear Insole Tack (R. Vol. 2, pp. 2533–2537); Pulling-over Machine (3 models) (R. Vol. 2, pp. 2540–2553, 2836(75)); Assembling Machine: Rex (R. Vol. 2, pp. 2554–2558, 2836(71)); Pounding Machine—Model E: Rex (R. Vol. 2, pp. 2560–2562); Trimming Machine: Rex Toe (R. Vol. 2, pp. 2562–2564); Pounding and Trimming Machine—Model B: Rex Rotary (R. Vol. 2, pp. 2564–2568); Pounding Machine—Model C: Rex Rotary (R. Vol. 2, pp. 2568–2570); Pounding and Beating Up Machine—Model A: Rex Rotary (R. Vol. 2, pp. 2570–2571, 2836(74)); Leveling Machine: Goodyear Welt and Turn (Turn Work) (R. Vol. 2, pp. 2576–2579); Leveling Machine: Hercules (2 models) (R. Vol. 2, pp. 2580–2584); Leveling Machine: Atlas (R. Vol. 2, pp. 2584–2587); Clicking Machine—Model C: Ideal (R. Vol.

2, pp. 2588–2597); Lacing Machine: Ensign (2 models) (R. Vol. 2, pp. 2599–2605); Trimming Machine: Goodyear Insole Heel Seat (R. Vol. 2, pp. 2607–2610); Jointing Machine: Goodyear (R. Vol. 2, pp. 2611–2616); Eyeletting Machine: Duplex (R. Vol. 2, pp. 2617–2621); Blacking Machine: Crest Heel (2 models) (R. Vol. 2, pp. 2622–2626); Repairing Machine—Model A: Patent Leather (R. Vol. 2, pp. 2628–2631); Beveling Machine—Model B: Champion Strip (R. Vol. 2, p. 2632); Building Machine: Pyramid Heel (3 models) (R. Vol. 2, p. 2632); Cementing Machine: Hub Lining (2 models) (R. Vol. 2, pp. 2633, 2836(72)); Cementing Machine: Star Channel (3 models) (R. Vol. 2, pp. 2633–2634); Clinch Machine: Universal Double (R. Vol. 2, p. 2634); Embossing Machine—Model B (R. Vol. 2, p. 2635); Eyeletting Machine: Universal (R. Vol. 2, p. 2636); Fastening Machine—Model D: Staple (R. Vol. 2, p. 2636); Grooving and Beveling Machine: Goodyear Power Welt (R. Vol. 2, p. 2638); Laying Machine—Model A: Apex Welt (R. Vol. 2, p. 2638); Laying Machine: Goodyear Improved Sole (3 models) (R. Vol. 2, p. 2639); Marking Machine—Model C: Paragon Vamp (R. Vol. 2, p. 2641); Molding Machine: American Twin Sole (2 models) (R. Vol. 2, pp. 2641, 2836(74)); Molding Machine—Model B: Goodyear Power (R. Vol. 2, p. 2642); Molding Machine: Stitch-Down Upper (R. Vol. 2, p. 2642); Nurling Machine—Model A (R. Vol. 2, p. 2642); Opening Machine—Model C: Apex Channel (R. Vol. 2, p. 2643); Rounding Machine: Goodyear Heel Seat (R. Vol. 2, p. 2645); Rounding Machine: Planet Sole (2 models) (R. Vol. 2, p. 2645); Sanding Machine—Model A; Tap and Sole (R. Vol. 2, p. 2646); Scalloping Machine—Model B: Top Piece (R. Vol. 2, p. 2647); Skiving Machine—Model A: Champion Heel Lift (R. Vol. 2, p. 2648); Skiving Machine—Model A: Champion Shank (R. Vol. 2, p. 2648); Skiving Machine: Eros Rand (R. Vol. 2, p. 2649); Skiving Machine: Pluma (2 models) (R. Vol. 2, pp. 2649, 2836(76)); Skiving and Finishing Machine: Monarch Counter and Box Toe (R. Vol. 2, p. 2649); Skiving or Rand Splitting Machine: Apex Tap (2 models) (R. Vol. 2, p. 2650); Snipping Machine: Goodyear Insole Toe (R. Vol. 2, pp. 2650, 2836(77)); Splitting Machine: Empire (2 models) (R. Vol. 2, p. 2651); Splitting Machine:

Summit (R. Vol. 2, p. 2652); Stamping Machine—Model C: Eagle Sole (R. Vol. 2, p. 2652); Stamping Machine: Regent (2 models) (R. Vol. 2, p. 2653); Sticking Machine—Model B: Shank Piece (R. Vol. 2, p. 2653); Trimming Machine: Ultima Heel (R. Vol. 2, p. 2655); Turning Machine: Goodyear Forepart (R. Vol. 2, p. 2655); Turning Machine: Goodyear Heel (R. Vol. 2, p. 2656); Turning Machine: Goodyear Welt Edge (R. Vol. 2, p. 2656).

Mr. WINSLOW testified:—

> "On Goodyear welt shoes the saving in cost of manufacture, resulting from the introduction of new machines and improvements in other machines that existed in 1899 and which we improved after the formation of the company, amounts to about seven and a half cents" (R. Vol. 1, p. 430, lines 27–31).

This saving is nearly two cents more than the aggregate royalties on men's Goodyear welt shoes and nearly three cents more than the aggregate royalties on women's welt shoes. In figuring the savings Mr. Winslow averaged men's, women's and children's shoes (R. Vol. 1, p. 430, lines 22–23). He also testified:—

> "On other kinds of shoes the manufacturers had the benefit of these savings so far as the machines were applicable to the reduction of the cost of those shoes" (R. Vol. 1, p. 430, lines 23–26).

In view of this situation it is of course to be expected, and the record shows, that—

8. IN DECEMBER, 1911, THE UNITED COMPANY'S MACHINES WERE FULLY PROTECTED BY STRONG AND VALUABLE PATENTS.

It is clear on the record that when this suit was begun the defendants' machines were more completely covered by patents of real commercial value than ever before. The importance

those patents is explained in Mr. Howard's detailed discus-
on of over 150 of the more important machines, and the
eadth of their claims is indicated by quoting typical claims
. Vol. 2, pp. 2239–2664). Moreover, the patents on
ese modern machines are of recent date; indeed, 144 of
e patents on the 1911 machines discussed in Mr. Howard's
stimony in October and November, 1913, were granted
ter this suit was begun, and when he testified again in Febru-
y, 1914, there had been granted twenty-eight more patents
aiming improvements embodied in the machines (R. Vol.
pp. 2836(67–80)).

9. SUMMARY OF THE PATENT TESTIMONY.

(1) The United States completely failed to prove the allega-
on of the petition that early in 1899 "many of the basic
atents on the principal machines" were "about to expire"
. Vol. 1, p. 993). On the contrary,—

(2) The United States proved, as to machines of its own
lection, that early in 1899 "basic" patents were *not* about to
pire, and that there were patents on those machines which
d not expire for more than ten years after the United Com-
any was formed.

(3) Defendants proved that of the important patents
early in 1899" on the "principal machines" selected by the
nited States the latest patent on each of those machines
d *more than fourteen years to run;* and that, in general,
e machines of the companies which combined in February,
99, to form the United Company were protected by strong
atents having considerably over half their terms to run.

(4) While in nearly every instance the machines of those
atents were not the first machines in the industry for perform-
g the respective operations and while the patents on those
st machines had expired before 1899, the patents which
vered the 1899 machines were important and valuable
cause those machines were so much better than the ma-
ines of the expired patents that "early in 1899" they were
ed and demanded by manufacturers; but—

(5) The patents on the 1899 machines represented only the 1899 stage in the continuous and continuously patented development of the industry; and—

(6) In the rapid development of the industry since 1899 the machines of that day have in turn given place to superior, modern machines which do better work and have greater capacity, and these modern machines are protected by strong and valuable patents of recent date; so that—

(7) When this suit was begun and now, as at every stage in the development of shoe machinery, the best machines available, the machines which manufacturers demand and use, were and are effectively protected by patents.

(8) Moreover, the period since February, 1899, has been a period of more important and more rapid development than any corresponding period in the history of shoe machinery. A great number of new patented machines have been developed and supplied to manufacturers, and the patents on thirty-nine of these machines which perform operations performed by hand or not at all in 1899 may fairly be termed pioneer patents.

(9) Accordingly, the machines which the United Company was putting out when this suit was begun, the machines which shoe manufacturers demand and use, are protected by strong and valuable patents of recent date.

10. FINDINGS OF THE DISTRICT COURT AS TO THE PATENT SITUATION.

A. The District Court Found that the Basic Patents Held by the Constituent Companies were not About to Expire.

The District Court found as follows:—

> (R. Vol. 1, p. 1133.) "But it is important at this point first to determine how far certain allegations of the petition, which characterize the defendants' alleged project and their motives for forming it, have been sustained by the evidence. These are found on pages 15 to 17 of the record, and they are, in substance, that the component

companies were in 1899 manufacturing their respective machines and parts thereof under patents; that 'many of the basic patents on the principal machines were about to expire'; that their manufacture and use was thus about to become open to the public 'in the near future,' and that the defendants, not being satisfied with the rights they had enjoyed under the patents and intending to expand and perpetuate them to the public detriment, devised the alleged project of acquiring a monopoly which the petition thereafter describes.

"This trial began on May 20, 1913. On June 27, 1913, the petitioner, having introduced substantially all its other direct evidence, stated that it desired to offer proof in support of the allegations just referred to, but was not then prepared to go into the matter.

"By consent, an order of reference to a Special Examiner was thereupon entered (pp. 262 T, 1996) for the purpose of taking such evidence as either party should offer regarding those allegations, out of court. Such evidence was required to be completed by October 11, 1913, but successive extensions of the time were afterward found necessary and allowed by consent. Before the Examiner the petitioner did not complete its direct evidence until October 6, 1913, and the evidence on both sides was not completed until November 19, 1913.

"At the final arguments, however, on June 2, 1914, the statement was made by petitioner's counsel that so many machines and patents were involved that examination of more than a very few had been impossible. It seems obvious, therefore, that the allegations in question could not have been founded, when they were made, upon any adequate or complete investigation of the facts.

"Nor can it be said that they have been sustained by the evidence before the Examiner. It seems unnecessary to spend time in considering what patents could and what could not properly be regarded as 'basic,' in view of the fact that, of the patents principally relied on as such by the petitioner, those protecting the welter and stitcher of the Goodyear Company, there were two, one upon its welter, the other upon its stitcher, which ran until 1908 and 1909, respectively. The petitioner's final position, indeed, as to what was proved by the evidence before the Examiner, was by no means that taken in the allegations referred to, but was only that the two machines above mentioned, and others protected in 1899 by patents not insisted on as 'basic' patents, became free to anyone to make or use—without any of the patented improvements

added to them by the United Company since 1899, but nevertheless capable of successful commercial use—before the filing of this petition in 1911. In view of all the above, I must regard the allegations here in question as not sufficiently supported by proof; and hold that no such motive is shown to have prompted either the organization of the United Company, or any of its subsequent doings. The effect of the evidence and of the petitioner's argument is to show that Goodyear machines of the old type are capable of commercial use and could have been made by anyone who chose to make them. That after the expiration of the two so-called basic patents machines constructed according to them were not used is sufficiently accounted for by the superiority of the newer machines which the defendants had introduced. For that reason the older machines did not enter into competition with them, and the defendants cannot be charged with suppressing such competition."

B. The District Court Found that the United Company's Machines Have Always Been and are Now Protected by Patents.

The District Court found as follows:—

(R. Vol. 1, p. 1115.) "At any rate, it must be accepted that from the beginning the machinery offered by the respondent corporation was, in all its essential elements, protected by patents, and that there has been no proof to the contrary."

III.

THE DEFENDANTS' LEASES OF SHOE MACHINERY.

1. INTRODUCTORY STATEMENT.

Since about 1860, when the first shoe machinery was introduced, it has been the almost invariable practice as to all the important shoe bottoming machines, and a common practice as to all kinds of shoe machines, to lease them to shoe manufacturers on a royalty basis charging a fixed amount for each pair of shoes operated on by the machine. From the very beginning of the industry practically all shoe machinery was patented, and the agreements under which the machines were leased were not only leases but also licenses under patents granting specific and limited rights to use the leased machinery in certain ways and on the terms and conditions set out in the lease and license agreements. In 1899, therefore, when the United Company was formed, its constituent companies sold no machines manufactured by them but leased all machines under lease and license agreements. The United Company continued the lease system which had been employed by the constituent companies, and it has made no fundamental change in the system. It did not disturb outstanding leases and for over a year it made no changes at all. From time to time thereafter it has made changes in the leases of specific machines, just as such changes had been made from time to time by the constituent companies, in order to meet new conditions, to make its system of leases consistent or to enable it to offer more satisfactory terms to lessees. It has, of course, adopted certain leases for new machines which were invented or acquired by it and not previously manufactured by the constituent companies. As it has developed General Department Machines, which now total over 170 different machines, it has either leased or sold them at the option of the

shoe manufacturer, thus relaxing the policy of the constituent companies which leased machines only.

The United Company's system of leases, therefore, was not formulated at any one time, but is the result of an historical development and growth extending over many years and represents the results of years of constant effort to provide a method of furnishing this great variety of intricate and expensive machinery to shoe manufacturers on terms mutually satisfactory and fair to the shoe manufacturer and to the machinery manufacturer.

Indeed it was admitted by the United States that the modifications made by the United Company in the leases were not planned in advance and that it did not base its charge of illegality upon the intent with which they were adopted. The District Court said:—

> "At the argument the admission was made on behalf of the United States that there was no proof that at the time they formed the United Company the defendants 'had in mind the adoption of the system of leasing which they later developed.' And the position then taken by the petitioner in argument was that the leasing system referred to has resulted in illegal restraint or monopoly and that the intent which prompted its development is therefore 'absolutely immaterial'" (R. Vol. 1, pp. 1154–5).

With this admission on the part of the United States that the intent with which the lease clauses were adopted is immaterial its entire contention in respect to the leases falls. We submit that an inspection of these clauses shows conclusively that they are not inherently unlawful, and therefore, if not adopted with an unlawful intent, they are clearly lawful.

Owing to the gradual growth of the shoe machinery industry and the consequent gradual development of the leases, to the fact that different forms of leases have been adopted for different machines, to the variety of conditions which arose at different times and which led to the adoption of provisions to meet them, to the great number and variety of machines, and to the great number of different kinds of shoes made requiring the use of different machines or sets of machines, the leases are necessarily complicated and require careful study to understand them.

An examination of the record will show that the provisions in the leases which were in effect when the United Company was formed were adopted for the purpose of granting the shoe manufacturer satisfactory terms and at the same time securing the machinery manufacturer reasonable protection. In other words, that these provisions were adopted for the purpose of providing for the most efficient, productive, and satisfactory use of the different machines; that such modifications as have been made by the United Company have had the same purpose and object; that the provisions in the leases were not adopted for the purpose of excluding others or creating a monopoly, and that these provisions, or provisions of substantially the same character and having the same effect, are essential to a commercially successful leasing system.

As we have stated above, one of the principal purposes the United Company had in mind was to reduce the cost of making Goodyear Welt shoes, and to encourage shoe manufacturers to manufacture them (R. Vol. 1, p. 441, lines 38–42; Vol. 1, p. 407, lines 22–30). Various modifications of the lease system had this object in view.

2. ALLEGATIONS OF THE PETITION AS TO THE LEASES.

The basic charge of the petition, as we have shown above, is that the defendants determined to acquire a monopoly of shoe machinery, by (R. Vol. 1, p. 994):

1. Acquiring all concerns engaged in the shoe machinery business, and then

2. Refusing to sell or lease any essential machines, viz., lasting, welt sewing, and outsole stitching, heeling and metallic fastening machines, unless the shoe manufacturer took "practically all other machinery" from them.

The leases, it is alleged, were a step in carrying out the foregoing plan (R. Vol. 1, p. 994).

In order to sustain the charge of the petition, therefore, it is necessary to find that the leases require a lessee who takes lasting, welt-sewing or outsole stitching, heeling, or metallic machines to take from the United Company practically all other machinery.

In support of its allegation that the leases were steps in carrying out the foregoing plan, the petition recites that prior to the formation of the United Company a shoe manufacturer could get machines of one of the constituent companies without being required "to use exclusively machines . . . manufactured by either of the other companies" (R. Vol. 1, p. 996). After the formation of the United Company it is alleged that the defendants—

> ". . . *discontinued* the sale to boot and shoe manufacturers of each and all of the machines included in said groups of machines . . ." (italics ours) (R. Vol. 1, p. 997),

and unlawfully devised and adopted arbitrary, oppressive and unreasonable lease and license agreements, which shoe manufacturers "are required to agree and conform to in order to obtain from said defendants any of the machines included in said groups" (R. Vol. 1, p. 997).

It is alleged that these agreements—

> "*contain provisions, not found in their former lease and license agreements*, which compel boot and shoe manufacturers leasing any of such machines from defendants to agree to use exclusively one or more of the classes of machines included in said groups of machines . . . upon penalty of having all the machines included in said groups so leased to them by defendants immediately reclaimed and taken away and the lease and license agreements cancelled" (italics ours) (R. Vol. 1, p. 997).

The petition then recites that the leases adopted by the defendants contain provisions as follows (R. Vol. 1, p. 997):—

(1) An agreement to take the machines for a period of not less than seventeen years, regardless of the terms of the patents relating thereto.

(2) That lessees thereunder are compelled to obtain all duplicate parts for the machines from defendants at exorbitant prices.

(3) Many of the leases provide that the lessee shall at the expiration of seventeen years return the machines to the defendants and pay a return charge which in some cases amounts approximately to the original cost of building the machines.

(4) A provision reserving to the lessor the right to cancel

all leases with shoe manufacturers if they fail to use exclusively and to their full capacity machines leased from the defendants.

The foregoing provisions, however, purport to be only a statement of the character of the provisions which the leases contain. The provisions which the petition contends are unlawful, as carrying out the unlawful plan charged, are specified in Section XII. of the petition as follows (R. Vol. 1, p. 1028):—

(1) A covenant that the lessee shall use exclusively machines of the lessor to perform the same kind of work as that performed by the leased machine.

(2) A covenant that the lessee shall use in accomplishing work other than that for which the machine was designed only machines controlled or leased by the lessor.

(3) A condition that, should the lessee violate either of the covenants mentioned, the lessee would thereby forfeit the use not only of the machine leased, but of other machines, both those designed to accomplish the same work as the leased machine and those designed to accomplish work entirely different.

(4) A covenant that the lessee should use the leased machine for seventeen years.

(A) Summary of Charges of the Petition with Respect to the Leases.

To summarize, the petition alleges that, in pursuance of the defendants' plan,—

(1) to acquire all shoe machinery concerns, and

(2) to refuse to sell or lease lasting, welt-sewing, outsole stitching, heeling, or metallic machines, unless the shoe manufacturer took practically all other machinery of them,—

the United Company—

(*a*) discontinued selling machines, and

adopted arbitrary and oppressive leases which, it is alleged in paragraph XII. of the petition (R. Vol. 1, p. 1028) were illegal in that they

(*b*) required the lessee to covenant to use the United Company's machines of the kind leased and of all other kinds exclusively,

(*c*) permitted the United Company to cancel its leases of all machines if these covenants were broken,

(*d*) required the lessee to use the leased machinery for seventeen years.

The petition also alleges that the leases required the lessee,—

(*e*) to obtain duplicate parts of the United Company for which it charged an exorbitant price;

(*f*) on the cancellation of the lease to pay exorbitant return charges.

These last provisions do not require a use of the United Company's machines and are therefore not referred to as evidence of the alleged plan to refuse to lease any machines unless practically all other machines are taken. They are apparently referred to merely as showing a general intent on the part of the United Company to oppress its lessees.

3. PROVISIONS IN THE UNITED COMPANY'S LEASES ON WHICH THE UNITED STATES RELIED IN SUPPORT OF ITS CHARGES.

The defendants' leases do not contain any provisions such as those alleged in the petition whereby the lessee covenants to use exclusively the United Company's machines.

This being so, the United States, at the argument in the District Court and at the previous argument in this Court, did not restrict itself to an attempt to support the allegations of the petition, but took exception to various provisions in the leases which we submit do not conform to the allegations in the petition, and contended that these provisions were illegal and tended to a monopoly of shoe machinery, even though they did not conform to the case stated by the petition. The provisions in the leases to which exception was taken by the United States are briefly as follows:—

Full Capacity Clause.

A clause requiring the lessee to use the particular machine leased to its full capacity on the work for which it is adapted so far as the lessee has work for it to do. This is referred to below as the **"Full Capacity Clause."**

This is the only clause contained in the United Company's leases (except the "Additional Machinery Clause" which was used only to a slight extent and was discarded entirely in 1907) **which obligates the lessee to use the United Company's Machines at all.**

This clause was used in various leases of the Consolidated Company prior to the formation of the United Company. It is employed by the United Company only in respect to those machines for which a royalty is charged based on the amount of use. Without this clause the lessee would be at liberty not to use the machine at all, and the United Company, whose return is dependent on a royalty based on the amount of use made of the machine, would have no assurance of a return on its investment in the machine.

This clause does not require an exclusive use of the particular kind of machine leased, nor does it require any use of other machines. It merely requires that the particular machine which is installed in the lessee's factory under this particular lease shall be used by the lessee, if he has work for it to perform. Without this clause the lessor would have no assurance of any compensation whatsoever for his machine.

Additional Machinery Clause.

A clause found in certain leases made by the constituent companies prior to 1899 and in a few leases made by the United Company prior to 1907, but eliminated by the United Company in all leases after that date, requiring the lessee to take additional machines of the particular kind leased if he needed such machines for additional work. This is referred to below as the **"Additional Machinery Clause."**

This clause was adopted prior to the formation of the United Company to secure an adequate return on the leased

machines and the inventions embodied therein after the lessor had gone to the expense of installing the machines and instructing operators in their use. It required a use by the lessee of other machines of the particular kind or class leased, but of no other kinds.

As the use of this clause was continued by the United Company after its formation only to a limited extent and was entirely discarded after 1907, more than four years before the present petition was filed, it is important in the present case only in that it shows that the United Company actually discarded from its leases the only clause which required an agreement on the part of the lessee to use any of its machines exclusively.

Exclusive Use Cancellation Clause.

A clause giving the lessor an option under a lease of a particular kind of machines, such as heeling machines, to cancel its leases of that particular kind of machines if the lessee provides himself with other machines of the same kind to do his work. This clause is referred to below as the "**Exclusive Use Cancellation Clause.**"

Under this clause the lessee does not covenant to use the lessor's machines of the particular kind leased exclusively, nor does the lessee agree to use the machines at all. The clause merely reserves to the lessor an option to cancel its leases of machines of a particular kind, such as heeling machines, when the lessee provides himself with other machines of that particular kind. As we show below, this provision is necessary for the lessor's protection in order to enable it to withdraw its machines of a particular kind when, owing to the use by the shoe manufacturer of other machines of the same kind, the lessor finds that its machines are used only occasionally, or only on slow or difficult work, or that proper reports of the amount of work done on its machines are not made by the lessee so that the lessor does not receive a fair return on its investment.

This clause, or the Additional Machinery Clause under which the lessee covenanted to take additional machines if needed was used in most of the leases of the constituent com-

panies, they having found by experience that such a clause was necessary to their protection under the leasing system. The continuation of this clause by the United Company, therefore, effected no change in the leasing system. Furthermore, as it does not require the lessee to use the United Company's machines at all, but recognizing the right of the lessee to install and use other machines merely gives the United Company an option under certain circumstances to withdraw its machines of a particular kind or class when other machines of the same kind or class are used by the lessee, it affords no support whatever to the allegation of the petition that the leases required the lessee to covenant to use the United Company's machines exclusively.

Restricted Use Clause.

A clause contained in certain alternative forms of lease restricting the use of certain kinds of machines thereby leased to use on shoes operated on by certain other specified machines. This clause is referred to below as the "**Restricted Use Clause.**"

This clause is used where machines of certain departments are leased at reduced rates to be used with machines of other departments as a team or series, in which case the machines of the United Company being concededly the best in the market, and being mechanically constructed and adapted to use together, and being the only machines with which efficient service by skilled mechanics is provided, are manifestly more efficient, productive, and economical in operation when so used together as a team, and thus each machine produces a greater return for the United Company. This clause does not require the lessee to use the United Company's machines at all. On the contrary, it merely forbids the lessee to use the United Company's machines when taken on this form of lease otherwise than as a team. It is simply the granting of a patent license to use a patented machine in a particular and defined field in connection with patented machines of other departments which are mechanically developed and adapted for use together.

Leases containing this Restricted Use Clause are alternative forms of leases. In practically every case the lessee is also offered a lease which does not contain any such restriction, but permits the lessee to use the machines without regard to his use of any of the lessor's machines of other departments. These unrestricted leases are offered lessees on terms as favorable or more favorable than those on which the machines could be obtained from the constituent companies prior to the formation of the United Company. The use of the restricted leases by the United Company, therefore, did not have the effect of preventing shoe manufacturers from obtaining machines on unrestricted leases on the same or better terms than were offered prior to the formation of the United Company. Their effect was merely to offer a wholesale rate to shoe manufacturers desiring to use a set or team of machines which were adapted for use together.

Auxiliary Restricted Use Clause.

A similar clause is employed to restrict the use of certain auxiliary machines of a department to use with the principal machines of that department. The principal machines are the recording machines on which a royalty is charged. The auxiliary machines are machines developed to aid in the work of the principal machines. They are treated as part of the principal machines and no separate royalty is charged for their use, but the return comes indirectly from the royalties on the principal machine to use with which they are restricted. Such a clause is referred to below as the **"Auxiliary Restricted Use Clause."**

This Auxiliary Restricted Use Clause was employed by the constituent companies, and its continuance by the United Company effected no change in the leasing system.

Cancellation for Breach Clause.

A clause permitting the lessor to cancel all leases between it and the lessee for violation of any condition contained in any of the leases which is expressed in the lease to be obligatory

upon the lessee, that is, for violation of certain specified conditions which the lessee obligates himself to fulfill. This is referred to below as the **"Cancellation for Breach Clause."**

This clause merely permits the United Company to sever relations with a lessee who violates his agreement to fulfill certain specified conditions. If such agreement on the part of the lessee is legal, it is obviously proper that the United Company should have the right to cancel its leases if any one of them is violated. The leases of the constituent companies all provided that they might be cancelled for breach of conditions contained in those leases.

Seventeen-year Term.

A clause providing that the lease shall run for seventeen years.

This clause grants the lessee the right for an extended term to retain the leased machines for the royalty agreed upon and assures the United Company that they will be held for a sufficient term to provide an adequate return on its investment.

The leases of the constituent companies ran in some cases for seventeen years and in others for the term of the patents then or thereafter embodied in the machines or for the entire life of the machines. The seventeen-year term was adopted by the United Company in all its leases to make them consistent, and shortened rather than increased the term of the leases.

Agreement as to Repair Parts.

A clause requiring the lessee to obtain of the lessor duplicate parts needed to repair the leased machines, the complaint being that the United Company charged exorbitant prices for such duplicate parts.

The constituent companies' leases all contained this clause, which is essential to preserving the physical integrity of the leased machine. The record shows that there was absolutely no foundation for the allegation that exorbitant prices for repair parts were charged.

Return Charges.

A clause requiring the lessee on the expiration of the lease to pay a return charge which it was alleged amounted in some cases approximately to the cost of building the machines.

This allegation also was without foundation, the record showing that the charges made upon a return of machines were considerably less than the cost of repairing them.

4. THE PROVISIONS IN THE UNITED COMPANY'S LEASES TO WHICH THE UNITED STATES TOOK EXCEPTION DO NOT SUPPORT THE ALLEGATIONS OF THE PETITION.

The foregoing brief statement of the clauses in the United Company's leases to which the United States took exception shows how utterly the United States failed to support the allegations in the petition in respect to the leases.

Those allegations, as we have shown, are that the United Company, in pursuance of the plan to acquire all shoe machinery concerns and to refuse to sell or lease lasting, welting, outsole stitching, heeling, or metallic machines, unless the shoe manufacturer took practically all other machinery of it,—

(A) discontinued selling machines and adopted arbitrary and oppressive leases, which

(B) required the lessee to use the United Company's machines of the kind leased and of all other kinds exclusively; and

(C) permitted the United Company to cancel its leases of all machines if these covenants were broken; and

(D) required the lessee to use the leased machinery for seventeen years.

A. The record shows that the constituent companies only leased and never sold machines. The allegation that the United Company discontinued the sale of machines was without foundation.

B. As shown above, there is no provision in the United Company's leases requiring the lessee to use either the machines of the particular kind leased or other machines exclusively. **The Additional Machinery Clause and the Full Capacity Clause are the only clauses which require any use of the United Company's machines whatsoever.** The Additional Machinery Clause referred only to machines of the particular kind leased, and as it was discarded by the United Company in 1907 it is immaterial in the present case, It is the only clause ever contained in the leases which required the lessee to take any machines except the particular machines he leased, and it was strictly limited to machines of the same kind required for additional work. The Full Capacity Clause requires the use only of the particular machine leased and therefore does not even require an exclusive use of that kind of machine.

The United States, therefore, utterly failed to support the charge on which the petition is founded that the defendants refused to lease essential machines, which it defined as lasting, welt sewing, outsole stitching, heeling, or metallic machines, unless the shoe manufacturer took practically all other machinery of it.

The only clause on which the United States relied in support of this allegation was the Restricted Use Clause, which, as pointed out above, does not require the lessee to use the machines at all, but, on the other hand, prohibits their use except under certain conditions. The contention of the United States was that this clause, while it does not require a covenant from the lessee to use the United Company's machines, does, by reason of its restrictions, induce the lessee to use not only the particular machine leased, but other principal machines to use with which it is restricted. Even this modified charge, however, was completely refuted by the fact that the United Company continued to offer unrestricted leases of its machines on terms as favorable or more favorable than those offered by the constituent companies prior to the formation of the United Company.

The District Court, therefore, held that this modified charge of a refusal by the United Company to lease machines separately, which, previous to the formation of the United Com-

pany, were offered separately, as a means of compelling the taking of other machines, was completely unfounded, saying:—

> "It appears that after the consolidation there was no refusal or imposition of conditions as alleged, but that the defendants continued to give manufacturers terms which were substantially the same as before and in some instances better than those offered by the constituent companies before the consolidation. This is shown not only by the exhibits of 'independent' leases but by the testimony of officers of the company" (R. Vol. 1, p. 1162).
>
> "The charge of this supposed scheme to deprive former customers of the right to use some machines unless they would also use others seems to have originated either in the erroneous assumption that a prohibitive lease was the only kind procurable, and that the former customer had no choice, or in disregard of the fact that it was merely an alternative form of lease. As the leases proved no such plan, whether of the extent alleged or of less extent, and as the evidence proves the exact contrary of what is charged, we think that the United Shoe Machinery Company is, upon the merits, entitled to a full clearance from this charge" (R. Vol. 1, pp. 1163–1164).

C. The allegation that the United Company was permitted to cancel its leases of all machines if the covenants requiring the lessee to use its machines exclusively were broken, was shown to be unfounded, since, as stated above, there were no covenants in the leases requiring the lessee to use the machines exclusively.

D. The term of the leases is for seventeen years. This is the only allegation in the petition which is substantiated by the leases themselves. An agreement that the lease of a particular machine shall run for seventeen years obviously does not require an exclusive use either of machines of the kind leased or any other machines. This clause, therefore, has no bearing on the fundamental charge made in the petition that the United Company refused to lease its essential machines unless the shoe manufacturer took practically all other machinery from it.

We submit, therefore, that the United States has wholly failed to substantiate by the leases the charge made by the petition that the defendants, acting through the United Com-

pany, planned to obtain a monopoly by refusing to lease essential machines except on condition that the shoe manufacturer should take practically all other machinery required by him.

We shall below consider the reasons for the leasing system, the leases used by the constituent companies, the modifications in the leasing system made by the United Company, and the business reasons underlying and requiring the use of the various provisions to which the United States objects and their legality.

5. THE UNITED COMPANY DID NOT DISCONTINUE THE SALE OF MACHINES—FOR THE CONSTITUENT COMPANIES ONLY LEASED AND DID NOT SELL MACHINES.

As above stated, the petition alleges that the defendants "discontinued the sale . . . of the machines . . . and . . . adopted . . . arbitrary . . . lease and license agreements" (R. Vol. 1, p. 997).

This charge that the United Company discontinued the sale of machines is absolutely without foundation. None of the constituent companies sold its machines; they were furnished to shoe manufacturers only on lease (Donham, R. Vol. 1, p. 2, lines 30–31; p. 4, lines 21–22, 28–29; Winslow, R. Vol. 1, p. 400, lines 37–39; Howe, R. Vol. 1, p. 468, lines 3–4).

The United States sought to show by Milton S. Florsheim that he had bought three Copeland Rapid Lasting Machines from the Goodyear Company (R. Vol. 1, p. 158, lines 22–25). On cross-examination Mr. Florsheim admitted he had obtained these on a lease which was introduced in evidence (R. Vol. 1, p. 165, line 40; p. 167, line 30). (See also Defendants' Exhibit 33; R. Vol. 5, p. 11.) This was the only evidence which the United States attempted to introduce in support of this important charge in its petition.

The District Court (Dodge, J.) said with reference to this charge:—

> "An attempt to support this charge by evidence wholly failed. Nothing of the kind was done, nor is it

easy to see what grounds for making the charge could ever have been supposed to exist" (R. Vol. 1, p. 1153).

The United Company not only did not refuse to sell machines previously sold by the constituent companies, but on the contrary it did sell over 170 different kinds of General Department machines, which it developed, in contrast to the policy of the constituent companies (R. Vol. 1, p. 452, lines 39–44; p. 453, lines 1–6).

6. REASONS FOR MARKETING SHOE MACHINERY BY LEASES.

In considering the clauses in the leases complained of it is important to appreciate the reasons which had led shoe machinery manufacturers generally from the beginning of the industry to market their machinery by the lease system.

The adoption by a manufacturer of the best method of marketing his product and thereby best meeting the conditions peculiar to his goods or under which his customers do business is one of the most important elements of commercial success.

The ingenuity of modern business men has been largely directed to this problem and a great variety of methods has resulted. One manufacturer sells only at wholesale, one at retail, one through agents, another through jobbers, another through a chain of his own stores and another only upon mail orders; one leases, another sells outright; one sells for cash only, another on the instalment plan; one sells through traveling salesmen, another depends upon advertising in magazines or by letter; one offers premiums with each purchase, another sells on long-time contracts providing for all the customers' business; one makes discounts for large purchases, another declines to distinguish between large and small customers; one sells only for a money consideration, another takes stock or some share of the profits of the purchaser.

The foregoing are a few of the methods employed by modern salesmanship devised to attract customers and to provide an

outlet for goods. They are all proper, normal methods because they are designed to advance the dealer's business by making his goods or terms attractive to his customers. The dealer is free to adopt any one of these methods he pleases. If he deems it the best policy to sell for cash only, no customer can demand credit; if he sells only through agents, no customer can demand that he sell directly to him; if he sells by mail only, no customer can demand that he sell at his office. Similarly, if he leases on terms which he believes best adapted to the conditions of the industry, no customer can demand that he lease on other or different terms or that he sell as well as lease. This freedom of choice as to the method of marketing his goods is the life of competition and the very kind of activity which the Sherman Act sought to promote.

The system of leasing instead of selling shoe machinery, and charging not a fixed rental but a royalty based on the amount of use, has been a fixed and established principle in the shoe machinery industry from the date of the introduction of the first shoe machinery about 1860, and the entire business of manufacturing shoes by machinery originated and has been developed under the lease system because it was especially adapted to the conditions of that industry and was most satisfactory to the shoe manufacturer. The following are a few of the reasons:—

A. Under the lease system shoe manufacturers do not have to buy outright machines at the large prices which the manufacturer would be obliged to charge in case of a sale, as compensation not alone for the cost of the machines themselves but also for the use of the patented inventions embodied in the machines, and the great expense involved in experimenting with and developing them. Shoe manufacturers are thus saved a large initial investment in machinery and this money is left available for use in the business.

The shoe manufacturers testified almost unanimously to the advantages of this method. Machinery depreciates rapidly and banks are unwilling to loan money on it. Furthermore, the shoe manufacturer turns his capital over rapidly and is thus able to do a large and profitable business on a small capital if he is not obliged to make a heavy investment in machines. Many shoe manufacturers are men with small

capital and would be wholly unable to engage in the business if required to make a large initial investment.

Jonathan Brown, Jr., testified that depreciation in shoe machinery is so rapid from wear and on account of new machines being invented that 50 per cent. depreciation should be charged off as soon as a machine is purchased. He does not dare to carry machines as an asset at all, but if he buys a machine he charges it off as expense (R. Vol. 1, p. 732, lines 6–31).

Edward W. Burt testified that he figured about 25 per cent. depreciation on machines which he had to take care of himself. His gross sales are six times his capital. He prefers not to tie up capital in machinery. In securing credit bankers never consider machinery worth a dollar (R. Vol. 1, p. 740, lines 29–41).

Frederick Allen testified that he turns his capital over about eight times a year. He prefers to lease rather than to purchase, because under the lease system he does not have to tie up his money in machinery "which as an asset is worthless as soon as it is installed" (R. Vol. 1, p. 722, lines 11–19).

Alanson C. Brown testified:—

> "The opportunity to lease our machines instead of investing our own capital in them by way of purchase has given us more money to put into other departments of our business. The capital which we invest in the materials which go into shoes we turn over about three times in the course of a year and in the usual course of business we make a profit every time. Our capital is four million and our gross business is around thirteen million a year" (R. Vol. 1, p. 618, lines 15–22).

R. P. Hazzard testified:—

> "The capital of the Snow-Hazzard Company was $50,000. We now turn over our capital about eight times. Our investment as shown by our last audit is a little over $300,000 and during the past year we have done a business of approximately two millions and a half. We have gone on the plan of making as small a permanent investment in machinery as was possible and putting all our money into the active running of the business.

"I might add right there that when the Snow-Hazzard Company was started as a $50,000 corporation, had we been obliged to have bought by outright purchase the machinery necessary to have equipped that plant, that it would have taken such a large part of our capital that our credit would not have been such as to enable us to have purchased our merchandise and conduct our business and allow us to grow as it has" (R. Vol. 1, p. 642, lines 3–16).

"The thing which pleases me especially in this system is that I stand on an exact footing, so far as machinery and repairs are concerned, and everything of that kind, with every other shoe manufacturer that leases from the United Company, because I am conceited enough to think that if given an even start I can hold my own" (R. Vol. 1, p. 654, lines 3–8).

B. Under the lease system the shoe manufacturer only pays for the machines when and as he uses them. If business is poor, his royalties proportionately decrease. The amount of payment, therefore, is automatically adjusted to the amount of business which the shoe manufacturer does, and he is not burdened with heavy annual charges when business is poor.

C. The principal shoe machines are so delicate and need such constant adjustment that unless properly cared for they prove unsatisfactory. No small shoe manufacturer and few of the large shoe manufacturers can afford to maintain an efficient repair service. Nor do shoe manufacturers understand as thoroughly as the machinery manufacturers the importance of this service. In consequence, experience has shown that when machines were purchased outright they quickly got out of repair or adjustment, because of lack of proper attention, and thereby became discredited. Shoe machinery manufacturers, therefore, found that it gave better satisfaction to their customers if the machines were leased and were kept in repair by the lessor. The shoe manufacturer under this system got better machinery for his money and the machinery manufacturer a larger return.

D. From the beginning of the shoe machinery industry every machine has been to a large extent experimental until its usefulness has been proved and demonstrated in actual commercial use over an extended period. Shoe manufacturers

hesitated to buy a machine at a large price which might not do as good work as was being done by hand, or which might otherwise prove a commercial failure, or might be supplanted within a short time by a better machine. Under the lease and license system shoe manufacturers do not have to take this risk; it is the machinery manufacturer who takes the risk.

See Strootman (R. Vol. 1, p. 744, lines 1–11).

E. By furnishing machines for a comparatively small initial cash payment or without any initial cash payment shoe machinery manufacturers were enabled to get active, energetic men to enter the shoe business and thus extend the use of their machines. To enter the shoe business no expensive factory is required, any loft being sufficient; the goods require no long time in process but are turned into cash quickly and the business can easily be started on a small scale. The shoe machinery manufacturer is thus able to place his machines and develop his business in a way which would not be possible if a cash sale price were demanded.

As Mr. WINSLOW testified:—

> "Under our system a small manufacturer has practically the same advantages as a large one as far as machine equipment is concerned. A man who goes into the business with a capital of $1,000 pays exactly the same royalty and receives exactly the same service as a man who goes into the business with a capital of $250,000" (R. Vol. 1, p. 555, lines 38–43).

FREDERICK ALLEN testified:—

> "If I had had to buy my machinery I don't think I should have been able to start in business, because it would have taken all my capital to buy machinery. Under the arrangement by which I can obtain the machinery by lease, I can put all my capital into the business" (R. Vol. 1, p. 722, lines 34–38).

EDWARD W. BURT testified:—

> "I am a small manufacturer. As to the effect upon my ability successfully to do business which a compulsory change in the method of leasing machines, making it necessary for the United Company to charge an initial

premium when it put out its machines, would have, I am very glad you asked me that question, because I think it is a very important one. If manufacturers must buy their machines, they have got to get money from their capital, or borrow money, or get it somewhere, to buy machinery, and that takes away your working capital. Now, you must have machinery at the least expense possible in the manufacturing of shoes. And if we were obliged to buy our machines I should be very sorry. In fact, if the privilege of buying or leasing were given me, I should say lease every single time. I never would want to buy a machine.

"As to the effect which it would have had with reference to my ability to go into business at all, I never could have started. I started without any money in shoe manufacturing. I was able to do that because I could obtain my machines by this method.

"That is one of the greatest reasons why I could start in the shoe business—because I could get machinery with practically no expense.

"I know that there are other men who from small beginnings have been enabled to start and grow. I have had experience along that line. I have had two superintendents leave me, both starting in the shoe business. They had practically no money" (R. Vol. 1, p. 741, lines 5–31).

C. Willis Bennett also testified that he could not have entered business had he been required to buy his machines (R. Vol. 1, p. 759, lines 1–20).

7. NECESSITY FOR PROVISIONS IN THE LEASES PROTECTING THE LESSOR.

A. Introductory Statement.

The United Company, under the lease system, installs in the shoe manufacturer's factory an equipment of machines, instructs the shoe manufacturer's operators in their use, and keeps the machines in proper operating condition. It depends for a fair return on its investment upon a royalty based upon the use of the machines.

The United Company, under this system, has installed millions of dollars' worth of machinery in the factories of lessees scattered all over the country. It is obvious that the leases of these machines must contain provisions carefully providing for the use and care of the machines and assuring the lessor a fair return on its investment.

The following conditions must be borne in mind in considering the provisions required in the leases:—

B. Compensation for Machines being Based on Amount of Use, Lessee must Agree to Use.

The United Company cannot manufacture and invest its money in expensive machines and install them in the shoe manufacturer's factory, instruct operatives and keep the machines in repair, depending for its return upon a royalty based on the use of the machines, unless assured that they will be used if the shoe manufacturer has work for them to perform. If the lessee were under no obligation to use them the United Company might receive no return on its investment. Mr. WINSLOW testified:—

> "The leases as existing in 1899, and as issued practically up to the present time, gave the possession of the machinery and the right to use the patents embodied in that machinery to the lessee, either for the life of all the patents that were then embodied in the machines, or for seventeen years upon his keeping certain conditions. The payment to the owner of the patents in these leases was dependent entirely upon the use that was made of the machines. Experience of the companies who were leasing machines prior to 1899 had shown them that frequently their machines would be in the hands of the manufacturers and would not be used for one reason or another. The machinery companies had gone to the expense of teaching operatives, educating the manufacturer in the use of the machines, and were by the custom of the trade called upon to teach the operator at any time in the use of those machines. My own experience with the Lasting Machine Company had shown me that we might start and educate operatives on the machines two or three times, and then the machine would be stopped. Some method had to be adopted to properly protect the inter-

ests of the machinery company if it were to continue to lease machines" (R. Vol. 1, p. 443, lines 24–44).

C. Seasonal Character of Shoe Business Requires that Lessee Use Machines When He has Work.

The shoe manufacturer's business is seasonal; during three months of the year he will do twice to four times as much work as at other seasons. To enable him to do his work in his busy season the United Company must furnish him with an equipment having a capacity far in excess of his requirements during the greater part of the year. Mr. WINSLOW testified:—

> "The manufacturing of shoes is one that is divided into substantially two seasons. The manufacturer with an average production of a thousand pairs per day, in other words, who makes 300,000 pairs of shoes in the year, will ordinarily have to have a capacity to produce 600,000 pairs. His production in certain months will run at the rate of 2000 pairs per day, and in other months as low as 500 pairs per day, so that if he has the machines of our company—our entire income is dependent upon their use—we have to furnish him the equipment to make the 2000 pairs per day, although his total product only averages a thousand pairs per day. We furnish him that equipment for his maximum output, which is only used, the maximum, I am quite safe I think in saying, not over three months out of the twelve, and from that it runs down, varying according to the man's own particular business, to from twenty-five per cent. to fifty per cent" (R. Vol. 1, p. 444, lines 27–42).

It is obvious that if the shoe manufacturer, in order to provide for his maximum requirements during his comparatively short busy season, takes from the United Company a machinery equipment having a capacity in excess of his average or normal requirements, the United Company must be assured that such excess capacity taken by the shoe manufacturer be used when required. Otherwise, the United Company will furnish and the lessee will hold a machinery capacity which will not be used and for which the United Company will get no return.

D. Wholesale Price is Fair Both to United Company and to Shoe Manufacturers When its Machines are Used as a Team.

When a series of the United Company's principal machines, which are admittedly the best machines made and which have been developed and are adapted for use together, are used as a team or series and are repaired and cared for by the United Company and are thus maintained in an efficient operating condition so that no one of the team breaks down and stops the work on other machines, and when the operators are instructed in the proper use of the machines and operators are furnished the shoe manufacturer in case of necessity, each machine of the series can produce more shoes than it would produce if used with machines not so adapted for use together as a team and not so maintained and cared for. Furthermore, a series of machines can be cared for at less cost per machine than a single machine. As a result, when a shoe manufacturer desires to take the United Company's principal machines to be used together as a team or series the United Company can afford to charge a reduced or wholesale price, because it receives a larger return in royalties on each machine when so used and the cost of caring for each machine is less.

Mr. WINSLOW testified as follows in respect to the reasons for the increased productivity and efficiency of machines when used as a team:—

> "By limiting the use of one principal machine of the company to work which has been operated upon by other principal machines of the company, its use is confined to work done by machines with which we know that prompt and efficient service is furnished to keep that machine in proper condition to operate, and with operators who have been properly instructed in the operation of the machine at the expense of our company, and also with machines where new operators will be taught whenever they are needed. Now, of course, under those conditions we have a definite assurance as to the maintenance of the productivity of the machines and the quality of work that will be produced by those principal machines with which another principal machine is used" (R. Vol. 1, p. 857, lines 5–17).

E. United Company must have Right to Take Back its Machines if Lessees do not Act in Good Faith.

The United Company is dependent to a large extent upon its lessees for a correct statement of the number of shoes on which its machines operate and for a proper use of its machines.

The constituent companies which were combined into the United Company had 1,060 different lessees operating 1,079 factories (R. Vol. 1, p. 454, lines 21–23). The United Company in 1911 had 1,033 lessees operating 1,150 factories (R. Vol. 1, p. 454, line 45). An average of over 62 new concerns have started in the shoe manufacturing business in each year from 1900 to 1911, and in addition an average of over 22 new concerns have during that period succeeded old firms. 746 entirely new concerns engaged in business between March, 1900, and December 31, 1911 (Defs.' Ex. 223, R. Vol. 5, p. 390).

It is obvious that the United Company can have no assurance of the moral responsibility of many of its lessees. It is inevitable that some should act unfairly or dishonestly.

Furthermore, the United Company can have no assurance that many of its lessees if they violate their agreements for any period of time will be able to pay for any resulting damages which may occur. It is one of the virtues of the leasing system that it enables men having little capital and, therefore, necessarily small resources, to engage in the business.

Under these circumstances the United Company must have fairly broad rights to withdraw its machines if it finds or has reason to believe that its machines are not properly cared for, or that the amount due in royalties is incorrectly reported, or that the lessee is otherwise violating his agreements, or if it finds that owing to the use by the lessee of other machines of the same kind as those leased, the lessee is using the United Company's machines only occasionally or only during his busy season, or only on slow or difficult work, or on shoes which although made on the United Company's machines the lessee reports as made on the other machines, and that for any of these reasons the United Company is not receiving a fair return on its investment in the machines.

F. Extended Term Necessary for Both Lessee and United Company.

The lessee embarking in business desires an assurance that he may hold his machines for an extended term and the United Company requires an assurance that the lessee will use the machines for a sufficient length of time to afford a fair return on the investment.

G. The Provisions in the Leases Objected to by the United States Attempt to Provide for and Meet the Foregoing Conditions.

The District Court said (R. Vol. 1, p. 1187):—

> "The clauses objected to are all subordinate and auxiliary to maintaining rights which unquestionably belong to the defendant; to charge their own prices and to choose as customers those who will pay those prices.
>
> "The attack of the United States is not upon these rights, but upon the particular mode in which they have sought to exercise them. Other modes, such as the requirement of arbitrary payment for the full period of the patents, would escape all such attacks. *The attack arises from the attempt to adjust the payments to the amount of use which particular manufacturers may have for the patented inventions*" (italics ours).

In considering the leases it must also be borne in mind that their purpose and effect cannot be tested solely by an examination of the wording of the clauses. In a lease of a complicated set of shoe machinery, even more than in the lease of a house or business premises, it is impossible to specify exactly and definitely every event or circumstance which should give the lessor a right to interfere for his protection. It is essential that the lessor reserve certain general rights, which, if violated, justify him in cancelling the lease if he feels such action necessary for his protection. As we show below (*infra*, pp. 427–432), the actual practice of the United Company has been to treat its lessees with the utmost liberality. The record shows that the United Company has enforced its right

to cancel its leases in only five instances (apart from cases of insolvency) in each of which the lessee acted in flagrant disregard of the lessor's rights, and either used the United Company's machines without payment of any royalty at all, or abandoned their use entirely.

8. LEASE SYSTEM EMPLOYED BY THE CONSTITUENT COMPANIES PRIOR TO THE FORMATION OF THE UNITED COMPANY.

In order to understand the gradual growth of the lease system, the reasons necessitating the various provisions in the leases, and the reasons why the United Company upon its formation continued the system, and in order further to appreciate how slight were the changes made by the United Company in the system, it is necessary to consider carefully the lease system in use at the time the United Company was organized.

A. LEASES OF GOODYEAR COMPANY PRIOR TO 1899.

The Goodyear Shoe Machinery Company manufactured welt and turn sewing machines and outsole stitchers and sixteen auxiliary machines used in connection therewith. It also manufactured Ideal Lasting Machines developed and used for lasting women's welt shoes (R. Vol. 1, p. 468, lines 4–14; p. 624, line 31–p. 625, line 13; p. 626, line 36; p. 627, line 3).

(1) Lease of Goodyear Welt Set Prior to 1899 (P.'s Ex. 4, R. Vol. 3, p. 29).

The Goodyear Company leased its welt set, consisting of the Goodyear Welt and Turn Machine and the Goodyear Outsole Stitcher and thirteen auxiliary machines as a single set and for a single royalty.

It charged an initial payment of $300 for the Welt and Turn Shoe Machines and $300 for the Outsole Stitcher and also an initial payment for each auxiliary (R. Vol. 1, p. 469, lines 16–18). It also charged a net royalty of four cents a pair for each pair of men's shoes on which the machines or any of them were used, three cents for women's shoes and boys' shoes, and less amounts for youths', misses', and children's shoes (P.'s Ex. 4, pars. Third and Fifth, R. Vol. 3, pp. 32–33).

The lessee agreed that the machine should be used only in the manufacture of "Goodyear Welts," *i.e.*, welt shoes welted and outsole-stitched on Goodyear Welters and Stitchers and that he would "*not use or permit the use of said machines, or either or any of them, upon boots or shoes in the manufacture of which any sole or welt sewing machine not leased to him by the Lessor is employed*" (italics ours) (par. Sixth, P.'s Ex. 4, R. Vol. 3, pp. 33–34).

The lease ran until the expiration of every patent referred to in the schedule of patents, or any extensions or renewals of the same (P.'s Ex. 4, par. Ninth, (*c*), R. Vol. 3, p. 35). The lessor had the right to add improvements, and if any patented improvements were added, it was provided that the lease should be construed as though such patents were contained in the original schedule (P.'s Ex. 4, par. Second, R. Vol. 3, p. 32). In other words, if the lessor added patented improvements, which he had the right to do, the lease would be continued indefinitely.

The lease could be terminated upon breach of any conditions on the part of the lessee (P.'s Ex. 4, par. Ninth, (*b*), Vol. 3, pp. 34–35). The lessee agreed to keep the machines in working order at his own expense and to procure all parts for repairing the machines from the lessor (P.'s Ex. 4, par. First, R. Vol. 3, pp. 31–32).

(2) Lease of Goodyear Turn Set Prior to 1899 (P.'s Ex. 3, R. Vol. 3, p. 22).

The Goodyear Company leased its turn set consisting of the Goodyear Welt and Turn Shoe Machine and three auxiliary machines as a single set and for a single royalty. It

charged $300 as an initial payment for the turn machine, and likewise initial payments for the auxiliary machines (R. Vol. 1, p. 21, lines 16–18; p. 469, lines 16–18). It charged a net royalty of 1½ cents per pair for men's, boys', youths', and women's shoes, and 1 cent for children's and misses' shoes (P.'s Ex. 3, pars. Third and Fifth, R. Vol. 3, pp. 24–25).

The lessee agreed that the machine should be used only in the manufacture of Goodyear turns.

The lessee agreed not to use in his factory any machines for uniting the soles of turn shoes to their uppers which were not leased to him by the lessor (P.'s Ex. 3, par. Sixth, R. Vol. 3, pp. 25–26). *This clause, therefore, required an exclusive use of the Goodyear Company's turn machines.*

The lease ran for the same period as the lease of the welt set.

The lease could be terminated upon breach of any conditions (P.'s Ex. 3, par. Ninth, (*b*), R. Vol. 3, pp. 26–27).

The lessee agreed to keep the machines in working order at his own expense and to procure from the lessor all parts for repairing the machines (P.'s Ex. 3, par. First, R. Vol. 3, p. 23).

(3) Lease of Ideal Lasting Machines prior to 1899 (P.'s Ex. 5, R. Vol. 3, p. 37).

The Goodyear Company leased its Ideal Lasting Machine, together with the Rapid loose tackers used in connection therewith, for an initial payment of $300 (P.'s Ex. 5, Vol. 3, p. 44) and a net royalty of one-half a cent for each pair of shoes lasted (P.'s Ex. 5, par. Fifth, pp. 40–41).

The lessee agreed not to use the machines on shoes "partially or wholly completed by the aid of any sole- or welt-sewing machine not leased to him by the Lessor" and not to use any of the rapid tackers on shoes "which have been partially or wholly lasted by the aid of any lasting machine not leased to him by the Lessor" (italics ours) (P.'s Ex. 5, par. Fourth, R. Vol. 3, p. 40). It is to be noted that this provision constituted a Restricted Use Clause, limiting not only the use of the rapid tackers to the lasting machine or machines, but also limiting the use of the lasting machines to shoes on which the lessor's welter and stitcher were used.

The lessee agreed to buy of the lessor all tacks used in the loose tackers and hoppers (P.'s Ex. 5, par. First, R. Vol. 3, p. 39).

The lease, as in the case of the other leases of the Goodyear machines, was to continue until the expiration of any patents embodied therein, or any patents or improvements which might thereafter be embodied in the machine by the lessor at its option (P.'s Ex. 5, par Seventh, (*c*), and par. Second, R. Vol. 3, pp. 42, 39).

The lease could be terminated upon breach of any conditions (P.'s Ex. 5, par. Seventh, (*b*), R. Vol. 3, pp. 41–42). The lessee agreed to keep the machines in working order at his own expense, and to procure from the lessor all parts for repairing the machines (P.'s Ex. 5, par. First, R. Vol. 3, p. 39).

B. LEASES OF CONSOLIDATED COMPANY PRIOR TO 1899.

(1) Lease of McKay and Copeland Lasting Machine Prior to 1899 (P.'s Ex. 6, R. Vol. 3, p. 45).

This machine was used for lasting heavy-weight brogans and metallic fastened and pegged shoes (R. Vol. 1, p. 3, lines 20–22).

An initial payment of $695 was required and a royalty (P.'s Ex. 6, Art. 3, R. Vol. 3, pp. 48–50; R. Vol. 1, p. 454, lines 3–8).

The lease declared it the intention of the lessee to use the machines leased for lasting all the shoes made by him applicable to said machines and not to have the machines in his possession as a means of reducing the price of hand lasting, or to influence any trade in connection with any other lasting machines not made by the lessor. The lessee further agreed to "use said machines and accessories hereby licensed and leased for rental, lasting all of his shoes and boots to their full capacity, limited only to the demands of his business; and should the demands of his business require, he shall take the

license and lease of such additional machines and accessories as may be required to last all of his work, . . . " (P.'s Ex. 6, Art. 12, R. Vol. 3, pp. 54–55). *This clause required the use of the machines to their full capacity and also required the exclusive use of the lessor's machines of this character.*

The lease ran "until canceled by the Licensor for breach of condition or otherwise"; in other words, it ran so long as the machine was in existence unless the lessor saw fit to cancel (P.'s Ex. 6, Art 9, R. Vol. 3, p. 53).

The lessee agreed to buy of the lessor all spare parts for repairing the machines and also all string-nail, tack-strips, or other fastenings driven by any appliance for lasting all shoes lasted on the machines (P.'s Ex. 6, Art. 13, R. Vol. 3, p. 55). The right was reserved to cancel for breach of conditions (P.'s Ex. 6, Art. 9, R. Vol. 3, p. 53).

(2) Lease of Chase Lasting Machines Prior to 1899 (P.'s Ex. 7, R. Vol. 3, p. 57).

This machine, and the hand tackers used therewith, was used for lasting men's welts and was leased without initial payment for a royalty of one cent per pair for ~~Goodyear~~ shoes, with certain provisions for abatement (R. Vol. 1, p. 397, lines 39–40 P.'s Ex. 7, par. Third, R Vol. 3, pp. 60–62). If the lessor so requested, the lessee was required to pay not less than $10 per month, except when his factory was not running. If the machines were unused for four months the lessor could cancel the lease (P.'s Ex. 7, pars. Third and Eighth, R. Vol. 3, pp. 60–61, 63).

The lease declared it the intention of the lessee to use the machines leased for lasting all the shoes made by him applicable to said machines and not to have them in his possession as a means of reducing the price of hand lasting or of controlling hand lasters or of influencing a trade with the owners of any other lasting machines or reducing the price thereof. The lessee agreed to "use such machines hereby loaned for lasting all of his shoes and boots, to their full capacity, limited only by the demands of his business; and should the demands of his business require, he shall take and pay for the loan of such

additional machines as may be required to do all his work" (P.'s Ex. 7, par. Twelfth, R. Vol. 3, p. 65). *This clause required the use of the machines to their full capacity and also required the exclusive use of the lessor's machines of this character.*

The lease ran until the expiration of the Letters Patent which the lessee was licensed to use, or which were or thereafter might be embodied in the machines (P.'s Ex. 7, par. Tenth, R. Vol. 3, p. 64). The lessor had the right to improve the machines (P.'s Ex. 7, par. Second, R. Vol. 3, p. 60). Thus the leases might run indefinitely.

The lessee agreed to buy all spare parts and all string-nail, tack-strips or other fastenings of the lessor (P.'s Ex. 7, par. Thirteenth, R. Vol. 3, pp. 65–66).

The lease might be cancelled for breach of conditions (P.'s Ex. 7, par. Ninth, R. Vol. 3, pp. 63–64).

(3) Lease of Consolidated Hand Method Lasting Machines (McKay) Prior to 1899 (P.'s Ex. 8, R. Vol. 3, p. 68; P.'s Ex. 9, R. Vol. 3, p. 74).

This machine was used for lasting McKay sewed shoes. There were two alternative forms of lease, one requiring an initial payment, the other no initial payment (R. Vol. 1, p. 3, lines 39–43; p. 399, lines 22–23).

Initial payment form (P.'s Ex. 8). This form required an initial payment of $300 for each machine and a royalty of one-half a cent a pair (P.'s Ex. 8, R. Vol. 3, pp. 69–70).

The lease ran until the expiration of all patents embodied in the machines or in any improvements thereafter attached thereto, which improvements the lessor had the right to make (P.'s Ex. 8, pars. Eighth and Sixth, R. Vol. 3, pp. 73, 71–72).

The lessee agreed to obtain all duplicate parts from the lessor (P.'s Ex. 8, par. Sixth, R. Vol. 3, p. 72). The right was reserved to terminate for breach of conditions (P.'s Ex. 8, par. Seventh, R. Vol. 3, p. 72).

Non-initial payment form (P.'s Ex. 9). This form required a royalty of five-eighths of a cent per pair, with a minimum of

$180 a year (P.'s Ex. 9, par. Third, R. Vol. 3, p. 77). If the machines were unused for four months the lease might be cancelled (P.'s Ex. 9, par. Eighth, R. Vol. 3, p. 79).

It was declared the intention of the lessee to use the machine for lasting all shoes made by him applicable to the machine, and the lessee agreed to use the machine "for lasting all of his boots and shoes to its full capacity, limited only by the demands of his business; and should the demands of his business require he shall take the license and lease of such additional machines as may be needed to do all his work" (P.'s Ex. 9, par. Twelfth, R. Vol. 3, pp. 80–81). *It therefore required a use of the leased machines to their full capacity and also required an exclusive use of machines of this kind.*

The lease ran until cancelled by the lessor for breach of condition or otherwise; that is, *it ran at the lessor's option so long as the machine was in existence* (P.'s Ex. 9, par. Ninth, R. Vol. 3, pp. 79–80).

The lessee agreed to obtain all duplicate parts from the lessor, and wire used in lasting in the machines (P.'s Ex. 9, par. Thirteenth, R. Vol. 3, p. 81). The right was reserved to terminate for breach of conditions (P.'s Ex. 9, R. Vol. 3, p. 76).

(4) Lease of Consolidated Hand Method Lasting Machine (Welt) Prior to 1899 (P.'s Ex. 10, R. Vol. 3, p. 82).

This is a machine which the Company had in an experimental stage in 1899. A lease had been prepared prior to the formation of the United Company.

This lease required no initial payment and charged a royalty of one cent per pair (R. Vol. 1, p. 4, lines 9–13; p. 398, lines 27–31; P.'s Ex. 10, par. Third, R. Vol. 3, p. 85).

The lease ran until cancelled by the lessor for breach of condition or otherwise (P.'s Ex. 10, par. Ninth, R. Vol. 3, p. 87). It was declared the intention of the lessee to use the machine for lasting all the shoes made by him applicable to such machine, and the lessee agreed to use the machine "for lasting all of his boots and shoes to its full capacity, limited only by the demands of his business; and should the demands of his busi-

ness require he shall take the license and lease of such additional machines as may be needed to do all his work" (P.'s Ex. 10, par. Twelfth, R. Vol. 3, pp. 88–89). *It therefore required a use of the leased machines to their full capacity, and also required an exclusive use of machines of this kind.*

The lessee was required to obtain all spare parts of the lessor and the lease could be cancelled for breach of condition (P.'s Ex. 10, par. Thirteenth, R. Vol. 3, p. 89; par. Ninth, R. Vol. 3, p. 87).

(5) Lease of Davey Pegging Machine Prior to 1899 (P.'s Ex. 13, R. Vol. 3, p. 113).

A net royalty of three-fourths of a cent and an initial payment of $100 was charged (P.'s Ex. 13, par. Third, R. Vol. 3, p. 116; p. 114).

The lessee agreed that "he will do all the pegging of boots and shoes manufactured by him upon the said machines of the Lessor which are leased hereby, and that in case he has too much work for the machines hereby leased, he will take from the Lessor, under this lease or a similar lease containing the same terms and provisions, sufficient additional machines to perform the work" (P.'s Ex. 13, par. Fifth, R. Vol. 3, p. 118). *It therefore required an exclusive use of the machines.*

The lease continued until the expiration of Letters Patent embodied in the machine or on any inventions thereafter added to the machine, which improvements the lessor had the right to make (P.'s Ex. 13, pars. Tenth and Second, R. Vol. 3, pp. 120, 116). All spare parts were to be purchased from the lessor and the lease might be terminated for breach of conditions (P.'s Ex. 13, pars. First and Ninth, R. Vol. 3, pp. 115–16, 119).

C. LEASES OF McKAY COMPANY PRIOR TO 1899.

(1) Lease of Heeling Machines Prior to 1899 (P.'s Ex. 11, R. Vol. 3, p. 90).

A net royalty of one-fourth of a cent was charged and this charge extended to all heels made by or for the lessee, whether or not made by the lessor's machines (P.'s Ex. 11, par. Third, R. Vol. 3, pp. 97–98). The lessor reserved the right to cancel if the lessee "*provides himself with any other machine to do any part of the work which any of said Lessors' machines are capable of doing*" (italics ours) (P.'s Ex. 11, par. Eighth, R. Vol. 3, p. 100). The lease ran for seventeen years "and for such further time as may be covered by the term of any Letters Patent now or hereafter owned by the Lessors, and any inventions of which are contained in any of the 'machinery' hereby leased or which shall be added to or embodied in said 'machinery' or used in connection therewith" (P.'s Ex. 11, par. Eighth, R. Vol. 3, p. 100). The lessor had the right to add improvements. The lessee agreed to buy all spare parts from the lessor (P.'s Ex. 11, pars. Second and First, R. Vol. 3, p. 97).

The lease could be terminated for breach of conditions (P.'s Ex. 11, R. Vol. 3, p. 96).

(2) Lease of Metallic Machines Prior to 1899 (P.'s Ex. 12, R. Vol. 3, p. 103).

This lease required an initial payment. It provided that the lessee should pay 10 cents a pair for all shoes operated on unless he should purchase of the lessor all the material used in the machines for fastening the shoes, which the lease stated was to be sold "at prices much in excess of the cost to the Lessors, with the intent that such excess shall be the rent and license fee hereunder" (P.'s Ex. 12, par. Third, R. Vol. 3, p. 107). This was in lieu of other royalty. The lease, however, carried a rider eliminating the initial payment and

providing that the lessor had the right to terminate the lease whenever the lessee "*shall provide himself with any other machine to do any part of the work which said lessors' machines are, in the lessors' opinion, capable of doing*" (italics ours) (P.'s Ex. 12, Rider, R. Vol. 3, p. 112).

The lease ran until the expiration of all Letters Patent, embodied or thereafter embodied in the machines, by the lessor (P.'s Ex. 12, par. Ninth, R. Vol. 3, p. 110).

The lease carried a rider which provided the lessor might cancel if the lessee did not purchase all spare parts of the lessor (P.'s Ex. 12, Rider, R. Vol. 3, pp. 112–113, and par. Eighth, R. Vol. 3, p. 110).

9. SUMMARY OF LEASE SITUATION JUST PRIOR TO THE DATE OF THE FORMATION OF THE UNITED COMPANY.

A. General Summary of Provisions in Leases.

From the foregoing it will be seen that the system of leases of the constituent companies in effect at the date of the formation of the United Company incorporated the following provisions:

1. Machines could not be bought but were only leased.

2. When two or more machines were put out by the same company which were used on the same shoe, the machines were generally leased as a group. Thus the Goodyear Welter, Stitcher and auxiliaries were leased for a single royalty. The Welter and Stitcher were restricted to use together and the auxiliaries were restricted to use on shoes operated on by the Welter and Stitcher (P.'s Ex. 4, par. Sixth). The Tackers were leased with the Ideal Machine for a single royalty and restricted to use on shoes operated on by the Ideal Machine (P.'s Ex. 5, par. Fourth). The various heeling machines of the McKay Company were leased as a whole for a single royalty (P.'s Ex. 11). In other words, these leases contained the Auxiliary Restricted Use Clause. The Ideal Laster was restricted to use on shoes operated on by the Welter and

Stitcher, an instance of restricting a principal machine of one department to use with a principal machine of another department, *i.e.*, the Restricted Use Clause.

3. Many of the leases required the lessee to use the lessor's machines of the kind leased exclusively, that is, they contained a direct agreement to this effect, or contained the Additional Machinery Clause, which required the lessee to take additional machinery for all work which he had of the kind for which the machines were adapted (Goodyear Turn Set, P.'s Ex. 3, par. Sixth; McKay and Copeland Machine, P.'s Ex. 6, Art. 12; Chase Machine, P.'s Ex. 7, par. Twelfth; Consolidated Hand-method McKay Machine, P.'s Ex. 9, par. Twelfth; Consolidated Hand-method Welt Machine, P.'s Ex. 10, par. Twelfth; Pegging Machine, P.'s Ex. 13, par. Fifth).

4. The leases of the McKay Company contained the "Exclusive Use Cancellation Clause" which permitted the lessor to cancel the lease if the lessee provided himself with machines of the same kind as those leased to do his work (Metallic Machines, P.'s Ex. 12, Rider; Heeling Machine, P.'s Ex. 11, par. Eighth).

5. All of the leases ran for long and in most cases indefinite periods. In the case of the McKay and Copeland Machine, the non-initial lease of the Consolidated Hand-method McKay Machine and the Consolidated Hand-method Welt Machine, the lease ran until cancelled for breach of conditions; in other words, it ran for the life of the machine (P.'s Ex. 6, Art. 9; P.'s Ex. 9, par. Ninth; P.'s Ex. 10, par. Ninth).

In the case of the heeling machines the leases ran for seventeen years and for such further time as any patents embodied then or thereafter in the machines were in force (P.'s Ex. 11, par. Eighth). In all other cases the leases ran for the life of the patents then embodied, or which might thereafter be embodied in the machines.

6. Most of the leases of the Consolidated Company contained the Full Capacity Clause (P.'s Ex. 6, Art. 12; P.'s Ex. 7, par. Twelfth; P.'s Ex. 9, par. Twelfth; P.'s Ex. 10, par. Twelfth).

7. All the leases permitted the lessor to cancel for breach of conditions.

8. All the leases required the lessee to obtain extra or duplicate parts required on the machines from the lessor.

9. The Goodyear Company required an initial payment upon the installation of its machines to cover the cost of installation and instruction of operatives. The Consolidated Company required an initial payment for its McKay & Copeland Machine and on one form of lease for its Consolidated Hand-method McKay Machine, and no initial payment on its other leases. The McKay Company had required an initial payment, but in 1899 was considering a change, and was temporarily loaning machines without initial payment (R. Vol. 1, p. 4, line 42 *et seq.*).

B. Provisions by which the Constituent Companies Protected Themselves when Leasing Machines without Initial Payment.

Where the shoe machinery manufacturer as lessor installs his machinery in the factory of a lessee and instructs such lessee's operatives in the use of the machinery, the lessor to be paid by a royalty based on the amount the machinery is used, it is, of course, essential that the lessor be protected as to the amount of use in order to assure him an adequate return. He cannot afford to permit the lessee to keep the machinery idle or use it only on his difficult and slow work, or use it only at especially busy times, doing his work on other machines at other times; nor can he afford to permit the lessee to use the machine under such factory conditions that it cannot be determined how much the machine is actually used. Such protection is especially essential when no initial payment is required from the lessee. This protection was afforded in the leases of the constituent companies in various ways, some used in one lease and some in another. The following provisions are illustrations:—

(*a*) The lessee was required to use the machines to capacity, limited only by the demands of his business (P.'s Ex. 6, Art. 12; P.'s Ex. 7, par. Twelfth; P.'s Ex. 9, par Twelfth; P.'s Ex. 10, par. Twelfth).

(*b*) It was agreed that the lessor might cancel the lease if the machines were unused for a certain length of time (P.'s Ex. 7, par. Eighth; P.'s Ex. 9, par. Eighth).

(*c*) The lessor was permitted to cancel the leases of a certain type of machine if machines of that type were not used exclusively (P.'s Ex. 12, Rider; P.'s Ex. 11, par. Eighth).

(*d*) It was provided that the lessee should take additional machines if he had more work than the leased machines could do (P.'s Ex. 6, Art. 12; P.'s Ex. 7, par. Twelfth; P.'s Ex. 9, par. Twelfth; P.'s Ex. 10, par. Twelfth).

(*e*) It was provided that the lessee should pay at the royalty rate in respect to all shoes whether or not made on the lessor's machines (P.'s Ex. 11, par. Third).

(*f*) The lessee guaranteed a minimum royalty (P.'s Ex. 7, par. Third; P.'s Ex. 9, par. Third).

(*g*) The lessor was given the right to cancel the lease if the machine was not used to the extent of earning a certain royalty within a given time (P.'s Ex. 6, Art. 8).

(*h*) It was provided that the lessee should not hold the machines in his possession as a means of reducing the price of hand work or to influence a trade for other machines (P.'s Ex. 7, par. Twelfth; P.'s Ex. 9, par. Twelfth; P.'s Ex. 10, par. Twelfth).

Mr. Donham testified as follows with reference to the reasons for the introduction of certain of these clauses by the constituent companies upon the removal of the initial payments:—

> "Prior to the introduction of the non-initial payment leases, each time a lessee took a machine he had to pay down a certain amount of money, and he was not likely to do that unless he wanted the machine, but when machines were put out without initial payments the situation changed. The lessee then had no money in the machines and it was entirely the money of the lessor that was in them, and unless the lessor protected itself in some other way there was nothing to prevent a manufacturer from taking machines with no intention of using them—for example, simply to have them stand in his factory as a threat to his hand labor, to use as a means of trading for some other machine, or to use in case of an emergency.
>
> "So, when the constituent companies took off the initial payments before 1899, they simultaneously sought to pro-

tect themselves in several different ways against non-use or mis-use of the machines. Usually two or three different methods were adopted in the same lease. Provisions were inserted that the lessor might cancel the lease if the machines remained unused for a certain length of time; that he might cancel if they were not used to the extent of earning a certain amount of royalty within a certain time; that the lessee should pay a minimum guaranty in case the machines were not used enough to earn the amount of the guaranty; that the machines should be used for doing all of a certain kind of work which a lessee might have; that the machines should be used for a certain kind of work only. The full capacity clause was inserted; and provisions were inserted that, in case the lessee had more work than could be done by the machines under lease, he should take additional machines; and that if he did not do so, the lessor could cancel his lease and take out his machines. There were also agreements in some cases that the lessee would not introduce any machinery not obtained from the lessor for doing the same work as done by the lessor's machines, and there were various limitations as to the manner and method of using the machines; for instance, a provision that the lessee should not retain the machines for the purpose of controlling his hand operatives or negotiating trades with other companies.

"In my study of the lease situation prior to 1899, I find that in all cases when the companies began to offer machines without initial payments they sought in some or all of these ways to protect themselves against the non-use or mis-use of the machines" (R. Vol. 1, p. 24, line 22; p. 25, line 17).

10. THE UNITED COMPANY NECESSARILY CONTINUED THE LEASING SYSTEM.

Such was the system of leasing machines in effect when the United Company was organized. It had gradually developed since the very beginning of the shoe machinery industry. Its general acceptance proved it to be the method best adapted to the needs of both the shoe machinery manufacturer and the shoe manufacturer.

The United Company could not have changed the essentials of this system even had it so desired without throwing the entire shoe business of the country into confusion. It could not have recalled and cancelled the outstanding leases without the consent of the lessees, which it could not have obtained. As to all machines then outstanding it was obviously necessary to continue the system. The great majority of shoe manufacturers did business on a small scale and had comparatively little capital. They had been induced to enter the business by the offer of machines upon the lease system. Had the United Company refused to furnish additional machines on this basis, it would have seriously crippled many of these lessees and worked a great injustice. On the other hand, if it did continue to furnish machines on lease, it was essential that it continue the clauses which experience showed were necessary for the protection of the lessor.

Apart, then, from the fact that the United Company believed its lease system best adapted to the needs and conditions of the business, it found itself practically pledged to its continuance.

II. MODIFICATIONS BY UNITED COMPANY IN LEASES OF CONSTITUENT COMPANIES.

A. INTRODUCTORY STATEMENT.

The United Company made no modifications in the leases for more than a year after its formation, but continued to use the forms of leases employed by the constituent companies (R. Vol. 1, p. 438, lines 5–9). Thereafter from time to time it made modifications in its leases, either to make them consistent, or gradually from time to time as special conditions relating to the machines of a particular kind demanded.

In making modifications in its leases, outstanding leases were not disturbed; Mr. Donham testified:—

> "After the formation of the United Company that company did nothing whatever with reference to the outstanding leases under which machinery had been ob-

tained by manufacturers from the constituent companies. The manufacturers continued to hold their machines under the old leases so long as those leases continued to run. When the United Company adopted a new form of lease, it was offered to any lessees to take, if they desired. Old lessees had the privilege of changing to the new form if they wished to do so. But if the old lessees did not want the new leases they could remain undisturbed and enjoy their machines under the old forms of leases. A good many old leases issued by the constituent companies before the organization of the United Company are still outstanding" (R. Vol. 1, p. 19, line 40; p. 20, line 8).

The leases of the different constituent companies, as we have shown above, differed somewhat in their terms. Most of the modifications in the leases made by the United Company have relaxed restrictions rather than imposed additional restrictions.

An examination of the modifications of the leases of machines which had been put out by the constituent companies will show that the two principal changes made in these leases by the United Company were the adoption in 1900 of an alternative form of lease for Metallic Machines containing a restricted use clause restricting the use of the machines to use with the United Company's Goodyear Welter and Stitcher and Lasting Machines, and the adoption in 1904 of an alternative form of lease for Heeling Machines containing a restricted use clause restricting their use to use with the United Company's Goodyear Welter and Stitcher, Lasting, Pegging and Metallic Machines. These restricted use forms of lease were optional and lessees could obtain the use of these machines as before without these restrictions.

The adoption of these alternative restricted use leases occurred long after the formation of the United Company, and an examination of the conditions which called for their adoption shows conclusively that they were adopted for the sole purpose of giving lessees better terms.

B. ADOPTION OF RESTRICTED USE CLAUSE IN METALLIC MACHINE LEASES.

With respect to the adoption of the restricted use clause in the leases of metallic machines, Mr. WINSLOW testified as follows (R. Vol. 1, p. 438, line 5–p. 439, line 21, lines 31–38):—

"The first change made by the United Company in the method of marketing any of the machines which had been put out by the constituent companies prior to the organization of the United Company was the adoption of the new metallic lease of the United Company, about the middle of the year 1900.

"For a year or two before 1899 the McKay Company had been putting out its machines without any lease, and that practice was continued by the United Company up to the middle of the year 1900.

"At that time Mr. Charles H. Willson, who had been assistant to Mr. Brooks in the management of the metallic end of the McKay business, reported to me that the price of copper had been constantly advancing so that there was not a proper margin of profit in the sale of wire material used in the metallic machines, that he had called Mr. Brooks' attention to that fact just before our coming together, and that before 1899 he had prepared a list of advanced prices at which the material should be sold. He suggested to me that something should be done and that I should take the matter up.

"Great amounts of brass wire and nails are used in the metallic fastening machines, and the price of copper is the important factor in the cost of that material. We use spelter [brass], composed of two parts of copper and one of zinc.

"In January, 1898, copper was eleven cents a pound; in January, 1899, 12.8 cents per pound; in January, 1900, and in January, 1901, 17 cents per pound. During 1900 the lowest price was 16 cents in four months, 17 cents in three months, and from 16½ to 16¾ in four months. It averaged about 16½ cents a month.

"The old leases provided that the minimum amount of material for each metallic machine should be 400 pounds a year and a very substantial amount of that would be copper.

"This very considerable increase in the price of copper

was a very serious factor, because the prices of the material used in the metallic machines constituted the entire royalty received for the use and care of those machines, and the margin between the cost of the material to the company and the price at which it was sold to represent that royalty had been fixed years prior to 1899, when copper was very much below these prices. The increase from 11 cents to 16 cents, of course, all came out of the royalty, so that it was a very serious question. All the royalty we got was the profit on the material, and when the material increased in cost the royalty disappeared.

"In view of this situation we adopted a policy of limiting the use of those metallic machines to work that had been done on machines of some other department that paid us a royalty. We restricted the use of the machines to footwear which had been lasted and welted and stitched upon machines leased of the United Company. That policy was adopted about August, 1900.

"That is, we got our royalty indirectly. We did not increase the price of material furnished for the metallic machines nor did we increase the royalty on the machines to use with which we restricted the metallic machines.

"We also adopted, in February, 1901, an alternative independent form of lease by which the use of the metallic machines was not limited to use with the machines of any other department and under which the manufacturer paid ten per cent. more for his material than he did under the limited license form. This form of lease was the result of negotiation and agreement with the manufacturers.

"Both forms of leases were offered to every lessee of the United Company simultaneously and he made his choice.

. . . . . .

"Since that time manufacturers have had a chance to take the metallic machines upon either of these forms, or more lately on a lease with an initial payment which is not limited to use with machines of any other department. Accordingly manufacturers have more recently had three alternatives, although it has been the intention of the company to withdraw the ten per cent. form and substitute the initial payment lease in order that the price of material might be uniform to all lessees."

C. ADOPTION OF RESTRICTED USE CLAUSE IN HEELING MACHINE LEASES.

With respect to the adoption of the restricted use clause in the heeling machine leases Mr. WINSLOW testified as follows (R. Vol. 1, p. 440, line 16–p. 441, line 42):—

"There was no change in the method of marketing the heeling machines until the year 1904. As to the occasion for the change which was made in that year, in the early Spring of 1904, as a result of long consideration of the subject, we had started to get out a lease for the Goodyear machines and their auxiliaries, without requiring the payment of an initial price, as had always been the case up to that time. As there were a great many machines in that department, and the amount involved was very large, that matter received a great deal of consideration, and it was not until late in that year that such a lease was finally prepared, not in fact until months after we expected to have it ready. Having that in contemplation, we had decided that if we were to remove that source of income, give up that source of income for the company, that we should be entitled to receive from that factory a surety of a further income, so the heeling machines were limited by that lease to use with the Goodyear department machines and some other departments.

"That was in effect simultaneous with the taking off of the initial payment on the Goodyear machines, because during the year 1904, while we had under contemplation this lease and were working on it, we furnished to a large number of manufacturers the loan of Goodyear department machines, and my remembrance is that in the case of every machine that was placed out after July 1st in that year, 1904, the manufacturer was allowed to exercise his choice of taking them upon the non-initial form of lease when it was gotten out, or the initial payment.

"With reference to preserving an alternative form of heeling department lease, it has always been the policy of the company to maintain the right of the lessee to take a machine upon the preceding form of lease, if he cared to have it that way. There never has been a time when a lessee could not obtain the machines of any department upon an independent form of lease.

"The business reasons which led us to the adoption of the form of Goodyear lease without the payment of initial premium but accompanied by restrictive leases in the heeling department and the lasting department were as follows:

"The manufacture of Goodyear welt shoes required up to that time the investment of a very much larger amount of money for machinery and equipment than was required for any of the other types of shoes. This had resulted in the manufacture of welt shoes being limited to quite a large degree to those manufacturers who had a substantial amount of capital, but some of those manufacturers had seen their businesses grow so fast that they were embarrassed to find the money to add to their equipment. That was especially true as regards the auxiliary machines. Our company had spent a great many thousands of dollars to develop the auxiliary machines and believed that the use of all the auxiliary machines would produce a better shoe and that every manufacturer ought to have the benefit of them. They would facilitate the manufacture of a shoe, but it was a grave question with many of the manufacturers whether the improvements in quality or the little savings that could be made by the use of the auxiliary machines would warrant their investing their money in those machines in a fixed form rather than using it in their business, where they turned it over two or three times a year.

"Furthermore, the removal of initial payments would allow those who were entering into shoemaking, and all the other small manufacturers who were making other kinds of shoes, to equip their factories with a complete system for making Goodyear welt shoes so that they would be as well equipped as the largest and richest manufacturer in the country. The United Company believed that if those opportunities were offered its revenue and the manufacture of the Goodyear welt shoe would be very much increased. This of course required an investment by the United Company of a very large sum of money without any immediate return.

"I believed in the Goodyear shoe. I think there is no question in the minds of manufacturers, or of wearers who know the differences between shoes, that it is the best kind of footwear for any person to wear, and our endeavor was to bring that shoe within the reach of everyone."

D. SUMMARY OF MODIFICATIONS MADE BY THE UNITED COMPANY IN THE CONSTITUENT COMPANIES' LEASES.

(1) GENERAL SUMMARY OF MODIFICATIONS.

As we have stated, the modifications made by the United Company in the constituent companies' leases were for the purpose of making the leases consistent or to meet new or special conditions requiring a change. It should be very clearly understood that these modifications did not apply merely to machines of the exact type acquired from the constituent companies, but to entirely new machines or machines remodeled, improved, made vastly more efficient by the inventions of the experts of the United Company, to which had been added many new auxiliaries similarly invented and developed mostly for the purpose of facilitating the manufacture of the Goodyear shoe. The following is a summary of the modifications:—

1. The period of all the leases has been limited to seventeen years.

This was done to make the leases consistent and to make them run for a definite term. The employment of this definite term of seventeen years did not increase the term of the leases. Some of the leases of the constituent companies ran for the life of the machine; some ran for seventeen years and for such longer time as the patents embodied in the machines were in existence, and some ran for the life of the patents and for such further time as any patents then or thereafter embodied in the machines were in existence.

2. The Additional Machinery Clause, employed in a number of the leases of the constituent companies, requiring the lessee to take additional machines from the lessor for additional work, thus requiring the lessee to use machines of the kind leased exclusively, was eliminated from all leases in or before 1907. The Exclusive Use Cancellation Clause, that is, a clause permitting the lessor to cancel leases of its machines of

the particular kind covered by the lease, if the lessee supplied himself with other machines of the same kind to do his work, which clause had been used by the McKay Company prior to the organization of the United Company, was substituted for the Additional Machinery Clause and inserted in most of the leases of royalty paying machines. By this clause the lessee was under no obligation to use the machines of the kind used exclusively. An option was reserved to the lessor to cancel if other machines of the same kind were used.

If the Additional Machinery Clause which had been used by the constituent companies closed the door to competitors, the Exclusive Use Cancellation Clause which the United Company substituted for it clearly opened the door to competition.

3. The Full Capacity Clause requiring the use of the machines leased to their full capacity, so far as the lessee had work which they could perform, which was employed in certain of the leases of the constituent companies, was continued by the United Company and made to apply to such of its machines as are used to measure the amount of work done and royalty to be paid.

4. The Restricted Use Clause was employed in alternative forms of leases for certain kinds of machines limiting their use to use on shoes operated on also by one or more other kinds of machines leased from the United Company.

This is the provision most strenuously attacked by the United States. It was employed prior to the formation of the United Company by the Goodyear Company, which restricted the use of its lasting machines on welted shoes to use on shoes operated on by the welter and stitcher (*supra*, p. 261).

This clause, as we have explained, offers a wholesale rate to those lessees who desire to use two or more of the lessor's machines of different departments together.

In every instance where a lease of this kind restricting the use of the machines to use with machines of other departments is offered, an alternative form of lease is also offered in which the same or a smaller initial payment than that formerly required by the constituent companies is charged and such restriction is omitted. These initial payment forms of lease without the Restricted Use Clause are as favorable or more

favorable than the leases offered by the constituent companies prior to the formation of the United Company.

5. The United Company has adopted the Cancellation for Breach Clause in its new leases, permitting it to cancel all leases with the lessee for violation of any condition expressed by the lease to be obligatory upon the lessee. This merely permits the United Company to sever relations with a lessee who violates his agreements. Prior to the organization of the United Company the constituent companies in general leased their machines on a single lease, adding to the old lease the numbers of the machines leased after the first one, so a single cancellation clause gave them the right in case of necessity to sever relations with a lessee. The United Company practically makes a separate lease for each machine so that the effect of its Cancellation for Breach Clause is practically the same as the effect of the cancellation clause in the leases of the constituent companies.

(2) MODIFICATIONS IN LEASES OF GOODYEAR MACHINES.

The United Company made no changes in the Goodyear Machinery leases until December, 1900, a year and nine months after its organization (R. Vol. 1, p. 7, lines 19–23).

The lease then adopted (P.'s Ex. 23, R. Vol. 3, p. 204) contained in the fourth clause (R. Vol. 3, p. 207) the same restrictions upon the use of the machines as was contained in the former Goodyear Company lease (P.'s Ex. 4, par. Sixth, R. Vol. 3, p. 33; for description of this lease see also *supra*, pp. 259–260). This new form of lease was made applicable both to the welt set and the turn set of machines; the Goodyear Company had used different leases for the two sets of machines (R. Vol. 1, p. 7, lines 23–26).

In the new lease the United Company omitted the clause previously contained in the turn set lease (P.'s Ex. 3) by which the lessee agreed in Clause Sixth not to use in its factory any sewing machines not leased from the lessor and substituted the Exclusive Use Cancellation Clause which merely gives the

lessor an option to cancel if its machines of this particular kind are not used exclusively (P.'s Ex. 23, par. Seven, R. Vol. 3, p. 209). The royalty on turn shoes was reduced 50 per cent., from a net price of 1½ cents for women's shoes to ¾ of a cent (P.'s Ex. 23, R. Vol. 3, p. 207).

The principal changes then were the reduction of the royalty on the turn machines and the elimination of the agreement in the turn lease that the machines be used exclusively.

No further change was made until January 1, 1905. In the fall of 1904 the United Company determined to offer an optional form of lease for its Goodyear set without the initial payments. The initial payment theretofore charged was $300 for the welt and turn machine and $300 for the stitcher (R. Vol. 1, p. 21, lines 10–12). The initial payments on the auxiliary machines ran as high as $500 for the more important machines (Defs.' Ex. 230A, R. Vol. 5, p. 443). It had been one of the purposes in forming the United Company to reduce if possible the cost of installing Goodyear machines and thus to extend their use (R. Vol. 1, p. 407, lines 22–30). January 1, 1905, a new form of lease without initial payment was put out (R. Vol. 1, p. 7, lines 36–41). Two forms of lease were provided, one for the sewing machines, namely the welter and stitcher, and one for the auxiliary machines (P.'s Ex. 24, R. Vol. 3, p. 214; P.'s Ex. 25, R. Vol. 3, p. 226).

In these new forms no change was made in the restrictions imposed on the use of the machines. As in the case of the old Goodyear leases the welter and stitcher were to be used together and the auxiliary machines were limited to use with the welter and stitcher. To compensate for the removal of the initial payment the Full Capacity Clause was inserted, but it was made applicable only to the welter and stitcher, which are the two machines which record the amount of use (P.'s Ex. 24). The lessee agreed to pay royalty on all welted and turn shoes manufactured by him by the aid of machinery (P.'s Ex. 24, par. Six, R. Vol. 3, p. 218). A small minimum payment was guaranteed and a payment upon the return of the machine was provided for amounting to only one-half of the initial payment previously demanded.

In the lease of auxiliary machines a small annual rental for each machine was substituted for the initial payment (P.'s

Ex. 25). This annual rental was very small compared with the initial payment previously required (Defs.' Ex. 230A, R. Vol. 5, p. 443). It was required so that a lessee should not, because they cost him nothing, take and hold auxiliary machines on which he paid no royalty, which were not needed by him.

The United Company continued to put out an initial payment form of lease (P.'s Ex. 26, R. Vol. 3, p. 241) which contained a full capacity clause, but otherwise was substantially the same as the form adopted in 1900 which followed the old Goodyear form of lease. The lessee, therefore, who chose to make the initial payments which had been required by the Goodyear Company and the United Company theretofore, could just as before get machines on the same terms previously asked by the Goodyear Company.

As Mr. WINSLOW testified:—

> "Both forms of Goodyear department leases, the old initial premium form and the non-initial premium form, have been continued as alternatives up to the present day at the choice of the manufacturer.
>
> "The difference between these leases, other than the initial premium, is that under the non-initial form the lessee paid royalty on all shoes welted or stitched in his factory, while on the initial form he paid royalty on all shoes welted or stitched on the leased machines" (R. Vol. 1, p. 442, lines 4–12).

In addition to these modifications in the regular form of leases various riders have from time to time been adopted to meet the wishes of lessees having special conditions to meet or special uses to which they wished to put the machine (Defs.' Exs. 278–279–280–281–283–284–285–286–287–288–289–290–291–292–293–294, R. Vol. 5, pp. 777–94). For example, Defendants' Exhibit 278 permits the auxiliary machines of the Goodyear Department to be used upon classes of footwear other than Goodyear welt shoes. (For an explanation of these riders see R. Vol. 1, pp. 822–5.) When any such rider was executed for one lessee it was immediately made available to any lessee who wished it (R. Vol. 1, p. 823, lines 7–16).

Mr. DONHAM testified:—

"Before the formation of the United Company the Goodyear Company charged an initial payment of $300 each on the welter and the stitcher. That sum has never been increased by the United Company. Wherever an initial payment has been charged by the United Company on the welter and the stitcher it has remained the same; but in 1905 the United Company offered those machines without that initial payment. The royalty charged by the Goodyear Company, before the United Company was formed, was the same as to-day. It has never been increased, but in the meantime both the welter and the stitcher have been very much improved, the auxiliary machines which the Goodyear Company had have been improved, and the United Company has introduced many additional auxiliary machines, all for the same royalty.

"In Plaintiff's Exhibit 25, the form of lease for Goodyear auxiliary machines, the figures in column 2 of the schedule are the small annual rentals paid for the machines against which they are set, when the machines are taken without initial payment. Otherwise there is no charge whatsoever for the use of those machines, but they are limited to use with the welting and stitching machines, in respect to which there is a royalty charge. That royalty charge for the principal machines is the same whether the lessee has the auxiliary machines or not.

"When the United Company was formed there were 16 or 17 auxiliary machines. The number has been increased, and now there are about 30 auxiliary machines. Those are all furnished to lessees of the welter and stitcher in the same way that the original 16 or 17 machines were furnished, without increase in the royalty and for a similar nominal charge.

"The United Company has reduced the royalty charged by the Goodyear Company for the use of its machines in making turn shoes, so that it is now only fifty per cent. of the royalty which was charged by the Goodyear Company" (R. Vol. 1, p. 21, lines 10–42).

The result of the modifications in the Goodyear leases has been an enormous saving to shoe manufacturers. In the first place, the lessee can get his machines without an initial payment. In the second place, the royalty on turn shoes has been reduced 50 per cent. In the third place, the lessee is given for the same royalty previously charged on welt shoes

and one-half the royalty previously charged on turn shoes a vastly improved welter and stitcher and much improved auxiliary machines, and, due to the development and acquisition of new auxiliary machines the lessee is also offered for this same royalty 35 welt auxiliary machines instead of 13 welt auxiliary machines furnished in 1899, and 9 turn auxiliary machines instead of 3 turn auxiliary machines offered in 1899 (Defs.' Exs. 242–243–244–245, R. Vol. 5, pp. 681–3). In view of the charge of the petition that the defendants designed "to enhance the cost of said machines to users thereof" (R. Vol. 1, p. 997) the foregoing illustration of the reduction in cost to users of the machines is illuminating.

The elimination of the initial payments has enabled many shoe manufacturers of small capital to manufacture Goodyear welt and Goodyear turn shoes.

Furthermore, the history of these Goodyear leases refutes completely the charge that the defendants planned to "refuse to sell or lease any of the essential machines to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery of whatever kind," which is the charge on which the petition is founded (R. Vol. 1, p. 994).

The Goodyear Welter and Stitcher are as important as any machines produced by the United Company. Chapman, the patent expert for the United States, declared them to be the only essential machines for making a welt shoe (R. Vol. 2, p. 2794). The lessee of the Goodyear welter and stitcher, however, is not obligated to use any other machinery whatsoever. He is not even required by the leases to use Goodyear machinery exclusively. The clause contained in the old Goodyear Turn lease requiring the exclusive use of the lessor's turn machinery was eliminated in 1900, showing conclusively that the United Company did not plan to require an exclusive use of its machines by the adoption of new clauses in its leases as charged in the petition. The Goodyear auxiliary machines are limited to use with the welter and stitcher, but this clause was in the old Goodyear leases, and the lessee can use with the welter and stitcher any auxiliary machines obtained from others that he chooses. The Exclusive Use Cancellation Clause is applicable only to the use of the welter and stitcher; the United Company has no option to cancel its leases of its

Goodyear Machines if auxiliary machines obtained from others are used. No Restricted Use Clause has been inserted in this lease. A lessee may obtain and use Goodyear machines without using any of the 250 or more other machines manufactured by the United Company.

(3) MODIFICATIONS IN LEASES OF LASTING MACHINES.

(a) Lease of Ideal Lasting Machine.

The United Company made no change in the lease of the Ideal Lasting Machine until August, 1901. It then put out a new form which substantially followed the old Goodyear form (R. Vol. 1, p. 6, lines 22–29). (Goodyear Company's form P.'s Ex. 5, R. Vol. 3, p. 37; *supra*, pp. 261–262; new form P.'s Ex. 18, R. Vol. 3, p. 154.) As in the old form the use of the machine was restricted to use on shoes operated on by the Goodyear Welter and Stitcher, and the auxiliaries were restricted to use with the principal machine. Under the new form the royalty and initial payment remained the same. The lease contained the Full Capacity Clause and the Exclusive Use Cancellation Clause. The clause in the former lease requiring the lessee to purchase from the lessor all tacks used in the loose tackers was omitted.

No other lease of Ideal machines has been put out (R. Vol. 1, p. 6, lines 28–9). It is to be noted that the United Company inserted no new provision obligating the lessee to use any other machines or requiring the lessee to use its lasting machines exclusively.

On the introduction of the new No. 5 laster the Ideal machine became practically obsolete (R. Vol. 1, p. 971, lines 5–8).

(b) Lease of McKay and Copeland Lasting Machine.

The form of lease used by the Consolidated Company (P.'s Ex. 6, R. Vol. 3, p. 45; see also, for description of this lease, *supra*, pp. 262–263) continued to be the only form used until

August, 1903, four and one-half years after the formation of the United Company (R. Vol. 1, p. 6, lines 38–39). The United Company then put out an additional form (P.'s Ex. 20, R. Vol. 3, p. 172). This lease reduced the initial payment previously required from $695 to $500 or less (R. Vol. 1, p. 454, lines 3–8) and contained a Restricted Use Clause limiting the use of the machine to use with the United Company's welter, stitcher, pegger, metallic and heeling machines. It continued the Full Capacity Clause which was in the old form of lease. It omitted, however, the Additional Machinery Clause and instead inserted the Exclusive Use Cancellation Clause. The elimination of the Additional Machinery Clause eliminated the requirement of exclusive use; the insertion of the Restricted Use Clause was coincident with the reduction of the initial payment. The new form of lease was an alternative form, and any lessee could still obtain the old form if he desired it (R. Vol. 1, p. 852, lines 5–21).

These machines were used to a comparatively small and continually decreasing extent (R. Vol. 1, p. 454, lines 8–9).

(c) Lease of Chase Lasting Machine.

The form of lease used by the Consolidated Company (P.'s Ex. 7, R. Vol. 3, p. 57; see also, for description of this lease, *supra*, pp. 263–264) continued to be the only form used until June, 1901, when an additional form was adopted by the United Company (R. Vol. 1, p. 6, lines 32–35) (P.'s Ex. 19, R. Vol. 3, p. 163). The new form contained a Restricted Use Clause restricting the use to use with welting, stitching, and metallic fastening machines leased from the United Company. The Additional Machinery Clause was omitted and the Exclusive Use Clause substituted.

This new form was an alternative form, and the former lease without the Restricted Use Clause could be had by any lessee who desired it (R. Vol. 1, p. 543, lines 17–18). On the introduction of the new No. 5 Laster the Chase machine became practically obsolete (R. Vol. 1, p. 971, lines 5–8).

(d) Lease of Consolidated Hand Method McKay Lasting Machine.

The Consolidated Company had two forms of lease for this machine, one requiring an initial payment of $300 and a net royalty of ½ cent per pair (P.'s Ex. 8, R. Vol. 3, p. 68), the other requiring no initial payment and a net royalty of ⅝ cent and containing the Full Capacity Clause and the Additional Machinery Clause thus requiring the exclusive use of the machines (P.'s Ex. 9, R. Vol. 3, p. 74; see also, for description of these leases, *supra*, pp. 264-265)

These forms were continued until the end of 1900 (R. Vol. 1, p. 5, lines 28–33). The United Company then adopted two forms of lease. It adopted an initial payment form (P.'s Ex. 14, R. Vol. 3, p. 121) in which $300 initial payment was required and ½ cent net royalty (R. Vol. 1, p. 6, lines 2–5). This form contained the Full Capacity Clause and the Exclusive Use Cancellation Clause. It contained no Restricted Use Clause. The United Company also adopted a non-initial payment form (P.'s Ex. 16, R. Vol. 3, p. 137) requiring no initial payment, a net royalty of ⅝ cent, and in addition to the clauses contained in the initial form a Restricted Use Clause limiting the use of the machines to use with metallic fastening and Goodyear sewing machines leased from the United Company.

As to this lease, Mr. Winslow testified that the restriction as to use with Goodyear sewing machines was of no effect, as the machine was adapted for use only on McKay work on which Goodyear machines were not used. It was only inserted in the leases so that if the machines were remodeled to do welt work, they would be restricted like the welt lasting machines under Plaintiff's Exhibit 15 (R. Vol. 1, p. 540, lines 24–34).

(e) Lease of Hand Method Welt Laster.

This machine in 1899 was not perfected commercially. It was offered by the Consolidated Company on a form of lease with the Full Capacity Clause and the Additional Machinery

Clause and a royalty of one cent per pair (P.'s Ex. 10, R. Vol. 3, p. 82; see also, for description of this lease, *supra*, pp. 265-266).

This form was continued by the United Company until December, 1900, when it adopted a non-initial payment form (R. Vol. 1, p. 6, lines 5–9) which reduced the royalty from one cent to $\frac{5}{8}$ of a cent per pair, which continued the Full Capacity Clause, but eliminated the Additional Machinery Clause and substituted the Exclusive Use Cancellation Clause, and which contained the Restricted Use Clause restricting the use to use with Goodyear sewing machines (P.'s Ex. 15, R. Vol. 3, p. 129). In other words, the agreement to use the machines exclusively was eliminated, the royalty was reduced, and a Restricted Use Clause substituted. The United Company later adopted another alternative form requiring an initial payment of $300, a net royalty of $\frac{5}{8}$ of a cent, but which contained no Restricted Use Clause (P.'s Ex. 17, R. Vol. 3, p. 145; R. Vol. 1, p. 6, lines 15–21).

(4) MODIFICATIONS IN LEASES OF HEELING MACHINES.

The lease of heeling machines put out by the McKay Company required a net royalty of $\frac{1}{4}$ cent and contained an Exclusive Use Cancellation Clause (P.'s Ex. 11, R. Vol. 3, p. 90; see also, for description of this lease, *supra*, p. 267).

The United Company made no change in this lease until January, 1900 (R. Vol. 1, p. 9, lines 23–24). At that time the United Company adopted an additional form of lease, continuing the same royalty and containing the Full Capacity Clause, and the Additional Machinery Clause (P.'s Ex. 27, R. Vol. 3, p. 254). In 1904 (R. Vol. 1, p. 9, lines 29–32) it adopted for the first time a form of lease containing a Restricted Use Clause limiting the use of the machines to use with Goodyear sewing machines, lasting, pegging, and metallic machines leased from the lessor (P.'s Ex. 28, R. Vol. 3, p. 261). No initial payment was required. The Additional Machinery Clause was eliminated. After the adoption of this form the United Company furnished its heeling ma-

chines, which had been much developed and improved since 1899, with an initial payment, and without the Restricted Use Clause, by attaching a rider to Exhibit 28 inserting the initial payment and striking out the Restricted Use Clause (R. Vol. 1, p. 9, line 38–p. 10, line 23).

The reason for the insertion of the Restricted Use Clause in 1904, was, as we have explained above (*supra*, pp. 277–278), that at that time the United Company determined to adopt the non-initial payment form of Goodyear lease, thus depriving itself of a large cash initial payment. This it could afford to do only if economies were effected, and added efficiency and productivity obtained in some other ways. For this reason the heeling machines when taken on the non-initial payment form of lease were restricted to use with the welter and stitcher, thus reducing the cost of furnishing service for the group, and making the use of the group more efficient, and productive of greater royalties, and thus compensating in part for the removal of the initial payments previously charged for the welter and stitcher (R. Vol. 1, p. 440, line 16 *et seq.*).

(5) MODIFICATIONS IN LEASES OF METALLIC MACHINES.

Prior to 1899 this machinery was put out on a lease requiring the lessee to purchase all metallic material used in the machine from the lessor or pay a royalty of ten cents a pair on the shoes operated on. No initial payment was required, but the lease contained the Exclusive Use Cancellation Clause (P.'s Ex. 12, R. Vol. 3, p. 103; see also, for description of this lease, *supra*, pp. 267–268). A short time prior to 1899 the McKay Company had discontinued the use of this lease and had been temporarily putting out its machines without leases pending the adoption of the new form. This practice was continued by the United Company up to March, 1900 (R. Vol. 1, p. 438, lines 10–13). In March, 1900, the United Company adopted the form of lease requiring no initial payment, containing the Full Capacity Clause and the Additional Machinery Clause, but containing no Restricted Use Clause and no

Exclusive Use Cancellation Clause (P.'s Ex. 29, R. Vol. 3, p. 272; R. Vol. 1, p. 10, lines 24–28).

In June, 1900, a lease containing a Restricted Use Clause was adopted restricting the use of the metallic machines to use with lasting machines, and in the case of welts or turns with a welter and stitcher, obtained from the lessor (P.'s Ex. 30, R. Vol. 3, p. 278). The Additional Machinery Clause was eliminated and a clause was substituted permitting the lessor to cancel if the lessee did not take additional machinery. The entire return to the United Company on its metallic machines came from the use of fastening materials made largely of copper which the lessee used in the machine and was required to purchase from the lessor. Copper had increased so much in price that at the price charged by the United Company for the materials it did not receive a fair royalty on its machines. Instead of increasing the price of the materials it restricted the machines to use with the welter and stitcher and lasting machines, thus obtaining an indirect royalty through the royalties received on these other machines The reasons for so doing are fully explained above (*supra*, pp. 275–276).

Shortly afterwards, in March, 1901 (R. Vol. 1, p. 10, line 40–p. 11, line 2), the United Company adopted a form requiring no initial payment and containing no Restricted Use Clause, in which form it reserved the right to charge 10 per cent. more for fastening material than was charged under the lease containing the Restricted Use Clause (P.'s Ex. 31, R. Vol. 3, p. 287). It also adopted a rider, which it attached to the Restricted Use form of lease (P.'s Ex. 30), eliminating the Restricted Use Clause and substituting an initial payment (P.'s Ex. 32, R. Vol. 3, p. 297; see also R. Vol. 1, p. 11, lines 5–17). A lease with this rider incorporated was drawn up in 1911 (P.'s Ex. 33, R. Vol. 3, p. 307; R. Vol. 1, p. 11, lines 18–20). A lessee of metallic machinery has, therefore, been at all times since 1901 able to take a non-initial payment form of lease containing the Restricted Use Clause or a lease without the Restricted Use Clause under which he either paid not in excess of 10 per cent. more for material or, at his option, paid an initial premium.

The lease adopted in March, 1901, without the Restricted

Use Clause was the result of negotiations with the shoe manufacturers (R. Vol. 1, p. 439, lines 13–19), who acted through the New England Manufacturers' Association (R. Vol. 1, p. 635, lines 18–42). Plaintiff's Exhibit 31 was agreed upon as satisfactory in every respect to the shoe manufacturers (R. Vol. 1, p. 635, lines 35–38). It was agreed that a lessee could change his lease from the form containing the Restricted Use Clause (P.'s Ex. 30) to the form without the Restricted Use Clause (P.'s Ex. 31) at any time prior to February 1, 1902 (R. Vol. 1, p. 663). The United Company further stated its intention to offer both leases ndefinitely after February 1, 1902 (R. Vol. 1, p. 663, lines 24–26) which intention was carried out (R. Vol. 1, p. 664, lines 1–4). Most shoe manufacturers took the form of lease containing the Restricted Use Clause (R. Vol. 1, p. 664, lines 4–8).

(6) MODIFICATION IN LEASE OF DAVEY PEGGING MACHINE.

The lease of the Davey Pegging Machine Company, at the time of the formation of the United Company, required an initial payment of $100, required the lessee to do all his pegging on the leased machines, and contained the Additional Machinery Clause (P.'s Ex. 13, R. Vol. 3, p. 113; see also, for description of this lease, *supra*, p. 266). This lease was used by the United Company until 1901 (R. Vol. 1, p. 14, lines 36–37), when the United Company adopted a form of lease which eliminated the initial payment, and which also eliminated the Additional Machinery Clause, *i.e.*, the agreement to use exclusively (P.'s Ex. 45, R. Vol. 3, p. 413). It contained the Full Capacity Clause and the Exclusive Use Cancellation Clause and also a Restricted Use Clause limiting the use of the machine in connection with the United Company's lasting and metallic machines. It also adopted an initial payment form of lease (R. Vol. 1, p. 14, lines 43–45) which contained no Restricted Use Clause (P.'s Ex. 46, R. Vol. 3, p. 422).

Here again the Restricted Use Clause was inserted upon the removal of the initial payment, and the old form of lease

without the Restricted Use Clause was continued as an alternative. In this case also the Additional Machinery Clause, or agreement to use exclusively, was eliminated.

E. LEASES ADOPTED BY THE UNITED COMPANY FOR NEW MACHINES.

Many new machines, as we have stated, especially in the Goodyear Department, which were auxiliary to principal machines already in use, were added to the line of auxiliary machines already leased without charging any additional royalty and were leased under the existing forms of lease.

In the case of other machines of new types which were developed by the United Company new leases were necessarily adopted which were substantially similar to the forms of lease in use at the time. In the case of all important machines two alternative forms were adopted. In one form no initial payment was charged and there was a Restricted Use Clause restricting the use to use in connection with machines of one or more of the following groups, namely, Goodyear sewing machines (*i.e.*, the Welter and Stitcher), lasting machines, metallic machines, and in certain cases pegging and heeling machines, and in one instance pulling-over machines. In the other form of lease an initial payment was charged and the Restricted Use Clause was omitted. In the case of most of the General Department machines the alternative was the right to purchase, the machines being sold outright.

(1) Pulling-over Machine Leases.

The pulling-over machines were invented and developed by the United Company and the first lease put out about 1902 (R. Vol. 1, p. 11, lines 37–40). This first form of lease (P.'s Ex. 36, R. Vol. 3, p. 331) contained the Full Capacity Clause, the Additional Machinery Clause, and a Restricted Use Clause limiting the use of the machine in connection with the welter, stitcher, lasting, metallic fastening, pegging, and heeling machine of the United Company. By 1905 the United Com-

pany had developed a series of auxiliary machines, and a new lease was adopted (R. Vol. 1, p. 12, lines 9–13) which covered the principal machines and the auxiliary machines and limited the use of the auxiliary machines to use in connection with the principal machines and which contained the Exclusive Use Cancellation Clause (P.'s Ex. 37, R. Vol. 3, p. 339). In other respects it was substantially similar to the previous lease.

In 1907 a lease containing substantially the same terms was adopted, except that it eliminated the Additional Machinery Clause (Defs.' Ex. 345, R. Vol. 5, p. 958; see also R. Vol. 1, p. 980, line 43–p. 981, line 20). In 1909 a new form was adopted (R. Vol. 1, p. 12, line 23) which permitted the use of the auxiliary machines on shoes not operated on by the principal pulling-over machine and which contained the same Restricted Use Clause. It likewise omitted the Additional Machinery Clause (P.'s Ex. 38, R. Vol. 3, p. 350).

An alternative form of pulling-over lease requiring an initial payment and omitting the Restricted Use Clause was also offered lessees (P.'s Ex. 39, R. Vol. 3, p. 363).

(2) Clicking Machine Lease.

The Clicking Machine was invented and developed by the United Company about 1908 (R. Vol. 1, p. 14, lines 27–33). The lease adopted for this machine has never had a Restricted Use Clause limiting its use in connection with other groups of machines (P.'s Ex. 44, R. Vol. 3, p. 402). The lease provides that the lessee shall pay a certain sum in respect to all dies used on the machines. It further provides for a royalty payment when the machine is used on shoes lasted on machinery not leased from the United Company or welted or stitched on machinery not leased from the United Company. It contains the Exclusive Use Cancellation Clause.

(3) Eyeletting Machine Leases.

The United Company first developed and put out its eyeletting machines in 1902 (R. Vol. 2, pp. 2617–22; 2636).

The United Company adopted a form of eyeletting machine lease requiring an initial payment of $100 and containing no

Restricted Use Clause (P.'s Ex. 42, R. Vol. 3, p. 387; P.'s Ex. 173, R. Vol. 4, p. 1184). It also adopted a non-initial payment form of lease containing a Restricted Use Clause limiting the use in connection with the welter, stitcher, lasting, pegging, metallic fastening and heeling machines of the United Company (P.'s Ex. 43, R. Vol. 3, p. 394; P.'s Ex. 172, R. Vol. 4, p. 1176).

Neither lease contained the Exclusive Use Cancellation Clause. Both leases required as royalty the use of eyelets purchased from the lessor.

The Vulcan Foot-power Eyeletting Machine was put out for an initial payment of $15 and was never restricted to use with other machines and the lease covering it did not contain the Exclusive Use Cancellation Clause (R. Vol. 1, p. 28, lines 20–24; P.'s Ex. 174, R. Vol. 4, p. 1191).

(4) No. 5 Lasting Machine Leases.

The No. 5 Lasting Machine is a new type of lasting machine invented and developed by the United Company and first put out about 1908 (R. Vol. 2, p. 2378).

Two forms of lease were adopted for this machine,—one requiring an initial payment and containing no Restricted Use Clause restricting its use to use with other machines (P.'s Ex. 22, R. Vol. 3, p. 193); the other a restricted use form of lease requiring no initial payment and restricting the machine to use with the United Company's Goodyear Welter and Stitcher, pulling-over machines, and metallic machines (P.'s Ex. 21, R. Vol. 3, p. 182). Both forms of lease have the Exclusive Use Cancellation Clause.

(5) General Department Machine Leases.

The General Department machines, comprise over 170 different machines (Defs.' Ex. 227, R. Vol. 5, p. 425). The United Company's entire business in these machines has been developed by the United Company since its formation.

The General Department machines have at the option of the shoe manufacturer been either sold or leased. Since 1911 they have been only sold (R. Vol. 1, p. 12, line 37–p. 13, line

30). The leases of these machines required a small initial payment or a small annual rental, but called for no royalty. They contained a Restricted Use Clause restricting use to use with other groups of the defendants' machines. Under this form of lease the United Company, outside of the small initial payment or rental provided for by the lease, receives no return, except indirectly through the royalties received from other groups of machines to use with which the General Department machines are restricted and through the added efficiency of such other groups of machines.

Plaintiff's Exhibit 40 (R. Vol. 3, p. 373), adopted in 1902 (R. Vol. 1, p. 13, lines 9–16), is the General Department lease requiring an initial payment. It has a Restricted Use Clause restricting the use to use in connection with the lessor's welter, stitcher, lasting, pegging and metallic fastening machinery. It contains no Exclusive Use Cancellation Clause or Full Capacity Clause. The purpose of these two clauses is to insure an adequate return in the way of royalties to the lessor. As the General Department machines carry no royalty, the clauses are omitted.

Plaintiff's Exhibit 41 (R. Vol. 3, p. 379) is the form of General Department lease requiring a small yearly rental. It contains the same Restricted Use Clause and, like the initial payment form, contains no Exclusive Use Cancellation Clause or Full Capacity Clause.

(6) Insole Machine Leases.

Before the United Company was formed the Gem Flexible Insole Company was engaged in the business of manufacturing and leasing a set of machines for making the patented Gem insole, a light canvas insole for use with welt shoes. After the United Company was formed the patents on the insole and the machines for producing it were acquired (R. Vol. 1, p. 15, lines 16–21). The United Company added the Gem insole machine to its Goodyear auxiliary set and abated the ½ cent a pair formerly charged (R. Vol. 1, p. 430, lines 11–13; p. 571, lines 24–29).

The lease of the Gem insole machine contains a Restricted Use Clause limiting the use to the manufacture of patented

insoles to be used on welt shoes welted and stitched on the United Company's machines. It contains no Exclusive Use Cancellation Clause or Full Capacity Clause (P.'s Ex. 51, R. Vol. 3, p. 443).

As to the Company's action respecting the Gem insole machines Mr. Winslow testified that they did it,--

> "so as to reduce the cost to the manufacturer of the Goodyear welt shoe, as we have all of these things that you have treated in that way. . . . we were hoping to increase the total manufacture of those shoes and thereby benefit the public" (R. Vol. 1, p. 571, lines 37–42)

Some years later (1907) the Company acquired the patent for the Economy insole for welt shoes (R. Vol. 1, p. 15, lines 35–39).

The lease of the Economy insole machine (P.'s Ex. 52, R. Vol. 3, p. 450) limits the machines to making a patented insole to be used in Goodyear welt shoes or as a sole in Goodyear turn shoes. The auxiliaries are limited to use with the principal machine. It contains the Full Capacity and Exclusive Use Cancellation Clauses. This is practically an auxiliary Goodyear machine except that in distinction from the other auxiliary machines a small royalty is charged for its use.

(7) McKay Sewing Machine Lease.

The constituent companies did not manufacture the McKay sewing machine. When the United Company started to manufacture it, it always either sold the machine or leased it at the option of the manufacturer. The machine was sold for $250 to $600 according to the type of the machine. It was leased for an initial payment of $100 and a rental of $5 per month and without any further royalty charge (R. Vol. 1, p. 29, lines 25–35). The lease (P.'s Ex. 170, R. Vol. 4, p. 1161) limited the use of the machine to use on shoes lasted by the United Company's machines. It contained no Full Capacity or Exclusive Use Cancellation Clause, as the machine was not a royalty machine.

The United Company did not begin to put out the machines covered by this lease until 1908 (R. Vol. 1, p. 977, lines 11–12).

F. USE OF RIDERS AND SPECIAL FORMS OF LEASE.

The United Company was always ready to adopt a new form of lease or a rider modifying its existing form of lease to meet new conditions or to accommodate lessees who wanted to use machines of other makers together with machines of the United Company (R. Vol. 1, p. 442, line 42—p. 443, line 2). The regular forms of lease set forth are only such as are in general use. In addition the United Company had numerous riders which were adopted to meet such special conditions as they arose. (For the application of the various forms of riders see R. Vol. 1, pp. 822–828.) When any such rider was given one lessee other lessees were always free to obtain it (R. Vol. 1, p. 823, lines 7–16). Examples of such riders and agreements are given in Defendants' Exhibits 278–310 (R. Vol. 5, pp. 777–838).

Mr. WINSLOW testified,—

> "When lessees believed they wanted to put in machines other than those held from our company, or when it seemed to them that the necessities of their business required that they do this, the policy of the company has been to reorganize the leases which they then had so as to leave them in a position to use those other machines" (R. Vol. 1, p. 442, line 42; p. 443, line 2).

12. REASONS FOR USE OF THE VARIOUS CLAUSES AND THEIR LEGALITY.

An examination of the business conditions which led to the adoption of the various clauses will show that they were adopted either to enable the lessor to offer its machines on the best possible terms and so far as possible without initial charge to the lessees, so as to enable them to enter business or extend their business, or to provide for reasonable and proper protection to the lessor, and that such clauses or similar clauses are essential to a commercially satisfactory leasing system when the return to the lessor on its investment is based on the amount which the machines are used.

A. CLAUSE REQUIRING LESSEE TO PURCHASE FROM THE LESSOR ALL REPAIR PARTS NEEDED IN THE MACHINE.

The United States in its petition alleges that lessees were required by the defendants to obtain duplicate parts for the leased machines from the United Company at exorbitant prices (R. Vol. 1, p. 997).

The only evidence offered in support of this allegation that exorbitant prices were charged is as follows:—

Frank C. Rand testified that he paid the United Company $25 for a pair of legs for a leveling machine and that he had a set of legs made himself for $6 not counting overhead charges (R. Vol. 1, p. 179, lines 9–13). On cross-examination he admitted that he did not know whether his mechanic made one or four legs and whether they were wrought or cast iron, and that his statement was hearsay at best (R. Vol. 1, p. 184, lines 25–41).

Herbert L. Cann, the local manager for the United Company in the St. Louis district, testified that the part which broke in Rand's leveling machine was not a leg which supports the machine, but a spindle which supports the last and which is referred to as a leg. This spindle is about 16 inches long, the bottom being made of wrought iron and the upper part of steel. The top part of the spindle in Rand's machine broke and his mechanic merely substituted a new top about 4 inches in length (R. Vol. 1, p. 749, lines 1–15). The United Company supplied entire spindles at $20 a pair (R. Vol. 1, p. 750, lines 10–13). After a year or so Rand obtained new spindles from the United Company to replace the repaired spindles (R. Vol. 1, p. 749, lines 16–17). It appears clearly, therefore, that Rand replaced only a portion of the spindle which the United Company furnished and for which it charged.

Carl H. Gleason, a witness for the defendants, testified that he had been employed in the Cost Department of the W. H. McElwain Company, one of the biggest companies in the country, and he had made a study of the cost of repair parts on the machines that the McElwain Company obtained from

the United Company. He testified as follows (R. Vol. 1, p. 714, lines 17–40):—

> "The cost per pair of shoes for the repair parts on these machines was as follows:—
>
> "Universal channeler, .001 of one cent; insole tacker, .005 of one cent; Rex assembling machine, .009 of one cent; Rex pulling over machine, .07 of one cent; Consolidated hand method lasting machine, .005 of one cent; No. 5 laster, .06 of one cent; tack puller and resetter, .008 of one cent; sole layer, model B, .007 of one cent; loose nailer, No. 2, .01 of one cent; Universal rounder and channeler, .01 of one cent; Rounder and channeler, model E, .01 of one cent; Goodyear automatic leveler, .002 of one cent; lightning heeler, .004 of one cent; Mayo heeler, .008 of one cent; Universal slugger, .01 of one cent; edge setter, .02 of one cent.
>
> "On the welter and stitcher my computation includes, in addition to mere parts, the cost of awls and needles which the machines are using all the time and which are ordinarily classed as supplies. The cost per pair of shoes for the model G welter, including awls and needles, was .15 of one cent per pair; for the model K stitcher, including awls and needles, .2 of one cent per pair; for the model M stitcher, including awls and needles, .08 of one cent per pair.
>
> "I also computed the cost of repair parts on the model K stitcher, not including the needles and awls, and that is .1 of one cent per pair."

Mr. Winslow testified that the profits of the United Company from repair parts for the year 1911 were $276,000, while the net cost of repairing and putting into condition Goodyear, heeling, lasting, pulling-over, and metallic machines returned by lessees *in excess* of the charges made to customers for such work was $277,763.49, that is, $1,600 more than the entire profits on the parts (R. Vol. 1, p. 853, lines 12–18). He further testified that from the figure of $276,000 as profits for parts there had not been deducted any interest on capital or loss on obsolete parts (R. Vol. 1, p. 853, lines 1–8), although the loss from repair parts that are manufactured and are never used because they become obsolete runs into thousands each year (R. Vol. 1, p. 853, lines 9–11), and although the United Company carried an investment in parts for the year

1911 amounting to $1,415,474.49 (R. Vol. 1, p. 979, lines 3–5), on which, of course, it receives no interest return. It, therefore, appears that the total business of supplying parts and repairing returned machines shows a considerable loss. In the charge for repair parts the United Company does not take into account or include the cost to it of the services and expenses of its repair men, amounting to over $1,100,000 a year (R. Vol. 1, p. 554, lines 11–13; p. 979, lines 12–13).

Mr. Winslow further testified that the prices for repair parts, to the best of his knowledge and belief, are the same prices that would be charged by any other company manufacturing parts for machines; and that the prices charged for parts on General Department machines which were sold so that the owner was under no obligation to purchase parts from the United Company were on the same basis as parts for leased machines where the lessee was required to purchase the new parts from the United Company (R. Vol. 1, pp. 553–4).

This Repair Parts Clause is clearly necessary in the leases for the protection of the lessor. The leased machines are the property of the lessor. The new parts placed in the machine become the property of the lessor. When a part wears out it must be replaced by a part which is equally good and which has been made to fit that particular machine; if replaced by a cheaper part, or one which does not properly fit, the machine will be depreciated in value. The cheap part may also cause the machine to break down and thus prevent its earning royalty, and likewise stop work on other royalty-producing machines.

The lessor could properly provide that all repairs to its own machines should be made by itself and that the lessee should have no right to make repairs at all. In such a case the lessor could, of course, provide its own parts needed in the machine. When the lessee is permitted to make repairs on the United Company's machines, he cannot complain because the owner of the machine controls the character of the parts replaced. Nor can a competing shoe machinery manufacturer demand a right to supply parts for machines owned by the United Company.

This clause was employed in all the leases of the constituent companies prior to the formation of the United Company.

Its continuance by the United Company was obviously necessary for its protection. It does not relate to the use of machines or require lessors to take other machines, and certainly constitutes no evidence of a plan to monopolize shoe machinery.

B. CLAUSE REQUIRING PAYMENT OF A RETURN CHARGE ON TERMINATION OF THE LEASE.

The petition charges that the United Company exacted a return charge at the termination of its leases which in some cases amounted approximately to the original cost of building the machines. It appeared that in certain of the leases a small return charge upon the expiration of the lease was required. Absolutely no evidence was introduced as to the cost of building the machines so leased or the comparative amount of this return charge. There is no evidence that the return charge was in any way exorbitant or oppressive.

On the contrary, it was shown that for the year 1911, a typical year, the cost of putting returned machines into condition for use was approximately $350,000, and the charges to lessees on account thereof only about $70,000, showing a loss to the United Company of $277,763.49 (R. Vol. 1, p. 853, lines 15–23).

This allegation of the petition is, therefore, only another example of the unfounded character of the charges made by the United States.

C. CLAUSE LIMITING THE TERM OF THE LEASE TO SEVENTEEN YEARS.

The leases of the constituent companies ran for long and indefinite periods. Thus the leases of certain lasting machines ran for the life of the machines. The McKay Company's heeling machine leases ran for seventeen years and for such further time as the patents embodied then or thereafter in

the leased machine were in effect, and the other leases ran for the life of the patents then or thereafter embodied in the machines. These leases gave the lessor the right to attach improvements to the machines and thus gave it the right by attaching patented improvements to extend the life of the leases indefinitely. As many if not most of the machines when leased embodied inventions for which patents had recently been granted, or for which applications were still pending, and as in many instances improvements in the machines were made from time to time after they were leased, it is obvious that the leases of the constituent companies in most cases ran for more than seventeen years.

The adoption by the United Company of this term for all its new leases did not extend the period and affords no evidence of an intent to obtain a monopoly by new methods as charged in the petition. It was obviously adopted to make the leases consistent.

A long term is essential both from the point of view of the lessor and from the point of view of the lessee. If the United Company is called upon to build and place in the hands of shoe manufacturers millions of dollars' worth of machinery without receiving any initial payment, it obviously cannot do this unless the shoe manufacturers are willing to take this machinery for an extended period so that the resulting royalties will compensate the United Company. The shoe manufacturer also requires an extended period. He proposes to engage in the business on the strength of obtaining patented machinery without initial cost. He must be assured of the right to retain this machinery for an extended period. If his leases ran only for a few years, he might find that after he had established a good-will and built up the business at considerable expense his leases of machines terminated and he could not extend the leases or obtain the machines elsewhere, or his royalties might be greatly increased or he might be required to buy his machines outright and not have sufficient capital to do so.

A lease of shoe machinery under these conditions is like a lease of a building erected for the use of a particular tenant. The landlord refuses to erect the building unless the prospective lessee agrees to take a lease for a sufficiently long term

to compensate him for the capital invested in the building. The lessee on his part is unwilling to locate his business on the premises and establish a good-will in that locality unless he is assured of its permanency by means of a long lease.

The United States will doubtless contend that the long term of the leases makes it more difficult for the rival shoe manufacturers to compete. If this is so, it is merely incidental to a normal and proper contract. That bankers, brokers, and other business concerns have long leases of the premises occupied by them makes it more difficult for the owner of a new building to obtain tenants, but this does not make such leases illegal; that owners of cotton mills are already supplied with cotton machinery makes it more difficult for a manufacturer of new machinery to dispose of his product. If the leases ran for shorter terms,—say for ten or twelve years,—the rival shoe manufacturer would find substantially the same difficulty. Indeed, if the machines had been purchased outright by the shoe manufacturers, it is difficult to see, so far as this seventeen-year term is concerned, how the rival machinery manufacturer would be better off. Shoe manufacturers, if they had purchased machinery, would not discard it until it became obsolete or worn out. Their demands for new machinery would be limited to their requirements for additional machinery.

As said in *Coppage* v. *Kansas*, 236 U. S. 1 (p. 21):—

> "For constitutional freedom of contract does not mean that a party is to be as free after making a contract as before; he is not free to break it without accountability. Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised; and each particular exercise of it involves making an engagement which, if fulfilled, prevents for the time any inconsistent course of conduct."

Nor can the shoe manufacturer complain because he is bound for an extended term. He demands the assurance of an extended period during which he cannot be deprived of his machines, nor his royalties be increased.

In *Chicago, etc., R.R.* v. *Pullman Car Company*, 139 U. S. 79, the Court held legal a contract giving an exclusive right to

the Pullman Company to furnish drawing-room and parlor cars for a period of fifteen years, not only on the railroad company's then road but on any roads thereafter owned by it. The contract was held legal in spite of its extended term and in spite of the fact that it granted an exclusive right to furnish cars, the Court saying (pp. 89–91):—

> "We cannot perceive that such a contract is at all in restraint of trade. . . .
>
> "But we are of opinion that public policy did not forbid the Railroad Company from employing the Pullman Southern Car Company to supply drawing-room and sleeping cars to be used by its passengers, and, as a means of inducing the plaintiff to perform this public service and to incur the expense and hazard incident thereto, from giving it an exclusive right to furnish cars for that purpose. . . .
>
> "The stipulation, therefore, that the plaintiff, not being in default, should have the exclusive right for fifteen years to furnish drawing-room and sleeping cars for the defendant's use, and that the defendant should not, during that period, contract for cars of that kind with any other party, rightly construed is not unreasonable, and, properly performed, will promote the convenience of the public in that it enables the defendant to have on its lines, at all times, and as the requirements of travel demand, drawing-room and sleeping cars for use by passengers."

The United States complains that this seventeen-year term may extend the lease beyond the life of the patents embodied in the machines.

But the validity of this term is not dependent on the machines being patented. The cars of the Pullman Company were not patented. It is a normal and legitimate agreement desirable for the protection of both parties.

The fact that the machines are patented, however, affords an additional reason for holding this term legal. The patentee is free to refuse to sell or lease his inventions at all.

If the public takes his machines on leases extending over a period of years in preference to other machines for shorter terms, it is because they believe the patentee's invention is of sufficient value to justify the extended agreement. The

public is free to take or decline the invention on the terms offered. By taking it on these terms it proves that the use of the invention more than offsets the detriment, if there be any detriment involved in the length of the lease. Public policy does not forbid such an extended lease of patented articles; if it did, since the patentee has the right to refuse the use of his machines, it might deprive the public of their use at all. It is to the interest of the public to permit the lessor to impose such terms as he pleases, unless they are in their very nature illegal, in order to induce patentees to grant licenses to use them.

The United States may object that the machines leased may become obsolete before the expiration of seventeen years and the lessee be obliged to continue paying for them after more efficient machines can be obtained elsewhere. No such condition has yet existed; the United Company has kept abreast of the times and given its lessees the benefits of the best improvements, and its lessees appear to have confidence that it will continue to do so. This argument is based upon too remote a contingency as held by the District Court (R. Vol. 1, p. 1177) and as held in *United Shoe Machinery Company of Canada* v. *Brunet*, 1909, A. C. 330.

Furthermore, while this clause permits the United Company to compel a lessee to retain the particular machine leased for the period of the lease, the record shows that the United Company in practice constantly waived this right, and furnished lessees with new or improved machines as they were developed without additional charge of any kind, taking back the old leased machines and scrapping them.

The record shows that the adoption of the seventeen-year term actually reduced the term required by the constituent companies. It therefore clearly does not sustain the charge of a new plan formed by the United Company to monopolize. Further, it is clear that an extended term is a benefit to both parties, and there is not the slightest evidence that the term was adopted or used to oppress shoe manufacturers.

D. FULL CAPACITY CLAUSE.

The Full Capacity Clause requires the lessee to use the leased machines to capacity so far as he has work in his factory which they can perform. An example taken from the United Company's lease of its No. 5 Lasting Machine (P.'s Ex. 21, R. Vol. 3, p. 182, at p. 185) is as follows:—

> "Subject to the foregoing limitations, the lessee shall use the leased machinery to its full capacity upon all boots, shoes or other footwear or portions thereof made by or for the lessee in the manufacture or preparation of which such machinery is capable of being used."

The reason for this clause is obvious.

The lessor invests its money in a valuable machine, installs it in the lessee's factory, and instructs his operatives, relying for his return on a royalty paid on each pair of shoes on which the machine is used. The machine must be used or the lessor will get no return. The agreement to use the machine is a necessity if the machine is leased on this basis. Without this clause the lessee might get the lessor to invest in a valuable machine and install it in the lessee's factory and after a few months the lessee might discard it or use it only occasionally, thus depriving the lessor of any return on its investment.

The clause is a normal and natural agreement obviously designed for the purpose of assuring the lessor a return on its investment and not designed for the purpose of arbitrarily requiring the use of the United Company's machines or of excluding competitors. That this is the purpose of the clause is conclusively shown by the fact that this provision is applied only to machines for which a royalty is charged. Thus in the leases of General Department machines the clause is omitted because the machines are leased for an annual rental or an initial payment and no royalty is charged, and, the lessor's return not being dependent on the use of the machines, it is not necessary that the lessee shall agree to use them. (See General Department Initial Payment form of lease, P.'s Ex. 40, R. Vol. 3, p. 373; General Department Annual Rental

form of lease, P.'s Ex. 41, R. Vol. 3, p. 379; McKay Sewing Machine lease, P.'s Ex. 170, R. Vol. 4, p. 1161.) So also in the case of the Goodyear auxiliary machinery. The lease of the Goodyear welter and stitcher provides that they shall be used to capacity because they are the recording machines on which royalty is paid (P.'s Ex. 24, R. Vol. 3, p. 214). No royalty being paid on the auxiliary machines, the lessee is not required to use them to capacity (P.'s Ex. 25, R. Vol. 3, p. 226).

There can be nothing unlawful in requiring one who has hired a machine upon a royalty measured by the machine's capacity, to pay for that capacity so far as he has work for it to do.

The lessee has acquired by his lease and license the full capacity of that machine. He has a right to the entire and exclusive use of it up to the limit of what it is physically able to do, but he is only required to pay according to that measure up to the extent of the work which he has for it.

If he has not work to keep it fully occupied, still he has the right to use the full capacity of the machine. Neither the United Company nor any one else can make any use of that surplus capacity which the lessee allows to go to waste. It is therefore obviously proper that he should agree to pay to the extent of the work he has for the machine to do.

If it once be granted that leasing for a royalty measured by use is reasonable, it is a necessary corollary that such use must be required and agreed to as will fairly compensate the one who supplies the use and fills the need.

The shoe manufacturer cannot complain of this clause. If he does not intend to use the machine, he has no right to take it under a lease whereby he is required to pay only if he does use it. If he does intend to use the machine, it is proper he should agree to use it so far as he has work for it to do.

The rival shoe machinery manufacturer also has no ground for complaint. He has no right to demand that shoe manufacturers who choose to take leases of the United Company's machines should remain as free to deal with him as though such leases had not been executed. If the lessee agreed to pay a fixed rental, he would use the machines for which he paid, not those taken from a competitor for which he must

make an additional payment. Even if the lessee bought the machines, he would not ordinarily discard them for other machines. The rival shoe machinery manufacturer is in little if any different position from what he would be in if the lease omitted this clause and contained a fixed rental, or if the machines had been purchased outright. If there is any difference which affects him, it is the incidental result of a normal and proper contract.

The shoe manufacturer's business is seasonal, and he requires an equipment of machines having a maximum capacity far in excess of his average requirements. Furthermore, in many cases a lessee's business is so small that a single machine has a capacity exceeding his maximum requirements. The result is that the United Company's machines held by a lessee have a capacity in excess of the ordinary requirements of the lessee. The United Company would be justified in charging a price based upon the maximum capacity of the machine. This, however, would be burdensome to the lessees who would only make use of such capacity occasionally. But if the United Company does not require payment for the full capacity of the machine, whether or not the lessee needs such capacity, it is only fair and reasonable that it should require payment for use to the full extent that the lessee has a use for it.

Mr. Winslow testified:—

> "We adopted the full-capacity clause in our leases to protect our interests under the conditions that I have described in the manufacture of shoes, where the seasons are changeable, and where our entire return is dependent upon the use made of the machine. The same reason applies to the adoption of the exclusive-use clause, but it is not the only reason for the adoption of either clause. There must be something in the lease requiring use of the machines or there is no security that they will be used. Because there are two seasons and because we have to furnish machines to take care of the peak of the manufacturer's load, there must be something to secure us properly for the use of the machines throughout the season. Otherwise, the manufacturer might use one of our machines just for taking care of the peak of his load and use somebody else's machine all the year round" (R. Vol. 1, p. 552, line 34—p. 553, line 3).

This provision for payment, viz., that the lessee shall use the machine so far as he has use for it, and pay for the amount it is used, is far more satisfactory to lessees and far less burdensome to them than a fixed monthly or annual payment (which is the only feasible alternative) would be. If a fixed payment were required, a shoe manufacturer would be obliged to pay the same amount whether his business was good or bad. Under the present method he pays according to the business he does, and thus his royalties are adjusted to his business: if business is good, his total royalties increase, but he can then afford to pay them; if business is poor, his total royalties are decreased.

Furthermore, if a fixed amount were charged, it would work to the disadvantage of the small manufacturer. Take a welter, for example. One welter will operate on 480 pairs of shoes a day (R. Vol. 1, p. 647, line 3). In 1911 out of 1,033 lessees of the United Company 274 made less than 100 pairs of shoes a day (R. Vol. 1, p. 454, line 45; p. 455, line 1). If the welter were leased for a fixed rental, the shoe manufacturer who made 480 pairs of shoes a day would pay for his welting machine used on his entire output the same amount as the manufacturer of 100 pairs or less paid for his welting machine. In other words, his cost of welting machinery per pair of shoes would be less than one-fourth of the amount paid by the small manufacturer. The Pulling-over Machine, Goodyear Stitcher, Heeling Machine, Slugging Machine and Loose Nailing Machine each has as great a daily capacity (R. Vol. 1, p. 456, lines 4–9). The Slugger, Loose Nailer, and Heel Pricking Machine have a capacity of over 1,200 pairs per day (Defs.' Ex. 249, R. Vol. 5, p. 693).

The United States contended in the District Court that the Full Capacity Clause was unnecessary to assure the United Company a return on its investment, because it inserts in most of its leases a clause requiring a minimum payment. It is obvious that a minimum payment does not provide for a fair return unless it is large enough in and by itself to compensate for the use of the machine. In such case it becomes a fixed annual payment and is open to the objections stated above. The minimum payments required in the United Company's leases are so small that they do not provide for

adequate compensation. This is not their purpose. The Minimum Payment Clause was inserted in the leases so that a lessee should return machines for which he had no use; if he were required to pay nothing on them, he might keep them although they were not needed at all.

Mr. Winslow testified (R. Vol. 1, p. 553, lines 4–28):—

> "The clause requiring payment of a minimum royalty, like many of the other clauses, is not enforced and never has been, excepting in cases of very great necessity to properly protect the company's interests, and then only in the way of asking the manufacturer to give up surplus machines. The original leases contained no means for recovering surplus machines. If a manufacturer's business decreased 50 per cent. he could retain a machine till the lease expired, and keep it idle. Such a condition showed us that we must have such control as would allow us to take back idle machines.
>
> "The practice has been, when a manufacturer had surplus machines arising from these or other conditions, to call his attention to the minimum clause and to tell him that if he wanted to return the surplus machine, the lease of that machine would be cancelled. That clause is not enforced except to require adequate arrangements between our lessees and ourselves.
>
> "The minimum-lease clause originated a great many years ago. It is not entirely a logical development, but, broadly speaking, the minimum clause is based upon half the capacity or 33 per cent. of the capacity of the machine, or something of that sort. The minimum has no bearing upon the amount of a reasonable return on our machines. In the Goodyear system, for example, the minimum is $15 per machine, if I remember correctly, but we are continually adding to the number of machines that we give to the manufacturer."

As we have shown, the introduction of this clause was not a new departure on the part of the United Company. This clause, or a clause going much further and requiring an exclusive use of the lessor's machines, or the taking of additional machines for additional work (which resulted in requiring an exclusive use) had been employed in many of the leases of the constituent companies. Experience had shown that some such clause was necessary to assure the lessor a return if his royalties were based on the use of the machine.

It is obvious that this clause is essential if machines are leased to be paid for only to the extent they are used. That it was adopted solely for the purpose of assuring an income from machines leased on this basis is conclusively shown by the fact that it is applied only to the royalty producing machines. If the United Company were forbidden to use this clause, it would necessarily be obliged to abandon leasing machines on this basis, a practice of enormous benefit to shoe manufacturers. It is therefore clearly a necessary and reasonable provision.

E. EXCLUSIVE USE CANCELLATION CLAUSE.

The following is an example of the Exclusive Use Cancellation Clause taken from the United Company's lease of Pulling-over Machines (P.'s Ex. 38, R. Vol. 3, p. 350, at p. 358):—

> "*Eight:* If at any time the lessee shall fail or cease to use exclusively machinery held by him under lease from the lessor for performing all work in the manufacture or preparation of all boots, shoes, or other footwear made by or for him which is performed by the aid of machinery and which is of a kind or kinds which any or all of the machines of the lessor mentioned by name in the foregoing Schedule of Machines are designed to perform, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases or licenses of machinery of the Pulling Over System of the lessor then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all machinery the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever."

It is to be noted that this clause only permits the lessor to cancel where the lessee supplies himself with other machinery to do his work of the same kind as that leased, and the lessor is then permitted to cancel only leases of machines of this particular kind.

This clause was employed in the leases of metallic machinery and heeling machinery put out by the McKay Company (P.'s Ex. 11, P.'s Ex. 12, Rider).

The Consolidated Company in all its non-initial payment leases required an exclusive use of machines of the kind leased (P.'s Ex. 7; P.'s Ex. 9; P.'s Ex. 10). The Goodyear Turn lease also required the lessee to use only the lessor's turn machines (P.'s Ex. 3). The United Company eliminated these clauses employed by the constituent companies requiring an exclusive use of machines of the kind leased, and inserted in its leases of royalty machines this Exclusive Use Cancellation Clause which had been employed by the McKay Company and an example of which is quoted above.

This Exclusive Use Cancellation Clause does not require or obligate the lessee to use the United Company's machines of the kind leased exclusively. On the contrary, it recognizes the right of the lessee to use other machines of the kind leased, contemplates that the lessee may do so, and merely provides that in such case the lessor may take back its own machines. The clause contains no agreement on the part of the lessee at all. It is a mere reservation of a right to terminate the lease under certain conditions.

The machines of each kind or department are leased under a separate form of lease. This clause refers only to machines of the particular kind leased. For example, if the lessee uses heeling machines obtained from others, this clause permits the United Company at its option to withdraw its heeling machines, but does not permit it to withdraw any other kind of machines.

The United States has persistently misrepresented the effect of this clause. It has contended that it requires the lessee to use machines of the kind leased exclusively, in spite of the fact that the clause by its terms does not so provide, and in spite of the fact that the District Court pointed out the distinction between an agreement to use exclusively and a right to cancel if machines are not used exclusively.

Of the effect of this clause the District Court (Brown, J., R. Vol. 1, p. 1169) said:—

> "The 'exclusive use' clause relates only to machines of a particular kind or department, thus differing essentially from the prohibitive clause. It was in use before

the consolidation, and after the consolidation was not changed in this respect. Though it does not relate to grouping what before was separate, this clause imposes a limitation upon the right to use machines of a particular kind. The legal effect of it is merely a reservation of a right to cancel the lease in case the lessee should fail or cease to use the defendants' machines exclusively for work of a particular kind. It does not have the legal effect of a contract by the lessee not to use the machines of others. It is merely a limitation imposed by a patentee upon the right to use.

"*The reiteration by the United States of the statement that the lessee must use, or is required to use, defendants' machines exclusively is misleading. The distinction between a contract requiring a lessee not to take other machines, and a limitation of the right to use the leased machines is very material*" (italics ours).

This clause protects the lessor by permitting him to withdraw his machines if by reason of the factory conditions under which the machines are used, caused by the use of other machines by the lessee, the lessor is not getting a fair or proper return on the leased machines (R. Vol. 1, p. 447, lines 18–21).

The primary reason for the use of this clause is as follows: The shoe machinery business is seasonal, being divided into substantially two seasons. The manufacturer with an average production of 300,000 pairs of shoes annually must ordinarily have machinery which has a capacity to produce 600,000 pairs of shoes annually. If his average production is 1,000 pairs of shoes a day, he will at times manufacture 2,000 pairs a day and at others 500 pairs a day. In other words, the United Company must furnish him with an equipment sufficient to make 2,000 pairs a day, although he will use it to this extent at most for about three months in the year (R. Vol. 1, p. 444, lines 27–42).

Defendants' Exhibits 212, 213, and 224 show the variations in production in typical factories. For example, Defendants' Exhibit 213 shows that L. A. Crossett made 113,191 shoes in January, 1911, and only 36,516 in April, 1911 (R. Vol. 5, p. 310); Defendants' Exhibit 212 shows that Burt made 4,492 shoes in November, 1911, and only 1,828 in February, 1911 (R. Vol. 5, p. 297); Defendants' Exhibit 224 shows that the

John Strootman shoe factory made 5,492 women's stitched shoes in September, 1911; 2,234 in April, 1911, and 749 in May, 1911 (R. Vol. 5, p. 421).

Referring to the variance in production shown in the Strootman factory Mr. Winslow testified:—

> "This is a fair sample of the condition with which we are confronted throughout the trade. It is not a selected case. I would be quite ready to take any factory and prepare the same figures" (R. Vol. 1, p. 445, lines 27–30).

A shoe manufacturer, therefore, requires a machine capacity in his comparatively short busy season which is not needed during the greater part of the year. A lessee who holds the United Company's machines and also machines of others may use the United Company's machines only during his busy season and use the other machines during his slack season, or he may do only his difficult and slow work on the United Company's machines and thereby reduce the royalties payable to the United Company. The United Company cannot afford to install its machines for a royalty measured solely by extent of use if they are to be used only occasionally or for slow and difficult work. It therefore inserts the Exclusive Use Cancellation Clause in its leases, permitting it to cancel the leases if on account of the use of other machines such conditions exist and it is deprived of a fair return.

Another reason for the use of this clause is as follows: The United Company leases machines for a royalty to be paid on each pair of shoes made. The United Company cannot keep men in each factory watching each machine in use on which a royalty is payable and counting the number of shoes on which it is used. On certain machines it can place recording mechanisms which will record the use with a certain degree of accuracy. On other machines, such as lasting machines, no such device is practicable. Even where such a device can be used, it records the revolutions of the machine rather than the number of shoes passing through the machine, and it, therefore, is not accurate, and furthermore, it may be tampered with by the lessee or get out of repair. If the lessee uses the United Company's machines of a particular kind—for example, heeling machines—exclusively, the United Company

can tell by an examination of the lessee's books or by a knowledge of its total sales substantially the number of shoes on which the machines are used. Where, therefore, the United Company's machines are used exclusively, it can check the returns made by the lessee and correct errors in such returns due to carelessness or dishonesty. Where, however, the lessee uses the United Company's machines and also machines of others for doing the same class of work, the United Company has no such check. If, therefore, the United Company finds that a lessee who is using its machines and also the machines of others of the same kind pays it a small return on its machines, it may have reason to believe that actually more work is being done on its machines than is paid for, and that through carelessness or dishonesty a correct account of the work is not rendered, but there is no way to check this up, and the lessor is at the mercy of the lessee. Under these conditions it must have the right to withdraw its machines.

This clause, or a clause more stringent in that it required an exclusive use of the lessor's machines, was employed in most of the leases of the constituent companies. Its use in the modified form by the United Company is therefore no evidence of the charge made by the petition of an unlawful plan adopted by the defendants to monopolize by the use of new methods. On the contrary, the elimination by the United Company of the clauses requiring an exclusive use which were previously employed in the constituent companies' leases and the substitution in these leases of the Exclusive Use Cancellation Clause, which merely permits the United Company to withdraw its own machines, is direct evidence that the United Company had no intent to require an exclusive use of its machines.

This clause is one which the experience of the constituent companies had proved to be necessary for the lessor's protection for the reasons stated above. It is a normal, legitimate agreement designed to permit the lease of machines without a substantial initial payment and at the same time protect the lessor so that it may cancel the arrangement if it does not receive an adequate return.

That the purpose of this clause is to protect the lessor when the factory conditions under which its machines are used do

not afford it a proper royalty return, and that its purpose is not arbitrarily to prevent other manufacturers from placing machines, is conclusively shown by the fact that this clause is applied only to those machines which carry a royalty. Thus the clause does not appear in the leases of General Department machines for which no royalty based on the use of the machines is charged, but only a fixed annual rental, or an initial payment. (See leases of General Department machines, P.'s Exs. 40–41; lease of McKay Sewing Machines, P.'s Ex. 170.) And so also in the leases of Goodyear machines this clause is made applicable only when the lessee supplies himself with other welting and stitching machines which are the machines on which the royalty is based, and it is not applicable where the lessee uses auxiliary machines obtained from others (P.'s Ex. 26, par. Seven). If the purpose of the clause were to require a use of the United Company's machines exclusively and thus arbitrarily exclude other shoe machinery manufacturers, it would certainly be applied to leases of machines like the McKay Sewing Machine, for which a fixed rental is charged.

As the clause is not applicable to General Department machines of which the United Company makes over 172 different kinds, or to Goodyear auxiliaries, of which 43 different kinds are made, or to eyeletting machines, it results that it is not applied to a majority of the kinds and numbers of machines put out by the United Company. Out of 90,276 machines leased by the United Company on March 1, 1911, over 53,000 of the kinds above mentioned were leased under leases which did not permit the United Company to withdraw its machines because machines of the same kind obtained from others were used (Defs.' Ex. 228, R. Vol. 5, p. 430).

Had the United Company intended by this clause to require an exclusive use of its machines of the kind leased, it would have so provided. The right to withdraw the lessor's machines of a certain kind—for example, heeling machines—because the lessee supplies himself with other heeling machines, obviously cannot compel the lessee to use the lessor's heeling machines. If the lessee is using other heeling machines, he doubtless prefers them. The exercise by the United Company of its option to withdraw its machines would under those

circumstances leave the lessee at liberty to use the competitor's heeling machines, which is what the lessee would desire. It could exert no pressure on him to discard other heeling machines which he preferred to use.

Mr. Winslow testified:—

> "The United Company has never adopted the policy of requiring the exclusive use clause as an agreement upon the part of the lessee. That clause has always been in the form of a right reserved to the company in case the lessee does not use exclusively and the conditions are unbearable" (R. Vol. 1, p. 444, lines 21–25).

Mr. Winslow further testified that it was not true, as alleged in the petition, that the defendants inserted in each lease provisions reserving to themselves the right to terminate and cancel all existing leases if a shoe manufacturer should fail or cease to use exclusively and to their full capacity machines leased of the defendants and that never was the purpose of the Company (R. Vol. 1, p. 447).

> "The purpose of the company has been nothing more than to reserve to the company the right to cancel leases of machines of a type which the lessee had ceased to use exclusively if conditions became too onerous to continue" (R. Vol. 1, pp. 447, lines 18–21).

It is difficult to see in what way it can be contended that this clause restrains competition. It does not require the shoe manufacturer to use the United Company's machines. So far as this clause is concerned, the shoe manufacturer can freely take and use any other machines he pleases. If, for example, he uses other heeling machines and the United Company withdraws its own heeling machines, this only leaves the lessee free to use other heeling machines which he can get and which he apparently prefers.

The rival shoe machinery manufacturer will be actually benefited by the enforcement of this clause. If the United Company withdraws its machines, the shoe manufacturer is necessarily in the market for new machines, and a market is thereby created for the United Company's competitor. Noth-

ing, therefore, would please competitors of the United Company better than to have it enforce this clause.

It is obviously fair and just that the United Company be entitled to withdraw a machine on which its return consists of a royalty based on the number of shoes on which the machine is used, if, owing to the use of other machines of the same kind by the lessee, the machine is only used occasionally or on slow or difficult work, or the United Company has reason to believe that work actually done on its machines is not so reported; in other words, when, to use Mr. Winslow's words, "conditions are unbearable."

That the United Company may properly reserve a right to withdraw its machines under the foregoing conditions seems indisputable. It would be impossible to specify exactly and definitely these conditions. The clause is, therefore, necessarily general in its terms; but it only reserves an option to cancel; it does not provide that there shall necessarily be a cancellation of the lease if other machines of the same kind are used.

As, therefore, the right reserved by the clause may clearly be exercised for a proper purpose, even if it could also be so exercised as to result in excluding competitors' machines (which we submit is not the case), nevertheless this possibility would not be sufficient to make the clause unlawful unless it were shown that it was inserted in the leases for this purpose or that it was enforced for this purpose.

Mr. Winslow, as quoted above, testified that it was not inserted or enforced for this purpose. There is absolutely nothing in the record to contradict his testimony. Not a single instance was shown in which the United Company enforced or threatened to enforce the clause in order to exclude competitors' machines. In the only five cases (except cases of bankruptcy) in which machines were withdrawn by the United Company, no such instance appears (R. Vol. 1, pp. 447–8; *infra*, pp. 429–430).

On the contrary, so far from showing that the United Company withdrew its machines because competitors' machines were used, Plaintiff's Exhibit 161 (R. Vol. 4, p. 1118) introduced by Louis H. Harriman of the Haverhill Shoe Machinery Company, a competitor of the United Company, as a witness

for the United States, gives a list of 17 concerns which had used or were using the Haverhill turn sewing machine in the same factory with the United Company's Goodyear turn sewing machine the leases of which contained the Exclusive Use Cancellation Clause, thus contradicting absolutely the contention that the United Company withdrew its machines merely because a competitor's machines of the same kind were used.

We submit, then, that even if it can be contended (which we deny) that the right given by this clause could be so exercised as to exclude a competitor's machines, the record establishes that it was not inserted in the lease for this purpose and that it was not enforced to accomplish this result.

The Use of the Exclusive Use Cancellation Clause is the Mere Exercise of a Patent Right, namely, the Right to Permit Others to Use or to Refuse such Permission.

The leases in the present case are termed "Lease and License Agreements" and constitute not only leases of the physical materials in the machines but also licenses under patents to use the machines in the manner and to the extent defined therein.

A patentee has an absolute right to exclude all others from the use of the patented invention even though he does not use it himself. *Paper Bag Patent Case*, 210 U. S. 405.

The motive of the patentee in refusing to license others to use the patented invention is immaterial. As said in the Paper Bag Patent Case (p. 429),--

> "As to the suggestion that competitors were excluded from the use of the new patent, we answer that such exclusion may be said to have been of the very essence of the right conferred by the patent, as it is the privilege of any owner of property to use or not use it, without question of motive."

If the patentee does consent to grant a license to use his patented invention, he may grant it for such time, long or

short, as he pleases. As the patent law gives him an absolute right to withhold or grant licenses as he pleases, regardless of his reasons or motives, the length of time for which any licenses he may choose to grant shall extend is absolutely within his discretion.

In *Mitchell* v. *Hawley*, 16 Wall. 544, the patentee conveyed the right to make and use four machines during the remainder of the original term of the Letters Patent. The licensee constructed and sold the four machines which he was authorized to make. The patent having been extended for an additional term of seven years it was held that the purchaser of the four machines had no right to use them during the extended term whether or not he had purchased with notice of the limited term of the license to use.

It is clear, then, that a patentee has the right to grant a license to use his patented invention for as long or short a term as he pleases. In pursuance of this right he may grant a license to use for a definite term or for an indefinite term, that is, until such time as he in his absolute discretion chooses to terminate it. After such termination the licensee, of course, has no longer any right to use. This is so even if, as in *Mitchell* v. *Hawley*, supra, the licensee has bought the machine which embodies the invention and still holds title to it.

Just as the patentee can refuse to grant a license at all, regardless of his motives or of the effect of his refusal, so in granting a license he may make it terminable at such time or in such event as he pleases, regardless of the effect of such termination or of his motives in so doing.

Such a grant of a license does not obligate the licensee to use the patented invention. It is a mere grant of a right. The licensee is as free in every respect as he was before the grant was made and in addition has the rights conferred by the grant. Upon the cancellation of the license, whether it be terminable at a definite time or at the patentee's option, and regardless of the patentee's motive in cancelling the lease, the licensee is no worse off than if the patentee had refused to make the grant at all.

Having an absolute right to make or refuse the grant, questions of public policy are not relevant. An argument that a grant for the full term of the patent, or an irrevocable

grant, would be more beneficial, or would confer a greater benefit on the licensee, or would be more advantageous to competitors, has no standing.

It follows, then, that in the present case the United Company could, in the exercise of its indubitable rights granted it under its patents, provide in its lease and license agreements that the licenses to use the leased machines should be in effect until such time as the United Company might at its absolute discretion terminate them. It would have the right in such case to terminate the licenses either because the licensee ceased to use its machines exclusively or for any other reason whatsoever. Its motives could not be questioned any more than its motives for refusing to grant a license at all could be questioned.

If, then, the United Company can in granting its licenses reserve this broad right to terminate for any cause whatsoever, surely it can reserve the lesser right (which is inevitably embraced within this broader right) of terminating because the lessee supplies himself with other machines to do his work. The termination of the license is a mere exercise of the rights granted by the patents, namely, the rights to exclude others completely or to permit the use of the patented inventions for as long or short a period as the patentee pleases.

The United States may object that the termination of the license because the licensee does not use the patented machines of the kind leased exclusively may result in excluding competitors' machines. We have shown above that no such result will follow and that, even if such a result were possible, the United Company did not insert this clause or enforce it for this purpose or with this result. But assuming that the clause may result in some instances in an exclusive use of the United Company's machines of the kind leased, it is, as we have shown above, within the rights of the patentee. If he grants licenses to use his machines and they are superior to all others in the market, they may drive such other machines out of use. If he refuses to grant licenses of his machines and they are sufficiently superior, he may by using them himself obtain all trade in the article which the machines produce. Questions of his motives, of public policy, or of the effect of his acts are irrelevant so long as he limits himself to the exercise

of his patent rights, that is, to excluding others or permitting them to use for such periods as he pleases.

The fact that the United Company in addition to reserving the right to terminate its licenses to use the machines also reserves a right to withdraw the machines themselves is immaterial. The machines belong to the United Company and are clearly of no value to the lessee when his right to use them has terminated. Their withdrawal in such event can in no way injuriously affect either the lessee or competing shoe machinery manufacturers.

F. ADDITIONAL MACHINERY CLAUSE.

This clause, contained in certain leases of the constituent companies, was employed by the United Company in only a few leases, and its use was abandoned entirely in 1907.

By this clause the lessee is required to take from the lessor additional machines of the same kind as those leased if his work requires them.

This clause was employed in non-initial payment leases of the Consolidated Company prior to 1899 (P.'s Ex. 7; P.'s Ex. 9; P.'s Ex. 10), and a similar clause forbidding the lessee to use any other turn machines was employed in the Goodyear Company's turn lease (P.'s Ex. 3). The following example of this clause is taken from Article Twelfth of the Consolidated Company's lease for the Consolidated Hand Method McKay Lasting Machine, in use before the United Company was formed (p. 80):—

> "*Twelfth:* It is declared and understood that it is the intention of the Licensee to use said machine herein licensed and leased for lasting all the boots and shoes made by him applicable to the said machine, and not to have it in his possession as a means of reducing the price of hand-lasting or of controlling hand-lasters, or of influencing a trade with any other lasting machine not controlled by the Licensor, or the list price thereon, and the Licensor enters into this contract because of and by reason of such understanding and agreement on the part of the Licensee. It is, therefore, agreed that the Licensee shall

use such machine hereby licensed and leased for lasting all of his boots and shoes to its full capacity, limited only by the demands of his business; *and should the demands of his business require he shall take the license and lease of such additional machines as may be needed to do all his work*" (italics ours).

Mr. Winslow testified:—

"All of those additional machinery clauses were removed from all of the leases of the United Company not later than 1907, and they were not in use and did not represent the policy of the company at the time of the bringing of this suit" (R. Vol. 1, p. 444, lines 17–20).

This clause was one of the various methods adopted by the constituent companies in an effort to assure a proper return upon their investment in machines. It protected the lessor against the abuses possible where its machines were not used exclusively, as we have explained above, in considering the Exclusive Use Cancellation Clause. By requiring an exclusive use of its machines it avoided their being used only occasionally during the busy season or only on slow work, thus reducing the royalty received, and it prevented also the difficulty of determining the actual work done on the machines which would arise where machines of others were used. It was usually introduced when the machines were first put on the market. Often when a shoe manufacturer first took a machine he used it only as a trading proposition. The lessor installed the machine and went to the expense of instructing operatives, and the lessee then used it to reduce the price of hand work or to obtain machines from others cheaper and the machine being on a royalty basis, the lessor got no return. By this clause the lessee agreed to do his work by machines and to take additional machines for additional work, and this besides preventing the abuses above referred to gave a further assurance of an adequate return (R. Vol. 1. pp. 405–406). Its purpose, therefore, was not to arbitrarily exclude others, but to provide an adequate return on the capital invested by the lessor.

The United Company did not adopt this clause for any general or extensive use. The United Company eliminated

the clause from the lasting machine leases of the Consolidated Company as soon as new leases were drawn up, and substituted the Exclusive Use Cancellation Clause, which it felt sufficiently protected it against the abuses possible where machines of others were used.

It inserted this Additional Machinery Clause in its lease of metallic machines adopted in March, 1900 (P.'s Ex. 29; R. Vol. 1, p. 10, lines 24–25), but in the next printing of this lease, in June, 1900 (P.'s Ex. 30; R. Vol. 1, p. 10, line 31), it eliminated the clause and inserted a provision that the lessee should either take additional machines or the lessor might at its option cancel; in other words, a different form of the Exclusive Use Cancellation Clause under which the lessee was not obligated to use its machines exclusively.

The United Company employed this clause also in its Heeling Machine Lease adopted in January, 1900 (P.'s Ex. 27, R. Vol. 3, p. 254), but it eliminated the clause in the next form of lease, adopted in May, 1904 (P.'s Ex. 28, R. Vol. 3, p. 261). It also inserted the clause in its first lease of the pulling-over machine, which was an entirely new machine displacing hand labor, and, therefore, one which might be used as a trading proposition to reduce the price of hand work, but it eliminated the clause in the form of Pulling-over Lease which was adopted as early as 1907 (Defs.' Ex. 345, R. Vol. 5, p. 958; see also R. Vol. 1, p. 981, lines 1–7).

The Additional Machinery Clause was never used generally by the United Company. It was used by the constituent companies and to the limited extent above outlined by the United Company for a definite and legitimate business purpose and, therefore, shows no intention to restrain trade or monopolize.

The clause was primarily useful when new machines displacing hand work were first introduced. In such cases, as explained above, it was found that a single machine was sometimes taken, not with the intention of doing the work by machine, but to enable the shoe manufacturer to reduce the prices paid hand workers by a threat of using the machine. The machinery manufacturer had gone to the expense of installing a single machine and instructing untrained operators in its use with the expectation and understanding that if suc-

cessful, the shoe manufacturer would adopt it for general use. In such cases the additional machinery clause was important to the lessor's protection. When the superiority of the machine over hand labor was definitely established, experience showed that the other abuses guarded against by the additional machinery clause, namely, the abuses which might arise when machines of the same kind obtained from others were employed in the factory, could be sufficiently guarded against by the Exclusive Use Cancellation Clause, which did not require a use of additional machines but merely gave an option to the lessor to withdraw its machines, and this clause was, therefore, substituted.

The fact, established by the record, that the clause was adopted by the constituent companies for a definite proper business purpose shows first, that it was not an unlawful provision adopted to monopolize trade, and second, that it was not a scheme devised by the United Company, and, therefore, affords no evidence of the plan which the United States alleges was devised in 1899 to monopolize shoe machinery. Furthermore, its limited use by the United Company, and its final abandonment in 1907, four years before the present petition was filed or contemplated, conclusively shows that it was not employed by the United Company to monopolize.

Its only importance in the present case is this. This clause and a similar clause in the lease of turn machines put out by the Goodyear Company prior to 1899 were the only clauses ever employed in any leases of the United Company or its constituent companies requiring a lessee to use any machines exclusively. The fact that these clauses have been eliminated by the United Company conclusively disproves the charge of the United States of a scheme to adopt leases requiring an exclusive use of the United Company's machines.

G. CANCELLATION FOR BREACH CLAUSE.

The following example of this clause is taken from the defendant's Heeling Machine Lease (P.'s Ex. 28, par. Eleven; R. Vol. 3, p. 268):—

> "But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor."

This clause permits the cancellation of all leases between the lessor and the lessee provided, and only provided, the lessee breaks one of the conditions in one or more of such leases "expressed to be obligatory upon the lessee"; in other words, some condition which the lessee obligates himself to carry out.

The leases contain various conditions which are obligatory upon the lessee. The following, taken from Plaintiff's Exhibit 28, will illustrate their character: (1) The leased machinery shall be used only by the lessee at his factory and shall not be transferred to any other person (par. One). (2) The lessee shall keep the machinery in good working order and not permit any one to remove any plate, dates, numbers or other inscriptions affixed to the same. He shall obtain from the lessor all duplicate parts needed in the machine (par. Two). (3) He shall indemnify the lessor from injury, loss or destruction by fire or otherwise (par. Three). (4) He shall pay all taxes and assessments on the leased machinery (par. Four). (5) He shall use the machinery to full capacity so far as he has work for it, and respect the Restricted Use Clause (par. Five). (6) He shall pay the royalty provided for in the lease (par. Six).

This clause merely provides that if the lessee does not act in good faith and violates his agreements the United Company may sever relations with him. If, for example, the lessee refuses to pay royalties or abuses the machines held by it under one lease, the United Company reserves the right to take back all its machines so that it will not suffer similarly in respect to machines held under other leases.

Mr. Winslow testified:—

> "The right to cancel clause, for breach of a condition expressed to be obligatory upon the lessee, was adopted by the company with respect to conditions which would be such as to make the continuance of the business relations between the lessee and ourselves impossible, as where the lessee did not make proper returns of the royalties or did not pay his royalty or refused to pay the taxes—those conditions which in the ordinary business relations between men would make the continuance of the relations impossible.
>
> "In the twelve to thirteen years prior to the beginning of this suit the United Company availed itself of the right to cancel leases and remove machinery for reasons other than bankruptcy or receivership in only five instances" (R. Vol. 1, p. 447, lines 22–34).

As in the case of the Exclusive Use Clause, this clause merely gives the United Company an option to cancel its leases, if the lessee violates their terms. It is obviously fair that this general right should be reserved to the lessor and it is clear that cases may arise in which its exercise would be essential to the protection of the lessor. If (which we deny) it is possible that it might also be so exercised as to oppress lessees or unlawfully exclude competitors' machines, this probability alone would not make the clause objectionable unless it were shown that it was inserted in the leases for this purpose, or was enforced for this purpose.

The record fully sustains Mr. Winslow's testimony (*supra*) that the clause was inserted only to permit the United Company to sever its relations with a lessee on account of conduct by the lessee which "in the ordinary business relations between men would make the continuance of the relations impossible."

In the five cases in which (apart from bankruptcy) leases

were cancelled, the lessee either had abandoned the use of the United Company's machines entirely or was persistently cheating the United Company of the royalty due on its machines (R. Vol. 1, pp. 447–8; *infra*, pp. 429–430).

The leases of the constituent companies all contained provisions giving the lessor the right to cancel if the lessee violated the lease. Practically every lease of property has such a condition.

The United States apparently objects to the present clause because it permits the cancellation not only of the particular lease, the agreement in which is broken, but of all other leases between the parties. The United Company could perfectly well furnish all its machines on a single lease, and if it did so this objection of the United States would not be applicable. For convenience it issues different leases for machines of different departments and also issues a new lease each time a new machine is taken in any one department. Thus, if a lessee has six Goodyear machines, he may have six different leases. The relationship created between the lessor and the lessee by these various leases, however, is essentially a single relationship which, for convenience, is expressed in a number of different documents. If the lessee violates an agreement in any one of these documents, it is as fair to cancel all as it would be to cancel that particular one.

The practice of the constituent companies was to issue one lease for all the machines originally taken, and then, when additional machines were taken of the same kind, to incorporate these machines in the original lease. The Fifteenth Clause of the Consolidated Company's lease of the Chase Lasting Machine (P.'s Ex. 7, R. Vol. 3, p. 66), for example, provides for this practice. Mr. Howe testified that that was the universal practice of the Goodyear Company (R. Vol. 1, p. 690, lines 12–23). When, therefore, the lease was broken the lessor could cancel the lease and thereby withdraw all its machines taken at different times and held under its terms. The clause as adopted by the United Company, which issued new leases for additional machines, accomplished practically the same result.

It is impossible to see how this clause can restrain trade or tend to create a monopoly. The shoe manufacturer cannot

complain if he loses his leases because he violates his agreements. A rival shoe machinery manufacturer cannot complain of the exercise of this clause because he is obviously benefited if a shoe manufacturer is deprived of machines of the United Company and therefore must seek machines elsewhere.

The United States contended in the District Court that this Cancellation for Breach Clause taken in connection with the Exclusive Use Cancellation Clause permits the United Company to cancel all its leases if machines of any one kind held by the lessee are not used by the lessee exclusively. This is obviously not so. This Cancellation for Breach Clause which we are now considering permits cancellation only for violation of a condition "obligatory upon the lessee." The Exclusive Use Cancellation Clause does not obligate the lessee to use the United Company's machines exclusively. On the contrary, it contemplates that the lessee may use other machines of the same kind and permits him to do so, and merely reserves an option to the United Company to cancel its leases of machines of that kind. As the lessee is not obligated to use such machines exclusively the condition is not one "obligatory upon the lessee," and therefore the use of other machines which gives the United Company a right under the Exclusive Use Cancellation Clause to cancel leases of machines of that kind does not give the United Company any right to cancel all its leases or any of its leases under this Cancellation for Breach Clause.

The United States may claim that it is not the actual exercise of this cancellation clause which operates to exclude the use of competitors' machines, but the power to exercise it in case of a violation by the lessee of the Full Capacity Clause or the Restricted Use Clause. In other words, the contention may be that a lessee will not use a competitor's machine if one of the United Company's machines held by him for doing the same work is not being used to capacity, and will not use one of the United Company's machines taken under a restricted use lease, in a manner not permitted by the license, on shoes operated on by some competitor's machines if as a consequence the United Company would have the right to withdraw all its machines. As a result it may be contended that the use of competitors' machines is interfered with.

This argument depends wholly upon whether the Full Capacity and Restricted Use Clauses are in themselves lawful. If it is lawful to require the lessee to use a leased machine to capacity, and to grant a restricted license to use the machine, then it is obviously fair that the lessee should be bound by these clauses, and that if he chooses to violate them, his leases should be cancelled.

The objection made by the United States, then, is not that the Cancellation for Breach Clause is unlawful, but that the Full Capacity and Restricted Use Clauses are unlawful. The Cancellation Clause, permitting cancellation for violation of a condition obligatory upon the lessee, can under no circumstances be unlawful, if the conditions made obligatory upon the lessee are lawful.

H. RESTRICTED USE CLAUSE.

(1) REASONS FOR ADOPTION OF THE RESTRICTED USE CLAUSE.

The Restricted Use Clause restricts the use of the United Company's machines of one group or department to use on shoes operated on by certain machines of another group or department. The following example, taken from the United Company's lease of the Hand Method Welt Lasting Machine (P.'s Ex. 15, R. Vol. 3, p. 129, at p. 131), which restricts the use of the machine to use on shoes operated on by the Goodyear Welter and Stitcher, illustrates the character of the clause:—

> "But the leased machinery shall not, nor shall any part thereof, be used in the manufacture of any boots, shoes, or other footwear which are or shall be welted, or the soles stitched on welt sewing or sole stitching machines not leased to the lessee by the lessor or its assignor, or in the manufacture of any turn boots, shoes, or other footwear, the soles of which are or shall be attached to their uppers by turn sewing machines, not leased to the lessee by the lessor or its assignor."

Considerations to be Noted at Outset of Discussion.

The following considerations must be noted at the outset:—

(*a*) **In the first place, the Restricted Use Clause does not obligate the lessee to use either the leased machine or any other machines of the United Company at all.** It merely restricts the use of the leased machine to use on shoes on which certain other machines obtained from the lessor are used. For instance, take the Restricted Use Clause quoted above from the lease of the Hand Method Lasting Machine, which restricts it to use with the Goodyear Welter and Stitcher. It does not require the lessee to use either the United Company's Lasting Machine or its Welter and Stitcher. If the lessee desires to use a competitor's lasting machine he may do so. If he desires to use a competitor's welter and stitcher he may do so. The only restriction is that if the lessee does use an outside welter and stitcher he cannot use the leased lasting machine on shoes on which such outside welter and stitcher are used. If he wishes to use the Lasting Machine in connection with an outside welter and stitcher he may exchange his restricted lease for an unrestricted lease by paying an initial premium of $300.

Nor does the Full Capacity Clause taken in connection with the Restricted Use Clause obligate the lessee to use other machines. The Full Capacity Clause in every case requires the use of the leased machine only if the lessee is making shoes on which the leased machine may be used without violating the restrictions.

(*b*) **Restricted Use Leases are only alternative forms of leases which are offered to lessees who desire to use a team of the United Company's principal machines.** Unrestricted leases are offered all lessees who wish to use only certain kinds of machines furnished by the United Company in connection with other machines obtained from competitors. The royalty charged under the unrestricted leases is in practically every case exactly the same as the royalty charged under the restricted leases. The only difference is that under the unrestricted leases an initial payment is charged to cover the loss

in royalties and additional expense which result where the United Company's principal machines are not used as a team (*infra*, pp. 358–361).

(*c*) **The Restricted Use Clauses have a very limited application as we shall show below.** They only restrict the use of the United Company's machines to use with a comparatively few of its principal machines, machines which are adapted for use together, which are delicate in operation, which are essential to the integrity of the shoe, and which must be kept in proper repair and adjustment to insure continuous and effective production in the factory.

Auxiliary Restricted Use Clause Distinguished.

The Restricted Use Clause limits the machine leased to use on shoes operated on by the principal machines of another group or department. The Auxiliary Restricted Use Clause limits the use of auxiliary machines of a department to use on shoes operated on by the principal machines of that department. The reasons for the use of this latter clause differ somewhat from the reasons for the use of the Restricted Use Clause, grouping machines of different departments, and are considered below separately (*infra*, pp. 375–378).

Reasons for Adoption of Restricted Use Clause.

The purpose of the Restricted Use Clause, when applied to machines of different departments, is to provide a lower rate for machines where they are used in a set or team, and thus not only make a better shoe, but work more efficiently and therefore produce a larger return for the United Company in the way of royalties on each machine. This clause provides a wholesale rate where the machines are used in a wholesale manner and bring in a larger return to the United Company. It thus enables a lessee to participate in the saving effected by the use of the machines as a team.

The reasons why the use of certain of the United Company's machines as a team or series increases the efficiency of each

machine, reduces the cost of service for each machine, and protects the reputation of the machines and thus justifies a better rate to lessees desiring to use the machines in this manner than is charged for machines taken independently to be used in connection with machines obtained from others, have been partially referred to above (*supra*, p. 256). We shall, however, at this point summarize the reasons.

(*a*) A large number of different machines are used in the manufacture of each shoe. In the economical management of a shoe factory the shoes flow from one machine to another in a continuous stream, and when an important machine in the line breaks down it interrupts this flow and therefore not only stops work on that machine, but also stops work on all machines coming after it in the line; and as it would merely accumulate uncompleted work which could not be finished to operate machines preceding it in the line, it likewise stops work on those machines which precede it.

It is therefore of the utmost importance that each machine in the line be well constructed and well cared for so that it will not break down or get out of adjustment, and it is furthermore of the utmost importance that a machine be repaired at once if it does break down or get out of adjustment, so that work will be interrupted for as short a time as possible; otherwise, the machines all along the line will be idle when any one machine breaks down, and the lessor of those which pay a royalty will be deprived of his royalty, the operatives who are paid by the piece will suffer, as they will be unable to work, and the shoe manufacturer's production will cease.

The advantages of a well-constructed line or series of machines which receive proper repair service are especially pronounced as respects the principal bottoming machines, namely, welters, stitchers, lasting, metallic fastening and heeling machines, to use with which other machines are restricted by the Restricted Use Clauses. These machines perform delicate and difficult operations, handle material like thread, wire and nails, and are themselves necessarily delicate machines, having a large number of moving parts, which are liable to get out of adjustment or repair.

No other company furnishes efficient service, so that when another company's machine is interjected into the series, the

efficiency of the whole series of machines is lowered to the level of the efficiency of that machine, just as was the case with the machines of the constituent companies before 1899 (*supra*, pp. 175–178). The United Company's income decreases as the efficiency of the series is so lowered.

It is important, also, to remember that the machines of the different groups or departments furnished by the United Company are not used independently as separate groups, the work of one group being completed before the shoe passes to another group of machines of a different kind. The machines of the different groups are interspersed and in reality constitute a single unit.

This was illustrated by the moving pictures shown to the District Court. This was Defendants' Exhibit 241.

Mr. Winslow testified:—

> "The machines, the operation of which were illustrated by moving pictures, Defendants' Exhibit 241, operate in a factory in the manufacture of Goodyear welt shoes in the order shown to the court." (The witness then stated the name of each machine as it operated in its order.) (R. Vol. 1, pp. 503–4.)
>
> "In these successive operations machines of the kinds obtained from the Goodyear Company, the Consolidated McKay Lasting Machine Company, and the McKay Shoe Machinery Company are interspersed among each other through those consecutive operations, and they are all required in the production of a Goodyear welt shoe and perform these necessary consecutive operations" (R. Vol. 1, p. 504, lines 24–30).

Robert P. Hazzard, a large shoe manufacturer, testified:—

> "The machines from the different departments of the United Company are interspersed in their operations. The first thing in making the shoe is to prepare the bottom stock. In that we have to use auxiliary machines of the Goodyear department and also some of the general department machines. We next use the assembling machine and pulling over machine, from the pulling over department, and the No. 5 lasting machine from the lasting department, etc. At the same point we use the machine for tacking innersoles from the metallic department. We next employ machines for trimming the uppers,

pulling the tacks, and welting the shoe from the Goodyear department, and then the auxiliary Goodyear machines for sole laying, etc. The heel seat nailing is done by a metallic department machine, and then we come to the Goodyear stitchers and more Goodyear auxiliary machines. Then the heeling machines of the metallic department are used, and then we swing back to the slugging machines of the metallic department. From there out we go back to the general department machines, edge trimmers, edge setters, etc. The operations of the machines from the different departments are all interwoven and the machines of one department are interspersed among the operations of the machines of the other departments" (R. Vol. 1, p. 642, lines 23–44).

The different machines might conceivably be incorporated into a single machine so far as their operation is concerned. They constitute for practical purposes a single machine. If one of the machines breaks down, the entire series is made idle to practically the same extent that all the parts of a single machine are made idle if one of the important parts breaks. It is as important for the efficiency of the machines as a whole that each machine of the team or series be adapted for use with the other machines and be well constructed and kept in proper repair and adjustment as it would be if they constituted parts of a single machine.

(*b*) I' is important also to note that the principal machines of the United Company have been developed for use together. Each machine prepares the shoe for the operation of the next machine, leaving it in condition to be operated on by that machine, and the next machine is adapted to supplement the operation of the preceding machine, correct any weaknesses or defects in its operation, and so in turn prepare the shoe for the peculiar operation of the succeeding machine in line.

This was also illustrated by the moving pictures referred to above.

Mr. Winslow testified,—

"It is the fact that each of the principal machines of the United Company have been developed and improved with special reference to its operation upon work which has been or is to be done by other principal machines of

the Company; and also new and improved machines have been developed to cooperate with them and increase the efficiency of the previously existing principal machines" (R. Vol. 1, p. 857, lines 29–35).

Robert P. Hazzard, a large shoe manufacturer, testified of the machines of the United Company:—

"Practically every machine takes up the shoe where the preceding machine left it, and there are very few places to-day in the bottoming room where any labor is necessary between the operations of the United Company machines. Practically speaking, each machine prepares the shoe for the operation of the next; for example, when a shoe leaves the No. 5 lasting machine there are tacks in it to hold the upper in lasted position, and those tacks must be removed before the inseam can be trimmed. Then they come in with their tack-pulling machine which pulls out the tacks, leaving the shoe in condition so that the inseam trimmer can trim the upper, which it could not do if the tacks were there. So you go on indefinitely; it is just a continuous process" (R. Vol. 1, p. 643, lines 3–15).

Mr. Howard testified as follows:—

"The manufacture of shoes is unique in that a great number of different successive operations are performed by different machines upon the shoe and its several parts. It is essential for the success of the operation of each machine that the shoe come to that machine in the right condition for its operation, and that requires that the operations of machines which have previously been used upon the shoe shall have been performed properly. If such prior operations have not been properly performed, the work of that machine cannot be done right. On the other hand, proper performance of subsequent operations upon the shoe requires that each machine in turn shall efficiently prepare the shoe for the operation of the next machine to which the shoe is to be presented; and improper operation of any machine in the line may impair the efficiency of the operation of one or many of the machines which are to perform subsequent steps in the manufacture of the shoe. Frequently the combined effects of improper operations of a number of machines will accumulate as the shoe goes through the factory

and will result in a poorly made shoe. It quite often happens that when the finished shoe is not right it requires some time to find out what machine is responsible, and frequently it will be found that the poor work is the combined effect of impaired efficiency of several machines which operate successively upon the shoe. It is therefore of the utmost importance that every machine shall be designed with a view to the succeeding machines, and so that it will deal accurately and efficiently with the precise shoe organization that comes to it from the preceding machines; and every machine must be kept in its most efficient and satisfactory condition. That requires incessant and careful supervision of the machines all along the line.

"Moreover, it is of great importance that each machine in the line be properly constructed from a mechanical standpoint. If a machine is poorly constructed, for example, if some of the operating parts are weak, or if some of the movements given to any of the parts are too abrupt, or if the mechanical organization is not good, so that excessive wear and lost motion with consequent erratic operation results, a machine will frequently be put out of operation by breakage of parts or by necessity for adjustment to make the parts co-operate as they must to perform the machine's work. Every time a machine is put out of operation for any reason, shoes accumulate in front of that machine and there are no shoes for the operation of the machines for performing subsequent steps, so that those succeeding machines and their operators are idle and the whole factory suffers on account of that one disabled machine" (R. Vol. 2, pp. 2664–5).

Mr. Howard then explained at length the effect on the operation and work of other machines of a number of machines not adapted for use with such other machines (R. Vol. 2, pp. 2265–2671), and added:—

"The impairment of the efficiency of the operation of one machine by the failure of machines which have previously operated upon the shoe to do their work right extends all the way through the long line of machines which operate successively upon the shoe, and includes even those machines which perform minor operations. The difficulties which I have specifically discussed are merely illustrations of what may occur throughout the factory" (R. Vol. 2, p. 2671).

Therefore a team of the United Company's machines used together is more efficient and has a greater productivity and produces a better product than if the team were not used as a whole and an outside machine not specially adapted for use with other machines of the series were interjected into the series.

(*c*) The United Company, as we have shown, furnishes service with its machines free of charge. It is obvious that the United Company can furnish this service at less cost to itself for each machine if a series of machines is used than it can if a single machine or only a few machines of the series are used.

(*d*) Where a series of machines is used on each shoe, if the completed shoe is defective it is sometimes difficult to tell what particular machine of the series is at fault. Where a team of United Company's machines is used the United Company is responsible for the result, and by furnishing efficient machines and keeping its machines in proper adjustment and repair it maintains a high standard of product. Where an outside machine is introduced it may produce defective work.

The United Company owns the trademarks "Goodyear Welt" and "Goodyear Turn" and grants to its lessees the right to use them (R. Vol. 1, p. 22, lines 3–4). Its machines have been especially developed to make "Goodyear Welts" and "Goodyear Turns." It is vitally interested in the quality of the product of its machines. Defective work affects the reputation of its machines.

When machines of different makes are used together on the same product it is not easy to tell which is responsible for defective work, and the results of poor work by one machine may run along and accumulate with each operation and produce unsalable or defective shoes and thereby affect the reputation of the United Company's machines, even though they are not responsible for the defective work.

Mr. Winslow testified:—

> "The reputation for efficiency, both in quantity and quality of work done by our machines, is always in jeopardy and affected by the introduction of a machine of some other manufacturer into the series of operations

done by our machines. The reputation of our Goodyear welt shoe, the standing of that shoe, is dependent upon the two different kinds of seams that are made by the two different machines used in the manufacture of that shoe. And the quality of work done is affected, and would be necessarily affected, by the way in which the work comes from, or is prepared by, one machine to go to the next machine.

"Prior to the formation of the United Company there was a constant dispute between the different companies which made up the United Company as to who was responsible for a poor piece of work. As an illustration, which could be easily understood even by one not familiar with the manufacture of shoes, the very next operation from the lasting is the welt sewing. The welt-sewing machine operator would constantly lay the blame for poor work upon the lasting operator—the operator upon the lasting machine. The lasting machine operator would constantly blame the operator upon the welt-sewing machine.

"Both those reasons have to do with the use of our tying clauses for the greatest and most successful production of our machines" (R. Vol. 1, pp. 866–7, lines 34–43, 1–12).

(*e*) The United Company also furnishes the best machines. This was proved by all the evidence and was found as a fact by the District Court. Having the best machines, adapted and developed to be used consecutively, as a team or plant, it is distinctly injurious to it to have an inferior machine introduced into the line, for at once the certainty and regularity of production is endangered, and royalties exposed to diminution.

One of the principal reasons for the formation of the United Company was to improve the service rendered with its machines and thus increase their productivity (*supra*, pp. 159–160–177). The three constituent companies prior to the formation of the United Company often had their machines in the same factory, but no one of the three could afford a really satisfactory service. The extent to which the United Company was enabled to improve this service has been shown above (*supra*, pp. 177–181). The testimony of shoe manufacturers as to the efficiency and necessity of the service has also been referred to (*supra*, pp. 181–187). It has also been shown that as a result in part of this service and the use of

the United Company's machines as a series or team the efficiency or productivity of each machine has increased to a startling extent. Thus each Goodyear welter operated on 66.7 per cent. more shoes in 1910 than it did in 1900, each Goodyear stitcher operated on 69.5 per cent. more shoes in 1910 than in 1900, each Goodyear turn sewing machine operated on 54.3 per cent. more shoes in 1910 than in 1900, each heel attaching machine operated on 62.3 per cent. more shoes in 1910 than in 1900, and each lasting machine operated on 24 per cent. more shoes in 1910 than in 1900 (*supra*, p. 191; Defs.' Ex. 218, R. Vol. 1, p. 428).

The foregoing conditions show beyond question that when a series of the United Company's machines is used the total number of shoes operated on by each machine is increased and therefore the amount of income on account of each machine carrying a royalty is proportionately increased; that the cost of the caring for each machine is reduced and the reputation of the defendants' machines is increased, factory space is economized because fewer machines will produce a larger output, and the regularity and certainty of product is assured. These results clearly justify the United Company (if any justification is needed) in granting the shoe manufacturer who uses a team of machines a better rate than is granted a shoe manufacturer who uses a single machine out of the team or only a portion of the machines constituting the team. Indeed, the shoe manufacturer may well insist that such wholesale or team rate is only fair to him, because when he so uses the machines the return to the United Company is greater on each machine. By granting such a team rate the shoe manufacturer is permitted to share in the economies resulting from the formation of the United Company and its consequent ability to furnish and care for a complete team of machines adapted for use together.

Mr. Winslow testified:—

> "The restricted-use clause was adopted in our leases for the purpose of giving the company the proper return for the use of the machines when they were leased without initial premiums, and for that reason alone. With the terms of royalty fixed the company would not, without

the initial premiums, receive a fair return for the machines unless they were used together as restricted in the leases. As a business proposition, after the initial premiums were removed, there would be no security whatever for a proper and fair return for the use of the machines without the restricted-use clause" (R. Vol. 1, p. 452, lines 29–38).

He further testified:—

"When I testified on cross-examination that the reason for the use of the tying clauses was not to cause more of our machines to be used and to make more people use them, but that the real reason was to increase the productivity of our machines, I meant that the clauses were introduced to increase the productivity of the principal machines and by increasing that productivity to reduce the number of machines required to do the work, and thereby reduce the cost to the company of the up-keep and service in connection with the machines, and at the same time increase the earnings of each machine.

"By limiting the use of one principal machine of the company to work which has been operated upon by other principal machines of the company, its use is confined to work done by machines with which we know that prompt and efficient service is furnished to keep that machine in proper condition to operate, and with operators who have been properly instructed in the operation of the machine at the expense of our company, and also with machines where new operators will be taught whenever they are needed. Now, of course, under those conditions we have a definite assurance as to the maintenance of the productivity of the machines and the quality of work that will be produced by those principal machines with which another principal machine is used.

"This tendency in the operation of the tying clauses is clearly shown by the comparison in the exhibits showing the efficiency of the machines in 1911 over the machines in the year 1900. A relatively smaller number of machines are producing a larger number of shoes, resulting in less necessary investment in machines to produce a given product and less relative expense to maintain those machines in condition to operate continuously, in the upkeep of those machines, and in the number of operators which must be instructed. The productive efficiency and quality of work done by any line of machines is only equal to that of the least efficient machine in the line.

. . . . . .

"With reference to this question of productivity, it would not be a business possibility for the company, without the requirement of initial premiums, to lease its machines on the terms of the restricted leases without the restrictions in those leases" (R. Vol. 1, p. 856, line 39; p. 857, line 39).

"While the restricted form of lease could not increase the number of our machines in use the two sets of machines were used in unison. The cost of the care of those machines was less per unit, and increased efficiency resulted because the same concern would from its branch office attend to the metallic machine so that it would not be delayed, or attend to the laster so that that would not be delayed" (R. Vol. 1, p. 550, lines 13–19).

"The manufacturers believe that we have the best machines, and they take them, first, for that reason. They take them on the limited lease system because it costs them less to equip their factories and they have the money that they would otherwise have in machinery to use to buy leather and other articles that they use, and they turn that money over two or three times a year. They know by experience that the life of a machine, while sometimes a long period, is many times a short period, and since the United Company was formed they have seen many improved machines. They know that if we improve a machine which they have without the license payment we will put the improved machine in their factory and take out the old one without any cost to them" (R. Vol. 1, p. 551, lines 5–17).

"The reputation for efficiency, both in quantity and quality of work done by our machines, is always in jeopardy and affected by the introduction of a machine of some other manufacturer into the series of operations done by our machines. The reputation of our Goodyear welt shoe, the standing of that shoe, is dependent upon the two different kinds of seams that are made by the two different machines used in the manufacture of that shoe. And the quality of work done is affected, and would be necessarily affected, by the way in which the work comes from, or is prepared by, one machine to go to the next machine" (R. Vol. 1, p. 866, lines 34–43).

(2) TESTIMONY OF SHOE MANUFACTURERS TO MERITS OF RESTRICTED LEASES.

The shoe manufacturers themselves appreciate the merits of the restricted forms of lease and prefer those forms to any others.

R. P. HAZZARD, manufacturer of 5,000 pairs of welt shoes daily, testified:—

> "When I started in for myself I adopted the plan of obtaining machines on the restricted leases because I considered it to our advantage to do so. Because in my judgment it was a necessity for the United Shoe Machinery Company to restrict in some way the use of those machines in connection with the machines paying a royalty, in order to make it practical for them to supply us with the agents' service which they give us, and that the saving in the machinery investment in our plant and the chances of new models coming up made the purchase of the machines in this manner better for us in a financial way as regards the investment of the machine, besides the advantage of the agents' services" (R. Vol. 1, p. 641, line 35; p. 642, line 2).
>
> "My reason for taking the restricted lease was primarily a question of finances, to save my money for working capital instead of tying it up in dead capital. Another reason was that I considered that the liability of loss in the replacement of a machine by a more up-to-date model would be less under the restricted lease than under the other lease. . . . I have never taken as much interest in the legal wording of the United Company's leases as I have in the personality of its people, and I have always had fair treatment from the United Company" (R. Vol. 1, p. 653, lines 10–20).

MARTIN E. WELCH testified:—

> "At the time we made up our minds to add a welt line of shoes I thought the United Company had the best machines and put them out on the best terms. I thought the restricted lease the best terms. First, because it allowed us the use of the money which would have to be put in machinery that at some time would be absolutely worthless; secondly, because we could tell almost

to a dollar what the depreciation would be at the end, and thirdly, because I made a partner of the United Company. They owned the machines, and it was just as much to their interest to make the machines work to their fullest capacity as it was to my interest to have them work to their fullest capacity. Again, when a man owns his own machine if a part breaks he must put it in, but if there are any poor parts in the United machines they paid for the parts. They have used me fair in that respect" (R. Vol. 1, pp. 709–10).

"As between the unrestricted lease and the restricted lease, in my judgment the restricted lease is preferable because, first, I can put into my business the money that I save instead of investing it in the machinery, so that I have more money; second, I can tell almost to a cent just what the depreciation is on that machinery—I call the return charges the depreciation; and, thirdly, I make a partner of the United Company. I have not a dollar invested in the machines, and their interest in the machines is fully as great as mine, and it is to their advantage to keep the machines working to their fullest capacity. That means less machinery for me to run in the factory, and it means a less investment for the United Company. It is true that under the unrestricted lease the United Company owns the machine, and the company draws the same royalty from that machine as it obtains from the other machine. . . .

"I do not see any advantage to the manufacturer in taking the unrestricted instead of the restricted lease, the advantage is with the restricted lease. . . .

"Before I changed to the restricted leases I had had the initial premium leases for about two years. I had practically all my machines on the initial payment basis and changed over from my own choice. I got back everything that was owed me" (R. Vol. 1, p. 713, lines 5–34).

FREDERICK ALLEN said:—

"When we equipped our new factory with machinery for making welt shoes we took the restricted form of lease. Of the three forms of obtaining machinery for making welt shoes—by purchase, by the independent lease, or by the restricted lease—in my judgment the restricted lease is the more advantageous for the manufacturer. I prefer that to purchase because I don't have to tie up our money in machinery, which as an asset is worthless as soon as it is installed. An investment in machin-

ery has not any value for the purpose of obtaining credit; no one considers it an asset. Also the money is tied up so that a manufacturer is prevented from doing that much more business" (R. Vol. 1, p. 722, lines 6–16).

"I preferred the restricted form of lease because I am not obliged to tie up my money. There was a less investment of money if I took the machines under the restricted form of lease than if I took them under the unrestricted form" (R. Vol. 1, p. 723, lines 33–36).

CHARLES A. EATON testified:—

"We take a very large proportion of our machinery from the United Company. We chose the restricted lease because we felt that it was for our interest. That was because we were relieved from a large investment of capital, and because we believed that the development of shoe machinery was along that line and that we should get better and improved service by so doing.

"I have read the leases. The restrictions do not affect our activities at all. We have full confidence in the management of the company as indicated by their dealings with us since it was formed. They have not taken advantage of the technicalities of their leases to the extent that they could. They have been lenient in all their dealings and in the exchange of machines. Their policy has been very liberal, and they have kept the machines up to date. As new machines were brought out they have exchanged the old ones without any return payment or any charge to us, except for missing or worn parts and freight charges. Those are all the charges that have been made to us on account of the replacement of machines during these years of development since we have done business with the company" (R. Vol. 1, pp. 751–2).

EDWARD W. BURT testified:—

"We have always taken our machines on royalty leases, not paying initial charges. I have done that because I prefer not to tie up capital in machinery. It is a very great expense and, in securing credit, bankers never consider machinery worth a dollar" (R. Vol. 1, p. 740, lines 37–41).

C. WILLIS BENNETT testified:—

"When I started out for myself I got my machinery from the United Company and from the Singer, the

Union Special, and the Wheeler & Wilson Companies. I make from 800 to 1,400 pairs a day, depending upon the season.

"I took my machines from the United Company on the restricted form of lease without initial premiums. I chose that form because I had a very small capital when I started and I didn't care to lock up so much money in machinery. I had been a superintendent and had saved some money. That is all I had to start with" (R. Vol. 1, p. 757, lines 40–45; p. 758, lines 1–4).

"As between purchasing machinery, or obtaining it upon an independent lease with an initial premium, or obtaining it on the restricted form of lease which I have, the restricted lease was the most advantageous because I had no money to tie up in machinery. Had I not been able to obtain my machines in that way, I would not have been able to start in business at all; never could have started if it hadn't been for the United Company. . . .

"I do not find anything irksome or difficult about the clauses in the leases limiting the use of our machines. I have read the leases" (R. Vol. 1, p. 759, lines 9–23).

(3) THE RESTRICTED USE CLAUSE DOES NOT REQUIRE A LESSEE TAKING ESSENTIAL MACHINES FROM THE UNITED COMPANY TO LEASE OF IT PRACTICALLY ALL OTHER MACHINES.

The fundamental charge of the petition, as we have shown (*supra*, p. 11), is that the defendants planned to acquire or obtain a monopoly by

A. Acquiring all concerns engaged in the shoe machinery business, and then

B. Refusing to sell or lease any essential machines, viz., lasting, welt sewing, outsole stitching, heeling, and metallic fastening machines, except on condition that the shoe manufacturer take from them "practically all other machinery" which he required (R. Vol. 1, p. 994).

The United States relies upon the Restricted Use Clause to prove the second portion of this charge, namely, that the

United Company refused to lease any of its essential machines, namely:—

(1) Lasting machines,
(2) Welt sewing and outsole stitching machines,
(3) Heeling machines,
(4) Metallic fastening machines,

except on condition that the shoe manufacturer take practically all other machinery from it.

Unless, then, the Restricted Use Clause has the Effect of Requiring a Lessee taking Essential Machines to take Practically All Other Machinery from the United Company, it Fails to Support the Allegation of the Petition, and is Immaterial in the Present Case.

The charge is not that the United Company refused to furnish one of the so-called "essential" machines except upon conditions requiring the manufacturer to take from it the rest of the "essential" machines. The whole theory of this branch of the case for the United States was that the manufacturer had to have the United Company's "essential" machines (that is, the five above enumerated), and that the United Company made use of its lawful patent monopoly of these machines and their controlling superiority to all others on the market to force upon the shoe manufacturers its much more numerous line of what the United States would presumably designate as "non-essential" machines and thus to exclude competitors and maintain an unlawful monopoly of such "non-essential" machines. It is clear, therefore, that the words, "practically all *other machinery*," are intended to refer to machines other than the five kinds which the petitioner designates as "essential."

That the Restricted Use Clause has no such effect as that alleged is apparent from an examination of the leases themselves.

In the first place, it must be remembered throughout the discussion that it is not true that the United Company ever "refused to sell or lease" any of its machines, "essential" or "non-essential," except with the Restricted Use Clause in the lease. On the contrary, the United Company has always

continued to offer all its machines, either for outright sale (as in the case of the General Department machines), or under leases containing no Restricted Use Clause, on the same or even more favorable terms than were in effect when the United Company was formed (*infra*, pp. 358–361). The Restricted Use Clause merely offers an alternative form of lease at a reduced price to lessees desiring to use a number of the United Company's machines as a team. The wholly unfounded charge that the difference in price under the two forms of lease is prohibitive, or exorbitant, or in any way unreasonable, will be dealt with below (*infra*, pp. 362–365).

Again, the Restricted Use Clause is not a condition that the shoe manufacturer take from the United Company "practically all other machinery" which he required, or all other machines even of a particular kind, or for a particular purpose. A lessee holding any machine under a lease containing this clause may take any other machines from competitors which he desires without in any way violating the terms of the Restricted Use Clause. The restriction is that he do not use the United Company's machine on shoes on which he uses certain other machines. The clause merely limits the method of use of that particular machine. That this is not an immaterial distinction will appear below (*infra*, p. 365).

But disregarding for the moment both of these fundamentally erroneous statements in the charge of the petition, the whole theory of this contention falls to the ground when it appears upon examination of the leases that instead of being customarily attached to the leases of the "essential" machines, and requiring these to be used only with the United Company's "other machinery," that is, the "non-essential" machines, the Restricted Use Clause was never used at all in any leases of the two machines which could most properly be described as "essential," namely, the Goodyear welt sewing and outsole stitching machines; and when used in leases of the other so-called "essential" machines it restricts their use (with one or two minor exceptions noted below among the many forms of leases put out) not to use with other "non-essential" machinery, but solely to use with one or more of the other "essential" machines; and the Restricted Use Clauses, found in the leases of the "non-essential" machines, restrict them not to

use with other "non-essential" machines, but to use with certain of the "essential" machines. Such a leasing system lends absolutely no support whatever to the charge that the "essential" machines were used to compel or even to induce by means of the Restricted Use Clause the purchase or leasing from the United Company of its "other machinery" or to exclude the "other machinery" of competitors. The Restricted Use Clause operated in exactly the wrong direction to support that theory; and the failure of this part of the case for the United States was so complete as to make it rather astonishing that any one who had ever had an opportunity to read with any care the United Company's leases should ever have put forward such a claim.

The examination of the leases shows that a lessee, taking every one of the so-called "essential" machines from the United Company under the restricted form of lease, is free to use with all of them on the same shoes any machines of any *other* kinds whatsoever obtained from competing makers, with only these three very small exceptions, namely, (1) that if he uses under restricted lease a No. 5 Lasting Machine (which is only one of several kinds of lasting machines made by the United Company), he must, if he pulls over by machinery the shoes on which that lasting machine is employed, use the United Company's pulling-over machine in connection therewith; (2) that if he uses under the restricted lease the United Company's heeling machine *on pegged shoes* (of which very few are made), he must use the United Company's pegging machine in connection therewith; and, (3) that if he uses the McKay & Copeland Lasting machine (of which very few are used (R. Vol. 1, p. 454, lines 8–9)) under the restricted form of lease, on pegged shoes, he must use the United Company's pegging machines in connection with it. With these three minor exceptions he is absolutely free to use all of the United Company's "essential" machines under restricted leases on the same shoes on which any other machines obtained from competitors are used, such as machines for stitching uppers, pulling-over machines, eyeletting machines, clicking machines, a large number of auxiliary machines (there being 43 in the Goodyear department alone), General Department machines (of which there are over 170 different kinds), and any

other machines of any kind which may be useful in the manufacture of shoes.

That this statement, if true, completely disposes of the charge of the petition must be apparent. It is only necessary to support the statement which has been made by a detailed examination of the leases of the so-called "essential" machines.

(*a*) Lasting Machines.

There were introduced by the United States, to show the form of lease upon which the United Company put out its lasting machines, nine different forms,—in addition to the forms in use before the United Company was formed and which the United Company continued to use.

Of the two forms introduced in respect to the **Consolidated hand method welt lasting machine** only one contains any limitation whatever to use with machines of any other department. That one limits the lasting machines held under it to use alone with the United Company's welt sewing and outsole stitching machines. There is no limitation or condition as to any of what the United States refers to as "*other machinery*" whatsoever (*supra* pp. 288–289).

Of the two forms of lease for the **Consolidated hand method McKay lasting machine** only one contains any limitation whatever to machines of any other department. That one limits to use with the lasting machines held under it to use alone with United Company's metallic machines. There is no limitation as to any "*other machinery*" whatsoever (*supra*, p. 288).

Of the forms of lease introduced in respect to the United Company's **Ideal** and **Chase** lasting machines neither one limits to use with any machines other than the United Company's welt sewing and outsole stitching machines and metallic machines. In the case of the **Ideal** the restriction is to the United Company's welt sewing and outsole stitching machines only—there is no limitation or condition as to any "*other machinery*" whatsoever (*supra*, pp. 286–287).

For the **McKay & Copeland lasting machines** one form of lease only (which was introduced by the United Company in 1903—four years after its formation) limits to use with

any of what the Government refers to as "*other machinery.*" Of such "*other machinery*" that one limits to use with pegging machines only (*supra*, pp. 286–287).

Of the two forms of lease introduced in respect to the United Company's **No. 5 lasting machines** only one contains any limitation to use with any other of the United Company's machines. That one so far as relates to what the United States refers to as "*other machinery*" limits to use with United Company's pulling-over machines only. This No. 5 Lasting Machine was not developed or put on the market until 1908—nine years after the formation of the United Company (*supra*, p. 295).

In the case of the other groups the lack of foundation for the allegation is even more striking, if that is possible.

The second group which the United States refers to is—

(*b*) Welt Sewing Machines and Outsole Stitching Machines.

The United States introduced three forms of leases as showing the manner in which the United Company has leased these machines. There is not one of these leases which limits the machines to use with any "*other machinery*" whatsoever. As a matter of fact, the United Company has never at any time in its existence put out any form of lease for its welt sewing and outsole stitching machines which limited such machines to use with the United Company's lasting, metallic fastening or heeling machines or any of them or which limited them to use with any "*other machinery*" whatsoever; or which prevented the use with the United Company's welt sewing and outsole stitching machines of any other machines of whatsoever kind or from whatsoever source obtained (*supra*, pp. 281–283).

The next group mentioned by the Government is—

(*c*) Heeling Machines.

Of the three forms of lease in respect to the United Company's heeling machines only one contains any limitation whatsoever. Of such "*other machinery*," that one form (which was

not adopted until 1904) restricts to use with pegging machines only (*supra*, p. 289).

The final group mentioned by the Government is—

(*d*) METALLIC MACHINES.

The United States introduced seven forms of lease as showing the manner in which the United Company has put out its metallic machines; only three contain any limitation whatsoever to use with any of the United Company's other machines. In no instance is such limitation extended to the use of any of what the United States has referred to as "*other machinery*"—the limitation in the three cases which contain any limitation being to use with the United Company's lasting and to its welt sewing and outsole stitching machines alone (*supra*, pp. 290–292).

The existence of a limitation to use with the United Company's pulling-over machinery in the one isolated instance in one form of lease for the No. 5 Lasting Machine adopted nine years after the formation of the United Company, and of a limitation to use with the United Company's Pegging Machine in the two instances mentioned, viz., one form of Lasting Machine lease adopted five years after the formation of the United Company and one form of Heeling Machine lease adopted six years after such formation, can hardly be taken as a demonstration of an "idea" alleged to have been "conceived" by the defendants at the time of its formation years before—

> "*to refuse to sell or lease any of the essential machines* [(1) lasting machines, (2) welt sewing machines and outsole stitching machines, (3) heeling machines, and (4) metallic fastening machines] to the manufacturer of shoes *except on condition that he buy or lease of them practically all other machinery of whatever kind necessary or useful to* such manufacturer of shoes" (italics ours) (Petition R. Vol. 1, pp. 991, 994).

An examination of all the leases offered in evidence shows, as stated above, that, with the three minor exceptions noted above, in all those cases in which any limitation whatsoever exists it is always *to* one or more of the machines which the United States in its petition has designated as "essential"

machines, viz.: (1) lasting machines, (2) welt sewing and outsole stitching machines (3) heeling machines, and (4) metallic machines and never *from* such "essential" machines *to* "other" machines.

The foregoing appears to be a complete answer to any claim that the United Company determined to "refuse to sell or lease any of the *'essential'* machines to the manufacturer of shoes except on condition that he buy or lease of them practically all *other machinery* of whatever kind necessary or useful to such manufacturer of shoes," but to further emphasize the lack of basis for such claim, consideration of some of the items of *"other machinery"* is illuminating. For example:—

"Other machinery" must include all of the machines used for attaching the soles of McKay shoes to their uppers. In 1899 such McKay sewed shoes amounted to 82,000,000 pairs out of a total of 172,000,000 pairs of shoes made in the United States; in 1904 to 94,000,000 pairs out of a total of 219,000,000 pairs made in the United States; and in 1910 to 105,000,000 out of a total of 278,000,000 pairs made in the United States (Defs.' Ex. 215, Vol. 5, p. 322).

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines of any kind, *"essential"* or otherwise, which contained any condition that such manufacturer buy or lease any McKay sewing machine from the United Company, or which limited the use of any of the United Company's machines to use with McKay sewing machines obtained from the United Company, or which precluded the use of any of the United Company's machines with McKay sewing machines obtained from any source whatever.

"Other machinery" must include all of the **machines used for the many operations in sewing together the parts of the uppers and linings** of all shoes made. Such machinery in number of machines used represents a very large per cent. of all the machines used in the manufacture of shoes.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, *"essential"*

or otherwise, which contained any condition that such manufacturer buy or lease any machinery for performing any such operations from the United Company, or which limited the use of any of the United Company's machines to use with machines for such purposes obtained from the United Company, or which precluded the use of any of the United Company's machines with machines for such purposes obtained from any other source whatsoever.

"*Other machinery*" must include all of the machines used for cutting or dieing out the various parts of the uppers and soles of all shoes. This includes all clicking machines.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any such cutting or dieing-out machines or clicking machines from the United Company, or which limited the use of any of the United Company's machines to use with cutting or dieing-out or clicking machines obtained from the United Company, or which precluded the use of any of the United Company's machines with cutting or dieing-out or clicking machines obtained from any other source whatsoever.

"*Other machinery*" must include all of the machines for performing the various operations similar to those performed by the auxiliary machines of the Goodyear Department of the United Company, or other similar operations.

The United Company never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer should buy or lease any such auxiliary machines from the United Company, or which limited the use of any of the United Company's machines to use with such auxiliary machines obtained from the United Company, or which precluded the use of any of the United Company's machines with similar auxiliary machines obtained from any other source whatsoever.

"*Other machinery*" must include all machines for inserting the eyelets and for inserting the lacing hooks in all laced shoes made.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any eyeletting or lacing hook machines from the United Company or which limited the use of any of the United Company's machines to use with eyeletting or lacing hook machines obtained from the United Company or which precluded the use of any of the United Company's machines with eyeletting and lacing hook machines obtained from any other source whatsoever.

"*Other machinery*" must include all machines for making and finishing all buttonholes and for attaching the buttons of all buttoned shoes made.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any button or buttonhole machinery of any kind from the United Company or which limited the use of any of the United Company's machines to use with button or buttonhole machinery obtained from the United Company or which precluded the use of any of the United Company's machines with button or buttonhole machinery obtained from any other source whatsoever.

"*Other machinery*" must include all machines for treeing and finishing all shoes made.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any treeing or finishing machinery from the United Company or which limited the use of any of the United Company's machines to use with treeing or finish-

ing machinery obtained from the United Company, or which precluded the use of any of the United Company's machines with treeing or finishing machinery obtained from any other source whatsoever.

"*Other machinery*" must include all **machines for performing the operation of pulling over and the operations of the various auxiliary machines connected therewith** upon all shoes made which are so operated upon.

The United Company with one minor exception has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any pulling-over or auxiliary machinery from the United Company or (excepting in so far as in some forms of Pulling-Over Department leases the pulling-over machine and its auxiliaries are limited to use together) which limited the use of any of the United Company's other machines to use with pulling-over or auxiliary machinery obtained from the United Company or which precluded the use of any of the United Company's machines with pulling-over or auxiliary machinery obtained from any other source whatsoever. The one exception is that there is one form of lease for the No. 5 lasting machine (P.'s Ex. 21) which limits the No. 5 lasting machine when held on that particular form of lease to use with the United Company's pulling-over machine, when the shoes were pulled over by machine but not otherwise.

"*Other machinery*" must include all **machines for performing all of the various operations similar to those performed by the 172 different kinds of machines offered by the United Company for outright sale in its General Department.**

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any machinery for performing any of such operations from the United Company, or which limited the use of any of the United Company's machines to use with

General Department machines obtained from the United Company or which precluded the use of any of the United Company's machines with machines of any of the 170 different kinds included in the General Department, which were obtained from others.

(4) THE RESTRICTED USE CLAUSES WERE NOT ADOPTED FOR THE PURPOSE OF EXCLUDING COMPETITORS' MACHINES.

We have shown above that the Restricted Use Clauses were adopted for the purpose of offering a wholesale rate to lessees desiring to use a team of the United Company's machines adapted for use together, and working most effectively together.

We have also shown that they do not require or even offer inducements to a lessee taking essential machines from the United Company to take of it practically all other machinery, or indeed any other machinery, and thus that they offer no support to the charge on which the petition is based. This being so, these clauses become immaterial in the present case.

However, we wish to call the Court's attention to various other considerations supporting our showing that the Restricted Use Clauses were adopted solely for the purpose of offering reduced rates to shoe manufacturers using a team of machines, and that they were not adopted for the purpose of excluding competitors' machines.

(a) THE FACT THAT THE UNITED COMPANY HAS ALWAYS OFFERED ALTERNATIVE LEASES CONTAINING NO RESTRICTED USE CLAUSES DISPROVES ANY INTENT TO COMPEL THE USE OF OTHER MACHINES.

There has never been a time when a lessee could not obtain machines of any department upon a form of lease containing no restrictions as to use with machines of other depart-

ments. Mr. Winslow testified (R. Vol. 1, pp. 440–1, lines 45, 1–2),—

> "There never has been a time when a lessee could not obtain the machines of any department upon an independent form of lease."

In 1911 Mr. Winslow gave to a committee representing the Manufacturers' Alliance a statement of the terms upon which lessees could then and could at all times previously obtain machines on unrestricted leases from the United Company. This statement is given in Defendants' Exhibit 40 (R. Vol. 5, p. 40). See also Mr. Winslow's testimony with reference to this statement (R. Vol. 1, p. 514).

Furthermore, the United Company has always been willing to permit a lessee holding a lease of a machine containing a Restricted Use Clause to cancel his lease and take in exchange an unrestricted form of lease. On pages 450 to 451 of the record, Vol. 1, are given the names of nineteen shoe manufacturers who were offered unrestricted leases in exchange for their restricted leases.

The unrestricted leases in practically every instance carry the same royalty as the restricted leases. The difference is that an initial payment is charged under the unrestricted leases. One form of unrestricted lease of metallic machines adopted in 1901 by agreement with a committee of shoe manufacturers is an exception to this rule. In that lease no initial payment is charged, but instead the United Company is authorized to charge 10% more for fastening material used in the machine, the profit from the sale of which constitutes the only royalty that is charged under the lease (*supra*, p. 291).

In no instance where an initial payment is charged for an unrestricted lease has the amount of the payment been increased over what was charged prior to 1899, the date of the formation of the United Company, and in some cases the initial payment has been reduced, and in no instance has the royalty charged on any machine been increased over that charged in 1899 (R. Vol. 1, p. 433, lines 29–32). On the contrary, certain of the initial payments previously required have been removed and the machines leased without the

Restricted Use Clause on leases requiring no initial payment. Thus in 1899 $300 initial payment was charged for the Goodyear Welter and the same amount for the Goodyear Stitcher (R. Vol. 1, p. 515, lines 1–12, and Defs.' Ex. 41, Vol. 5, p. 44). The charge for some of the auxiliary machines was as much as $500 each (Defs.' Ex. 41, Vol. 5, p. 45). The lessee to-day can get his Goodyear machines without any initial payment, paying on the auxiliary machines only a small annual rental (Defs.' Ex. 230A, Vol. 5, p. 443), and the leases contain no clause restricting their use to use with other groups of machines. In addition the royalty on the turn machine has been reduced 50%.

The result is that a lessee to-day who does not wish to be bound by the Restricted Use Clauses adopted by the United Company can get leases without these clauses on better terms than were available in 1899, before the formation of the United Company, although the machines themselves have been much improved, numerous auxiliary machines have been added, and the cost of manufacturing machines has unquestionably increased.

It is obvious that if the defendants, as charged by the United States, had organized the United Company in order to compel shoe manufacturers taking one kind of machine to take all kinds, they would not have continued to offer machines of each kind independently on as favorable or more favorable terms than before.

The District Court, referring to the contention that the leases of the United Company compel shoe manufacturers desiring to take certain machines from the United Company to take other machines which prior to the formation of the United Company they could obtain separately, said,—

> "The alleged plan of a refusal of what before could be had separately, as a means of compelling the taking of other machines, was a principal ground for invoking the Sherman Act" (R. Vol. 1, p. 1162).

After reviewing the various clauses in the leases, the District Court found that the Restricted Use Clause was the only one that—

". . . has relation to the supposed scheme of using the power acquired by combination to refuse machines that before were separately obtainable, and to offer such machines only on condition that other machines of different kinds should also be taken" (R. Vol. 1, p. 1163).

The District Court, however, found not only that the Restricted Use Clause was lawful in and by itself, but that in view of the fact that machines on unrestricted leases are offered on as favorable terms as previously the United States must be held to have utterly failed to prove its contention.

Thus the District Court said:—

"The restricted or prohibitive leases do not in themselves as documents prove the denial of the right to procure, as before, independent leases for individual machines. As matter of fact, independent leases which did give the right to use the machines with machines of other kinds, made by other machinery manufacturers, were always procurable. This was the general rule, and if there were any exceptions they were, so far as appears, inconsiderable.

"It is a result of the consolidation that the United Company offers more attractive contracts for a group of machines of different kinds than for machines of one kind only; but as it still offers the contract for machines of one kind on as good terms as before it is difficult to see how that is detrimental to the shoe manufacturers.

"The charge of this supposed scheme to deprive former customers of the right to use some machines unless they would also use others seems to have originated either in the erroneous assumption that a prohibitive lease was the only kind procurable, and that the former customer had no choice, or in disregard of the fact that it was merely an alternative form of lease. As the leases prove no such plan, whether of the extent alleged or of less extent, and as the evidence proves the exact contrary of what is charged, we think that the United Shoe Machinery Company is, upon the merits, entitled to a full clearance from this charge" (R. Vol. 1, p. 1163).

The Contention of the United States that the Terms Charged for Unrestricted Leases are Prohibitive is Utterly Unfounded.

The United States contended in the District Court that the initial payments charged for machines under the unrestricted leases were prohibitive. This of course is not the fact, because they are the same or less than the initial payments that manufacturers had paid and prospered under for many years before the United Company inaugurated the group form of leases from which the initial payments were eliminated.

The objection to the initial payment leases is not that the initial payments are exorbitant, but it lies only in the fact that the United Company's non-initial payment leases are more favorable.

No evidence was introduced by the United States as to the cost of building or the value of the machines, and there was absolutely no evidence that these initial payments were unfair. The United States did not attempt to show that the amount of the initial payments exceeded the difference between the return to the United Company when its principal machines are used as a team, and when they are used independently. In the case of the metallic lease adopted in 1901, where no initial payment was charged for the unrestricted lease, but the royalty was increased, where this form of lease was taken, over the amount charged under the restricted lease, the difference was only 10%.

The District Court said (R. Vol. 1, p. 1166):—

> "But surely, if the argument is made that there is coercion through an excessive price, such an argument can have no weight whatever for any purpose legal or ethical unless the fact that it is excessive affirmatively appears. From such evidence as is presented in this case as to the amount of initial charges upon independent leases we can draw no support for the charge of coercion through excessive charges."

Mr. F. C. Rand, vice-president of the International Shoe Company, a witness for the United States, testified that his

company operated 1,635 machines taken from the United Company; that the cost of installing them under the restricted form of lease was between $10,000 and $12,000, and the cost under the unrestricted form would be over $250,000—a difference of approximately $240,000, the royalty charged in both cases being the same (R. Vol. 1, p. 180, lines 38–45; p. 183, lines 37–38). The amount of the initial payment on each machine of the kind held by Mr. Rand is given in Defendants' Exhibit 41 (R. Vol. 5, p. 44). It is to be noted: *First*, that the amount stated by Mr. Rand as the cost of installation includes not only initial payments under the unrestricted form of leases of certain departments, but also the cost price of all General Department machines when purchased outright, which amounts to one-third of the total. The International Company by purchasing these General Department machines would avoid the annual rental otherwise payable on them; *Second*, that this total includes initial payments on Goodyear machines, the leases of which contain no clause restricting their use to use with other groups of machines, so that it would not be necessary to take the Goodyear machines on the initial payment form of lease to avoid the effect of the Restricted Use Clause; *Third*, that if a manufacturer desired to use machines without Restricted Use Clauses it would only be because he desired to use some but not all machines obtained from others, in which case he would not take machines of that kind from the United Company, and therefore would not pay the initial premiums required on such machines. This, of course, would reduce the total initial premiums paid by him. The more machines of others he took, the fewer would be the machines of the United Company which he used, and thus the initial payments made by him to the United Company would be proportionately reduced. In no possible case, then, would he be under the necessity of paying $250,000, or anything approaching that sum, because he wished to use a competitor's machines.

The International Company is one of the two largest shoe manufacturers in the world, having $25,000,000 capital, making 50,000 pairs of shoes a day, and operating twenty different factories (R. Vol. 1, p. 184). $240,000 (an average of $12,000 for each of the International Company's factories) is on its

face a small sum to cover the cost of buying outright the General Department machines used in these twenty factories and obtaining the remaining machinery of the types manufactured by the United Company under conditions whereby the machines could be used at the option of the lessee independently of each other and not as part of a series.

That the Terms Charged for Unrestricted Leases are not Prohibitive or Arbitrary is Conclusively Shown by the Large Number of Machines which have been Taken on these Terms by Shoe Manufacturers.

The continued and extensive use of the unrestricted leases and the large number of machines covered thereby in and of themselves clearly prove that the terms upon which the United Company offered its machines on such leases are not prohibitive and that any shoe manufacturer who cares to do so can take from the United Company such machines as he desires on these forms of lease and continue in competition with other manufacturers. In 1905, 706 shoe manufacturers had machines of the Lasting, Heeling, and Metallic Departments upon unrestricted leases—"There were 186 unrestricted leases of principal metallic machines, 536 unrestricted leases of heel attaching machines and 322 unrestricted leases of lasting machines" (R. Vol. 1, p. 976, line 43; p. 977, line 5).

During the twelve years from the formation of the United Company up to 1911, shoe manufacturers took 869 unrestricted leases of the hand method McKay lasting machine alone.

In 1911 there were 225 metallic machines, 415 principal heel attaching machines, 514 auxiliary heeling machines and 1,506 lasting machines held on unrestricted leases.

The payment of lease premiums for the use of shoe machinery has been an accustomed feature of obtaining such machinery. The manufacturer of the Goodyear welt or Goodyear turn shoe had never, prior to the formation of the United Company or subsequent to its formation until January 1, 1905, been able to obtain Goodyear machinery other than by the payment of lease premium.

It is to be noted that the smallest number of unrestricted

machines was in the Metallic Department. An unrestricted lease in this department can be obtained without initial payment for 10% more royalty than was charged on the restricted form, surely a small discount for a wholesale use of the machines as a team.

(b) OTHER CONSIDERATIONS SHOWING THAT THE RESTRICTED USE CLAUSES WERE NOT ADOPTED FOR THE PURPOSE OF EXCLUDING COMPETITORS' MACHINES.

That the Restricted Use Clauses are intended to offer wholesale prices to shoe manufacturers desiring to use a series or team of the United Company's machines and that they were not adopted to require an exclusive use of the Company's machines or to arbitrarily exclude competitors' machines is further shown by the following considerations:—

1. The clause, as we have shown above, does not require the lessee to use the United Company's machines at all. On the contrary, it prohibits the use of the United Company's machines except on certain conditions, that is, when they are used as part of a team.

The only effect, therefore, that it can have is to induce the shoe manufacturer to use a team of the United Company's machines because he thereby gets a wholesale price instead of a retail price.

Had the United Company planned, as charged, to refuse to lease any of its essential machines unless the lessee bought or leased practically all other machinery of it, or had it intended to require an exclusive use of its machines, or to arbitrarily exclude competitors' machines, it is obvious that it would have adopted a very different kind of provision to carry this purpose into effect.

2. The United Company, as we have shown, eliminated the clause occurring in a number of the leases put out by the constituent companies requiring the lessee to take additional machines of the same kind as those leased, if he needed them for additional work. The effect of this clause was to require an exclusive use of the machines of the kind leased. The fact

that the United Company used this clause only to a limited extent after its formation, and discarded it entirely after 1907, shows that it did not intend by its leases to require even an exclusive use of machines of the particular kind which the shoe manufacturer desired to take.

3. The Restricted Use Clause was not introduced at once upon the formation of the United Company, but only from time to time as special conditions made it possible for the United Company to reduce its charges or in some other way grant more favorable terms to lessees who desired to use a series of its machines. Thus, as we have shown, it was introduced into the metallic leases only when the cost of copper wire used by the lessees in the machines, the purchase of which afforded the royalty, compelled the United Company to increase the price at which it sold the wire to lessees who did not use a series of its machines and thus enable it to obtain a royalty from the series sufficient to compensate it (*supra*, pp. 275–276). It was not introduced into the heeling leases until the fall of 1904, nearly six years after the formation of the United Company, and was then introduced as partial compensation for the elimination of the initial payments previously charged for the Goodyear machines (*supra*, pp. 277–278).

4. The United Company never inserted any Restricted Use Clause in its leases of Goodyear machines, restricting their use to use with machines of other departments. The Goodyear Welter and Stitcher are in many respects the most important machines manufactured by the United Company. The patent expert for the United States, Chapman, testified that they were the only essential machines for welt shoes (R. Vol. 2, p. 2794). They are fundamental in its welt system and the largest royalty is paid for their use. Had the United Company contemplated refusing to lease its important or essential machines, unless the manufacturer took or used other machines furnished by it, it surely would have restricted the use of its Goodyear Welter and Stitcher.

5. The United Company sells outright 172 General Department machines which were invented or acquired by it after its formation (Defs.' Ex. 227). More than one-half the machines which it manufactures are General Department machines.

In other words, while the constituent companies prior to

the formation of the United Company sold no machines, the United Company now sells outright more than half of the kinds of machines it makes. No other machines furnished by the United Company are restricted to use with any General Department machines. Had the United Company planned to compel shoe manufacturers leasing its machines, whether essential or otherwise, to take all or a large part of the other machines required by them, it would certainly not have sold its General Department machines outright to any shoe manufacturer whether or not such shoe manufacturer took or used any of its other machines nor continued to lease all its other machines without any reference to whether the lessee bought or used any of its General Department machines.

6. The effect of the Restricted Use Clauses is very limited. Thus, a shoe manufacturer holding machines under restricted use leases can, without violating the restrictions applicable to such machines, obtain from competitors and use in connection with the United Company's machines the larger portion of the machines required by him in his factory. We consider this limited effect of the Restricted Use Clauses more in detail below.

(c) THE EFFECT OF THE RESTRICTED USE CLAUSES IS VERY LIMITED. A SHOE MANUFACTURER HOLDING MACHINES UNDER RESTRICTED LEASES CAN, WITHOUT VIOLATING THE RESTRICTIONS, OBTAIN FROM COMPETITORS, AND USE IN CONNECTION WITH UNITED COMPANY'S MACHINES BY FAR THE LARGER PORTION OF THE MACHINES REQUIRED BY HIM.

The restrictions contained in the United Company's restricted use leases, as we have shown above, limit the use of the machines to use in connection with only a few of its principal machines which are peculiarly delicate in their operation, which have, as we have stated, been constructed for use together, which are essential to the integrity of a shoe, and which comprise only a very small proportion of the total number of machines required by a shoe manufacturer.

As we have shown above, these so-called principal machines are restricted to use in certain cases with each other, but they are not restricted to use with any other machines, and while other machines are restricted to use with the principal machines, they are not restricted to use with each other. There are then no restrictions in any of the leases of any kind of machines which restrict the use of the leased machines except to use in connection with one or more of the following, viz., the Goodyear Welter and Stitcher (but not the 43 Goodyear Auxiliary Machines), Lasting Machines, Heeling Machines, Metallic Machines, and Pegging Machines. The only exception to the foregoing statement is that the No. 5 Laster is limited to use with the Pulling-over Machines.

The result is that, with the single exception above noted, requiring a lessee of a No. 5 Laster to use it in connection with the United Company's Pulling-over Machine, a shoe manufacturer who leases from the United Company under restricted leases a Welter and Stitcher, a Lasting Machine, a Heeling Machine, a Metallic Fastening Machine (and, if he makes pegged shoes of which kind very few are made, a Pegging Machine) can use in connection with them, or in connection with any other machine leased from the United Company, any other kinds of machines he desires, whether obtained from competitors or not, without violating any Restricted Use Clause.

Thus he can take from competitors and use in connection with any machine he may lease from the United Company any one or all of the 43 different kinds of Goodyear Auxiliary Machines, any one or all of the 172 different kinds of General Department Machines, any Pulling-over Machines, Eyeletting Machines, Clicking Machines, Heeling Machines, Lacing Machines, Insole Machines, or McKay Sewing Machines.

The Restricted Use Clause thus has a very limited effect.

Defendants' Exhibit 230 (R. Vol. 1, p. 456) shows the number of Pulling-over, Lasting, Heeling and Metallic Machines, and Welters and Stitchers required in factories making from 100 to 450 pairs of welt shoes per day. Only 7 such machines are needed in a factory making 100 pairs per day; only 12 in a factory making 450 pairs per day. In the manufacture of McKay shoes, the Welters and Stitchers are not needed, so

that a factory making 450 pairs per day would require only 8 of these machines (R. Vol. 1, p. 456, lines 10–13). Out of a total of 1,150 factories which used the United Company's machinery in 1911, about half made less than 450 pairs per day (R. Vol. 1, p. 455). In a factory making 600 pairs of turn shoes only 6 such machines are needed, and in a factory making 4,800 pairs per day only 23 (Defs.' Ex. 249, R. Vol. 1, p. 506).

A shoe manufacturer, then, who leases from the United Company under restricted leases 12 machines of the kinds above mentioned in a factory making 450 pairs of welt shoes daily, or 8 of such machines in a factory making 450 pairs of McKay shoes daily, or 6 of such machines in a factory making 600 pairs of turn shoes, can, at his option, take from competitors or from the United Company any one or more of 43 different kinds of Goodyear Auxiliary Machines, 172 General Department Machines, any eyeletting machines, insole machines, lacing machines, clicking machines, or any other kinds of machines, and use them in connection with any machines of any kind whatsoever leased from the United Company on restricted leases without violating any Restricted Use Clauses in such leases.

The foregoing limited effect of the Restricted Use Clauses is illustrated by the machines in the factory of R. P. Hazzard, who makes about 5,000 pairs of Goodyear Welt shoes per day (R. Vol. 1, p. 641, lines 9–10), and who, therefore, is one of the large manufacturers, and who takes from the United Company his welters, stitchers, lasting machines, heeling machines and metallic machines. A complete list of the machines in his factory is given in Defendants' Exhibit 262 (R. Vol. 5, p. 707). This company has in all 746 machines. 419 of these machines were obtained from other persons than the United Company and can be used in connection with any machine which the United Company makes without violating any restriction contained in any lease which it puts out. Of the remaining 327 machines furnished by the United Company only 121 including 14 pulling-over machines are machines to use with which any other machine made by the United Company is restricted in any of its leases. In other words, out of a total of 746 machines actually used by Mr. Hazzard's company any one

or all of 625 machines, or over 83 per cent., whether or not obtained from a competitor can be used in connection with any machine put out by the United Company on a restricted lease without violating any restriction contained in any such lease.

J. Brown & Sons' factory has a capacity of 7,500 pairs of McKay and Standard Screw shoes a day (R. Vol. 1, p. 730, lines 14–15). It is, therefore, one of the fifteen or sixteen largest factories in the country (R. Vol. 1, p. 455). A complete list of the machines in his factory is given in Defendants' Exhibit 236 (R. Vol. 5, p. 671). This company has a total of 424 machines. 296 of these machines were obtained from other persons than the United Company, and can be used in connection with any machine which the United Company makes without violating any restriction contained in any lease which the United Company puts out. Of the remaining 128 machines furnished by the United Company only 53 are machines to use with which any other machines made by the United Company are restricted in any of its leases. In other words, out of a total of 424 machines actually used in this factory any one or more of 371 machines, or over 87 per cent. of the total number of machines in the factory, could be bought from a competitor and used in connection with any machine put out by the United Company without violating any Restricted Use Clause in any lease.

It seems self-evident that Restricted Use Clauses which, as in the case of J. Brown & Sons' factory, permit a lessee to take on a restricted lease any or all of the United Company's machines he may wish to use, and to obtain from competitors, and use in connection with such machines obtained from the United Company, 87 per cent. of the total number of machines needed by him can hardly be said to show an intent to exclude competitors' machines, or, as alleged in the petition, an intention to require a lessee taking essential machines to take practically all other machinery from the United Company (R. Vol. 1, p. 994).

Furthermore, Each of the So-called Principal Machines is not Restricted to Use with all Other Principal Machines.

We have shown above that the only machines to use with which other machines are restricted are the two principal Goodyear machines, viz., the Welter and Stitcher, Lasting Machines, Heeling Machines, Metallic Fastening Machines, and Pegging Machines with the single exception that the No. 5 Laster is restricted to use with the Pulling-over Machine.

However, the restricted leases do not restrict the use in most cases to all of the above-mentioned machines. Even in the case of the principal machines themselves this is not true. The result is that a shoe manufacturer can take various principal machines of competitors which he may desire to use and use them in connection with the United Company's principal machines of other kinds without taking all of such other principal machines from the United Company on unrestricted leases.

To illustrate:—

The Goodyear Welter and Stitcher are not restricted to use with any other machines whatsoever.

The Metallic Machines are restricted to use with the Goodyear Welter and Stitcher and the Lasting Machines.

The Heeling Machines are restricted to use with the Goodyear Welter and Stitcher, Lasting, Pegging, and Metallic Machines.

Lasting Machines are restricted:—

The Hand Method Welt to the Goodyear Welter and Stitcher.

The Hand Method McKay to the Metallic Machines.

The No. 5 to the Goodyear Welter and Stitcher, Pulling-over and Metallic Machines.

The other lasting machines have become practically or entirely obsolete.

The McKay Sewing Machine, when leased and not purchased, is restricted to use with the Lasting Machine.

The shoe manufacturer choosing his principal machines for making welt, turn, or McKay shoes, which are the principal kinds of shoes made, may take any of the following combinations of the United Company's machines and competitors' machines without paying to the United Company one cent more for any of the United Company's machines either in royalties or initial payments than he would pay for such machines if he took all his machines from the United Company.

FOR MAKING WELT SHOES.

No. 1. The United Company's Goodyear Welter and Stitcher.
Competitor's Welt Auxiliary Machines.
Competitor's Lasting Machines.
Competitor's Metallic Machines.
Competitor's Heeling Machines.

No. 2. United Company's Goodyear Welter and Stitcher.
United Company's Goodyear Welt Auxiliary Machines.
Competitor's Lasting Machines.
Competitor's Metallic Machines.
Competitor's Heeling Machines.

No. 3. United Company's Goodyear Welter and Stitcher.
United Company's Goodyear Welt Auxiliary Machines.
United Company's Hand Method Welt Lasting Machine.
Competitor's Metallic Machines.
Competitor's Heeling Machines.

No. 4. United Company's Welter and Stitcher.
Competitor's Welt Auxiliary Machines.
United Company's Metallic Machines.
United Company's Hand Method Welt Lasting Machine.
Competitor's Heeling Machines.

No. 5. United Company's Welter and Stitcher.
United Company's Goodyear Welt Auxiliary Machines.
United Company's Hand Method Welt Lasting Machine.
Competitor's Metallic Machines.
Competitor's Heeling Machine.

FOR MAKING TURN SHOES.

In making turn shoes the lasting is usually done by hand, so that the Lasting Machine is omitted from the following list. The Turn Machine is the same machine as the Goodyear Welter without the Welt attachment.

No. 1. United Company's Turn Machine.
Competitor's Turn Auxiliaries.
Competitor's Metallic Machines.
Competitor's Heeling Machines.

No. 2. United Company's Turn Machine.
United Company's Turn Auxiliaries.
Competitor's Metallic Machine.
Competitor's Heeling Machine.

No. 3. United Company's Turn Machine.
United Company's Turn Auxiliaries.
United Company's Metallic Machine.
Competitor's Heeling Machine.

No. 4. United Company's Turn Machine.
Competitor's Turn Auxiliaries.
United Company's Metallic Machine.
United Company's Heeling Machine.

FOR MAKING MCKAY SHOES.

No. 1. Competitor's McKay Machine.
United Company's Metallic Machine.
United Company's Hand Method McKay Lasting Machine.
Competitor's Heeling Machine.

No. 2. United Company's McKay Machine.
United Company's Metallic Machine.
United Company's Hand Method McKay Lasting Machine.
Competitor's Heeling Machine.

No. 3. Competitor's McKay Machine.
United Company's Metallic Machine.
United Company's Hand Method McKay Lasting Machine.
United Company's Heeling Machine.

In other combinations in which it would be necessary for the lessee to take an Unrestricted Initial Payment Lease of one or more of the United Company's machines, the lessee would be obliged to pay the initial premium charged for the lease of those particular machines so taken. For example, take the following combination:—

Competitor's Welter and Stitcher.
Competitor's Welt Auxiliaries.
United Company's Hand Method Welt Lasting Machine—Unrestricted Initial Payment Lease.
Competitor's Metallic Machine.
United Company's Heeling Machine—Unrestricted Initial Payment Lease.

In such combination the lessee would be required to make initial payments for his Lasting and Heeling Machines. For his Lasting Machine he would be required to pay $300 initial payment, and for the Automatic Heel Loading and Attaching Machine, $400 to $750, according to the particular model chosen (Defs.' Ex. 41, R. Vol. 5, p. 44).

If he took the United Company's Metallic Machines also on an unrestricted lease he would either make an initial payment, or pay an additional 10 per cent. for the material used in the machine on which the royalty is based (*supra*, p. 291).

These initial payments, or, in the case of the Metallic Machines, at his option, a 10 per cent. additional royalty would

be the entire additional amount the lessee would be required to pay to obtain these machines from the United Company on unrestricted leases running for seventeen years.

If a manufacturer has a full line of the United Company's Goodyear Machines, Lasting, Metallic and Heeling Machines on restricted leases and wants to use with them a competitor's lasting machines, he need only change his heeling and metallic machine restricted leases to independent leases.

To change to a competitor's metallic machine he need only put his heeling machines on independent leases.

To change to a competitor's heeling machine he need not take unrestricted leases of any of the other machines. None of them is restricted to use with the heeling machine.

The foregoing are only a few illustrations of the combinations available to a lessee desiring to equip his factory partially with United Company's principal machines, and partially with a competitor's principal machines.

Had the United Company intended by the use of the Restricted Clauses to exclude competitors' machines, it would obviously not have so drawn the clauses as to permit shoe manufacturers to use its machines in connection with competitors' machines, not only by taking initial payment leases, but even under the restricted leases with so little interference on account of the restrictions. The conclusion is obvious that the restricted clauses were not intended to exclude the use of competitors' machines.

(5) REASONS FOR ADOPTION OF AUXILIARY RESTRICTED USE CLAUSE.

The Auxiliary Restricted Use Clause restricts the use of auxiliary machines to use on shoes operated on by the principal machines of the department.

This clause was used by the constituent companies, and the United Company merely continued the practice.

The larger number of auxiliary machines are in the Goodyear Department, and the reasons for the use of this clause

can perhaps be best explained in connection with the Goodyear machines. The principal reasons for the use of this clause are as follows:—

1. The principal machines and the auxiliary machines as a rule perform practically a single operation, such as welting, pulling-over, or heeling. The auxiliary machines were originated and developed to assist the principal machine with which they are used, and are adapted for that particular purpose. For practical purposes they constitute a single machine. The principal machine or machines and the auxiliary machines used in connection therewith are therefore leased as a unit, the auxiliaries being restricted to use with the principal machines, as this is the purpose for which they are taken by the lessee.

2. The United Company prefers not to put out machines of the kinds it leases unless it assures their being satisfactory by repairing them and keeping them in proper operating condition. A group of machines it can care for at a more or less ascertained price. A single auxiliary machine would be costly to care for by itself.

Mr. Winslow testified:—

> "I will state one reason why the United Company has not adopted a form of lease for the Goodyear auxiliary machines which would permit them to be used in connection with welters and stitchers manufactured by other companies, upon payment of a royalty. Of course our machines are all taken care of in the factories, and the expense of taking care of individual machines would be very large and no prices have been established for that. It was not the policy of the Goodyear Company, and we have developed along the same lines trying to furnish to manufacturers the greatest amount of help that we could in manufacturing Goodyear welt shoes, and it was only on these lines that we could see how to give the manufacturer the greatest value for the money. We spent large sums in developing these auxiliary machines, perhaps much in excess of their value as machines, or what we could charge for, but there was every incentive to do it to develop the manufacture of the shoes made by the principal machines" (R. Vol. 1, p. 544, lines 23–39).

3. As a matter of historical growth the principal machine of a group has been developed first and the auxiliary machines have been developed later to assist the work of the principal machine. When an auxiliary has been developed, therefore, the situation has been that the lessees already had the principal machine under leases requiring them to pay a specific royalty for each pair of shoes on which the principal machine was used. The lessor, having originated a new auxiliary machine, was therefore confronted with the question of whether he should put the machine out on an independent lease, charging a separate and additional royalty for its use, or should let the shoe manufacturer who was already using his principal machine have the new auxiliary without additional royalty. It has always been the practice of the United Company and its predecessors to furnish lessees of its principal machines with auxiliary machines, as they have been successively developed, without requiring payment of any additional royalty. They have therefore furnished to a lessee a new auxiliary machine when it was developed, restricted to use with the principal machine the lessee already held, without exacting any additional payment except in some cases a small rental or initial payment. They have received their return for the use of the new machine indirectly through the increased use and efficiency of the principal machine on which royalty was paid. It is obvious that they could not be asked to furnish the new auxiliary machine without exacting any additional royalty for its use unless its use was so restricted, for otherwise they would have received no return whatsoever for the machine.

It is further obvious that as a practical business matter it was necessary to lease these machines as a group for a single royalty, which could only be done by restricting their use in this way. For example, the net royalty charged for Goodyear machines when used on men's shoes was four cents per pair (P.'s Ex. 24). It would have been impossible to distribute this royalty over the forty-five machines included in the Goodyear Department. Furthermore, as each new machine was put out it would have been necessary to increase the total royalty for the group by charging a new royalty on the new machine or to readjust the royalties on all outstanding ma-

chines. Such a readjustment would have been wholly impracticable.

4. The principal machines do better and more work when auxiliary machines are also used. It is to the advantage of both parties to furnish the lessees with auxiliary machines, which assist the principal machines, increase their productivity, and improve the quality of their work. The shoe manufacturer's output and the company's royalties are both increased. The United Company therefore finds it to its interest to furnish lessees with auxiliary machines to be used in connection with the principal machines for the same reason that it finds it advantageous to furnish efficient repair service to lessees without making any charge for such service, believing thereby that the increased use of the principal machine will compensate it.

5. The royalty paid by the lessee is based on the number of shoes on which the principal machines are or could be used. This at once presents a serious problem, namely, the problem of checking up the amount of the use of each machine. In the case of a large group of machines, such as the Goodyear Department group, where there are two principal machines and forty-three auxiliaries, it would be almost impossible to check the actual use of each machine, particularly in view of the fact that some of the auxiliaries are useful only on particular kinds of shoes and are not used at all on other kinds. It is easier to check the use of the principal machine or machines, which are always used, especially when, as in the case of the Goodyear Welter and Stitcher, they have recording mechanisms which show approximately the amount of their use. It would not be practicable to place such mechanisms on most of the auxiliary machines. The principal machines are therefore used as measuring machines to measure the payment required for the use of the entire group (R. Vol. 1, p. 442, lines 15–21). No independent charge is made for the use of the auxiliary machines except in some cases a small annual payment, but they are restricted to use with the principal machines, and thus the payment for their use is received indirectly through the royalty on the principal machines.

(6) THE AUXILIARY RESTRICTED USE CLAUSE DOES NOT RESTRICT THE PRINCIPAL MACHINES TO USE WITH THE AUXILIARY MACHINES NOR RESTRICT THE USE OF THE AUXILIARY MACHINES TO USE WITH EACH OTHER.

The Auxiliary Restricted Use Clause as a rule does not restrict the principal machines to use with the auxiliary machines. The lessee for example, who has the Goodyear Welter and Stitcher may use as many auxiliary machines obtained from others in connection with them as he pleases. Furthermore, the auxiliary machines are not restricted to use together; the lessee may use Goodyear auxiliaries and auxiliaries obtained from others on the same shoes. Finally, a lessee is not required to use these auxiliary machines to full capacity, this clause being applicable only to the use of the principal machines, the Welter and Stitcher. And the Exclusive Use Cancellation Clause is likewise applied only to the use of the principal machines, so that the United Company cannot cancel its leases of machines if Goodyear auxiliaries obtained from others are used.

A lessee of the Welter and Stitcher is furthermore under no obligation to take any auxiliary machines unless he wishes to do so.

The lessee can, therefore, freely take and use Goodyear auxiliary machines obtained from others in connection with any of the United Company's machines he may have. Had the United Company intended to compel lessees to use its machines exclusively and to exclude competitors' machines, it would surely have required that lessees using its principal machines must also take and use its auxiliary machines.

I. LEGALITY OF THE RESTRICTED USE CLAUSE.

The Restricted Use Clause is

(1) A normal provision designed to accomplish a legitimate business purpose, beneficial alike to the lessor and the lessee;
(2) It does not in any way restrain trade;
(3) It is a valid patent restriction which the United Company is entitled to impose.

(1) THE RESTRICTED USE CLAUSE IS A NORMAL PROVISION DESIGNED TO ACCOMPLISH A LEGITIMATE BUSINESS PURPOSE.

The Restricted Use Clause is a normal provision designed to accomplish a legitimate business purpose and is, therefore, lawful, even if no patents or patent rights were involved. We shall, therefore, first consider it without reference to the patent situation.

We have shown above that where a series or team of the United Company's machines are used, which are adapted for use together and each of which is kept in repair by the United Company, the efficiency of the machines is increased, the royalty received on each machine is greater, an improved product results, and the cost of caring for each individual machine is reduced (*supra*, pp. 256, 333–341).

It obviously follows that if the machines are to be paid for according to the number of shoes they produce, a machine leased to be used as part of the series will return a greater income than if taken to be used alone, and that it can, therefore, be leased for a less price than would necessarily be charged if it were taken to be used separately.

The leases containing the Restricted Use Clause result in offering the lessee who desires to take a machine to be used as part of a series of the United Company's machines a reduced price and they accomplish only this result.

A shoe manufacturer, as we have shown (*supra*, pp. 358–360), who does not desire to use the entire series of machines, can obtain the use of a machine of any one department on an unrestricted lease by making an initial payment, *i.e.*, by paying a larger price for the use of the machine.

The Restricted Use Clause, therefore, merely provides for a reduced rate for machines used as a series or unit. It embodies only the well-known principle of a wholesale price for the use of machines on a wholesale basis.

The United Company loans or leases its machines to its lessees and then charges a certain sum for each use made of them. The transaction is in substance a loan by the United Company of the machines, which by itself gives no right to use them, and an agreement on the part of the United Company to sell to the shoe manufacturer or permit him to take the use of the machines each time he has a shoe on which he desires to use them.

It is in principle exactly like an offer to sell goods over a period of time in quantity lots at wholesale prices. It differs in form from such an agreement only because the form of a transaction in which goods are sold at wholesale prices differs from the form of a transaction in which machines are leased and their use paid for each time they are used. There is no difference in substance.

For example, take an offer by a sugar refiner to sell sugar in quantity. The sugar refiner says:—

> "I only sell my sugar at wholesale in 100 barrel lots. I agree to sell you for the next year as much sugar as you wish in 100 barrel lots at $15 a barrel. Each time you take 100 barrels you must pay me this price. If you wish at any time to take less than 100 barrels you must make a new trade with me and I will charge you a higher price for each barrel."

Similarly in the present case the United Company says:—

> "Here is a series of my machines which I place in your factory. I dispose of the use of these machines at a wholesale price only when the machines are used as a series. I agree to furnish you the use of these machines as a series at wholesale rates on the following basis: Each time you make a shoe you can take the use of the entire

series and pay me a definite amount for the use of each machine. If you wish to take the use of less than the whole series you must make a different trade with me and pay me a higher price for each machine so used."

If machines are to be leased on the royalty basis and only their use paid for (a practice established since the very beginning of the shoe machinery industry and admitted to be highly beneficial), there is no other practical way which we can conceive of in which the wholesale rate for the use of a series of machines can be applied.

The Restricted Use Clause, by enabling the United Company to offer better terms for a series of its machines, not only benefits the United Company by enabling it to offer terms acceptable to shoe manufacturers, but also, of course, benefits the shoe manufacturer. By using the United Company's machines as a series, the shoe manufacturer reduces the expense to the United Company of caring for each machine and increases the productivity and, therefore, the royalty paid on each machine. Through the agency of the Restricted Use Clause the shoe manufacturer is enabled to share in this saving to the United Company.

It must further be remembered that these machines belong to the United Company and that it is only regulating and controlling the use of its own property. If the shoe manufacturer bought and paid for the machines and the United Company had, therefore, no further interest in them, the situation would be quite different. In such case any control of the use of the machines by agreement might restrain rights and property in which the United Company had no interest and thus might offend public policy.

But in the present case the United Company has never parted with the ownership of the machines. It must be admitted that it is under no obligation to permit shoe manufacturers to use them at all. In permitting their use, but without parting with its ownership or interest in them, it surely does not forfeit its rights to determine the character of the use which shall be made of them. It would seem that the United Company, owning the machines, would have an absolute right to control the use which was made of them. In any event it must have the right to direct that machines

which it has constructed for use together and which produce the greatest return when used together, shall be so used. The right of the owner of property to control its use to this extent can hardly be questioned.

The Restricted Use Clause, therefore, being merely a control by the United Company of machines which it still owns and has the right to control, being designed to offer merely a wholesale rate for the use of a series of machines and being the only practical method under the royalty system by which such wholesale rate can be offered, is clearly a normal agreement designed to accomplish a legitimate result, and it, therefore, cannot be within the condemnation of the Sherman Act.

We do not understand that the United States denies that the use by a shoe manufacturer of a series of the United Company's machines will reduce the cost of service on each machine, or that the use of a series of machines constructed for use together, each of which is kept in proper operating condition, will result in an increased output by each machine, and, therefore, an increased royalty earned by each machine.

The contention of the United States, as we understand it, is:

First: That even if the United Company does still own the machines and even if the use of a series of the United Company's machines does increase its return on each machine, and even if the Restricted Use Clause was adopted for the purpose of offering a wholesale rate for the use of a series of machines, nevertheless, the clause is inherently unlawful because of its effect on competitors.

Second: That if the clause is not inherently unlawful, it is unlawful in the present case, because the purpose of its adoption was to make it difficult for competitors to compete.

(2) CONTENTION THAT THE RESTRICTED USE CLAUSE IS INHERENTLY UNLAWFUL.

As we have shown above (*supra*, p. 365), the Restricted Use Clause does not obligate the lessee to use either the particular machine leased or any other machine of the United Company, nor does it forbid the lessee to use competitors'

machines as freely as he pleases. It merely forbids the lessee to use the particular machine leased unless it is used as part of a series of the United Company's machines.

As said of this clause by the District Court (R. Vol. 1, p. 1163):—

> "'Tying,' therefore, does not mean that the manufacturer is required to agree, or agrees not to use the machines of others, but merely that he has secured only limited rights of use, and that if he exceeds such limited rights, he may lose his lease. . . . The term is misleading in its implication that the manufacturer is bound by contract not to use the machines of others. He is bound only not to use the leased machinery in violation of the terms of the lease."

The complaint made by the United States, then, is not that the lessee is required to use the United Company's machines or forbidden to use other machines, but, on the contrary, that the United Company forbids the use of its own machines, except when they are used as part of a certain series.

It is obvious that this clause cannot interfere with the competitor who also offers a complete series of machines which the shoe manufacturer desires to use. The shoe manufacturer, whether he is just entering business or already has the United Company's machines under restricted leases, is absolutely free, so far as this clause is concerned, to take the competitor's series of machines and use them.

The objection of the United States is that if a shoe manufacturer desires to use one or two of the series of machines put out by the United Company, he is, by reason of the better terms offered by the restricted leases, induced to use all of the series furnished by the United Company. The result, it contends, is that a competitor having only a single machine, and not a complete series of machines to offer, finds it more difficult to dispose of his product.

When analyzed, the contention merely amounts to this: That a manufacturer who furnishes a complete article has an advantage over the manufacturer who offers only one of the component parts of the article, and, therefore, that the manufacturer of the complete article, although not required to

permit others to use the article at all, must, if he does permit the complete article to be used, also permit each of its component parts to be used separately on terms which will enable the public to use certain parts obtained from him and the remaining parts from his competitors and thus obtain the use of the complete article as cheaply as if it were taken as a whole from him. To state this contention is to refute it.

Take an illustration on all fours with the present case. The Pullman Company leases its sleeping and parlor cars to railroads. It obviously has an advantage over a competitor who has only one of the component parts of the car to lease or sell,—say, for instance, the wheels. Such competitor in attempting to lease or sell his wheels is met by the statement that the wheels without the body of the car are of no value to the railroad, and that the Pullman Company either refuses to lease the bodies and wheels separately, or, if it is willing to do so, that it leases them at retail prices which total more than the wholesale price charged if the complete car is leased. The contention of the United States, as we understand it, is, first,—that if the Pullman Company leases the complete car, it must also lease the component parts of the car, viz., the wheels, the bodies, the chairs, etc., for use separately, so that the manufacturer of wheels may sell or lease his wheels to customers who can then lease the remainder of the cars from the Pullman Company; and, second,—that the Pullman Company must lease the component parts of the car at such prices that the total of the prices charged for the component parts does not exceed the price charged for the complete car, or is so little greater that a customer can obtain the wheels from the Pullman Company's competitor and obtain the other parts of the car from the Pullman Company at substantially the same cost as if he obtained the complete car from the Pullman Company.

Take another analogous illustration. A manufacturer of a locomotive, who manufactures all the component parts, the boiler, the wheels, the brakes, etc., and offers the locomotive for sale as a whole, has an obvious advantage over a competitor who manufactures and offers only a boiler. The United States contends that to enable the competitor to compete on equal terms, the manufacturer of the complete locomotive

must sell all the parts of the locomotive separately, and not only this, but must sell them at prices which will enable the purchaser to obtain his boiler from the competitor and the remaining parts from the locomotive manufacturer without its costing him more than if he purchased the complete locomotive from the locomotive company.

But on what possible theory can the Pullman Company be required to lease the parts of its car, or the locomotive manufacturer be compelled to sell the parts of his locomotive separately, or be compelled to lease or sell them at prices which total no more, or substantially no more, than the prices charged for the complete car or locomotive.

In the first place,—the manufacturer is under no legal or moral obligation to lease or sell the component parts of his car or locomotive separately. There are thousands of manufacturers in this country who sell only at wholesale or who furnish only a complete article. Can it possibly be contended that this practice is illegal?

In *Great Atlantic and Pacific Tea Company* v. *Cream of Wheat Company*, 227 Fed. 46, the Court said (p. 47):—

> "As was stated before, defendant has elected not to sell to consumers or retailers, but to confine its sales exclusively to wholesalers. There is nothing unusual about such a course of business, and certainly it is no offence against common law, statutes, public policy, or good morals, for a trader to confine his sales to persons who will buy from him in large quantities."

It is equally no offence against law or morals for a manufacturer of a complete article to confine his leases or sales to persons who will use or purchase such complete article as a whole.

The United States may contend that there is a difference between a series of machines, and a combination of articles or parts in a single machine. But there is no practical difference between a complete car or locomotive and the series of machines which the United Company furnishes. The series of machines furnished by the United Company are adapted for use together, and the machines must be so adapted to do effective work. The fact of physical connec-

tion is the only distinction between the complete locomotive and the complete series of machines. The United Company's machines could conceivably be connected physically. If this were done, would the United States agree that its objections were removed? Clearly the question of whether the manufacturer can refuse to sell or lease the use of two machines or articles except as a unit cannot depend upon the immaterial question of whether they are physically connected. The boiler of the locomotive has far less actual connection with the wheels of the locomotive than has the lasting machine with the welter, one of which must be so constructed as to prepare the shoe for the work of the next and either of which if not so constructed will ruin or make impossible good work by the other.

There is no more reason why the United Company should be required to permit the use of its lasting machines and its welter separately than there is why it should be required to permit its welter to be taken apart, and certain of the parts only used.

The District Court said (R. Vol. 1, p. 1184):—

> "The assumption that it is highly desirable that the shoe manufacturer should be at liberty to group the defendant's machines, with such other machines taken from other manufacturers, as he may see fit, ignores the fact though machines may be treated in the Patent Office as separate, in a shoe factory machines have a very definite mechanical relation to each other and to the particular method of making the shoe. The grouping of machines in order that some may aid others in turning out a product affords a sufficient mechanical reason for installing them in groups and a sufficient business reason for dealing with them as groups.
>
> "That there are sound, mechanical and business reasons for grouping together machinery as it is grouped by a series of prohibitive leases is abundantly established. . . .
>
> "A contract for a group of related machinery, or for a supply of machines not immediately related but used only in separate mechanical steps of a manufacturing business, is an entirely proper and normal contract."

It follows, then, that the United Company would be justified in refusing to permit the use of its machines, except as a

series, but the United Company does not pursue this course. It permits the machines of the different departments to be used independently if the shoe manufacturer so desires, requiring him in such cases to pay, in addition to the royalties charged when the series is used, an initial payment for each machine. Thus the manufacturer of one class of machines, such as lasting machines, is not shut out of the market, even though his customer desires and insists upon using the other machines manufactured by the United Company. The Lasting Machine manufacturer can say to his customer, "Take my lasting machines and take your other machinery if you so desire from the United Company." If such manufacturer has a lasting machine which the shoe manufacturer prefers to the United Company's, the only difficulty he encounters is that the shoe manufacturer may say, "If I use certain of the United Company's machines with your lasting machine, I must take them on unrestricted leases and pay the United Company an initial payment, not payable if I use its entire series of machines." In other words, the expense of using the United Company's metallic and certain other machines is increased because they are taken for use at retail and not at wholesale. The only difficulty is in the difference in cost. The United States, as we understand their argument, contends either—

(1) That the United Company cannot charge a less price for the use of a series of machines than the total of the prices charged for the use of the machines separately, or—

(2) That if the prices charged for the use of the machines separately are higher they must be reasonable, and that the United Company's charges are unreasonable.

If, as we contend and have shown above, the United Company is fully justified in only permitting the use of a series of its machines and refusing to permit them to be used separately, it is immaterial what prices it charges for the use of the machines separately. As it can refuse to permit their use separately at all, it can, if it offers them for use separately, place a price on them which is prohibitive. This would be no worse than a refusal to lease separately at all.

However, even if we accept the assumption that the use of the machines must be permitted separately (which we contend

is contrary to reason) we submit that the United Company is legally and morally entitled to charge more for the machines when so used than when used as a part of a series, and we further submit (if it be material) that the prices charged by the United Company for its unrestricted leases are not unreasonable.

In respect to the first proposition, namely, that the United Company may charge less for the use of a series of machines than it charges for the use of the same machines when used separately, it is abundantly proved by the record that machines used as part of a series produce a greater royalty per machine and cost less to care for (*supra*, pp. 256, 333–341). There is, therefore, a distinct increase in the return to the United Company when they are so used.

Is it not clear that the United Company is legally as well as morally entitled to share this increased return with its lessees by giving them reduced rates when its machines are so used?

In practically every business in this country the wholesale purchaser gets a reduction in price which is granted on the basis that there is a saving to the seller in making a quantity sale. There is no distinction when the quantity consists of a series of machines instead of a number of machines of the same kind. In case six machines of the same kind are sold or leased, the question of whether a saving results to the manufacturer in the usual case may be problematical. In case six different shoe machines of a series adapted for use together are leased, to be cared for by the lessor and paid for by royalties based on their output, there can be no question that there is a saving or increased return to the lessor.

The United States has referred to no authority and we submit none exists for contending that a reduced price cannot be properly charged a shoe manufacturer desiring to use a complete series of machines.

The District Court said (R. Vol. 1, p. 1184):—

> "We are unable to see that a shoe manufacturer has any just cause of complaint that the defendants offer him and their other customers restricted leases. One who refuses these leases and takes the independent leases may complain that other shoe manufacturers are getting their machinery on lower terms; but the royalty rate will be

the same, and the cost of initial payments is fixed and may be weighed as against the estimated value of taking machinery from other manufacturers. It is a mere question of dollars and cents. It is legal for the defendants to discriminate in price between customers who take large amounts and those who take small amounts" (R. Vol. 1, p. 1168).

"If leases for machines for use as a group are offered and accepted for sound business reasons, and if, because of the greater productivity of a group and of the less cost of maintenance, better prices can be made, the defendants and shoe manufacturers need not forego the making of such contracts for the sake of possible competitors who may have only single machines to offer. Contracts for large equipments of machinery, furniture, and other articles, are too common to be condemned for such reason."

The United States, however, contends that the price charged by the United Company for the use of its series of machines is so much less than the prices charged for its machines when taken on unrestricted leases that the difference is unreasonable.

What is the test of the reasonableness of a wholesale price? Surely the United Company, without being charged with being unreasonable, can grant shoe manufacturers who use a series of its machines a reduction equal to the increased return effected by such use or any part of such increased return.

The United States has utterly failed to show that the reduction granted users of a series of its machines exceeds such increased return. The record shows that certain initial payments are charged for independent leases, but it utterly fails to show that they are unreasonable. On the contrary, the essential reasonableness of the prices charged for the restricted leases is shown by the number of such leases which are outstanding (*supra*, pp. 364–365), and by the fact that the initial payments are in substantially no case larger and in certain cases are less than were charged under the leases put out by the constituent companies prior to the formation of the United Company, although the machines have since that time been greatly improved and the cost of manufacturing them has increased (*supra*, pp. 359–360).

The United States, however, contends that competitors

offering single machines find it difficult to get shoe manufacturers to take their machines. The United Company's machines are the best that are made and, owing to the fact that they are patented, competitors can only offer inferior machines. Is it surprising that shoe manufacturers hesitate to take and interject into the United Company's series of machines an inferior machine probably unadapted for use with the series, and furnished by one who offers no adequate service, and pay a higher price for certain of the United Company's machines he continues to use, even though the additional amount paid the United Company for such independent use is entirely reasonable?

The District Court found that it was not shown that the price charged for the independent leases was unreasonable. The Court said (R. Vol. 1, p. 1165):—

> "Nor has the United States made any attempt to show by evidence that the prices charged for independent or unrestricted leases are excessive, or such as to prevent the shoe manufacturer from using them profitably."

(3) CONCLUSION AS TO CONTENTION OF THE UNITED STATES THAT THE RESTRICTED USE CLAUSE IS INHERENTLY UNLAWFUL.

We submit that the contention of the United States, that a wholesale price for the use of a series of machines cannot be offered, because, as a result, a competitor who has only one or two of the machines of a series to offer will find it more difficult to compete, is wholly without foundation or reason.

This contention denies entirely the right of an owner of machines, who has never sold them and thus placed them unrestricted in the channels of trade, to control the use of his own property. It denies the right of a manufacturer and owner of machines to dispose of the use of them at wholesale or retail prices as he pleases. It proposes that the shoe manufacturer must be required to pay a retail price for the use of each machine, even though he uses the series of machines, that is,

uses the machines in a wholesale way and the machinery manufacturer is willing to grant him a wholesale price. In other words, it proposes to deprive both the machinery manufacture and the shoe manufacturer of the right to make reasonable normal and usual contracts beneficial to both of them with reference to machines owned by the machinery manufacturer in order that competitors who have less to offer may more easily compete.

The proposal of the United States would not result in freeing competition from unlawful restraints, but, on the contrary, would restrain it. The public policy which condemns restraints on competition is designed to leave manufacturers absolutely free to compete by all lawful and normal methods. This is the very life of competition. Freedom of competition means that manufacturers are encouraged to effect such economies as they can and thereby reduce prices and obtain trade. The United States proposes that manufacturers who effect an economy by furnishing a series of machines adapted for use together, cannot share with their customers the benefit of such economy and thus further their trade.

This Court in *United States* v. *Winslow*, 227 U. S. 202, said (p. 218),—

> "It is as lawful for one corporation to make every part of a steam engine and to put the machine together as it would be for one to make the boilers and another to make the wheels."

If this is true and if an economy results from such integrated manufacture, surely the manufacturer can dispose of the complete locomotive at a lower price than is charged for the separate parts.

So in the present case, if the United Company by producing a complete series of machines is thereby enabled to lease the use of the series at a reduced price, surely it is entitled to do so.

The District Court said with reference to this contention of the United States (R. Vol. 1, p. 1184):—

> "If leases for machines for use as a group are offered and accepted for sound business reasons, and if, because of the greater productivity of the group and of the less

cost of maintenance, better prices can be made, the defendants and the shoe manufacturers need not forego the making of such contracts for the sake of possible competitors who may have only single machines to offer."

That the Restricted Use Clauses are lawful agreements at Common Law without regard to whether the machines are patented and that they do not offend public policy by an improper restraint of trade was determined by the Privy Council of Great Britain in *United Shoe Machinery Company of Canada* v. *Brunet* (1909) A. C. 330; Lords MacNaghten, Atkinson, Collins & Gorell composing the Court.

In this case the record did not show that the machines were patented, and the Court, therefore, treated them as unpatented and disregarded the provisions of the Patent Act. In sustaining the validity of the Restricted Use Clauses, the Court, after stating that the findings of the jury limited the question at issue as to whether it was proper to present to the shoe manufacturers of Canada the alternative of either doing without these machines altogether or of hiring them on the terms set forth in the leases, said (p. 342):—

"This alternative, however, does not subject the would-be customers of the appellants to any coercion beyond what their desire to promote their own trade interests imposes upon them. By virtue of the privilege which the law secures to all traders, namely, that they shall be left free to conduct their own trade in the manner which they deem best for their own interests, so long as that manner is not in itself illegal, the respondents are at liberty to hire or not to hire the appellants' machines, as they choose, irrespective altogether of the injury their refusal to deal may inflict on others. The same privilege entitles the appellants to dispose of the products they manufacture on any terms not in themselves illegal, or not to dispose of their products at all, as they may deem best in their own interest, irrespective of the like consequences. This privilege is, indeed, the very essence of that freedom of trade in the name and in the interest of which the respondents claim to escape from the obligations of their contracts."

(4) CONTENTION THAT THE RESTRICTED USE CLAUSE WAS ADOPTED WITH INTENT TO EXCLUDE COMPETITORS.

The United States apparently contends that, even if the Restricted Use Clause is not inherently unlawful, it is unlawful as used by the United Company, because it was adopted for the purpose of excluding competitors.

We have above reviewed the evidence on this question (*supra*, pp. 331–358), which fully establishes the fact that the Restricted Use Clause was adopted for the legitimate purpose of forwarding trade by offering a reduced wholesale price, and that it was not adopted for the purpose of arbitrarily excluding competitors.

The evidence reviewed further shows that the clause was adopted not at one time in all the leases, but only from time to time as some special reason, such as a reduction in initial payments, called for its use; that the United Company has always continued, as an alternative, to lease its machines on independent leases, charging no more than was charged for such leases by the constituent companies; that the machines to use with which other machines are restricted are limited in number, comprising only a few of the principal machines, and that a shoe manufacturer is free to obtain from competitors and use with any machine furnished by the United Company on a restricted lease the great majority both in number and kinds of the machines that he needs, including all machines for sewing uppers, clicking machines, Goodyear auxiliary machines (of which there are 43 different kinds), General Department machines (of which there are 172 different kinds), McKay sewing machines, heeling machines, lacing machines, button attaching machines, button-hole machines, and, with one immaterial exception, pulling-over machines (*supra*, pp. 368–369).

The District Court found that the clauses in the leases, including the Restricted Use Clause, were not adopted for the purpose of arbitrarily excluding competitors. The Court said:—

"Considering the clauses objected to in the light of what preceded them, and of the circumstances attending their adoption by the defendants, the petitioner has not, in my opinion, proved that the defendants' object in adopting them was the prevention of competition by others. Such prevention might, indeed, follow from the more favorable terms offered lessees, but modifications made in the existing system for the direct purpose of otherwise better adapting it to exclude competitors, would have been different in character from the modifications represented by these clauses. . . .

"Modifications in the contracts offered them tending, as these are shown to have done, to enable the Company, through provisions adapted to increase the number of shoes worked on by each machine, to lessen the royalty charged per pair, and to diminish or dispense with the initial payment before required, were so obviously prompted for the purpose of developing the company's business through the perfectly legitimate method of offering them on terms more advantageous to users, that it would be unjust to treat them, on evidence no stronger than that here presented, as really intended to accomplish an arbitrary exclusion of users from any dealings with others" (R. Vol. 1, p. 1159).

These findings of the District Court are fully sustained by the record.

But even if the defendants admitted that the Restricted Use Clause was adopted for the purpose of increasing its business, and thus taking business away from competitors, it is difficult to see how such intent would make the use of the clause illegal. Normal usual conduct adapted to the legitimate furtherance of business is not made unlawful under the Sherman Act no matter what the intent of the parties may be. Thus in *United States* v. *Winslow*, supra, the Court said with respect to the contention that a combination of non-competing concerns was unlawful by reason of the alleged intent with which it was done,—

"That . . . no intent could raise the conduct to the dignity of an attempt."

Suppose the American Locomotive Company sells its complete locomotive for less than the sum of the parts, and sells

ten locomotives for less than it sells one, and admits that it offers these wholesale prices for the purpose of obtaining more business, and thereby necessarily taking business from its competitors. Can it possibly be charged that this intent makes its offer of wholesale prices illegal? The intent to obtain business, and thus necessarily to deprive competitors of such business is at the root of all legitimate competition. If it is accomplished only by legitimate business methods, such as the offer of a wholesale price, it is lawful. To hold otherwise would kill competition, not stimulate it.

The United Company is entitled to obtain business, and it is, therefore, entitled to take business which would otherwise go to competitors. The only way in which the Restricted Use Clause can operate to exclude competitors is by offering a wholesale price for the use of a series of machines. The United Company is entitled to offer such wholesale price, and the fact that such offer brings it business, and that the United Company so intends, cannot make the offer unlawful.

(5) THE RESTRICTED USE CLAUSE DOES NOT AND CANNOT RESTRAIN TRADE OR TEND TO CREATE AN UNLAWFUL MONOPOLY.

In condemning agreements and combinations in restraint of trade, it is self-evident that the Sherman Act only has reference to such restraints as create or impose a new restraint which did not previously exist. In condemning monopolies it refers only to such as are obtained by the imposition of new restraints or by conduct which in some way unlawfully restricts the freedom of others. A grant by the United Company of a lease containing a Restricted Use Clause not only does not create or impose a new restraint not existing at the time, but it actually removes in part an existing restraint and grants the lessee greater rights and privileges than he previously held.

The United Company's machines are patented. In *United States* v. *Winslow*, 227 U. S. 202, this Court said (p. 217),—

> "The machines are patented, making them is a monopply in any case, the exclusion of competitors from the

use of them is of the very essence of the right conferred by the patents, . . ."

The United Company may refuse to permit any one to make or to use them. *Paper Bag Patent Case*, 210 U. S. 405, 429.

In agreeing under the terms of the Restricted Use Clause that they may be used as a series, but not separately, the United Company grants a right to the shoe manufacturer which he previously did not have. Prior to such grant the shoe manufacturer could use any other machines he pleased, but he could not use the United Company's machines at all. By reason of the United Company's patents the shoe manufacturer was absolutely restrained from so doing. After the grant of the United Company, the shoe manufacturer can still, so far as the Restricted Use Clause is concerned, use any other machines he desires, his freedom in this respect not being in the slightest degree restrained, and he can also use a series of the United Company's machines at his option.

In other words, the shoe manufacturer, after obtaining a series of the United Company's machines on restricted leases, has, so far as the Restricted Use Clause is concerned, all the freedom and rights he previously had and also an additional right, namely, the right to use at his option the United Company's machines as a series.

A provision which in no way restrains the freedom of the lessee and which grants him an additional right, namely, the right to use at his option a series of patented machines, can hardly be termed a restraint of trade. On the contrary, it is a removal of an existing restraint.

The mere fact that the new option or right obtained by the shoe manufacturer is so favorable that he desires to take advantage of it and thus is induced to use the United Company's machines cannot, with any propriety, be termed a restraint or limitation of his freedom of action.

It is true that if the shoe manufacturer were granted the r ght not only to use the machines as a series, but also the right to use any one or more of them he chose, in any manner he chose, he would obtain still greater rights. But this does not refute the fact that the grant of the right to use as a series is the grant of an additional right which the shoe manufacturer

did not have before. and that it imposes no new restraint.

It is also true that by accepting a lease of machines the shoe manufacturer agrees to use certain o' them to capacity and to this extent limits his future action. But this limitation is wholly due to the Full Capacity Clause, the legality of which is considered above. It is not created or in any way affected by the Restricted Use Clause which we are now considering, which neither obligates him to use the United Company's machines nor forbids his use of other machines.

As the United Company's machines are all patented, the Restricted Use Clause does not even indirectly by its advantageous terms induce or encourage the shoe manufacturer to take or use any unpatented machines furnished by the United Company or give it any control or greater business in unpatented machines. The United Company urnishes only its own patented machines, of which it has a lawful patent monopoly.

The United States persistently contends that a shoe manufacturer who accepts a lease containing a Restricted Use Clause limiting the use of the leased machines to use on shoes operated on by certain other machines of the United Company is thereby restrained from using a competitor's machines. It contends that a shoe manufacturer who takes a lasting machine on a restricted lease is compelled, for example, to use the United Company's Welter and Stitcher. But, as we have shown, this is not so. The lessee taking such a lease does not agree that he will use the United Company's Welter and Stitcher or that he will not use a competitor's Welter and Stitcher. All that he agrees to is that he will not overstep the rights granted him, that is, that he will not use the lasting machine except for the purpose of performing operations on shoes made on the United Company's Welter and Stitcher. He is restricted as to his use of the leased machine which belongs to the United Company and not as to his use of any other machines. By accepting the leased machine he has added to his rights and not restrained them.

The United States may further contend that as the Full Capacity Clause requires the lessee to use the leased machine to capacity so far as he has work for it to do, and as under

the Restricted Use Clause he can use it only on shoes made on the United Company's Welter and Stitcher, the lessee is thus indirectly required to use the Welter and Stitcher. This again is untrue. The Full Capacity Clause only requires the lessee to use the leased machines to full capacity on shoes on which the lessee is permitted to use them. For example, the lessee of the lasting machine held on a restricted lease is forbidden to use it except on shoes on which the United Company's Welter and Stitcher are used. He is free to use a competitor's Welter and Stitcher on any shoe. If he does so he is not required by the Full Capacity Clause to use the United Company's lasting machine on such shoe, but, on the contrary, he is forbidden by the Restricted Use Clause from so doing. The Restricted Use Clause and the Full Capacity Clause together, therefore, do not impose any obligation on the lessee of a lasting machine to use the United Company's Welter or Stitcher.

We submit that as the Restricted Use Clause in no way deprives the lessee of any freedom of action he had before, but grants him additional rights, it cannot be held to restrain trade or tend to create a monopoly under the Sherman Act.

(6) THE RESTRICTED USE CLAUSE IS MERELY THE GRANT OF A VALID PATENT LICENSE.

The agreements under which the United Company's machines are leased constitute agreements whereby the machines themselves are loaned to the lessee and also constitute licenses under the patents, the inventions of which are embodied in the machines, granting the lessee a right to use such patented inventions in the machines to the extent set forth. The Restricted Use Clause is a mere grant of a limited instead of a complete right of use in machines which are still owned by the patentee, and which are still within the limits of the patent monopoly, and it is therefore a lawful exercise of patent rights.

By a patent the patentee is granted the right to exclude all others from making, using, or vending the patented machines.

In *Bloomer* v. *McQuewan et al.*, 14 How. 539, the Court said (p. 549),—

> "The franchise which the patent grants, consists altogether in the right to exclude every one from making, using, or vending the thing patented, without the permission of the patentee."

The patentee may grant such permission, and when he does do so such permission is termed either an assignment or a license, depending upon whether it is a transfer of an entire patent, an undivided interest in the entire patent, an exclusive right in a designated territory, or some lesser right.

Waterman v. *MacKenzie*, 138 U. S. 252.

It has never been questioned that the patentee may not only grant licenses to make, use, and sell anywhere at any time and for any purpose, but that he may, instead of granting full and complete licenses, grant partial or restricted licenses. Thus he may grant the right to sell to one person, the right to use to another, and the right to make to a third. As said by the Court in *Adams* v. *Burke*, 17 Wall. 453,—

> "The right to manufacture, the right to sell, and the right to use are each substantive rights, and may be granted or conferred separately by the patentee."

The patentee may further limit each of these rights. Thus he may grant to one person the right to make 12 machines containing the patented invention and no more, to a second he may grant the right to sell a limited number or the right to sell in a defined territory, and to a third the right to use in a defined place for a limited time or for a specific purpose only.

Mitchell v. *Hawley*, 16 Wall. 544.
Rubber Co. v. *Goodyear*, 9 Wall. 788.
Gayler v. *Wilder*, 10 How. 477.
Waterman v. *MacKenzie*, 138 U.S. 252.

In making such a limited grant or license the patentee reserves to himself all rights not so granted. If, for example, he

sells certain machines, and grants a license to use his patented invention embodied in them for a limited period, as in *Mitchell* v. *Hawley*, supra, he reserves to himself the exclusive right to use the invention embodied in those machines after that period. If he grants a license to use his invention for a specific purpose, such as for the manufacture of certain classes of goods, as in *Rubber Co.* v. *Goodyear*, supra, he reserves to himself the exclusive right to use the invention for other classes of goods. If the licensee oversteps the limits of his license, he becomes an infringer.

The patentee has an absolute right to refuse to grant licenses at all, or to grant partial or full licenses at his pleasure. The patentee, by the terms of his grant, has a complete mon poly of the patented invention. The grant of a license to another to make use of the invention, either in whole or in part, is necessarily a relaxation of the monopoly already legally existing. It can neither create nor impose any new restraint or monopoly, nor can it contravene public policy.

We do not understand that any decision of this Court has ever questioned the right of the patentee to grant a partial license and reserve to himself all rights not so granted. As said by this Court in *Virtue* v. *Creamery Package Company*, 227 U. S. 8:—

> (p. 32) "The owner of a patent has exclusive rights,—rights of making, using and selling. He may keep them or transfer them to another—keep some of them and transfer others. This is elementary; and, keeping it in mind, there is no trouble in estimating the character of such rights or their transfer."
>
> (p. 37) ". . . We repeat, patent rights may be conveyed partially or entirely, and the monopoly of use, of manufacture or of sale is not one condemned by law."

The patentee may, in addition to granting a license, partial or complete, and as consideration therefor, require the licensee to fulfil certain conditions or require him to agree to perform certain acts, such as the payment of royalty.

Such agreements or conditions to be fulfilled by the licensee are not part of the grant of the license. They do not limit the grant, but are collateral agreements or conditions indepen-

dent of the grant. If they are not fulfilled, the licensee may forfeit his license and lose his right further to enjoy the license granted him. But mere failure on the part of the licensee to fulfil such conditions and agreements does not in and of itself constitute infringement of the patent. For example, if a patentee grants the right to use his patented invention in a certain designated territory and the licensee agrees to pay the patentee $100 a month for such right, the agreement to pay royalty in nowise limits the patent license or reserves patent rights. Failure to pay royalty is not an infringement of the patent.

The validity of such collateral agreements or conditions must be determined by considerations of public policy and the general law. An agreement on the part of the licensee that in consideration of the grant of the license he will commit a crime is clearly illegal. The fact that such collateral conditions or agreements are contained in the patent license does not affect their legality except to the extent that their character is affected by the fact that they relate to a legal monopoly conferred by the patent law. In other words, in determining whether such an agreement or condition is condemned by public policy, all the circumstances must be considered. Agreements relating to a monopoly conferred by Congress may and usually do have an effect quite different from their effect if they related to unpatented articles.

Where a patented article is sold and no rights of use are reserved such purchase, as the Court said in *Keeler* v. *Standard Folding Bed Company*, 157 U. S. 659 (p. 666), "emancipates such article from any further subjection to the patent throughout the entire life of the patent." A patented article so purchased, as said by the court in *Bloomer* v. *McQuewan*, supra, passes outside "the limits of the monopoly." See also *Adams* v. *Burke*, 17 Wall. 453, in which the Court said (p. 456):—

> "In the essential nature of things, when the patentee, or the person having his rights, sells a machine or instrument whose sole value is in its use, he receives the consideration for its use and he parts with the right to restrict that use. The article, in the language of the court, passes without the limit of the monopoly. That is to say, the patentee or his assignee having in the act of

sale received all the royalty or consideration which he claims for the use of his invention in that particular machine or instrument, it is open to the use of the purchaser without further restriction on account of the monopoly of the patentees."

In such cases where the article is sold unreservedly all patent rights in the article are released, and the article is placed outside the limit of the patent monopoly. Any conditions or restrictions which the patentee attempts to impose upon the purchaser, or subsequent purchasers, are necessarily not patent restrictions, since all patent rights in the article are granted, and they can only be justified and enforced as special contracts.

Patented articles which are not so sold remain within the limits of the patent monopoly and subject to control and restriction on the part of the patentee except to the extent that he expressly waives the right by special agreement to control and restrict them.

We do not understand that any decision of this Court has questioned the ruling that a patentee can control or restrict the use of patented machines which still remain within the limits of his patent monopoly or that he may legally and properly transfer by assignment or license either all or such portion of his rights conferred by his patent as he pleases. The difficulty encountered by the courts and the conflict between recent decisions of this Court and earlier decisions have resulted not from any real difference of opinion as to the principles of law applicable, but to a difference of opinion as to the proper construction of the transaction before the Court. The difficulty, in other words, has consisted in determining whether the transaction consisted of the grant of a limited license to use or enjoy the patented invention or article, or whether, on the contrary, the transaction was a sale or transfer of full rights to enjoy the patented article or invention and the restriction was a mere collateral agreement or condition and therefore not a patent restriction at all.

To show the law applicable to the present case and the effect of recent decisions of this Court upon restrictions, conditions and agreements contained in patent licenses it is necessary to review the more important decisions.

In *Heaton Peninsular Button Fastener Co.* v. *Eureka Specialty Co.*, 77 Fed. 288 (decided in 1896), the Heaton Company furnished a patented machine for fastening buttons to shoes with metallic fasteners. It sold this machine with a notice attached, stating that it was to be used only with fasteners furnished by the Heaton Co. The Eureka Co. furnished fasteners for use on this machine and was sued for contributory infringement. The Court held that, in spite of the fact that the machines were sold to the public and paid for, the notice constituted a reservation of a right of use in the patented invention, namely, the right to use the machine on materials furnished by persons other than the patentee. The notice being construed as a reservation of a right of use, it was held that the use of the machine with other materials was an infringement and a person furnishing such materials was a contributory infringer.

While this case has now been overruled by *Motion Picture Patents Co.* v. *Universal Film Co.*, 243 U. S. 502, considered below, it is on the ground that the Court misconstrued the nature of the transaction, which was a sale of the machine with full rights of use, thus placing it outside the limits of the patent monopoly, the restriction being, not as the Court construed it—a reservation of certain rights of use, but a collateral condition or agreement attempting to limit not the use of the machine, but the character of the materials which should be used on the machine. The rule applied by the Court, namely, that rights of use not granted by the patentee cannot be exercised by the licensee, was correct and has never been questioned. It was the application of the rule which was held erroneous.

In *Bement* v. *National Harrow Co.*, 186 U. S. 70 (1902), the Harrow Co. licensed Bement to manufacture at Lansing, Mich., and to sell throughout the United States, harrows of a certain character made under its patents. This grant was a mere license to make and sell, and in and of itself was clearly legal. The agreement then provided that the license was granted in consideration of a number of terms which included, (1) the payment of a royalty on each harrow sold by the defendant; (2) the making of certain reports by the defendant and an agreement that he would not sell the harrows

on commission; (3) an agreement that the defendant would sell only at certain prices; (4) an agreement that the Harrow Co. would furnish labels which were to be affixed to the harrows; (5) an agreement that the defendant would not manufacture or sell any other harrows except those he was licensed to make; (6) an agreement that the defendant would not contest the validity of the Harrow Company's patents or alter or change the construction of the harrows which it was authorized to manufacture under the license.

The Harrow Company contended that Bement had violated certain of these agreements and brought suit for violation thereof in the New York State Court and recovered judgment. The case came before this Court on writ of review, the question being whether the agreements violated the Sherman Act.

With a possible exception of the provision limiting the price charged for sales of harrows manufactured under the license, it is clear that the agreements were not reservations in the license grant, but were collateral agreements. For example, the agreement for royalty, the agreement to make reports, the agreement as to sales of other harrows cannot be construed as a reservation of any rights in the invention or the patented harrows. It was necessary, therefore, to consider whether these provisions violated the public policy expressed in the Sherman Act. Not being reservations in the grant of a patent license, the fact that they referred to patents was material only because this was an important consideration in determining their effect.

The Court held that, as these agreements affected the manufacture and sale of patented articles which are a recognized legal monopoly, the fact that they might keep up the monopoly or fix prices at which the harrows were sold was immaterial. The Court said (p. 91):—

> "The very object of these laws is monopoly, and the rule is, with few exceptions, that any conditions which are not in their very nature illegal with regard to this kind of property, imposed by the patentee and agreed to by the licensee for the right to manufacture or use or sell the article, will be upheld by the courts. The fact that the conditions in the contracts keep up the monopoly or fix prices does not render them illegal."

While the Court held that the agreements affected interstate commerce, it held that they were not within the scope of the Sherman Act, because that act was directed only against illegal restraints and these agreements merely assisted in maintaining a monopoly which the law recognized as legal.

The Court said (p. 94):—

> "But that statute [viz., the Sherman Act] clearly does not refer to that kind of a restraint of interstate commerce which may arise from reasonable and legal conditions imposed upon the assignee or licensee of a patent by the owner thereof, restricting the terms upon which the article may be used and the price to be demanded therefor. Such a construction of the act we have no doubt was never contemplated by its framers."

Numerous decisions of the Circuit Courts of Appeal and the Circuit Courts followed, in which the validity of restrictions, conditions, and agreements imposed by patentees were considered. In the cases similar to the Heaton Peninsular case the transaction was construed, as in that case, as a mere reservation of patent rights, and upon such construction the restrictions were held valid and the licensee restrained from violating it in accordance with the well-established doctrine that a licensee cannot exercise rights of use not granted him. The courts, in a large number of cases, went so far as to hold that an article could be sold with the full right to use for every purpose and yet the right to control future sales be reserved. The rule applied, viz., that if a patent right was reserved, it constituted a valid patent reservation, was correct. The error was in holding that any patent right was reserved. As later held in *Bauer* v. *O'Donnell*, 229 U. S. 1, when an article is sold with full right of use, the patentee's right to vend is completely exercised and the article passes beyond the limits of the monopoly, and, therefore, no patent right to control future sales is or can be reserved. In certain cases the rule laid down in the Bement case was misconceived. In that case it was held that conditions agreed to by the licensee, not in their very nature illegal in respect to patented property, could be enforced as contracts.

The distinction between an agreement to be enforced by an action of contract and the reservation of a patent right was not always recognized, nor was the limitation always borne in mind that agreements should relate to and protect the patent monopoly in order to fall within the rule.

In *Standard Sanitary Manufacturing Company* v. *United States*, 226 U. S. 20 (decided in 1912), the defendant attempted to justify a combination clearly in restraint of trade by reason of a patent.

In this case sixteen competing manufacturers of enamel ware accepted licenses under a patent for the use of a tool, the employment of which was useful but not essential to the manufacture of the ware. Prior thereto the Standard Company, one of the sixteen, had owned the patent and the others had held no licenses. Some had infringed the patent and others had not made use of it at all. In accordance with an arrangement made by one Wyman, the Standard Company transferred the patent to him and he granted licenses to all the competing manufacturers to use the patented implement in manufacturing enamel ware. Under these licenses the manufacturers agreed, among other things, to sell their enamel ware only at prices determined by a commission composed of the licensor and of five of their number. All jobbers to whom they sold were likewise required to sign licenses agreeing to sell only at stipulated prices and to buy all their enamel ware from the licensees. The concerns which accepted such licenses manufactured 85 per cent. of the total production.

The patentee's only right was to control the use of the invention embodied in the tools used in manufacturing enamel ware, and the use and enjoyment of such patented tools while still within the limits of the patentee's monopoly. He had no right by reason of his patent to control the manufacture of unpatented enamel ware or the price at which such enamel ware was sold, either by the manufacturer or by the jobbers who purchased it. Nor did he have any power by reason of his patent to control the right of the jobbers to purchase enamel ware from other persons than his licensees. Yet he attempted by agreement to control all these matters. Clearly there was no question in this case of a limited or partial grant of a license or of the mere control of patented articles which had

not been sold and thus were still within the limits of the patentee's monopoly. The sole question was whether the patentee could legally take from his licensees the agreements that in consideration of the license to use his tool they would restrict their sales of unpatented enamel ware in which they were previously competing and would impose agreements on jobbers, who did not even have licenses to use the patent, that they would sell only at certain prices and deal with no other persons.

The only possible defence was that the agreements did not create a restraint of trade within the intent of the Sherman Act because they related to goods made by the use of a patented tool or process. They were adopted for the purpose of restraining trade in enamel ware which was not, and never had been protected by the licensee's patent; and they were, therefore, not affected by the patent on the tool or the patent licenses to use the tool. They did not keep up a monopoly in the patented article, as in the Bement case, but in enamel ware and they were not adapted to or "necessary to protect the use of the patent or the monopoly which the law conferred upon it" (p. 48).

In *Henry* v. *Dick*, 224 U. S. 1 (decided in 1912), the Dick Company sold a patented mimeograph to which was attached a notice that the machine could be used only with stencil paper, ink, and other supplies furnished by the Dick Company. Suit was brought against the defendant Henry for contributory infringement in selling ink to one Miss Skou to be used on a machine which she had bought and owned.

The majority of the Court held that the right granted was a limited one, namely, the right to use with supplies furnished by the Dick Company, that the right of use with other supplies was reserved and not licensed, and, therefore, that a use of other supplies constituted an infringement. Henry was, therefore, held to be a contributory infringer.

The minority did not dispute the rule that the reservation of a patent right was lawful, and that a use not licensed constituted an infringement. It held, however, that the restriction in question was not a reservation of a right to use the machine, or the patent embodied therein, but was a restriction upon the "use of the materials" employed in the machine. It held

that by the sale to Miss Skou every possible use of the machine which the patent protected was transferred to Miss Skou. Thus the minority opinion said (p. 65),—

> "That the sale here in question was one of all the rights which the patent protected has, it seems to me, at the outset been demonstrated beyond reasonable dispute."

And again (p. 53),—

> "Every use which the patent protected was transferred to Miss Skou, and the very existence of the particular restriction under consideration presupposes such right of complete enjoyment, and because of its possession there was engrafted a contract restriction, not upon the use of the machine, but upon the materials."

The minority, therefore, held that, as the right to use for every purpose was transferred to Miss Skou, the machine had passed outside the limits of the patentee's monopoly, and that the restriction was, therefore, necessarily not a reservation of a right to use for a certain purpose which would have been a valid patent restriction but was at best a mere agreement by Miss Skou that she would not use certain materials on the machine. Since, therefore, Miss Skou so far as her patent rights were concerned, held the right to use her machine for any and every purpose, she could not be held to be an infringer.

The minority opinion distinguished the case from *Mitchell* v. *Hawley*, supra, where a use of certain machines was granted for a limited term and a use of the machines after the close of the term was held to be an infringement as follows (p. 64):—

> "The difference between the rule applied in that case and the doctrine of the many other cases which we have cited and which also exists between the controversy presented in *Mitchell* v. *Hawley* and the one here under consideration was simply as follows: (*a*) That which exists between the conveyance of all one's rights covered by a patent and a transfer of only a part of such rights; (*b*) that which obtains between the ability of a patentee to protect the right which he enjoys under the patent law from infringement and his want of power on parting with all his rights under the patent to contract so as to secure

rights never embraced in his patent, and to bring such newly acquired contract rights under the protection of the patent law."

The question of whether Miss Skou had impliedly agreed not to use other materials, and whether if so this agreement would be invalid, was not involved in the case, as it was a suit for infringement, although the minority intimated that such an agreement was against public policy.

In *Bauer* v. *O'Donnell*, 229 U. S. 1 (decided in 1913), the plaintiff sold Sanatogen, a patented remedy, in packages bearing a notice that the packages were licensed for sale and use by retailers at a price not less than one dollar. The defendant, a retailer, had bought from jobbers and paid for packages of this remedy bearing the notice above referred to, which he sold for less than the price named. He was sued for infringement.

The majority of the Court held that the patentee, by selling the packages with full right of use, had "exercised" his exclusive right to sell granted him by the patent law, and had placed the packages outside the "limits of the monopoly granted by the patent law." The attempted restriction on future sales was, therefore, not a reservation of any patent right, since all the rights which the patentee had in respect to these particular packages had been transferred by him. The Court, therefore, held that no future sales of these packages could constitute an infringement.

In the recent case of *Strauss* v. *Victor Talking Machine Co.*, 243 U. S. 490 (decided April, 1917), the Victor Company adopted a plan for distributing its machines whereby, among other things, it attached a notice to each machine providing that its use for demonstrating purposes only was granted dealers and retailers; that dealers could convey a right to use it to the public only on payment of a royalty to the retailer of $200 each, and that title remained in the Victor Company until the expiration of the patents embodied in the machine. The Victor Company received the full payment to which it was entitled upon delivering the machines to the wholesaler, and received no part of the $200 for which the machines were to be sold to the public. The defendant, a retailer, obtained machines from retailers or wholesalers for less than $200, the

price which the notice on the machines required should be paid when sold to the public, and were selling these machines for less than this price. The Victor Company asked that the defendant be enjoined from selling the machines and from further violating the Victor Company's patent rights.

The Court held that the evident purpose and intent of this arrangement was not to secure to the plaintiff any use of its machines, but that it was a mere attempt to restrict the prices charged for them after the plaintiff had been fully paid for the machines and they had passed into the possession of dealers and the public, and that the case, therefore, fell within the principle of *Bauer* v. *O'Donnell*, supra, and *Adams* v. *Burke*, supra.

The case, in other words, decided that the retailer or wholesaler had paid for every right which he transferred to Strauss, and that these rights, as in the case of *Bauer* v. *O'Donnell*, supra, had passed outside the "limits of the patentee's monopoly." This being so, the wholesaler or retailer in transferring his rights to Strauss could commit no infringement of the plaintiff's patent rights.

In *Motion Picture Patents Co.* v. *Universal Film Co.*, 243 U. S. 502 (decided in April, 1917), the decision of the minority in the Dick case was sustained and the Dick case was overruled.

In this case the patentee granted a license to make and sell a patented machine for exhibiting moving-picture films. The agreement contained a covenant on the part of the licensee that every machine it sold should be sold under the restriction and condition that the machine should be used solely for exhibiting pictures containing the inventions of a certain patent for films and on other terms to be affixed by the licensor. The patent on the films had expired. The defendant Prague Amusement Company leased and held the machine which had been sold to its lessor bearing a notice which set forth the above restriction and used this machine with films furnished by the defendant Universal Film Company of a character not permitted by the attempted restriction. Suit for infringement of the patent was brought.

The question with which we are here concerned was, as stated by the Court,—

> "May a patentee or his assignee license another to manufacture and sell a patented machine and by mere notice attached to it limit its use by the purchaser or by the purchaser's lessee, to films which are no part of the patented machine, and which are not patented?" (p. 508).

The majority of this Court held that the attempted restriction was invalid (p. 518),—

> "Because such a film is obviously not any part of the invention of the patent in suit; because it is an attempt, without statutory warrant, to continue the patent monopoly in this particular character of film after it has expired, and because to enforce it would be to create a monopoly in the manufacture and use of moving picture films, wholly outside of the patent in suit and of the patent law as we have interpreted it."

The Court said that the patentee's right was to control the use of the patented mechanism. The materials with which it was used were no part of the patented machine.

> "Both in form and in substance the notice attempts a restriction upon the use of the supplies only and it cannot with any regard to propriety in the use of language be termed a restriction upon the use of the machine itself" (p. 512).

In other words, the Court held, as did the minority in the Dick case, that the full use of the machine for all purposes was sold, and, therefore, passed outside of the limits of the patent monopoly and no right of use in the machine was reserved. There was, therefore, no question of a limited patent grant or of a patent infringement.

Whether such an agreement restricting the use of supplies could be made by special contract between the patentee and the purchaser of the machine was not involved in the case (p. 509), though from the language of the Court it is to be presumed it would be held unlawful on the ground that it would create a monopoly in an unpatented article.

RESULT OF THE FOREGOING DECISIONS.

The decisions we have referred to above determine the following rules:—

1. A patentee has the exclusive right to make, use, or vend the patented invention.

2. The patentee at his sole discretion may retain these rights or transfer or grant licenses, either partial or complete, to exercise these rights. Any manufacture, use, or sale of a patented invention which is not so licensed is an infringement of the patentee s rights.

3. As the patentee can retain all his rights, he cannot be criticised for granting only partial licenses. A transaction which consists solely of the grant of certain rights and the reservation of those not granted is clearly valid.

4. When a patented article has not been sold by the patentee, and it, therefore, still remains within the limits of the patent monopoly, it is subject to the control of the patentee, and no other person can use or sell it except as the patentee expressly directs or permits.

5. When an article is sold with the full right of use, it passes outside the patent monopoly, and no use or sale of it made thereafter can be an infringement of the patent. Such future sale or use can be forbidden if at all only by special contract, and not by reservation of a patent right by the patentee, since he has made no such reservation in his grant. No future use or sale of such article can constitute an infringement: it can at best constitute a violation of a contract or condition.

6. When a machine is bought and paid for and a notice is attached stating that it is to be used only with certain unpatented materials furnished by the patentee, the transaction is construed as a transfer of the machine with full rights of use for every purpose, and the attempted restriction is construed, not as a reservation of a use of the machine (which would make it a valid patent reservation), but as a restriction on the use of the materials. Its violation is, therefore, not an infringement of the patent. Such a restriction cannot be

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imposed on purchasers of the machine by mere notice, but can only be imposed and enforced, if at all, by special contract.

7. All agreements and conditions which do not operate to restrict the use of a patented machine while such machine is still within the limits of the patent monopoly, or which do not constitute a reservation of a right of making, using, or vending, are collateral to the granting of the license. Their legality is governed by the general law and they cannot be imposed as a matter of right conferred by the patent law. Such collateral agreements or conditions, however, which merely tend to keep up a monopoly conferred by the patent laws, as held in the Bement case, are not in restraint of trade.

APPLICATION OF THE FOREGOING PRINCIPLES TO THE PRESENT CASE.

In the present case the patented machines have not been sold, but remain the property of the United Company. There is nothing in the transaction which can be construed to be even analogous to a sale. The machines are installed in the shoe manufacturer's factory without payment of any purchase price whatsoever. The shoe manufacturer is only required to pay for such use as he may from time to time make of them. They must be returned at the termination of the lease or earlier in case of prior cancellation of the lease. In practice shoe manufacturers frequently change the character of their work or go out of business, with the result that the machines are being constantly returned. They have not been sold, and they have, therefore, not passed beyond the limits of the patent monopoly as in *Bauer* v. *O'Donnell*, supra, or *Adams* v. *Burke*, supra.

Since the United Company, as patentee, has never sold the machines, they remain within the limits of its patent monopoly and cannot be used in any way by a shoe manufacturer without infringement unless such shoe manufacturer has been granted a license so to use them.

The only license a shoe manufacturer holds is contained in his lease and license agreement under which the machines are installed. That lease and license agreement provides that

the machines may be used as a series. It expressly provides that no right to use them otherwise is granted.

Since this license is the only license the shoe manufacturer holds, if he uses the machines otherwise than the license permits he commits infringement. It cannot be contended with reason that the license agreement grants him a license to use the machines in any way he pleases, and that the limitation is not a limitation of the rights granted, but a mere collateral agreement. The transaction expressly negatives such a construction. The restriction relates directly to the use of the patented machines and provides what use is licensed and what use is not licensed.

It is not a restriction on the use of other unpatented materials or articles, but a restriction on the use of the patented machines themselves. These machines are adapted for use as a series. When so used they work more efficiently, produce a better product, and return larger royalties. The patentee, owner of the machines, naturally desires that its machines be used in the manner in which they can be used most effectively and in which they return the largest royalty. A provision to this effect is clearly a provision relating to the use of the machines, limiting and defining the use which may be made of them, and it, therefore, constitutes a mere partial license to use.

The United States relies on *Motion Picture Patents Co.* v. *Universal Film Co.*, supra, to sustain its contention that the restriction is a collateral agreement or condition, and not a reservation of patent rights. In the Motion Picture Patents case it was held that the restriction was not on the use of the machine, but on the use of the films. In that case the machine had been sold and the patentee had received the full royalty he claimed in connection with the patent embodied therein. The machine had thus passed outside the limits of the patent monopoly, and the notice attached to it was necessarily a restriction, not against the use of the patented machine, since the right to use it for all purposes had been granted and paid for, but against the use of materials in the machine. It was, therefore, not a reservation of any use of the machine.

In the present case the machine is clearly still within the limits of the patent monopoly and subject to the control of

the patentee. It is not sold or paid for, nor is any full right of use for any and every purpose granted even for the term of the lease. The machine remains the property of the United Company; it cannot be sold by the licensee; it can be used only by the licensee and only as permitted by the license, namely, for a limited term at a designated factory and for a designated purpose. The licensee has not even paid for this limited license to use, but pays only as he uses the machine. The machine is still within the limits of the patent monopoly and subject to the rights of control granted by the patent. The licensee therefore cannot, without infringement of these rights, use the machine at all unless he obtains permission to do so from the patentee. The only permission granted him to use it at all is the license contained in his lease and license agreement. That license only grants him certain limited rights. He is granted the right to use it only at his factory. He cannot use it at any other place without violating a right reserved by the patentee and, therefore, committing an infringement. He is granted the right to use it himself. Others cannot use it without violating a reserved patent right and committing an infringement. He is granted the right to use it only on shoes operated on by certain patented machines leased from the United Company. If he uses it on shoes operated on by other machines, he violates a patent right which the United Company has not granted him and is under no obligation to grant him. He thus commits an infringement of the rights conferred by the United Company's patent. There being no sale or transfer of all rights of use, but only a limited license to use the machine which is still owned by the patentee and within the limits of his patent monopoly, there is no basis for a contention that since all rights of use have been sold the restriction must be construed as a collateral agreement and not as a patent reservation.

Furthermore, in the Motion Picture Patents case it was evident that the purpose of the restriction was to control the use of the films and not to control the use of the patented device. The patentee had sold the patented machine and had no interest in its future use. The purpose of the restriction was solely to obtain control of unpatented films used in the machine. The patentee, having charged such price as

he saw fit for the machine and the right to use it, attempted, in addition, to control the use of the films which had no relation to the use of the machine. As pointed out by the Court (pp. 512–513), the restriction both in form and in substance was on the use of materials and not on the use of the patented device embodied in the machine.

In the present case the restriction is clearly on the use of the machine itself. The United Company's machine is designed and adapted for use in connection with other patented machines which no one else can furnish. When so used the machine produces more work and better work. The United Company is vitally interested in having the machines which it owns used most effectively and in the manner for which they are designed. The reputation of its machines is thus enhanced and the return to the United Company increased. In providing that its machine shall be used in the way in which it is designed to be used and can be used most effectively, the United Company is obviously controlling the use of the machine itself. In form as well as in substance, the restriction is on the use of the patented machine.

There is no attempt to regulate the use of materials employed in the machine as in the Motion Picture Patents case. The shoe manufacturer is free to use any materials he pleases. The United Company, in leasing a set of its patented machines, merely regulates the use of these patented machines. It does not attempt to bring within its control or the control of its patents, nor does it require the lessee to use, materials, supplies, or machines for which it has no patents and over which the patent law gives it no control. In the Motion Picture Patents case the patentee attempted to exclude others from furnishing unpatented films which they were free to make and dispose of. In the present case the patentee only controls the use of his patented machines.

The reasons given for the decision in the Motion Picture Patents case are wholly inapplicable to the present case. They are stated as follows in the opinion (p. 518):—

> "Such a restriction is invalid because such a film is obviously not any part of the invention of the patent in suit; because it is an attempt, without statutory warrant, to continue the patent monopoly in this particular char-

acter of film after it has expired, and because to enforce it would be to create a monopoly in the manufacture and use of moving picture films, wholly outside of the patent in suit and of the patent law as we have interpreted it."

The first reason given is because the films, the use of which is restricted, are no part of the patented invention. In the present case, as we have shown, it is only the United Company's patented machines, the use of which is restricted. There is no attempt to control any unpatented materials or machines.

The second reason is that an attempt is made to continue the patent monopoly in films after it has expired. In the present case there is no attempt to continue any monopoly in articles on which the patents have expired.

The third reason is that to enforce the restriction would result in creating a monopoly in moving-picture films wholly outside of the patent in suit. In the present case the restriction is limited to the United Company's own patented machines.

The other cases which we have referred to above setting limits on the right of the patentee to impose conditions on his licensee are equally inapplicable to the present case. In none of them was the right of the patentee to grant a limited right of use or to control the use of patented machines still owned by the patentee and still within the limits of his patent monopoly, questioned.

In *Strauss* v. *Victor Talking Machine Co.*, supra, the license to use and the rights which Strauss acquired in the machines and proposed to sell at a less price than the notice on the machines permitted had been acquired and paid for in full by his predecessors in title and had passed outside the patent monopoly. There was, therefore, no question of infringement or reservation of patent rights, but solely a question of whether such a condition could be imposed by mere notice on rights after they had been sold and paid for and passed outside the patent monopoly.

In *Henry* v. *Dick*, supra (regarding the minority opinion as the opinion of the Court), the machine had been sold and paid for with full right to use for any and every purpose and had thus passed outside the limits of the patent monopoly and the

restriction was not a reservation of patent rights but a mere attempt by notice to impose a condition on the use of materials in the machine after it had passed beyond the control of the patentee.

In *Bauer* v. *O Donnell*, supra, the packages of Sanatogen had been sold with full right of use and paid for. They had thus passed outside the patentee's monopoly and outside of his control. The restriction could operate, if at all, only as a contract restricting the sale of goods no 'onger within the control of the patentee. It was obviously not a patent restriction.

In *Standard Sanitary Co.* v. *U. S.*, supra, the restriction did not purport to be on the use of the patented tool. It was on the goods made by the tool and went even further than this and required that the licensee should compel jobbers to agree with him not to deal in any goods except those made with the patented tool. There was not even a semblance of a patent reservation, and the sole question was whether such a contract made with licensees was justified.

In the present case the machines which are restricted are the property of the patentee. It has never sold them and they have never passed beyond the limits of its patent monopoly. Lessees can use them only as licensed so to do and any use not so licensed is unlawful. The Restricted Use Clause merely permits their use as a series. The right to use them in other ways is not granted. It is a case of a grant of a partial license to use in a particular way as distinguished from a full license to use in any and every way. The right of a patentee to grant such a partial license and to reserve all rights not granted is recognized by the patent laws and by a long line of decisions which have never been questioned.

(7) LEGALITY OF AUXILIARY RESTRICTED USE CLAUSE.

The Auxiliary Restricted Use Clause restricts the use of an auxiliary machine to use with a principal machine. Its legality needs little further discussion, as it has been covered by the foregoing discussion of the Restricted Use Clause.

Like the Restricted Use Clause, it

(1) is a normal agreement adapted to accomplish a legitimate business purpose;

(2) cannot restrain trade;

(3) is a valid exercise of a patentee's rights.

The reasons for the adoption of this clause are set forth above (*supra*, pp. 375–378). It is there shown that the auxiliary machines are mainly Goodyear Department machines which have been developed from time to time to assist the operation of the principal Goodyear machines, the Welter and Stitcher. These machines were developed after the principal machines were invented, and, instead of leasing them separately for an additional royalty, the United Company (and the Goodyear Company before 1899) furnished them without royalty to users of its Welter and Stitcher, charging only a nominal rental or initial payment. The purpose has been to increase the productivity of the Welter and Stitcher and improve the character of work they produced and thus to increase the use of the Welter and Stitcher and the return received in royalties from those machines. A further reason has been that, as the United Company's machines are paid for to the extent used, it would be impossible to determine the exact use of all these auxiliary machines, on most of which no recording mechanisms can be placed. By restricting them to use with the principal machines this difficulty is largely avoided. A further reason is that a fair separate charge for the use of each auxiliary machine would be impossible to determine with any exactness, and, furthermore, as a new machine was put out the royalty on each machine outstanding would have to be changed or the total royalty for the set would necessarily be increased. Still other reasons which make this form of lease necessary are given *supra*, pp. 375–378.

The Auxiliary Restricted Use Clause, being designed to accomplish these legitimate and proper purposes, is clearly a normal agreement.

Furthermore, it is a mere continuation of the method of leasing employed by the Goodyear Company from the very beginning. It was not a plan devised by the United Company and is no evidence of the plan charged in the petition, which it is alleged was formed in 1899 to monopolize shoe machinery by acquiring all shoe machinery companies and

adopting new forms of leases. By continuing the method of leasing machines in use by the Goodyear Company, the United Company did not affect the existing situation in the slightest degree.

The United States contends that this clause restrains trade because shoe manufacturers may desire to use the United Company's auxiliary machines and thus be induced to take the principal machines. There is no evidence in the record that any manufacturer was induced to take the United Company's Welter and Stitcher for this reason. But even if this were true it would not make the clause illegal. A manufacturer, as we have shown above (*supra*, pp. 384–387), is not compelled to furnish separately each of the parts of an article, or of a series of articles, adapted and constructed for use together. A manufacturer is free to furnish a complete set of machines, if he pleases, just as he can furnish a complete locomotive and refuse to enter into retail transactions to furnish the separate parts.

The use of this provision does not restrain trade. Shoe manufacturers have no right to use the patented auxiliary machines at all. If they obtain the right to use them in connection with the United Company's Welter and Stitcher, they are obtaining new rights, and they remain as free to use auxiliary machines obtained from others, either with the United Company's Welter and Stitcher or with welters and stitchers obtained from others, as they ever were. By taking the machines they are not even required to use them. The result is that they have every right they had before and in addition a right to use these auxiliary machines on certain shoes. The grant of a new right, as we have shown, without the imposition of any new restriction on the grantee cannot be termed a restraint of trade.

And, finally, as we have shown above (*supra*, pp. 396–397), such a clause is merely the grant of a limited right of use of machines still within the limits of the patentee's monopoly and a reservation of all other rights. The patentee is free to reserve all his rights or such portion of his rights, as he pleases, and in so doing is merely exercising the rights granted him by his patent.

J. OTHER CLAUSES COMPLAINED OF BY THE UNITED STATES.

The Factory Output Clause in Goodyear Lease and Royalty Clause in Clicking Machine Lease.

In its brief filed at the previous hearing in this Court, the United States made objection to two clauses, neither of which was referred to in the petition, and neither of which was objected to specifically at the hearing in the lower court. These two clauses are the Factory Output Clause, contained in one alternative form of Goodyear lease, and the Royalty Clause in the Clicking Machine lease.

(1) The Factory Output Clause in the Goodyear Lease.

In the lease of Goodyear Welt machines used by the Goodyear Company, prior to 1899, a substantial initial payment was required, and a royalty was charged for each pair of shoes on which the machines were used. In its lease of turn machines a similar initial payment and royalty was charged, but the lessee was required to use the Company's turn machines exclusively; and was thus obliged to pay a royalty on all turn shoes made by him.

In 1900 the United Company eliminated this clause requiring the lessee to use its Turn machines exclusively and thus pay a royalty on all turn shoes which the lessee made. From this date until 1905 the United Company required an initial payment and as royalty for its Goodyear Welt and Turn machines a payment based only on the number of welt or turn shoes made on its Goodyear machines.

On January 1, 1905, the United Company adopted a form of lease for Goodyear machines under which no initial payments were required (*supra*, p. 282). These initial payments had been fairly large and had been a considerable source of income to the United Company. Under this new form of lease requiring no initial payment, the lessee was required to pay a royalty for the use of the leased machines

based on the total number of shoes made in his factory. There is a similar clause in one form of lease for Pulling-over machines.

The reason for the clause is clear. The United Company could not afford to give up these large initial payments and place its machines in a lessee's factory without such initial payments unless it was assured of an adequate return in the shape of royalties. When the lessee made an initial payment the United Company felt that the lessee would not make the payment unless he intended in good faith to use the machine and thus pay royalties for its use to the United Company. When the lessee made no initial payment the United Company had no such assurance unless some other clauses were added for its protection. It, therefore, required the lessee to pay a royalty for the use of its machines based upon his factory production. The United Company was thus assured of an income provided the lessee manufactured shoes and had work which the machines could perform.

A form of lease which did not contain this factory production clause, but which called for the initial payments which had always been charged by the old Goodyear Company and by the United Company, was continued and could be obtained by any lessee who desired it (*supra*, p. 283). Any lessee, therefore, who held welters and stitchers obtained from other sources and who did not wish to pay for the United Company's Welter and Stitcher on the basis of his factory production would not take this factory output form of lease.

The United States has called this provision a royalty charge for work done on competing machines. It obviously is not. It is a charge for the right to use the United Company's machines if the lessee so chooses, by paying a royalty based on factory production. For this payment the United Company gives the lessee the right to use its Goodyear machines if he so desires. A fixed annual payment for the right to use the Goodyear Company's patented machines on any shoes the lessee wishes to use them on would certainly be beyond criticism. So equally must be this clause, which, instead of requiring a fixed payment for such right, requires a payment based on the actual number of shoes on which the lessee is privileged to use the machines.

The United States contends that no shoe manufacturer hav-

ing such a lease will take and use a welter from a competitor as the lessee would have to continue paying the same charge to the United Company as previously. If the shoe manufacturer had an equipment of welt machines from the United Company under a lease by which he paid a fixed annual rental, he would be obliged to continue paying this same annual rental even if he obtained and used a competitor's welter.

Furthermore, if the lessee does not desire to be bound by this clause, his remedy is simple. He can change his lease to an initial payment form and thus avoid the effect of the clause.

This same clause had been used by the McKay Company in its leases of heeling machines prior to the formation of the United Company for the same reason that it was employed by the United Company in its Goodyear leases, namely, to assure the lessor of an adequate return for its machines.

(2) Clicking Machine Royalty.

The Clicking machine is not restricted to use with any other machine.

The lease provides that the dies used on the machine shall be obtained from the United Company or a royalty paid the United Company equivalent to five cents per inch of all dies obtained from others. In other words, a royalty is charged based on the use of the machine as measured by the number of dies employed, which royalty is paid either by the purchase from the United Company of dies on which it expects to obtain a manufacturing profit or by the payment of a specified sum if other dies are used. This payment is not intended to provide an adequate royalty, as the profit from this source is very small. The United Company could not afford to lease this valuable machine for the trivial return it receives from this provision.

However, when the machine is used on shoes lasted on the United Company's lasting machines, and, in the case of welt or turn shoes, sewed on the United Company's Goodyear machines, no additional royalty is charged, the United Company getting its return indirectly through the royalties received on

these other machines. In other words, the Clicking machine is treated substantially as an auxiliary machine when used as part of a series with the United Company's Welter, Stitcher, and Lasting machines, and the United Company is sufficiently compensated for its use by the total royalties received from all the machines of the series.

The lease of the Clicking machine, however, differs from the lease of the ordinary auxiliary machine in that it contains no Restricted Use Clause whatsoever. The lessee is free to use the Clicking machine with a competitor's welter or lasting machines if he pleases. If he does so, and, therefore, does not use the Clicking machine as part of a series of the United Company's machines, he is not entitled to the wholesale rate charged for the series. The lease, therefore, provides that in such case he must pay the United Company a royalty of ½ of a cent net if the machine is used in connection with other lasting machines, ⅞ of a cent net if used with another turn sewer on turn shoes, and 3 cents net if used with another welter and stitcher on welt shoes. If these amounts were not charged where the machine is not used as part of the series, the United Company would get no fair return for the use of its Clicking machine, either directly as a royalty for the machine or indirectly from the total royalties received for the use of the series.

In the case of the Goodyear auxiliary machines, the United Company makes no charge for the use of the machines, except a small rental, but restricts their use to use with the Goodyear Welter and Stitcher on which it receives a royalty. The United States objects to this practice, because it contends that the United Company should also lease these auxiliary machines for a separate royalty to be used with the competitor's welter and stitcher.

In the Clicking Machine lease the United Company does exactly what the United States insists it ought to do in respect to Goodyear auxiliaries. It leases the machine for a small royalty when used as part of a series with its other machines, and charges an additional royalty when used separately. This is the full effect of the clause.

The fact that the United Company objects to this method of payment shows clearly and definitely that the real objection of the United States to the United Company's leases is

that they provide for a wholesale rate where a series of machines is used. *The position of the United States is that each machine must be leased separately for a definite royalty regardless of economies resulting from use as a series and that no wholesale rate can be granted.*

13. ENFORCEMENT BY THE UNITED COMPANY OF ITS LEASES.

The petition alleges that the United Company has continually, persistently, and arbitrarily enforced the provisions of its leases (R. Vol. 1, p. 997). This charge is without any foundation whatsoever.

We have discussed the provisions of the leases above as though they were strictly enforced by the United Company. As a matter of fact, the United Company has only enforced them in a very few instances when the conditions in the lessee's factory were such that its machines were being damaged or it was being deprived of a proper return on its machines as was fairly contemplated by their spirit and intent.

The purpose and effect of leases of this character cannot, as stated above, be tested solely by an examination of the literal wording of the leases. In leasing a complicated set of shoe machinery to over a thousand lessees scattered all over the country, it is impossible to foresee all the conditions which may arise under which it may be unfair for the lessee to use the machinery, and even when such conditions can be foreseen it is often a question of degree or of the particular circumstances of the case as to whether the lessor needs protection. It is essential that the lease contain general provisions agreed to by the lessee, which the lessor can enforce if his protection so requires. The same is true of the ordinary lease of a house or of business premises. For example, such a lease often contains a covenant on the part of the lessee not to permit any nails to be inserted in the walls, and the lessor is authorized to forfeit for violation of any covenant. If the lessee or any of his family drives a small nail into the wall, the lessor has a

technical right to forfeit the lease. This, however, does not make the lease oppressive. It is obvious that the lease cannot specify exactly how many nails a lessee may drive without forfeiture. The reservation of this general right is necessary and the lessor in the ordinary lease exercises a reasonable discretion as to the exercise of his rights, and a court of equity will restrain an unjust forfeiture.

In considering, then, the purpose and effect of the provisions contained in the United Company's leases, it is necessary to consider not only the literal wording of the clauses, but the extent and manner in which the United Company has enforced these provisions.

The United Company has been far more Liberal to Lessees than the Terms of its Leases Required.

The following are a few striking examples of the extent to which the United Company has treated its lessees more liberally than was required by the terms of the leases.

1. Every lease which the United Company has put out requires the lessee at his own expense to keep the leased machinery in good and efficient working order and condition. (For example, see P.'s Ex. 24, par. Two; R. Vol. 3, p. 216.) None of the leases has required the United Company to instruct operatives for the lessee. Yet the United Company has always supplied its service for keeping the machines in repair, charging only for the cost of new parts, and has always instructed operatives. It has charged the shoe manufacturer absolutely nothing for this service, except the cost of new parts, even paying the traveling expenses of its service men. In 1911 this service cost the United Company $1,196,494.86 (R. Vol. 1, p. 421, lines 18–23, 31–34; p. 974, line 22).

2. Every lease provides that the lessee upon the termination of the lease shall pay the lessor such sum as is necessary to put the leased machinery in suitable order and condition to lease to another lessee. (For example, see P.'s Ex. 24, par. Nine, R. Vol. 3, p. 223.) As a matter of practice the United Company has charged lessees upon the return of machines much less than the cost of repairs. For example, in 1911, the cost

of repairing returned machines was $350,000, and the amount charged lessees was only $70,000 (R. Vol. 1, p. 853, lines 19–32).

3. When a lease of a machine is once made, the United Company has, of course, a right to insist that it be retained by the lessee for the period of seventeen years.

The United Company has disregarded this provision of its leases wherever a new machine has been developed which was better than a machine then in use. In such cases the United Company has offered the new machine to lessees, and taken back the machine previously leased, and when obsolete has scrapped it. The United Company has done this without making any charge to lessees for so doing, either on account of the scrapping of the old machine, or on account of the increased efficiency of the new machine (R. Vol. 1, p. 425, lines 12–20). The new Model K Welter, for example, effects a saving to shoe manufacturers and operatives of at least $800 per year. Yet these welters are substituted for the old welters without any charge, or the requirement of any additional royalty, although the United Company is under absolutely no obligation to do so. The United Company has thus substituted new improved machines for a large portion of the machines which were outstanding when it was formed. Nearly all of the machines made by the Goodyear Company in 1899 have been replaced by new and improved machines (R. Vol. 1, p. 430, lines 32–34).

4. The United Company has since its organization developed a large number of new auxiliary machines not supplied in 1899. It has, for example, added 22 welt auxiliary machines, and 6 turn auxiliary machines (Defs.' Exs. 242 and 243, R. Vol. 5, p. 681; Defs.' Exs. 244 and 245, R. Vol. 5, p. 683). Although under no obligation whatsoever to do so, it has furnished lessees under existing leases these new auxiliary machines without extra charge or royalty except a small rental or initial payment which affords no fair return on the machines.

5. Many of the leases require the lessee to guarantee a minimum payment. This clause has never been strictly enforced, except for the purpose of requiring a lessee to return idle machines for which he had no further use (R. Vol. 1, p. 553, lines 4–19).

The United States, in spite of extraordinary efforts to present the evidence of every dissatisfied lessee out of the hundreds of lessees who have dealt with the United Company since 1899, has utterly failed to show a single instance of any arbitrary or oppressive enforcement of its leases. The thirteen instances of such conduct which it finally charged are set forth in its bill of particulars under the heading of "Misrepresentation and Threats to Induce Customers of Competitors to Abandon Competing Machinery" (R. Vol. 1, pp. 1075–8). As to five of these alleged instances it introduced no evidence whatsoever. The evidence as to the remaining eight showed the charge to be utterly unfounded. A statement of the evidence in respect to these charges is contained in Appendix II (*infra*, pp. 743–761), and a short summary is given below in the Brief (*infra*, pp. 589–595).

In a very few instances the record shows that the United Company called the attention of its lessees to the clauses in the leases. Except in the five cases of cancellation referred to below, and a single suit brought against the Plant Shoe Company under its leases, the record shows no instance of an enforcement by the United Company, by legal action or by cancellation of its leases, of any of the clauses objected to by the United States, viz., the clause providing that the lease should run for seventeen years, the Full Capacity Clause, the Exclusive Use Cancellation Clause, the Cancellation for Breach Clause, the Restricted Use Clause, or the Auxiliary Restricted Use Clause.

In each of the five cases of cancellation referred to, the United Company cancelled its leases because of a most flagrant violation by the lessee of its rights. These were the cases of C. E. Ramlose, E. F. Bell & Co., Peter Tessier & Co., E. Bottomley & Co., and T. D. Barry & Co. (R. Vol. 1, p. 447).

In the Ramlose case the lessee persistently cheated the United Company by reporting on his royalty returns only about half the shoes made (R. Vol. 1, p. 447, lines 36–45).

In the Bell case the lessee persistently used wire purchased from others on his metallic machines, thus depriving the United Company of its only royalty on these machines. Only the machines which were being so wrongfully used were removed, and the others were left (R. Vol. 1, p. 448, lines 1–10).

In the Tessier case the lessee had abandoned the use of the United Company's machines and was paying it no royalty (R. Vol. 1, p. 448, lines 11–18; see Appendix II, *infra*, p. 143).

In the Bottomley case the lessee obtained other machines and abandoned the use of the United Company's machines and wrote the United Company he would pay it no further royalties on them (see Appendix II, *infra*, p. 746).

In the Barry case the lessee abandoned the use of the Goodyear Welter, but used the Goodyear Auxiliaries without making any payment for such use (see Appendix II, *infra*, p. 748).

Not only then does the record fail to show any instances of oppressive enforcement of the provisions of the leases, but it shows various instances in addition to those stated above in which the United Company did not insist upon a compliance with the provisions of the leases or exercise its full rights reserved under the leases.

In respect to the term of the leases, we have shown that the United Company upon the invention of a new improved machine was always ready to cancel the old lease, and furnish the new machines without charge. The United Company was also ready at all times to change over restricted leases to unrestricted leases or vice versa (*supra*, p. 359). It was further ready to permit a shoe manufacturer to give up his leases if circumstances justified. Thus Mr. McElwain, whose company is one of the largest shoe concerns in the country, making about 30,000 pairs a day, asked the United Company if he could cancel his leases in case he decided he would take other machines, and was told by Mr. Winslow that the United Company would be glad to make fair arrangements to cancel any or all of his leases, so that he might use another line of machines if he desired (R. Vol. 1, p. 502, lines 12–18).

Plaintiff's Exhibit 161 (R. Vol. 4, p. 1118), introduced by Louis H. Harriman of the Haverhill Shoe Machinery Company, a witness for the United States, gives a list of eight concerns which had used the Haverhill Company's Turn machine in the same factory with the United Company's Goodyear Turn machine, and of nine other concerns who were still doing so. In none of these cases had the United Company exercised the right to withdraw its Goodyear Turn machines, although it could have done so under the Exclusive Use Can-

cellation Clause, and although the lessee in certain cases was apparently using in connection with the Haverhill Turn machines, machines held under Restricted Use Clauses forbidding such use, including General Department machines on which no separate royalty was paid, and on which the entire royalty was received indirectly from the machines to use with which they were restricted (Donham, R. Vol. 1, pp. 828–30).

We do not intend to intimate that the lease clauses are not essential to the protection of the United Company. We merely wish to point out that, like all clauses of this kind, it is necessary that they should be general in their terms, and that the United Company enforces them only if necessary to protect itself against damage to its machines, or against the use of its machines under conditions which do not give it a fair return.

Furthermore, the leases as introduced in evidence do not give a complete picture of the policy of the United Company towards its lessees. The United Company is willing at all times to adapt its system to meet the reasonable requirements of shoe manufacturers.

Riders in great variety, as the record shows, have been adopted from time to time modifying the terms of the leases to meet particular situations, and the United Company is prepared to continue this policy. The policy of the United Company is expressed by Mr. Winslow's statement on cross-examination with reference to making a separate price for Goodyear Auxiliary machines:—

> "It is not fair to state that we will not permit one of these important auxiliary machines that we have developed and are developing to be used in connection with a welter or outsole stitcher made by any one else. We have followed the line which in our judgment would give to the manufacturers of shoes the greatest amount of value for the money that we received, and there has been no other reason for it" (R. Vol. 1, p. 545, lines 19–25).
>
> "Should a welter or a stitching machine that was the equal of our machine be developed and offered to the manufacturers, and the developer of that machine or that concern were not attempting to use it as a black-mailing proposition, or attempting to make shoes and call them Goodyear welts when they were not, I can quite

understand our company to be perfectly willing to establish prices for its auxiliary machines" (R. Vol. 1, p. 545, lines 31–38).

The leases in evidence only represent the terms under which the United Company offers its machines for use under conditions for which there has so far been a demand. As Mr. Winslow testified:—

> "The assumption that these leases that you have put in, or have been putting in, represent the policy of the company is entirely unfair. We have riders continually, when a condition arises, by which we let manufacturers use machines. They only represent just exactly certain notices as to how those machines should be used for the money that is paid for them, nothing more" (R. Vol. 1, p. 546, lines 13–20).

14. THE PROVISIONS IN THE LEASES ARE ESSENTIAL TO A CONTINUANCE OF THE PRESENT SATISFACTORY LEASE SYSTEM UNDER WHICH SHOE MANUFACTURERS OBTAIN MACHINES WITHOUT INITIAL PAYMENT FOR A ROYALTY BASED ON THE USE OF THE MACHINES. THEY ARE, THEREFORE, CLEARLY NOT CONDEMNED BY THE SHERMAN ACT.

The foregoing survey of the reasons necessitating the various provisions in the leases attacked by the United States shows that they are essential to a continuance of the present satisfactory lease system under which shoe manufacturers obtain machines without initial payment, and for a royalty based upon the use of the machine.

For example:—

The Full Capacity Clause is essential if machines are leased without initial payment for a royalty based on use. The return to the United Company on its investment in machines cannot be made dependent on use unless the lessee agrees that he will use. If prohibited from employing this clause, the United Company would be obliged to adopt some

method of payment far less satisfactory to its lessees such as to (1) sell its machines, or (2) charge a large initial premium upon the installation of its machines, or (3) charge a fixed rental based on the capacity of the machine instead of a royalty based on use.

The Restricted Use Clause, or some provision having the same effect, is essential if the shoe manufacturer who desires to use a team of the United Company's machines is to be given a wholesale rate and thus be permitted to share in the economies resulting from the use of the machines as a team. If forbidden to use this clause, the United Company must charge for each machine a price based upon the probable return from the machine when used as an independent unit, which is necessarily higher than the price charged when it is taken to be used as a part of a team of the United Company's machines. The shoe manufacturer desiring to use a team of the United Company's machines would, therefore, be obliged to pay more for his machines.

The Exclusive Use Cancellation Clause permits the United Company to withdraw its machines of a particular kind if, owing to the use by the lessee of the same kind of machines obtained from others, its machines are not used sufficiently to afford a fair return, or it has reason to believe that the lessee carelessly or dishonestly does more work on its machines than is reported. Unless it had this right, the United Company could not continue furnishing machines without a fixed rental based upon the capacity of the machine, instead of the present royalty based on use.

The Cancellation for Breach Clause enables the United Company to withdraw its machines if the lessee violates his agreements. If, in case the lessee refused to pay royalties, or damaged, removed, or assigned the machines or otherwise violated his agreements, the United Company had no remedy except to bring a succession of suits which might take years to conclude, and which might not be determined until after the lessee became insolvent, it could not continue to furnish its machines on lease at all, or, if it did lease them, without large initial payments which would serve as a guarantee against such possible loss.

A term of seventeen years is, of course, not essential. But

a long term is essential. The United Company could not be asked to build $40,000,000 of machines and install them in lessees' factories without initial payment on their part unless the lessees agreed to use the machines for a term long enough to insure an adequate return. The lessee likewise desires a long term; otherwise his royalties may be increased at any time. If the term is long, it is not of controlling consequence whether it be fifteen or seventeen years.

The clause requiring the lessee to obtain new parts needed in the leased machines from the United Company is essential to assure the proper maintenance of the machines which belong to the United Company. The United Company could not furnish its machines on lease if the lessee were permitted to replace broken parts with cheap parts or parts not adapted to the machine, and thus depreciate its value.

These clauses, then, or clauses similar in effect, are essential to the continuance of the present highly satisfactory lease system. The District Court said (R. Vol. 1, p. 1187):—

> "The attack of the United States is not upon these rights, but upon the particular mode in which they have sought to exercise them. Other modes, such as the requirement of arbitrary payment for the full period of the patents, would escape all such attacks. *The attack arises from the attempt to adjust the payments to the amount of use which particular manufacturers may have for the patented inventions*" (italics ours).

If the United Company should be forbidden to employ those or similar provisions, it would be prevented from continuing the present reasonable and satisfactory lease system, and the consequences to shoe manufacturers and the public would be most serious.

Substantial initial charges for machines and an increased royalty would inevitably result. Men like Bennett, Burt, and Allen, as they testified, would be unable to enter the business under such a system. Existing manufacturers would be required to make capital expenditures for the machines now held by them and all new machines they took. Many who have little capital might be unable to do so and be forced out of business. The small manufacturers especially would

be injured, and the shoe manufacturing business would tend to concentrate in the hands of the larger manufacturers, who have large capital resources and who can better afford to invest their capital in machines.

Provisions necessary to enable the United Company to furnish machines without initial payment for a royalty based on use, and to share with its lessees the economies resulting from the use of machines as a series, are obviously normal, reasonable provisions not affected by the Sherman Act.

IV.

THE "ACQUISITIONS" OF OTHER CONCERNS AND PATENTS.

1. GENERAL DISCUSSION.

A. INTRODUCTORY STATEMENT.

The petition alleges that defendants

> "determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery, destroy existing competition among the manufacturers and dealers in such machinery, . . ."

and that

> "they conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery . . ." (R. Vol. 1, p. 994).

Section VII of the petition (R. Vol. 1, pp. 999–1023), which sets forth the "acquisitions," is introduced by these allegations:—

> "In pursuance of their purpose to monopolize the shoe machinery industry, the defendants have, through United Shoe Machinery Company, of New Jersey, by the methods herein described, absorbed many competitors. . . . Among the individuals, partnerships, and corporations who were competitors of the defendants and whose businesses have been so acquired and absorbed by them are the following:" (R. Vol. 1, pp. 999–1000).

The petition then recites * fifty-eight transactions entered

* The Plant purchase (R. Vol. 1, p. 1019) will be discussed separately (*infra*, pp. 507–586). The allegation in the petition regarding the Boston Blacking Company (R. Vol. 1, p. 1005) was abandoned by the United States, and Plaintiff's Exhibit 76 (R. Vol. 3, p. 599) was withdrawn (R. Vol. 1, p. 47, lines 21–43).

into by the United Company at various separated times during a period of twelve years, and concludes,—

> "The competition which previously existed between said several concerns has been entirely destroyed" (R. Vol. 1, p. 1023).

The petition also alleges that defendants

> "have acquired many letters patent for valuable inventions, and have held the same for long periods of time without making use thereof, thus depriving the manufacturers and the public of the benefits arising therefrom; . . . they have bought the business of many competitors, though compelled to pay exorbitant prices therefor . . ." (R. Vol. 1, p. 999).

In view of these unqualified allegations that the parties with whom these dealings were had were "competitors" of the United Company, and, in view of the failure of the petition to set forth either adequately or accurately the facts regarding either defendants' intent or their accomplishment, it is important that at the outset an understanding be had as to the general character of these transactions.

In the first place, it is essential to a proper understanding of the purpose and effect of these "acquisitions" that adequate realization be had of the fact that the shoe machinery industry is unique, and that, on account of the characteristics which distinguish this industry from all others which this Court has been called upon to investigate in suits under the Sherman Act, it was not only lawful but it was necessary, and it was the United Company's duty, in order that it might properly develop its business and improve its machines to enable it to serve its customers better, that it should make such acquisitions as it did occasionally during the period of twelve years over which they extended. Those acquisitions, so far as they related to shoe machinery, were complementary to the extraordinarily aggressive, expensive, and effective experimental work which the United Company has constantly been carrying on since its organization.

The distinguishing characteristics of the shoe machinery industry which have particular bearing upon the necessity and lawfulness of the acquisitions are as follows:—

(1) In making a shoe a great number of successive operations are performed, each requiring a separate and distinct machine, so that in the manufacture of a machine-made shoe a large number of different machines must be used one after another.

(2) The different kinds of shoes, owing to their radically different shoe organizations, in most instances require different machines for the same or corresponding operations (R. Vol. 1, p. 84, lines 1–4; p. 86, lines 16–45).

(3) Every important shoe machine embodies many inventions claimed in a number of patents, often a dozen or a score of patents, and those inventions are coördinated and interwoven into a harmonious and complete mechanical organization.

(4) Shoe manufacturers use a great variety of supplies or "findings," such as eyelets, nails, tacks, lacings, peg-wood, awls, needles, sandpaper, brushes, cement, blackings, and stains.

When the United Company was formed it had a comparatively small number of machines for an equally small number of operations, a very small proportion of the great number of operations which must be performed in making a shoe (R. Vol. 1, p. 2, lines 10–22; p. 3, lines 15–19; p. 4, lines 23–27), and for the most part those machines were adapted for welt shoes only (R. Vol. 1, p. 48, lines 35–38). For example, there was then no General Department, where we find over 170 machines to-day. Also, in 1899 the United Company had no facilities for furnishing findings and supplies to its customers, many of which, such as tacks, peg-wood, needles, eyelets, sandpaper, brushes, and cement, were used on its own machines. When the United Company was organized, therefore, it was able to supply only a small proportion of its customers' needs for machines and no part of their needs for supplies.

In 1899, therefore, the United Company was confronted with the question whether it should be content to stand still,—whether it should be content to put out its machines as it had received them from its predecessors,—or whether it should undertake constantly to advance the industry by improving its machines, adding other machines to make its line more complete, producing entirely new machines for doing work then done by hand and providing itself with facilities for fur-

nishing supplies used by shoe manufacturers, particularly the many kinds of supplies used on its own machines.

Defendants realized that there was opportunity for enormous improvement in the shoe machinery of that day; they foresaw the tremendous development in shoe machinery which has in fact, as the record shows, been effected on these lines, and they conceived it to be their duty as well as their opportunity to undertake that development. Defendants knew that their machines were then the best, embodying the improvements of recently granted patents, and they believed that the further development of the industry should be directed to improving those superior machines and developing new machines which should be properly coördinated with the existing machines to coöperate with them in performing successfully the successive operations on the shoe.

Accordingly, the defendants undertook this work of continuing the experimental and development work which had been carried on by its predecessors since the beginning of the industry, and we have already shown how intelligently, aggressively, and successfully they carried on that work, resulting in great improvement in all the United Company's machines and in the development of a large number of entirely new machines (*supra*, pp. 187–191; 218–228). Most of the remarkable development in shoe machinery since 1899 has been effected by the United Company through the persistent and successful work of its large experimental department.

But the shoe machinery industry is dominated by patents, and when the United Company had developed an improvement for one of its machines it occasionally found that the improvement infringed a patent owned by another. And likewise, when the United Company desired to supply to its customers a machine for performing an operation for which it had not before had a machine it sometimes found either that the new field was completely dominated by patents owned by others or that a machine which it was developing infringed patents owned by others. Accordingly, it was occasionally necessary for the United Company to acquire patents from others before it could supply to its customers a machine which they needed.

In some of those instances the United Company had a

machine for performing an operation on one kind of shoe which, however, could not be used for performing the corresponding operation upon another kind of shoe because the organization of that shoe and the necessarily different methods of making it required a wholly different type of machine. For example, the Goodyear Automatic Leveler, the only leveling machine that the United Company had in 1899, could only be used on welt shoes. The United Company had no leveling machine which could be used on turn shoes until it acquired the patented Star Leveler from the Swain-Fuller Company, and it had no leveling machine that could be used on McKay sewed shoes until it developed the Atlas Leveling Machine embodying the inventions acquired from Winkley and Phillips combined with many inventions of its own; while neither of those machines could be used on welt work or for the work done by the other. Many of the transactions presented similar situations.

Again, a large proportion of the acquisitions were for the purpose of enabling the United Company to manufacture and furnish to its customers "findings" or supplies, which were constantly used by its customers, but which the United Company had never before manufactured. In these transactions no shoe machinery whatever was acquired.

Accordingly, disregarding for the present a considerable number of transactions by which no property was acquired and which were not "acquisitions" at all, the record shows that the acquisitions were not made for the purpose of monopolizing shoe machinery or destroying competition, as the petition alleges, but that they were made for the following purposes.

(1) To enable the United Company to furnish to its customers patented machines for performing operations for which it had never before had any machines. The United Company was obviously entitled to furnish such machines, which did not compete with any machines it was manufacturing, and for this purpose was entitled to acquire such other machines as were then invented. It was further a convenience to its customers to get such machines from the United Company, which not only took excellent care of them, but, owing to its large manufacturing establishment, could produce them economically, and offer them at reasonable prices.

(2) To enable the United Company to improve substantially the machines which it was making and putting out. In many instances patents owned by others prevented the United Company from using much needed improvements which it had made in its machines. The United Company acquired those patents and by combining them with its own patents still further improved its machines. It was clearly to the advantage of its customers that its machines be improved both to give them greater capacity and thereby greater economy in operation and to enable them to keep pace with the progress and development of the shoemaking industry. Obviously it was advantageous for the United Company to be in a position to furnish the best machines possible for in no other way could it hold its business.

(3) To enable the United Company to develop and put out entirely new machines upon which it was experimenting. In many instances such machines were found to infringe patents owned by others and could not be put out by the United Company without infringement unless those patents were acquired. Combining the improvements which the United Company was making with the improvements of the patents which it infringed and thereby producing a better machine than if only a part of those improvements were used was clearly advantageous both to the United Company and its customers.

(4) To enable the United Company to manufacture and supply to its customers the various kinds of findings which are constantly used in a shoe factory. These acquisitions enabled the United Company's customers to obtain such supplies at the Company's numerous branch offices, an obvious convenience. They benefited the United Company because they provided an assured source of supply for the many articles used on its machines such as needles, tacks, nails, eyelets, peg-wood, sandpaper, etc., and because they enabled the United Company to provide the proper kinds and qualities of those articles and thereby insure greater efficiency for its machines and less trouble in keeping them in repair.

It is clear that the United Company not only had the right to make the acquisitions for these purposes and under

these conditions, but also that it was its duty to make them. Its predecessors had been constantly improving their machines, and the United Company inherited the responsibility for continuing that improvement.

If the United Company had been content to stand still and go on doing business with its machines as they were in 1899, that policy would inevitably have held back the development of the industry for many years. The United Company's machines were preëminent and they were patented. That further improvements should become immediately effective, it was essential that they should be combined with the patented improvements already in those machines. The result was that, if the development of shoe machinery was to go on steadily and consistently, it was necessary that the United Company should undertake it. Furthermore, if the United Company had not assumed this duty and had rested content with its machines as they were in 1899, it would eventually have lost its business, for others would have made improvements and after the patents on its machines had expired the machines would have become out of date and manufacturers would have ceased to use them.

The duty which confronted the United Company in 1899, to improve its machines to the best of its ability, is made clear by the manner in which it discharged that duty, by the tremendous development and the remarkable improvements in shoe machinery which it has effected since 1899, with great benefits resulting both to itself and to the shoemaking industry. But, as we have indicated and will later show more in detail, that duty could not have been properly discharged if the United Company had not made these acquisitions.

It was under such conditions and for such normal and reasonable purposes that the so-called acquisitions were made by the United Company. The acquired concerns were small, and of those which had machines many had but a single machine, and that more often merely an experimental machine. The Plant transaction was the only one in which patents relating to any considerable number of machines were obtained, and that transaction may more conveniently be discussed by itself (*infra*, p. 507).

As showing how the United Company in developing its

machines has been obliged to acquire from others patents covering inventions to be combined with those developed by its own inventors, some specific illustrations may be noted. The Model K Welting Machine embodies inventions covered by six patents acquired from others combined with the inventions of nineteen patents which were developed by the United Company (R. Vol. 1, p. 83, lines 5–8; R. Vol. 2, pp. 2266–7; p. 2836(73); Defs.' Ex. 343, R. Vol. 5, p. 951); the Model M Outsole Stitcher, five patents acquired from others and the inventions of seventeen patents developed by the United Company (R. Vol. 1, p. 83, lines 5–8; R. Vol. 2, pp. 2299–2300, 2836(73); Defs.' Ex. 343, R. Vol. 5, p. 950); the Ensign Lacing Machine, four acquired patents and five patents developed by the United Company (R. Vol. 1, p. 86, lines 25–30; R. Vol. 2, p. 2606; P.'s Ex. 117, R. Vol. 4, p. 839); the Universal Channeling Machine (turn work), three acquired patents and eight patents developed by the United Company (R. Vol. 2, p. 2329; Appendix I, *infra*, pp. 733–4); the Star Channel Cementing Machine—Model D, one acquired patent and three patents developed by the United Company (R. Vol. 1, p. 79, lines 2–5; R. Vol. 2, p. 2019, Int. 1304; p. 2634); the Atlas Leveling Machine, two acquired patents and five patents developed by the United Company (R. Vol. 2, p. 2062, Ints. 1530–1532; pp. 2584–6); No. 5 Slugging Machine, three acquired patents and seventeen patents developed by the United Company (R. Vol. 1, p. 103, lines 15–18; Vol. 2, pp. 2470, 2781).

These examples not only illustrate the normal and legitimate character of the acquisitions, but they also show the practical impossibility of separating out and taking away from the United Company the inventions which it has acquired. The record shows that those acquired inventions are just as essential to the commercial success of the machines in which they are embodied as are the inventions made by the United Company which have been combined and interwoven with the acquired inventions; and more than that, in many instances the United Company could not have used its own inventions, if it had not acquired from others patents which its inventions infringed.

As we have stated, at the time the United Company was formed

it had a comparatively small number of machines for an equally small number of operations (R. Vol. 1, p. 2, lines 10–22; p. 3, lines 15–19; p. 4, lines 23–27), and for the most part those machines were adapted for welt shoes only (R. Vol. 1, p. 48, lines 35–38). Since that time it has greatly extended the kinds of machines which it furnishes. Thus since its formation in 1899 it has added to the machines furnished by it over 170 different General Department machines. In addition to the machines which it has acquired it has developed and put out 150 entirely new machines and it has produced 39 machines which perform operations which in 1899 were performed by hand or not at all, including the pulling-over machine and auxiliaries, the eyeletting machines, and the clicking machines (R. Vol. 1, p. 503, lines 7–12, 17, 37–41; Defs.' Exs. 246, 247, R. Vol. 5, pp. 683, 690). The number of machines and inventions purchased by the United Company is small in comparison with the number developed and invented by its own experimental department.

B. GENERAL SURVEY OF THE "ACQUISITIONS."

The petition aims to create the impression that most of these fifty-eight parties were manufacturers or dealers in shoe machinery generally, like so many sugar refineries or so many tobacco factories, and that by these transactions the United Company removed so many competitors from the shoe machinery field. This is very far from the facts.

Less than a Half of the Parties were Engaged in any Shoe Machinery Business.

In twenty-four of these transactions *no shoe machinery was acquired.* Many of the concerns were not engaged in business at all, and of those engaged in business many were not engaged in the shoe machinery business, but made sandpaper, brushes, cement, eyelets, lacings, peg-wood, needles, awls, rawhide mallets, nails, tacks, metallic heels and counters, or

other supplies which were used by shoe manufacturers who were customers of the United Company.

In eight more transactions the parties were doing no business, their machines were only experimental (*infra*, p. 460).

That is, only twenty-six of the parties to the fifty-eight transactions set out in the petition were doing any shoe machinery business of any kind; thirty-two were not doing any shoe machinery business at all. Accordingly more than half of these transactions are not even *prima facie* within the allegation in the petition that defendants' intent was

> "acquiring the ownership or control of all concerns engaged in *manufacturing and dealing in* any and all kinds of *shoe machinery*" (italics ours) (R. Vol. 1, p. 994).

And further, with but few exceptions the machines of those concerns which were in one way or another engaged in shoe machinery business were all different, not only from anything that the United Company had before, but each from the machines of all the others. So far from the truth is the allegation that

> "the competition which previously existed between said several concerns has been entirely destroyed" (R. Vol. 1, p. 1023).

Furthermore, in all cases competitors were left outstanding.

By nearly All of the Transactions by which the United Company Acquired Anything it Acquired Something which it had never had before.

Probably the most striking fact about the "acquisitions" is that by nearly all of the transactions by which the United Company acquired anything it acquired something which it had never had before. By fifty of the fifty-eight transactions, including nearly all of those by which any shoe machinery was acquired, the United Company entered an entirely new field by acquiring machines for performing operations for which it did not have machines, or supplies or findings which it did not have before; or it acquired patented improvements or inven-

tions for the purpose of enabling it to supply better machines or products than it had before; or it acquired no property or business whatever. The remaining eight concerns were either not engaged in the shoe machinery business or were not in any sense competitors (*infra*, pp. 456–466).

In so far as there was any suggestion of competition in respect to any of those fifty concerns by reason of slight overlapping of the field in which any of them was doing business and the United Company's field,—and there were but few cases of that,—either (1) the United Company's machine or product was very inferior and unsatisfactory and was discarded when the new machine or product was acquired; or (2) the acquisition of the overlapping machine or product was merely incidental to the transaction, entirely outside of its real purpose and object, and such slight competition as existed or was promised was of no consequence at all and may be disregarded. In every one of these transactions the all-important fact bearing upon both the intent and what was actually accomplished was that the United Company acquired a new machine or a new product which it did not have before but which its customers used and demanded, or a new invention which was needed to improve its machines. The charge that the United Company acquired competing concerns is thus absolutely without foundation.

In its efforts to show that in a few instances there was competition between the acquired concerns and the United Company the United States has throughout the case endeavored to obscure the facts by telling only a part of the story,—for example, that the United Company and an acquired concern had machines of the same or similar names. In considering such arguments by the United States it is highly important that the Court keep in mind the fact that as clearly appears from the record the different kinds of shoes, owing to their radically different shoe organizations, in most instances require different machines for the same, or corresponding, operation (R. Vol. 1, p. 83, lines 29–45; p. 84, lines 1–4).

By a Majority of the Transactions the United Company did not Acquire any Machine of the Class in respect to which the United States Claims a Monopoly.

Considering the "acquisitions" from another viewpoint, it is an illuminating fact that in thirty-two of the transactions the United Company did not acquire any machine which was within the field of the alleged monopoly as defined during the trial, namely, machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines; and a dozen other transactions related only to machines of the General Department type which, however, might be regarded as machines for "preparing" soles. By twenty-three of the twenty-six transactions which do fall within the above classification, thus liberally construed, the United Company acquired a machine or an invention which it did not have before and which it needed. As to the three remaining transactions, in one case the machines were only experimental and infringed many of the United Company's patents. The other two transactions related solely to foreign business and were in effect only purchases of foreign patents; in one of those cases there were patent complications and in the other the United Company had been agent for the machine acquired (*infra*, pp. 470, 460–466).

But the situation is even more striking when considered in the light of the definition of the alleged monopoly given by counsel for the United States in the argument at the first hearing in this Court. That new definition excluded General Department machines from the field of the alleged monopoly. Forty-four of the transactions are entirely outside that field, as thus finally defined; and the few remaining transactions, as is true of all of them, did not eliminate competition (*infra*, p. 470).

This shows that the acquisitions did not give the United Company any monopoly such as that charged, or affect the alleged monopoly to any significant extent, and that they may therefore be disregarded in this aspect of the case.

As to acquisitions of this class the District Court said (Dodge, J., R. Vol. 1, p. 1140):—

"It does not appear that they contributed anything essentially important to that degree of commercial success obtained by the company as above. If they assisted in obtaining it, it was by assisting the development of the machines to whose ultimate efficiency it was due. It can hardly be said as to any of them that they afforded anything more than a basis whereon to build."

The Concerns and Inventions which were Offered to the United Company and Declined were far more Numerous and Important than Those which it Acquired.

An examination of the lists of concerns dealing in shoe machinery and findings which were offered for sale to the United Company, but which it declined to purchase, and of the large number of other concerns engaged in the shoe machinery business in competition with the United Company which it has never acquired or attempted to acquire shows conclusively that the United Company made no attempt to acquire all concerns engaged in the shoe machinery business. This is confirmed by Mr. Winslow's testimony that in each instance outstanding competitors were left (R. Vol. 1, p. 465, lines 20–23).

Thus Defendants' Exhibit 233 (R. Vol. 5, p. 527), which is a partial list of concerns offered for sale to the United Company but declined, contains the names of 75 different concerns, many of great size and importance. (See Mr. Winslow's testimony regarding the business done by these concerns,— R. Vol. 1, pp. 472–5.) Many of these concerns had machines which are included within the classes of machines as to which the United States charges a monopoly. Mr. Winslow said of them (R. Vol. 1, p. 472, lines 16–23),—

"Broadly speaking, this list includes manufacturers who, taken together, were making, or are now making, I should say, a complete line of shoe machinery, including the sewing machines for the fitting room."

The list includes such important concerns as the following:—

The Wheeler & Wilson Company (R. Vol. 1, p. 472, lines 24–26), manufacturing 90% of the machines used in making uppers.

The Atlas Tack Co., the largest manufacturer of tacks and a large producer of eyelets (R. Vol. 1, p. 472, lines 39–43).

The Canadian Shoe Machinery Co., making a full line of what is termed the important machines, including welters and stitchers, which did business in the United States through the Duplessis Company (R. Vol. 1, p. 473, 13–18).

The Duplessis Shoe Machinery Company (now the Hamel Shoe Machinery Company) which manufactured complete sets of machines for making welt, turn and McKay shoes (R. Vol. 1, p. 327, lines 15–25; p. 473, lines 30–31; p. 945, lines 1–4).

The Boylston Manufacturing Company, making lasting machines (R. Vol. 1, p. 956, line 8).

The Haverhill Shoe Machinery Company, which furnishes all kinds of shoe machinery for welts, McKays, turns, or pegged shoes (R. Vol. 1, p. 301, lines 5–9).

The Frechette Pegging Machine Co., making pegging machines (R. Vol. 1, p. 474, lines 9–12).

The Krentler Pym Lasting Machine Co., which manufactured a lasting machine (R. Vol. 1, p. 474, lines 26–28).

The R. H. Long Machinery Co., which manufactures large numbers of welters, stitchers, and lasting machines and is prepared to furnish a full line of machines for welt or turn shoes (R. Vol. 1, p. 345, lines 39–44).

The Union Lockstitch Co., which made and marketed large numbers of outsole stitchers (R. Vol. 1, p. 199, lines 9–45).

Defendants' Exhibit 336 (R. Vol. 5, p. 849) contains a list of shoe machinery manufacturers or dealers not acquired by the United Company, setting out the machines they offer for sale taken from Defendants' Physical Exhibits 311–321, which consist of catalogues, letters, and advertisements. It shows over 125 different manufacturers and dealers offering every kind of machine, a number of them offering complete lines of machines.

Comparing the number of concerns which the United Com-

pany refused to purchase with those actually purchased the District Court said:—

> "As to several, at least, of these instances of refusal, the evidence warrants the belief that the business offered and refused much exceeded in importance to any such scheme of monopoly as now charged, any of the specified acquisitions. . . . If a monopoly of all machinery for attaching bottoms to uppers was really undertaken, it is hard to believe that opportunities would have been neglected, as they were, such as those for acquiring the Union lock-stitch machines or the welters and stitchers of the R. H. Long Company, all of them patented machines for use on welt shoes; or for acquiring a considerable business in producing McKay sewing machines, though these were unpatented and not capable of use on shoes of that kind" (Dodge, J., R. Vol. 1, p. 1141).

Defendants' failure to take advantage of the opportunities to acquire those companies could only be regarded as extraordinary, if back in 1899 they had, as the petition alleges,—

> "determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery" (R. Vol. 1, p. 994).

Mr. Winslow's testimony regarding those concerns which were offered to the United Company but were not acquired (R. Vol. 1, pp. 472–5) also shows that a large number of them were engaged in the same lines of business in which many of the concerns which the United Company acquired were engaged.

In addition to the businesses offered to the United Company and not purchased, there were offered to the United Company between June, 1904, and December, 1911, 493 inventions which it did not acquire. These are shown by Defendants' Exhibit 222 (R. Vol. 5, pp. 370, 371–389). A large portion of the so-called "acquisitions" consisted merely of the purchase of inventions of the same kind as the 493 so offered the United Company, the purchase of which was declined.

This list of inventions the purchase of which was declined includes over two hundred inventions which it is obvious from their titles related to machines of the kind in respect

to which monopoly is charged. Of these the District Court said,—

> "The cases in which inventions were offered and refused during the same period were many times more numerous than the patents or inventions acquired" (Dodge, J., R. Vol. 1, p. 1141).

The Transactions Extended through a Period of Twelve Years.

Reverting to the allegations of the petition that prior to the formation of the United Company the officers and directors of the predecessor companies, individual defendants,—

> "determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery,"

and—

> "conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery" (R. Vol. 1, p. 994),

and that these fifty-eight "acquisitions" were made—

> "in pursuance of their purpose to monopolize the shoe machinery industry" (R. Vol. 1, p. 999),—

these allegations prepare the reader for a showing that these defendants immediately went about gathering in all existing competitors and that they did this by a great number of practically simultaneous transactions so that within a few months at the most they had the field entirely to themselves.

On the contrary, the showing of the petition itself is that *these transactions were entered into at different separated times through a period of twelve years.* The petition alleges that eleven of them were at various times in 1899; seven in 1900; six each in 1901 and 1902; four in 1903; nine in 1904; one each in 1905, 1907, 1909, and 1911; three each in 1906 and 1908; and five in 1910. But, as we have already explained and shall later point out in detail, by a majority of these transactions the United Company did not acquire any shoe machinery business. Notwithstanding this fact, as was well stated by the District Court,—

"Though thus extended through a period of years, and though widely varying each from the others in character, both in respect to the nature of the transaction itself and also regarding the circumstances attending it, the petition sets them forth as if all had been in pursuance of one and the same scheme; there described as a scheme to control shoe machinery in general, though now called a scheme only to control the particular classes of shoe machinery before mentioned" (Dodge, J., R. Vol. 1, p. 1138).

Taking only those transactions which are within the particular classes of machinery as to which monopoly is charged, according to the definition of the alleged monopoly during the trial (*infra*, p. 467) there were, adopting the dates alleged in the petition, three transactions in 1899; four each in 1900, 1901, and 1902; two each in 1903 and 1908; one each in 1904, 1905, 1909, and 1911; and three in 1910. Of the fourteen transactions which are within the more limited field of the alleged monopoly as defined by counsel for the United States at the first hearing in this Court (*infra*, p. 470) there were two transactions each in 1899, 1901, and 1902; one each in 1900, 1904, 1905, 1908 and 1909; three in 1910; and none in 1903, 1906, 1907, and 1911.

It is beyond belief that these transactions, entered into at these widely separated times during this long period, none of which had any connection with or bearing upon any of the others, were entered into in the carrying out of an intent conceived in 1899, and defined in the petition as—

"acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery" (R. Vol. 1, p. 994).

It was found by the District Court:—

"The acquisitions above regarded as the only ones of any possible significance in the case were made at various separated times during the period of eleven years or thereabouts above referred to. It cannot be said that the later ones were in contemplation when the earlier acquisitions were made, because there is nothing to show that the circumstances attending any of them were such as could have been anticipated as likely to occur at the time

of the preceding acquisitions. The most that can be said is, that as, in the progress of events, the needs of the United Company became manifest and these opportunities presented themselves, they were availed of" (Dodge, J., R. Vol. 1, p. 1140).

The Allegation that Defendants Paid Exorbitant Prices.

The petition also alleges that defendants

> "have bought the business of many competitors, though compelled to pay exorbitant prices therefor" (R. Vol. 1, p. 999).

Passing over the allegation that these concerns were "competitors," which as we have shown and shall later explain more in detail is not supported by the facts, there is not a word of testimony in the entire record which shows or even suggests that the consideration paid in any instance was more than the property acquired was worth. The largest consideration, $775,000, was that paid in the J. C. Rhodes & Company transaction, and they did no shoe machinery business whatever. They were a large eyelet-making concern established long before, owning real estate and a factory and employing 116 men. The broadly patented enamel eyelet which they manufactured was in general use (Appendix I, *infra*, p. 687).

In only one other transaction, Pearson & Bennion, Ltd., did the consideration exceed $200,000. That concern did business in General Department machines only in England and it in no way competed with the United Company. The list of their assets, including a new factory, at the end of Plaintiff's Exhibit 61, coupled with their agreement to assign their Letters Patent (R. Vol. 3, pp. 525, 527, 530), shows that the United Company got full value for the amount which it paid, $410,245.

Neither of these transactions was included in the thirty-six acquisitions which were discussed in the brief for the United States at the former hearing and which its counsel said in argument were the only ones which seemed to them to be of any material importance in any aspect of the case.

The aggregate of the considerations paid in all of the fifty-eight transactions, including nearly $1,200,000 paid in the

Rhodes and Pearson & Bennion transactions, was approximately $3,555,000, an average of less than $62,000. That sum, excepting the consideration in the Plant purchase, which will be discussed by itself, represents the entire amount paid by the United Company over a period of twelve years for new machines, new supplies, and patented inventions which enabled it to enter many new fields and to add a great number of substantial and important improvements to its machines. It is certainly an insignificant sum as compared with the United Company's assets of over $40,000,000 on March 1, 1911 (P.'s Ex. 167, R. Vol. 4, pp. 1137, 1143). And compare the amounts paid from 1907 to 1911 with the $2,267,000 which it expended on its own experimental work in that same period, —1907 to 1911 (Defs.' Ex. 216, R. Vol. 5, p. 322). The aggregate of the considerations paid for the acquisitions during those five years, including a number not doing any shoe machinery business, was $639,588.93; for those concerns which were doing shoe machinery business approximately $375,000 was paid during that period.

The District Court held:—

> "An allegation in the petition that the business of many competitors was bought at exorbitant prices, fails of support in the evidence relating to any specified instance of acquisition among those thus far considered [all except the Plant purchase]. As to them, indeed, no claim of the kind seems to be seriously urged" (Dodge, J., R. Vol. 1, p. 1142).

The Charges that Plants have been Closed and Businesses have been Discontinued.

In the summary of the "acquisitions" in the petition there are frequent statements that "the plant has been closed" and "the business has been discontinued." The facts are as follows:—

In thirty-three of these transactions *no plant was acquired.* Real estate was acquired in only six, and only one of those six was included in the thirty-six transactions which at the first hearing in this Court counsel for the United States said

were the only ones which they considered to be of any material importance in any aspect of the case. The only machines which that concern had were two General Department machines. Five of those six businesses were continued and are now being carried on in the same plants, and the sixth was continued for a considerable time in the same plant and then, for reasons of convenience and economy, was transferred to the United Company's Beverly factory where it has since been continued and increased (*infra*, pp. 481–482).

In general, as to forty-one of the fifty-eight transactions the United Company has continued to carry on the business when the transaction involved the acquisition of a business, or has used the patented inventions when those were the subjects-matter of the transactions; in most of the other seventeen transactions no shoe machinery business was acquired; while as to the few transactions in respect to which the United Company has not yet succeeded in doing anything with what it acquired, either the demand ceased entirely owing to radical changes in manufacturing methods or it proved impossible to make the experimental machines acquired commercially successful, as will be fully set forth in our detailed discussion (*infra*, pp. 475–478).

Again, the petition alleges that defendants—

> "have acquired many letters patent for valuable inventions, and have held the same for long periods of time without making use thereof, thus depriving the manufacturers and the public of the benefits arising therefrom" (R. Vol. 1, p. 999).

There is not a particle of evidence in support of this allegation, but there is ample evidence which positively disproves it (*infra*, pp. 474–475).

2. DETAILED DISCUSSION OF THE ACQUISITIONS.

NOTE.—The Plant purchase (R. Vol. 1, p. 1019) will be discussed separately (*infra*, pp. 507–586). The allegation in the petition regarding the Boston Blacking Company (R. Vol. 1, p. 1005) was abandoned by the United States, and Plaintiff's Exhibit 76 (R. Vol. 3, p. 599) was withdrawn (R. Vol. 1, p. 47, lines 21–43).

On examining the facts regarding these transactions, which are set forth in Appendix I (*infra*, pp. 655–739), the Court will find that the circumstances attending each transaction fully justified the United Company in entering into it, and that the facts about all of them completely disprove the allegations of the petition that these transactions were made in pursuance of any "purpose to monopolize the shoe machinery industry" (R. Vol. 1, p. 999), or with the intent to suppress competition, or that they had any such effect.

It is of course impracticable to review here the facts of each transaction, but, as indicated in our general discussion, each transaction presented one or more striking characteristics which were common to a large proportion of the others, so that the discussion of the transactions may be facilitated by grouping those presenting important distinctive features in common.

A. CLASSIFICATION OF THE ACQUISITIONS.

(1) In Nine Transactions no Tangible Property or Business of Any Kind was Acquired.

The agreements with GEORGE W. FREEMAN, FRED H. PERRY, and JOHN H. RICHARDSON were merely contracts of employment (Appendix I, *infra*, pp. 668, 705, 725).

The agreements with the LINCOLN SEWING MACHINE COMPANY and ZACHARY T. FRENCH were merely contracts commuting obligations created and existing before 1899 (Appendix I, *infra*, pp. 677, 709).

The AMERICAN GLUE COMPANY transaction was merely an exclusive agency, terminable by either party on six months'

notice, for sandpaper in the shoe trade. The United Company was not manufacturing sandpaper (Appendix I, *infra*, p. 708).

By the BREACH MANUFACTURING COMPANY transaction the United Company acquired only an exclusive license under patents. Those patents related to a machine for cutting outsoles. The United Company had no such machine, and acquired this license for the purpose of developing a clicking machine under those patents (Appendix I, *infra*, p. 664).

From JOSEPH P. CURTIS the United Company acquired only two pending patent applications, which related to a machine for cementing a piece of fabric to an upper. Curtis had only an experimental machine which was not acquired. The United Company had no machine for that work and desired to be able to furnish one (Appendix I, *infra*, p. 704).

From LEOPOLD J. COURTEAU the United Company acquired a patented invention relating to a mechanism for holding linings of uppers while being pasted to the upper leather. Courteau was doing no business and had only an experimental machine. Even that was not acquired. The United Company had no machine for that work and wished to develop one under the Courteau patent (Appendix I, *infra*, p. 712).

(2) By Fifteen Other Transactions the United Company Acquired Nothing More than Supplies of Various Kinds which are Used by Shoe Manufacturers; it did not Acquire Any Shoe Machinery.

THE CORRUGATED WIRE FASTENING COMPANY was doing a small business in supplying wire and spare parts for an obsolete machine which had not been put out for years (Appendix I, *infra*, p. 663). This business was characterized by the District Court "as making wire and spare parts for use in an obsolete metallic fastening machine" (Dodge, J., R. Vol. 1, p. 1128).

The GLOBE SHOE TOOL COMPANY was manufacturing and selling cutters and edge irons, which are tools, not machines. The Globe Company infringed two of the United Company's patents. The United Company desired to secure the services

of H. M. Loomer, one of the vendors, as manager or superintendent (Appendix I, *infra*, p. 671).

The JOHN RITCHIE COMPANY, who were shoe manufacturers at Quebec, Canada, were also, in a small way, making wire for use on standard screw machines and were selling it to lessees of the United Company, who had agreed to buy wire from the United Company in payment for the use of the machines. This was a dishonest situation which it was the purpose of the transaction to remove (Appendix I, *infra*, p. 672).

The BOSTON FAST COLOR EYELET COMPANY was dealing in patented celluloid covered eyelets known as Fast Color Eyelets. This was a new field for the United Company. The purpose of the transaction was to enable the United Company to go into the fast color eyelet business (Appendix I, *infra*, p. 678).

The ENAMEL EYELET COMPANY was endeavoring unsuccessfully to market a patented enamel eyelet. This was a new field for the United Company. The object of acquiring the Enamel Company's patents was to enable the United Company to enter that field (Appendix I, *infra*, p. 679).

J. C. RHODES & COMPANY was doing a large business in enamel eyelets which were broadly patented. Both the Rhodes Company and the Enamel Company infringed a patent owned by the other and each had sued the other. The objects of this acquisition were to compose that litigation, to enable the United Company to produce a commercially satisfactory enamel eyelet without infringement, and to enable it to procure satisfactory metal blanks for its fast color eyelets (Appendix I, *infra*, p. 687).

From the MORLEY BUTTON MANUFACTURING COMPANY the United Company acquired a patented enamel eyelet of a different type from the Enamel Company and Rhodes Company eyelets. The Morley Company infringed and had been sued under the patents on both the Enamel and Rhodes eyelets. The objects of this transaction were to settle that litigation and to obtain valuable patents on a new type of enamel eyelet. The principal business of the Morley Company was manufacturing buttons; that business was not acquired (Appendix I, *infra*, p. 689).

The MARLBORO AWL & NEEDLE COMPANY was manufacturing McKay needles, hand awls and mallets,—none of which the United Company had made before. The object of this acquisition was to enable the United Company to enter that new field (Appendix I, *infra*, p. 692).

W. W. CROSS & COMPANY, INCORPORATED, was manufacturing nails and tacks. The United Company had never made any nails or tacks, but was buying tacks in large quantities from Cross for its lasting machines. The purpose of this transaction was to obtain an assured source of supply for the tacks which the United Company needed (Appendix I, *infra*, p. 701).

JOSEPH W. LEARY had a small business in cements and blackings and was dealing in an insignificant way in second-hand upper sewing machines. This transaction was merely an employment contract, Leary making it a condition of his employment that the United Company take over his small stock (Appendix I, *infra*, p. 705).

THE F. G. FARNHAM BRUSH MANUFACTURING CO. was dealing in patented brushes and parts of brushes. The United Company bought its patents in order to be able to furnish a better brush (Appendix I, *infra*, p. 706).

KIMBALL & HADLEY were making and selling Goodyear needles. The United Company was not making Goodyear needles and had been obliged to purchase from others the needles which it supplied for its own Goodyear machines. Its purpose was to enable the United Company to manufacture its own Goodyear needles (Appendix I, *infra*, p. 710).

The METALLIC HEEL AND COUNTER COMPANY was manufacturing a patented metallic heel and counter for use on shoes worn by miners and quarrymen, etc. The United Company had nothing of the kind before. The United Company desired to enter that new field and to secure the services of three experts who were connected with that company (Appendix I, *infra*, p. 717).

The ELLIS LACER COMPANY was making a patented wire lacer for holding the edges of an upper at the right distance apart during manufacture. This was a new field for the United Company which it desired to enter but could not without acquiring the Ellis Company's patents, while on the

other hand the Ellis Company infringed broad patents of the United Company (Appendix I, *infra*, p. 729).

The B. F. Sturtevant Company was manufacturing peg-wood and wooden shanks. The United Company had previously been obliged to purchase from others, including the Sturtevant Company, the peg-wood and shanks which it supplied to its customers; peg-wood was required for its pegging machines. The object of this transaction was to obtain an assured source of supply for those articles (Appendix I, *infra*, p. 732).

(3) Eight of the Parties from which Shoe Machinery was Acquired were Doing no Business at all with their Machines which were Merely Experimental and not Adapted for Commercial Use.

The Goddu Sons Metal Fastening Company had experimental metallic fastening machines of four types. It had done no business and its machines could not have been used commercially without entire reconstruction. The McKay Shoe Machinery Company claimed that the inventions in those machines had been made by Louis Goddu while in its employ and while paid to make them, and that accordingly it owned the inventions. It had brought suit to compel the transfer of the inventions and the suit had been vigorously prosecuted. The McKay Company had also prepared to bring suits for infringements of several of its patents by each of the Goddu Company's machines. The purpose of this transaction was to settle and avoid litigation (Appendix I, *infra*, p. 657). The finding of the District Court on this transaction was:—

> "The metallic fastening machines acquired by purchase of a controlling interest in the company were none of them in the hands of users; their then state of development does not appear to have been such as made them capable of commercial use, whatever the merit of the inventive ideas they sought to embody; nor is the evidence sufficient for a belief that without reconstruction, radical in character, anyone could have used them as competing machines" (Dodge, J., R. Vol. 1, p. 1140).

EDWIN T. FREEMAN had constructed an experimental slugging machine which was patented. He had put out no machines. The United Company infringed one of his patents, there was an interference pending in the Patent Office, Freeman's machine infringed the United Company's patents, and the Freeman patents barred the way to improvement of the United Company's machines. The objects of the transaction were to avoid litigation and to enable the United Company to improve its machines without infringement. His inventions have since been embodied in three different machines of the United Company (Appendix I, *infra*, p. 667).

ALBERT G. BREWER had built an experimental heel breasting machine which was patented. The United Company had no such machine, but was experimenting on a machine of similar type, which was not successful until the Brewer invention had been incorporated in it. It is a General Department machine. Brewer infringed a broad patent owned by the United Company. The purpose of the transaction was to obtain an invention needed to make the United Company's machine successful (Appendix I, *infra*, p. 669).

ERASTUS E. WINKLEY and BENJAMIN PHILLIPS were not engaged in business and no machinery was acquired from them. They had invented a leveling machine adapted for McKay shoes. The United Company had no leveling machine for McKay shoes and used the Winkley and Phillips inventions in the Atlas leveling machine, a General Department machine. The object of this transaction was to enable the United Company to produce a leveling machine for McKay shoes (Appendix I, *infra*, p. 675).

THE SMITH LACING MACHINE COMPANY had an entirely new machine for lacing uppers. It was experimental and had not been put out. The United Company had no machine for that work and desired to obtain one. The Smith Company had broad patents but infringed a patent owned by the United Company (Appendix I, *infra*, p. 715).

From ZOTIQUE BEAUDRY the United Company acquired a patented experimental heel burnishing machine. The inventions could be embodied in the machine of the United Company which had nothing like them. Beaudry's machine infringed the United Company's patents. These inventions

were acquired for the purpose of improving the United Company's machine (Appendix I, *infra*, p. 719).

From HARRY L. RICE and FRED LACHAPELLE radically new patented welting machine inventions were acquired. Their machine was only experimental. These inventions could be put into the United Company's machines and were acquired for that purpose because they would strengthen the stitch and effect substantial economies (Appendix I, *infra*, p. 728).

From ADAM H. PRENZEL, a shoe manufacturer, patented inventions relating to children's shoes and machines for making them were acquired. The United Company had nothing of the kind and desired to be able to furnish these valuable inventions to its customers. Prenzel infringed (Appendix I, *infra*, p. 733).

From all of these eight parties excepting the Goddu Company the United Company acquired *either new machines which it did not have before or patented inventions which could be embodied in its own machines for the purpose of improving those machines.*

All of the Thirty-two Transactions which have been Named are Outside of the Petition's Allegations as to the Defendants' Intent.

The allegations as to defendants' intent in entering into these transactions are that they—

> "determined to acquire a complete monopoly of the *manufacture, sale, and lease of shoe machinery* . . ." (italics ours) (R. Vol. 1, p. 994),—

and that—

> "they conceived the idea of acquiring the ownership or control of all concerns *engaged in manufacturing and dealing in* any and all kinds of *shoe machinery*" (italics ours) (R. Vol. 1, p. 994).

These allegations certainly cannot be stretched to include either twenty-four concerns from whom no shoe machinery whatever was acquired or eight concerns whose machines were only experimental, far from being commercial, and who could

not possibly be regarded as "engaged in manufacturing and dealing in . . . shoe machinery."

(4) By Seventeen of the Transactions with Parties who were actually doing Shoe Machinery Business the United Company entered an Entirely New Field by Acquiring Machines for Performing Operations for which it did not have Machines Before.

The new machines which were acquired will be briefly indicated in the following list of these transactions:—

PEARSON & BENNION, LTD., General Department machines (Appendix I, *infra*, p. 661).

PETER A. COUPAL and WILLIAM GORDON, experimental basting machine, really an employment contract (Appendix I, *infra*, p. 665).

BOSTON SHOE TOOL COMPANY (Timothy A. Bresnahan), edge trimming and setting machines (General Department) and tools (Appendix I, *infra*, p. 666).

STANLEY MANUFACTURING COMPANY, foreign agency for McKay sewing machine and for some General Department machines (Appendix I, *infra*, p. 676).

ROSS-MOYER MANUFACTURING COMPANY, General Department machines (Appendix I, *infra*, p. 680).

SWAIN-FULLER MANUFACTURING COMPANY, leveler for turn shoes (General Department) (Appendix I, *infra*, p. 684).

OLIVER A. MILLER, treeing machine (Appendix I, *infra*, p. 691).

THE T. A. NORRIS MACHINE COMPANY, six new General Department machines (Appendix I, *infra*, p. 693).

THE GEORGE A. SMITH MACHINERY COMPANY, supplies, spring heel scarfer (General Department) (Appendix I, *infra*, p. 697).

G. W. EMERSON & COMPANY, tip scourer, power spring heel scarfer (General Department) (Appendix I, *infra*, p. 699).

J. K. KRIEG & COMPANY, heel seat rounding, Louis heel scarfing machines (General Department) (Appendix I, *infra*, p. 702).

ARNOLD MACHINE & SUPPLY COMPANY, machine for cementing Gem insoles (Appendix I, *infra*, p. 711).

BOOTH BROTHERS (1904 agreement), vamp perforating machine (General Department) (Appendix I, *infra*, p. 713).

BROCKTON SUPPLY COMPANY, patents on tack pulling machine (Appendix I, *infra*, p. 714).

BOOTH BROTHERS (entire business), two new machines (Appendix I, *infra*, p. 720).

CARVER COTTON GIN COMPANY, leveling machine for "freaks" and samples, leatherboard skiver, counter dividing machine (all General Department) (Appendix I, *infra*, p. 725).

CHARLES P. STANBON & COMPANY, new folding machine, important improvements on two others (all General Department) (Appendix I, *infra*, p. 736).

(5) By Seven of the Nine Remaining Transactions the United Company Acquired Patented Improvements or Inventions for the Purpose of Enabling it to Supply Better Machines than it had Before.

The BOOT & SHOE SOLE LAYING COMPANY had a patented sole laying machine. The United Company's machine was inferior, of different type, and very unsatisfactory. The United Company infringed a patent owned by the Boot & Shoe Sole Laying Company (Appendix I, *infra*, p. 662).

The SEAVER PROCESS LASTING COMPANY had a patented experimental pulling-over machine which, although a commercial failure, embodied inventions indispensable to a successful machine. The United Company was developing a pulling-over machine, not yet commercial, which embodied those inventions; they have been in all pulling-over machines put out by the United Company and are of the utmost importance (Appendix I, *infra*, p. 673).

The GLOBE SEWING MACHINE COMPANY had patents on very superior features in its lockstitch welter which barred the way to development by the United Company of its lockstitch welter (Appendix I, *infra*, p. 685).

The AMERICAN SOLE LAYING MACHINE COMPANY had patent rights which prevented the United Company from mak-

ing a double or two-form sole laying machine which would operate on right and left shoes and have double the capacity of the United Company's machine, and which also prevented development of the Atlas leveling machine. The United Company infringed (Appendix I, *infra*, p. 694).

The RICHARDSON SHOE MACHINERY COMPANY had a greatly improved, patented McKay sewing machine, which was much superior to and did a great deal better work than the United Company's machine. The Richardson patents prevented development of the United Company's machines and one of them was infringed by the United Company (Appendix I, *infra*, p. 722).

THE WENTWORTH COMPANY had a patent on a shank sticking machine which prevented the United Company from developing such a machine (Appendix I, *infra*, p. 730).

M. V. BRESNAHAN & COMPANY had a patented experimental lasting machine, not yet commercial, and a patented heel burnishing machine, which infringed two patents controlled by the United Company. The United Company had nothing in its lasting machines or its heel burnishing machines which would do the work that was done by the patented mechanisms in the two Bresnahan machines. A large amount of litigation was composed by this transaction (Appendix I, *infra*, p. 734).

(6) The Two Remaining Transactions.

The transactions with the BAY STATE INTERNATIONAL SHOE MACHINERY COMPANY (Appendix I, *infra*, p. 683) and WILLIAM J. YOUNG (Appendix I, *infra*, p. 696) both related solely to foreign business in patented machines, in no way to business or conditions in the United States. Both were in effect merely purchases of foreign patents.

The Bay State Company was infringing the United Company's foreign patents. Its business was insignificant. The acquisition was made at the earnest solicitation of the people interested, who were shoe manufacturers and customers of the United Company, because it was the cheapest way to settle the litigation.

The only property acquired from Young was his foreign patents under which as agent for Young the United Company had for years been putting out his heel compressing machine abroad. Young's machine was the only one of the kind that the United Company had been putting out abroad. Young has ever since continued to put out his machine in the United States in competition with the United Company.

The foregoing summary shows that by forty-four of the transactions the United Company either entered an entirely new field by acquiring machines or patents on machines for performing operations for which it did not have machines, or supplies or findings which it did not have before, or it acquired patented improvements or inventions for the purpose of enabling it to supply better machines or products than it had before; and that the remaining transactions consisted merely in contracts of employment, contracts commuting obligations created before 1899, purchases to settle or avoid serious patent litigation or transactions of such character that they are entirely unimportant and have no significance in this case. Of the 58 transactions at least 20 were not concerned with the acquisition of shoe machinery or patents on shoe machinery at all.

It is also important to note that in all instances competitors were left outstanding (R. Vol. 1, p. 465, lines 20–23).

During this period the United Company was engaged in a remarkable development of the art of shoe machinery. It improved by new inventions practically all its machines. It developed 150 new machines including 39 machines which performed work previously done by hand (R. Vol. 1, p. 503, lines 7–12, 17, 37–41; Defs.' Exs. 246, 247, R. Vol. 5, pp. 683, 690).

It developed and acquired 172 different General Department machines (*supra*, p. 190). The patents and machines acquired by the acquisitions were used in building up and perfecting this large body of new and improved machines. They were, however, of insignificant importance, as the foregoing summary shows, compared with the results accomplished by the inventive efforts of the United Company itself.

B. THE ACQUISITIONS CONSIDERED FROM OTHER VIEWPOINTS.

(1) In Thirty-two of the Transactions the United Company did not Acquire Any Machine which was within the Field of the Alleged Monopoly as defined during the Trial.

The parties to thirty-two of the transactions did not have any machine which was within the field to which the United States limited its charge of monopoly during the trial:—

> "Machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines" (R. Vol. 1, p. 837, lines 40–43; p. 838, lines 1–3, 18–20).

In this classification we have omitted all concerns which might possibly be regarded as within the field as above defined, although a dozen of those concerns had no "bottoming" machines but only machines of General Department types performing minor operations in the way of "preparing" the soles.

At the first hearing in this Court counsel for the United States still further limited the claim as to the field of the alleged monopoly and we shall presently consider the acquisitions from the viewpoint of that final definition (*infra*, p. 470). But dealing now with the delimitation of the field of the alleged monopoly made during the trial, as set forth in the above quotation, there were but twenty-six of the fifty-eight transactions which come within that definition.

As to those twenty-six transactions:

(1) By fifteen transactions the United Company acquired machines for performing operations for which it did not have machines before, so that by each of those transactions it was entering a new field. These were: Pearson & Bennion, Ltd. (Appendix I, *infra*, p. 661); Breach Manufacturing Company (Appendix I, *infra*, p. 664); Erastus E. Winkley and Benjamin Phillips (Appendix I, *infra*, p. 675); Stanley Manufacturing Company (Appendix I, *infra*, p. 676); Ross-Moyer Manufact-

uring Company (Appendix I, *infra*, p. 680); Swain-Fuller Manufacturing Company (Appendix I, *infra*, p. 684); The T. A. Norris Machine Company (Appendix I, *infra*, p. 693); The George A. Smith Machinery Company (Appendix I, *infra*, p. 697); G. W. Emerson & Company (Appendix I, *infra*, p. 699); J. K. Krieg & Company (Appendix I, *infra*, p. 702); Arnold Machine & Supply Company (Appendix I, *infra*, p. 711); Brockton Supply Company (Appendix I, *infra*, p. 714); Carver Cotton Gin Company (Appendix I, *infra*, p. 725); Adam H. Prenzel (Appendix I, *infra*, p. 733); Charles P. Stanbon & Company (Appendix I, *infra*, p. 736).

It was held by the District Court:—

> "There remain a number of instances involving the acquisition of patent rights, patents, or machines relating to or capable of being included within some of those kinds of shoe machinery whereto the case is restricted as above. In the larger portion of these the device or machine acquired is shown to have been of a kind not then being produced by the United Company. There being nothing unlawful, as above stated, in the acquisition of different groups of noncompeting patented machines, it is clear that by such enlargements of the United Company's field of operation no 'competitor' can be said to have been absorbed or driven out of business, and that no reason appears for holding the acquisitions thus made unlawful either in themselves or because made in furtherance of an unlawful purpose" (Dodge, J., R. Vol. 1, p. 1139).

All of these transactions are clearly within the rule of *United States* v. *Winslow*, supra. So also, we submit, are the eight named in the next paragraph.

(2) By eight of the eleven remaining transactions the United Company acquired patented improvements or inventions for the purpose of enabling it to supply better machines than it had before. These were: Boot & Shoe Sole Laying Company (Appendix I, *infra*, p. 662); Seaver Process Lasting Company (Appendix I, *infra*, p. 673); Globe Sewing Machine Company (Appendix I, *infra*, p. 685); American Sole Laying Machine Company (Appendix I, *infra*, p. 694); Richardson Shoe Machinery Company (Appendix I, *infra*, p. 722); Harry L. Rice and Fred LaChapelle (Appendix I, *infra*, p. 728); The Went-

worth Company (Appendix I, *infra*, p. 730); M. V. Bresnahan & Company (Appendix I, *infra*, p. 734).

The District Court held:—

> "In all such cases it appears that the acquisitions made were of patented improvements, whether or not embodied in an actual machine, enabling the United Company to increase the efficiency of its own machines, or to complete the development of others with which it was then experimenting or had not yet succeeding[ed] in rendering commercially successful. . . . The most that can be said is, that as, in the progress of events, the needs of the United Company became manifest and these opportunities presented themselves, they were availed of" (Dodge, J., R. Vol. 1, pp. 1139, 1140).

It should also be noted that the United Company infringed patents owned by the Boot & Shoe Sole Laying Company and the Richardson Company; while the Seaver Company, the Globe Company, The Wentworth Company, and Bresnahan infringed the United Company's patents.

(3) There are but three other transactions which were within the class of machines as to which a monopoly is charged,—those with the Goddu Sons Metal Fastening Company, the Bay State International Shoe Machinery Company, and William J. Young.

As has previously been explained (*supra*, p. 460) and as is set forth in detail in Appendix I (*infra*, p. 657), it is shown by the record and it was held by the District Court that the metallic fastening machines of the Goddu Company were experimental, and that they could not have been used without radical reconstruction. A suit had been brought by the McKay Shoe Machinery Company and had been vigorously prosecuted before February, 1899, to compel the transfer of the inventions embodied in the Goddu Company's machines on the ground that those inventions belonged to the McKay Company. The Goddu Company's machines all infringed the United Company's patents, in the aggregate a large number, and the only purpose of this transaction was to settle and avoid litigation.

The facts which we have already stated (*supra*, p. 465) show

that the transactions with the Bay State International Shoe Machinery Company (Appendix I, *infra*, p. 683) and William J. Young (Appendix I, *infra*, p. 696) were entirely without significance in this case.

(2) In Forty-four of the Transactions the United Company did not Acquire any Machine which was within the Field of the Alleged Monopoly as Defined by Counsel for the United States at the First Hearing in this Court.

At the first hearing in this Court counsel for the United States made a new classification of the machines which they claimed the United Company has monopolized. That new definition excluded the General Department machines from the field of the alleged monopoly, as emphasized by the statement by counsel for the United States that they made no question with respect to General Department machines and that they are not involved in this suit.

In forty-four of the transactions no machine was involved which is within the field of the alleged monopoly as thus defined.

The transactions with the fourteen concerns which did have machines within the field of the above definition are within the groups which have just been characterized (*supra*, pp. 467–470, paragraphs (1), (2), and (3)). Not only was no competition eliminated by these acquisitions, but, considered in the light of the total number of machines in this field owned by the United Company and the inventions and improvements relating to them which it itself developed, these acquisitions are of little significance.

Referring to the acquisitions of this character the District Court said (R. Vol. 1, p. 1140):—

> "The acquisitions of this class are, in importance and amount, only of a consequence relatively small in proportion to the entire field then lawfully belonging to the United Company. It does not appear that they contributed anything essentially important to that degree of commercial success obtained by the company as above. If they assisted in obtaining it, it was by assisting the development of the machines to whose ultimate efficiency it was due. It can hardly be said as to any of them that

they afforded anything more than a basis whereon to build."

(3) In Forty-eight of the Transactions the United Company did not Acquire Any Machines which were Adapted or Intended for the Same Work as Any of the Machines which the United Company was Putting Out in February, 1899, or Any of its Predecessors before that.

In only ten of the fifty-eight transactions did the United Company acquire any machines which were adapted or intended for the same work as any of the machines which it was putting out in February, 1899, or any of its predecessors before that.

This shows conclusively that the United Company's purpose in making the acquisitions was to acquire machines or patents or supplies in new fields.

The ten concerns which had a machine or machines adapted or intended for the same work as any of the machines which the United Company was putting out in February, 1899, were: Goddu Sons Metal Fastening Company, Boot & Shoe Sole Laying Company, Edwin T. Freeman, Seaver Process Lasting Company, Bay State International Shoe Machinery Company, Globe Sewing Machine Company, American Sole Laying Machine Company, William J. Young, Harry L. Rice and Fred LaChapelle, M. V. Bresnahan & Company.

Summarizing the facts already stated about these ten concerns:—

(1) The machines acquired from four of these concerns were experimental, and no business was being done or could be done with them for they were far from being commercial. Those were: Goddu Sons Metal Fastening Company (Appendix I, *infra*, p. 657), Edwin T. Freeman (Appendix I, *infra*, p. 667), Rice and LaChapelle (Appendix I, *infra*, p. 728), and M. V. Bresnahan & Company (Appendix I, *infra*, p. 734).

From three of those four, Freeman, Rice and LaChapelle, and Bresnahan, valuable inventions were acquired which the United Company did not have before. Also there were serious patent complications in connection with the Goddu Company, Freeman, and Bresnahan transactions. Other litigation with the Goddu Company and Bresnahan was pending.

(2) By four transactions the United Company acquired valuable inventions which were a bar to further development of its own machines. These were: Boot & Shoe Sole Laying Company (Appendix I, *infra*, p. 662), Seaver Process Lasting Company (Appendix I, *infra*, p. 673), Globe Sewing Machine Company (Appendix I, *infra*, p. 685), and American Sole Laying Machine Company (Appendix I, *infra*, p. 694).

(3) The two remaining transactions, those with the Bay State International Shoe Machinery Company (Appendix I, *infra*, p. 683) and William J. Young (Appendix I, *infra*, p. 696), have already been explained (*supra*, p. 465).

(4) There are other facts showing the little importance of these ten transactions. No real estate was acquired from any of the ten concerns and from only one of the six who were actually doing business was even a machine shop acquired. That was the Seaver Company, which employed only six men, whose lasting machine infringed, whose business had fallen to pieces, and which was insolvent (Appendix I, *infra*, p. 673). Further the aggregate considerations paid in the six transactions with the concerns which were actually doing business were less than $150,000.

(4) Serious Patent Complications were Cleared Up by a Large Number of the Acquisitions.

By twenty-six transactions the United Company secured patents completely dominating new fields which it desired to enter, patents which it infringed, patents which barred the way to needed improvements in its own machines, or patent applications with which its own applications were in interference; or it acquired machines which infringed its patents, thereby composing and avoiding expensive and annoying litigation and protecting its lessees from the embarrassment of infringement suits.

Officials of the United Company were aware of these complications and they were, in all instances, the subject of study before the several acquisitions were made (R. Vol. 1, p. 821, lines 13–19).

All of the few concerns which the United States may urge had apparently competing machines are in this class.

The District Court said:—

> "In most of the cases of this sort the machine or device acquired was claimed to infringe patents belonging to the United Company, or the patent acquired was one which some machine belonging to it was claimed to infringe, or the application acquired was in interference with applications of its own; and the object of the acquisition is shown to have been the avoidance or compromise of pending or threatened litigation. In such cases it is still less possible to say that any wrongful absorption of a 'competitor's' business has been proved" (Dodge, J., R. Vol. 1, p. 1140).

In *Bement* v. *National Harrow Company*, 186 U. S. 70, it was said by this Court (p. 93):—

> "There had been, as the referee finds, a large amount of litigation between the many parties claiming to own various patents covering these implements. Suits for infringements and for injunction had been frequent, and it was desirable to prevent them in the future. This execution of these contracts did in fact settle a large amount of litigation regarding the validity of many patents as found by the referee. This was a legitimate and desirable result in itself."

NOTE.—These complications are set forth in full detail in Defs.' Ex. 275, R. Vol. 5, pp. 755–777, which consists largely in statements of the opinions of defendants' patent expert Howard in regard to these patent complications. Not a single statement in this exhibit and none of Mr. Howard's testimony to the same effect, no statement by Mr. Winslow as to patent complications in Defs.' Ex. 231, R. Vol. 5, pp. 444–479, and none of Mr. Winslow's or Mr. Howe's testimony to the same effect, have been controverted in any manner by the United States.

These transactions were: Goddu Sons Metal Fastening Company (Appendix I, *infra*, p. 657), Boot & Shoe Sole Laying Company (Appendix I, *infra*, p. 662), Peter A. Coupal and William Gordon (Appendix I, *infra*, p. 665), Edwin T. Freeman, (Appendix I, *infra*, p. 667), Albert G. Brewer (Appendix I, *infra*, p. 669), Globe Shoe Tool Company (Appendix I, *infra*, p. 671), Seaver Process Lasting Company (Appendix I, *infra*, p. 673), Boston Fast Color Eyelet Company (Appendix I, *infra*, p. 678), Enamel Eyelet Company (Appendix I, *infra*, p. 679), Bay

State International Shoe Machinery Company (Appendix I, *infra*, p. 683), Swain-Fuller Manufacturing Company (Appendix I, *infra*, p. 684), Globe Sewing Machine Company (Appendix I, *infra*, p. 685), J. C. Rhodes & Company (Appendix I, *infra*, p. 687), Morley Button Manufacturing Company (Appendix I, *infra*, p. 689), American Sole Laying Machine Company (Appendix I, *infra*, p. 694), G. W. Emerson & Company (Appendix I, *infra*, p. 699), Brockton Supply Company (Appendix I, *infra*, p. 714), The Smith Lacing Machine Company (Appendix I, *infra*, p. 715), Zotique Beaudry (Appendix I, *infra*, p. 719), Booth Brothers (entire business) (Appendix I, *infra*, p. 720), Richardson Shoe Machinery Company (Appendix I, *infra*, p. 722), Ellis Lacer Company (Appendix I, *infra*, p. 729), The Wentworth Company (Appendix I, *infra*, p. 730), Adam H. Prenzel (Appendix I, *infra*, p. 733), M. V. Bresnahan & Company (Appendix I, *infra*, p. 734), Charles P. Stanbon & Company (Appendix I, *infra*, p. 736).

As to these transactions defendants' expert Howard, who has been head of the United Company's Patent Department since the company was organized (R. Vol. 2, p. 1998), testified:

> "In some cases there were interferences pending in the Patent Office; in others, actual litigation, or, in my opinion, such a conflict of patents as to threaten litigation; or a field which we desired to enter was absolutely dominated, in our opinion, by patents owned by the acquired company; or the acquired company had inventions which we believed we ought to have and must have to make our machines commercially satisfactory" (R. Vol. 1, p. 820, lines 22–29).

3. WHAT THE UNITED COMPANY HAS DONE WITH THE ACQUIRED BUSINESSES.

In the summary of the acquisitions in the petition there are frequent statements that the "plant has been closed" or that "the business has been discontinued." The petition also alleges that defendants—

> "have acquired many letters patent for valuable inventions, and have held the same for long periods of time

without making use thereof, thus depriving the manufacturers and the public of the benefits arising therefrom" (R. Vol. 1, p. 999).

These allegations are disproved, first, by the testimony of defendants' witnesses as to the United Company's general policy. Mr. Winslow testified,—

"The United Company has suppressed absolutely no machines, no inventions and no improvements" (R. Vol. 1, p. 433, lines 27–28).

Mr. Howe testified:—

"The United Shoe Machinery Company has never suppressed an invention that it thought could be worked out to make a commercial machine which would benefit the lessees. . . . I have never known of a single patent which had prospective value when embodied in machinery being laid on the shelf or suppressed" (R. Vol. 1, p. 671, lines 18–20, 23–25).

Mr. Howard testified that as regards all the acquisitions the acquired inventions were put to practical use so far as they were useful, and that in every instance where the invention was not put into practical use, it was because study and experiment proved that it was not practicable or was inferior to what the industry already had (R. Vol. 2, pp. 2087, 2088, Cr. Ints. 1657, 1658).

These allegations of the petition are further disproved as to all the transactions by the evidence regarding each of those transactions.

As to the Allegations of the Petition that the Businesses have been Discontinued.

(*A*) With respect to forty-one of the transactions the record shows that the United Company has continued to carry on the business where a business was acquired, or has used inventions where those were the subjects-matter of the transactions. These were: Pearson & Bennion, Ltd. (Appendix I, *infra*, p. 661); Boot & Shoe Sole Laying Company (Appendix I, *infra*, p. 662); The Corrugated Wire Fastening Company (Appendix I, *infra*, p. 663); Peter A. Coupal and William Gordon (Appendix I,

infra, p. 665); Boston Shoe Tool Company (Timothy A. Bresnahan) (Appendix I, *infra*, p. 666); Edwin T. Freeman (Appendix I, *infra*, p. 667); Albert G. Brewer (Appendix I, *infra*, p. 669); Globe Shoe Tool Company (Appendix I, *infra*, p. 671); Seaver Process Lasting Company (Appendix I, *infra*, p. 673); Erastus E. Winkley and Benjamin Phillips (Appendix I, *infra*, p. 675); Boston Fast Color Eyelet Company (Appendix I, *infra*, p. 678); Enamel Eyelet Company (Appendix I, *infra*, p. 679); Ross-Moyer Manufacturing Company (Appendix I, *infra*, p. 680); Swain-Fuller Manufacturing Company (Appendix I, *infra*, p. 684); J. C. Rhodes & Company (Appendix I, *infra*, p. 687); Morley Button Manufacturing Company (Appendix I, *infra*, p. 689); Oliver A. Miller (Appendix I, *infra*, p. 691); Marlboro Awl & Needle Company (Appendix I, *infra*, p. 692); The T. A. Norris Machine Company (Appendix I, *infra*, p. 693); American Sole Laying Machine Company (Appendix I, *infra*, p. 694); William J. Young (Appendix I, *infra*, p. 696); The George A. Smith Machinery Company (Appendix I, *infra*, p. 697); G. W. Emerson & Company (Appendix I, *infra*, p. 699); W. W. Cross & Company, Incorporated (Appendix I, *infra*, p. 701); J. K. Krieg & Company (Appendix I, *infra*, p. 702); The F. G. Farnham Brush Manufacturing Co. (Appendix I, *infra*, p. 706); American Glue Company (Appendix I, *infra*, p. 708); Kimball & Hadley (Appendix I, *infra*, p. 710); Booth Brothers (1904 agreement) (Appendix I, *infra*, p. 713); Brockton Supply Company (Appendix I, *infra*, p. 714); The Smith Lacing Machine Company (Appendix I, *infra*, p. 715); Metallic Heel & Counter Company (Appendix I, *infra*, p. 717); Booth Brothers (entire business) (Appendix I, *infra*, p. 720); Richardson Shoe Machinery Company (Appendix I, *infra*, p. 722); Carver Cotton Gin Company (Appendix I, *infra*, p. 725); Ellis Lacer Company (Appendix I, *infra*, p. 729); The Wentworth Company (Appendix I, *infra*, p. 730); B. F. Sturtevant Company (Appendix I, *infra*, p. 732); Adam H. Prenzel (Appendix I, *infra*, p. 733); M. V. Bresnahan & Company (Appendix I, *infra*, p. 734); Charles P. Stanbon & Company (Appendix I, *infra*, p. 736).

(*B*) *By thirteen of the seventeen transactions not included in the above list no shoe machinery business was acquired.* These

were: Goddu Sons Metal Fastening Company (Appendix I, *infra*, p. 657); Breach Manufacturing Company (Appendix I, *infra*, p. 664); George W. Freeman (Appendix I, *infra*, p. 668); John Ritchie Company (John Ritchie) (Appendix I, *infra*, p. 672); Lincoln Sewing Machine Company (Appendix I, *infra*, p. 677); Joseph P. Curtis (Appendix I, *infra*, p. 704); Fred H. Perry (Appendix I, *infra*, p. 705); Joseph W. Leary (disregarding his insignificant dealing in second-hand upper sewing machines) (Appendix I, *infra*, p. 705); Zachary T. French (Appendix I, *infra*, p. 709); Leopold J. Courteau (Appendix I, *infra*, p. 712); Zotique Beaudry (Appendix I, *infra*, p. 719); John H. Richardson (Appendix I, *infra*, p. 725); Harry L. Rice and Fred LaChapelle (Appendix I, *infra*, p. 728).

As to these transactions:—

(1) From eight of these parties no tangible property whatever was acquired. The Freeman, Perry and Richardson transactions were merely contracts of employment. The Lincoln Company and French transactions were merely contracts commuting obligations created and existing before 1899. From the Breach Company, Curtis and Courteau, the United Company acquired certain patent rights and nothing more.

(2) As we have already explained (*supra*, p. 460) the record shows and District Court held that the metallic fastening machines of the Goddu Company were experimental, that they were not capable of commercial use and that they could not have been used without radical reconstruction. The evidence also shows that the minority stockholders of that company stood in the way of development of those machines.

(3) As to the inventions acquired from the Breach Company, Curtis and Courteau, named above in paragraph (1), and from Beaudry, the United Company experimented aggressively with each of those inventions until in each instance it was proved that the invention was of no commercial value. Each of these situations is set forth in detail in Appendix I (*infra*, pp. 664, 704, 712, 719).

(4) As to the John Ritchie Company business it is to be presumed that the United Company's lessees were supplied with the wire which they needed. It could not be expected that the United Company would continue the dishonest situation which it was the object of that transaction to eliminate, as fully explained in Appendix I, *infra*, page 672.

(5) The Leary transaction was in effect merely a contract of employment. He was dealing in a small way in cements, blacking and second-hand upper sewing machines and made it a condition of his employment by the United Company that it should buy his stock. The consideration was $3,052.

(6) The United Company has been working on the Rice and LaChapelle inventions since they were acquired, it has tried them out several times in a shoe factory, and is still at work with the purpose of developing them into a commercial machine. "It takes a long time to develop one of these machines" (R. Vol. 1, p. 72, lines 3–4).

(*C*) As to the four remaining transactions:—

For the machine acquired from the Arnold Machine & Supply Company (Appendix I, *infra*, p. 711) the demand ceased immediately after the acquisition owing to a revolutionary change in the methods of shoemaking.

Shortly after the acquisition of the patents of the Globe Sewing Machine Company (Appendix I, *infra*, p. 685) shoe manufacturers decided that they did not desire to sew the inseam by a lockstitch as they found it was impossible to secure a tight inseam, and they refused to use lockstitch welters.

The record is silent as to the history of the machines of the Stanley Manufacturing Company (Appendix I, *infra*, p. 676) and the Bay State International Shoe Machinery Company (Appendix I, *infra*, p. 683) after the dates of those transactions, but both of them related to foreign business only. The Bay State Company had put out only a few machines in England and its machines were distinctly inferior to those of the United Company. The Stanley Company transaction amounted simply to an agency contract which contained a covenant that the United Company should use its best endeavors to sell the Stanley machines in foreign countries and provided that if it should fail to purchase machines from the Stanley Company, that company should then have the right to sell them abroad itself.

As to the Allegations of the Petition that the Plants have been Closed.

(*A*) *Thirty-three of the parties either did not have any manufacturing plant or even a machine-shop, or if they had any the United Company did not acquire it.* These were: Goddu Sons Metal Fastening Company (Appendix I, *infra*, p. 657); Boot & Shoe Sole Laying Company (Appendix I, *infra*, p. 662); Breach Manufacturing Company (Appendix I, *infra*, p. 664); Edwin T. Freeman (Appendix I, *infra*, p. 667); George W. Freeman (Appendix I, *infra*, p. 668); Albert G. Brewer (Appendix I, *infra*, p. 669); John Ritchie Company (John Ritchie) (Appendix I, *infra*, p. 672); Erastus E. Winkley and Benjamin Phillips (Appendix I, *infra*, p. 675); Stanley Manufacturing Company (Appendix I, *infra*, p. 676); Lincoln Sewing Machine Company (Appendix I, *infra*, p. 677); Boston Fast Color Eyelet Company (Appendix I, *infra*, p. 678); Enamel Eyelet Company (Appendix I, *infra*, p. 679); Bay State International Shoe Machinery Company (Appendix I, *infra*, p. 683); Globe Sewing Machine Company (Appendix I, *infra*, p. 685); Morley Button Manufacturing Company (Appendix I, *infra*, p. 689); American Sole Laying Machine Company (Appendix I, *infra*, p. 694); William J. Young (Appendix I, *infra*, p. 696); The George A. Smith Machinery Company (Appendix I, *infra*, p. 697); Joseph P. Curtis (Appendix I, *infra*, p. 704); Fred H. Perry (Appendix I, *infra*, p. 705); Joseph W. Leary (Appendix I, *infra*, p. 705); American Glue Company (Appendix I, *infra*, p. 708); Zachary T. French (Appendix I, *infra*, p. 709); Arnold Machine & Supply Company (Appendix I, *infra*, p. 711); Leopold J. Courteau (Appendix I, *infra*, p. 712); Booth Brothers (1904 agreement) (Appendix I, *infra*, p. 713); The Smith Lacing Machine Company (Appendix I, *infra*, p. 715); Zotique Beaudry (Appendix I, *infra*, p. 719); Richardson Shoe Machinery Company (Appendix I, *infra*, p. 722); John H. Richardson (Appendix I, *infra*, p. 725); Carver Cotton Gin Company (Appendix I, *infra*, p. 725); Harry L. Rice and Fred LaChapelle (Appendix I, *infra*, p. 728); Adam H. Prenzel (Appendix I, *infra*, p. 733).

Some of these parties had their machines or products made

for them by others, *e.g.*, Boot & Shoe Sole Laying Company, Boston Fast Color Eyelet Company, Globe Sewing Machine Company, American Sole Laying Machine Company, Richardson Company. Others had each only a single experimental machine, *e.g.*, Brewer, Winkley and Phillips, Rice and LaChapelle. From others no tangible property of any kind was acquired, *e.g.*, Breach, G. W. Freeman, Lincoln Company, Curtis, Courteau, Perry, French, J. H. Richardson.

Seven of these thirty-three parties had manufacturing plants *but the United Company did not acquire the plants.* These parties were: Stanley Company, Morley Company, Young, American Glue Company, Booth Brothers (1904 agreement), Beaudry, Carver Cotton Gin Company.

(*B*) *Nineteen of the parties leased the premises which they occupied and no real estate was acquired from any of them.* These were: The Corrugated Wire Fastening Company (Appendix I, *infra*, p. 663); Peter A. Coupal and William Gordon (Appendix I, *infra*, p. 665); Globe Shoe Tool Company (Appendix I, *infra*, p. 671); Seaver Process Lasting Company (Appendix I, *infra*, p. 673); Ross-Moyer Manufacturing Company (Appendix I, *infra*, p. 680); Swain-Fuller Manufacturing Company (Appendix I, *infra*, p. 684); Marlboro Awl & Needle Company (Appendix I, *infra*, p. 692); The T. A. Norris Machine Company (Appendix I, *infra*, p. 693); G. W. Emerson & Company (Appendix I, *infra*, p. 699); J. K. Krieg & Company (Appendix I, *infra*, p. 702); The F. G. Farnham Brush Manufacturing Co. (Appendix I, *infra*, p. 706); Kimball & Hadley (Appendix I, *infra*, p. 710); Brockton Supply Company (Appendix I, *infra*, p. 714); Metallic Heel & Counter Company (Appendix I, *infra*, p. 717); Booth Brothers (entire business) (Appendix I, *infra*, p. 720); Ellis Lacer Company (Appendix I, *infra*, p. 729); The Wentworth Company (Appendix I, *infra*, p. 730); M. V. Bresnahan & Company (Appendix I, *infra*, p. 734); Charles P. Stanbon & Company (Appendix I, *infra*, p. 736).

As to these nineteen transactions, in every instance the business was continued, if a business was acquired, and the United Company has continued to manufacture the machines or products either on the acquired concern's leased premises or at the Beverly factory; or, if patented inventions were what was

acquired, the United Company has incorporated those inventions in its machines. The only apparent exception is the Seaver Process Lasting Company, but that company's lasting machine was inferior to the United Company's and there was no demand for it after the acquisition. Its valuable pulling-over inventions, the acquisition of which was the real object of that transaction, have been embodied ever since in the United Company's pulling-over machine and are of vital importance in that machine (Appendix I, *infra*, p. 673).

(*C*) *In only six of the transactions did the United Company acquire any real estate.* These were: Pearson & Bennion, Ltd. (Appendix I, *infra*, p. 661); Boston Shoe Tool Company (Timothy A. Bresnahan) (Appendix I, *infra*, p. 666); J. C. Rhodes & Company (Appendix I, *infra*, p. 687); Oliver A. Miller (Appendix I, *infra*, p. 691); W. W. Cross & Company, Incorporated (Appendix I, *infra*, p. 701); B. F. Sturtevant Company (Appendix I, *infra*, p. 732).

Only one of these concerns, the Boston Shoe Tool Company, was included in the thirty-six transactions which at the first hearing in this court counsel for the United States said were the only ones which they considered to be of any material importance in any aspect of the case. The only machines which that company had were two General Department machines which are sold outright (R. Vol. 1, p. 12, line 37 *et seq.*; Vol. 5, pp. 425, 428, 429), and counsel for the United States also said at the former hearing that they made no question with respect to General Department machines and that they are not involved in this suit. Pearson & Bennion also dealt in General Department machines only, while Miller handled only treeing machines, not included in the field alleged to be monopolized. Of the three other concerns, Rhodes made eyelets, Cross made tacks, and Sturtevant made peg-wood and wooden shanks. None of them handled any shoe machinery.

The result is that the United Company did not acquire ownership of a single plant making machines of the character as to which monopoly is charged.

The businesses of five of those concerns were continued and are still being carried on *in the same plants*. These were: Pearson & Bennion; Rhodes; Miller; Cross; Sturtevant Company.

In the case of the Boston Shoe Tool Company—

> "the business was continued at the same plant for a considerable period of time. Subsequently, for convenience and economy of manufacture, the business was transferred to the Beverly Factory, where the United Company has ever since continued and increased the business" (Winslow, Defs.' Ex. 231, R. Vol. 5, pp. 444, 460).

In this connection it should be understood that the purchase of machine-shops where shoe machinery has been made does not give the vendee control of existing facilities for making shoe machinery. As explained by Mr. Winslow:—

> "The manufacture of shoe machinery does not require any particular kind of machine tools. The standard machine tools used in manufacturing all ordinary machines are the tools that are used in every factory making shoe machinery. The only other things needed are the special tools and jigs which are made by any manufacturer of a particular machine" (R. Vol. 1, p. 858, lines 25–31).

4. CONCLUSION AS TO THE "ACQUISITIONS."

The United States has completely failed to establish its charges that these fifty-eight individuals or concerns were competitors, that these transactions were entered into in pursuance of a purpose to monopolize the shoe machinery industry or with intent to suppress competition, that defendants have acquired patents and suppressed them, or that the considerations in the transactions were exorbitant.

The parties with whom these transactions were made were not competing with the United Company; in the few cases in which a machine was acquired of the character of one made by the United Company, or an invention was acquired applicable to a machine made by the United Company, the purpose of the United Company in entering into the transaction was to acquire a patent necessary to perfect or improve its own machines, or to acquire a patented machine of the same name as one it had, but used for a different purpose, or to settle litigation which might have prevented the United Company from

putting out its own machine, and if any possible competition was eliminated, it was trivial in character, its elimination was not a motive for the transaction, but incidental thereto, and in no case did such competition have any material effect upon the industry.

Practically all the parties who were doing business—and many were not doing any—were putting out machines performing operations which no machine that the United Company had before could perform; or they were making and selling some of the great variety of supplies or "findings" which were used by the United Company's customers and none of which it supplied or was in position to supply before; or they had valuable patented inventions which the United Company had to acquire in order to make some of its machines commercially successful or to enable it to effect substantial improvements in the quality of work or speed of operation of its machines.

Viewing the acquisitions as a whole it is clear that they were made for the purpose of enlarging the United Company's field or adding important and needed improvements to its machines. They were plainly a continuation of that "effort after greater efficiency" which began with the formation of the United Company in 1899, already approved by this Court, and which has resulted in the United Company's taking advantage of opportunities, which have presented themselves from time to time during a period of more than twelve years, to enlarge its field and improve its machines. That such transactions were lawful has been established by *United States* v. *Winslow*. The Court said in that case:—

> "It is said that from seventy to eighty per cent. of all the shoe machinery business was put into a single hand. This is inaccurate, since the machines in question are not alleged to be types of all the machines used in making shoes, and since the defendants' share in commerce among the States does not appear. *But taking it as true* we can see no greater objection to one corporation manufacturing seventy per cent. of three non-competing groups of patented machines collectively used for making a single product than to three corporations making the same proportion of one group each. The disintegration aimed at by the statute does not extend to reducing all manufacture

to isolated units of the lowest degree" (italics ours) (*United States* v. *Winslow*, 227 U. S. 202, 217).

If any further proof were needed that these fifty-eight transactions were normal and reasonable steps in the developing and carrying on of the United Company's business, we have, first, the fact that there were serious patent complications attending a large proportion of the transactions, including all of the few concerns which the United States may urge had apparently competing machines. The acquiring of patents which it infringed or which barred the development of its machines, frequently preventing the construction of a successful machine, and the avoidance or composing of patent litigation are certainly normal, reasonable, and lawful steps in the development of the business of a corporation doing business in patented machines. Transactions entered into for such reasons and with such objects not only benefit the corporation, but they are clearly to the advantage of its customers and the public.

The unimportant character of these transactions in their bearing upon this case is further shown by the facts that more than half of the transactions were clearly outside of the scope of the alleged actual monopoly as frequently defined by counsel for the United States during the trial; that only ten of the parties had any machine which performed the same work as any of the machines which the United Company was putting out in February, 1899; that no factory or machine shop was acquired in more than half of the transactions and real estate was acquired in only six, and that there is nothing on the record to show that any of forty-four of the parties were engaged in interstate or foreign trade or commerce. Nearly all of the parties that had any machines had but one or two. Many had but one machine, and that frequently only an experimental machine, never in a shoe factory.

If defendants had had any such intent as was alleged they never would have refused the opportunities which were offered them to acquire the large concerns which were and are actively competing with the United Company. The record shows that its biggest and most aggressive competitors, putting out complete lines of machines for making all kinds of shoes, were

offered to the United Company and those offers were declined. And, in general, the record shows that a much greater number of shoe machinery concerns than it acquired, many of them having bottoming machines, and a far greater number of inventions than it purchased, over two hundred of which were within the alleged monopoly as defined by the United States during the trial, were offered to the United Company and declined by it.

And finally the record shows that the United Company has *used* what it has acquired by these acquisitions. In a very few cases its hopes were disappointed and the most aggressive experimenting failed to make an acquired invention commercially successful, as frequently happens with its own experimental machines. But in nearly all cases the company has been able to utilize what it acquired to great advantage. For years it has been putting out and its customers have been using many machines—including such important machines as the Pulling-over Machine, Model M Outsole Stitcher, Goodyear Tack Pulling and Resetting Machine, Goodyear Twin Sole Layer, Goodyear Welt Indenting and Burnishing Machine, Model B Standard Screw Machine, Atlas Leveling Machine, Imperial Heel Breasting Machine, Ensign Lacing Machine, and Model B McKay Sewing Machine—which incorporate an improvement or improvements which make the machines more efficient and which the United Company could not have used without infringement if it had not made these acquisitions.

In considering the comparatively few purchases of machines similar to machines held by the United Company or inventions applicable to machines of the kind already owned by the United Company, the distinction between the acquisition of a patent or patented machine and the acquisition of an unpatented machine must be borne in mind. Even if the acquisition of a patent or patented machine may result in the elimination of some possible or even actual competition, it does not make the transaction inherently unlawful.

In the case of the purchase of the business of manufacturing and furnishing to the trade an unpatented machine, the purchaser, prior to the purchase, is free to make the machine and furnish it to his customers in competition. He is under no restraint, and by making the purchase he does not relieve

himself of any restraint previously imposed upon him which forbade his furnishing the same kind of machine. By the purchase of a patented machine the purchaser acquires the patents covering the machine. Prior to the purchase he was restrained by these patents from making the machine; by the purchase he is relieved from this restraint. If the patented machine is one desired by his customers, he cannot satisfy their demands without making the purchase. Unless he make the purchase he is therefore not in a position to compete on equal terms with the owner of the patented machine.

The Sherman Act was intended to protect the normal flow of commerce. Where a manufacturer is lawfully restrained by a patent monopoly owned by another person from manufacturing machines desired by such manufacturer's customers, the Sherman Act was not intended to prevent his acquiring the right to make and furnish such machines by the acquisition of the patent even if thereby an incidental competition is eliminated.

In *Virtue* v. *Creamery Package Company*, 227 U. S. 8, it appeared that the Disbrow Company entered into a contract with the Owatonna Company granting the latter rights under patents for churns and butter workers. The latter company at the time had other patents covering such articles. The Owatonna Company also made the Creamery Package Company its exclusive sales agent.

The Court said (pp. 36, 37):—

> "We may therefore sum up by saying that the Disbrow Company, by its contract with the Owatonna Company, did nothing more than confirm or enlarge the rights which the Owatonna Company had obtained, by the contract of 1893, and conveyed to it the exclusive right in the patents for certain named royalties. This was no violation of law. The Owatonna Company did nothing more in its contract with the Creamery Package Manufacturing Company than to make that Company its exclusive sales agent, and this was no violation of law. Both contracts had natural and adequate legal inducements and conveyed rights that could under the law be conveyed, and, as a necessary incident to the conveyance, one only of the parties could thereafter exercise them. *It may be that the Disbrow Company was to an extent in competition with the Owatonna Company, but it was a competition in*

part, at least, which, it was contended, was illegally conducted against rights which had been transferred in 1893. But, be that as it may, we repeat, patent rights may be conveyed partially or entirely, and the monopoly of use, of manufacture or of sale is not one condemned by law" (italics ours).

If two patented machines can do the same work, it is not infrequently the case that each has a patented improvement which the other does not have. A far more efficient machine would result if the patents were combined and the two improvements embodied in a single machine. In such a case the manufacturer of one machine may lawfully purchase the patents held by the manufacturer of the other machine, even though competition between the two machines is thereby eliminated. To hold otherwise would be to hold that the public could not be furnished the most efficient machines possible to the art. But the Sherman Act was intended to benefit the public, not to injure it.

In *Nash* v. *United States*, 229 U. S. 373, the Court said (p. 376),—

> ". . . Only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade."

In *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, the Court said (p. 174),—

> "In other words, founded upon broad conceptions of public policy, the prohibitions of the statute were enacted to prevent not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented."

A purchase which is made for the purpose of enabling the purchaser to produce a more efficient machine, even if it does result in the elimination of competition between inferior machines, cannot be said to "prejudice the public interests" or produce "harm to the general public." Such a purchase dis-

tinctly benefits the public, and is obviously a normal, legitimate step in the development of the industry.

In *United States* v. *American Bell Telephone Company*, 167 U. S. 224, the right of a patentee to acquire other patents which will improve his apparatus, although thereby his monopoly will be extended indefinitely, was affirmed as undoubted.

The Court said (p. 249):—

> "Much is said in the briefs and in the arguments about the practical continuance of the telephone monopoly. It is well to understand exactly what is meant thereby. No one questions that the Bell patent has expired, and that all of his invention is free to the use of the public. It is not denied that Berliner's invention is something independent and distinct from the Bell invention. It is the combination of these inventions with those of Blake and Edison which makes the instrument in commercial use, and because this is the most serviceable it is the one that the public insists upon having. But each invention has independent rights. It loses nothing because when united with another it results in an instrument more valuable than either alone will give. Suppose that at the expiration of this Berliner patent some new invention shall be made by which in connection with those already free to the public an instrument can be manufactured far surpassing in utility that used today, and the Bell Company shall purchase that invention, the public, which always insists on having the best and most serviceable, will undoubtedly take the new instrument, and in that way it may happen that what is called the telephone monopoly is practically still further continued. But surely that does not abridge the legal rights of anyone. The inventor of the latest addition is entitled to full protection, and if the telephone company buys that invention it is entitled to all the rights which the inventor had."

It appears from that case that the telephone was covered by four patents. Bell's invention was the fundamental invention; the others were improvements. If, as was not impossible, after the expiration of Bell's patents a telephone could have been constructed by the addition of either one of the improvements, could it possibly have been contended that the owners of those improvements, although there would have been competition between them if they had remained sepa-

rate, could not have combined, and by the use of all their patents made a more perfect instrument? We think it clear from the language of the Court that such a combination would have been permissible.

We do not here contend that every purchase of patents or of a business protected by patents is lawful, although there is authority to this effect. We do submit that every such purchase made to enable the purchaser to manufacture and offer his customers machines which are more efficient, which they prefer, and which he could not manufacture unless he purchased the patents, or to enable the purchaser by a combination of different patents to put on the market a better machine than any then manufactured, is lawful. To hold otherwise would prevent a manufacturer from fairly competing with his competitors by preventing his manufacturing as efficient machines as they can manufacture under their patents, or would prevent his putting upon the market the best machines which could be manufactured by a combination of patents.

Unless a company like the United Company which is engaged in an industry dominated by patents is privileged to make such acquisitions, the character of its machines will deteriorate and its business decline.

The United Company's machines are the best in the market. It hopes that they may continue to be the best. To this end it expends enormous sums each year in conducting experiments and making inventions. It also acquires from others such inventions as will improve or perfect its machines, or enable it to put out new machines. This it is lawfully entitled to do.

Its lessees look to it to furnish them with the best and most improved machines. It can only do this by maintaining its own experimental department, and by acquiring such inventions made or owned by others as will effect this end. It is not only entitled to do so; it would be lax in its obligations to its lessees if it declined to do so.

In other words, not only were the acquisitions made by the United Company reasonable and lawful steps in the normal development of its business, but it was the United Company's duty to make them. The machines which it received from

its predecessors had been continuously improved by those companies, and if the United Company had stood still and had declined to continue improving the machines it would have failed in its duty both to its customers and itself. Shoe manufacturers would not have had the benefit of the wonderful development in its machinery which has been effected by the United Company, and when its patents expired and improvements were made by others the United Company's machines would have become out of date and its business would eventually have fallen to pieces. As we have shown, the remarkable development of the industry which has taken place in recent years could not have been effected unless the United Company had occasionally acquired from others patents which from time to time barred the way to further development. The United Company not only had the right but it was its duty to acquire those patents.

V.

COVENANTS TAKEN FROM VENDORS, INVENTORS, AND EMPLOYEES IN CONNECTION WITH THE ACQUISITIONS.

1. GENERAL DISCUSSION.

The petition alleges that the defendants have taken from "*all or substantially all*" of those whose businesses they have purchased covenants in writing not to engage for long terms of years in trade "*in shoe machinery in competition*" with the defendants and have further required the vendors to agree that if they "*shall invent or cause to be invented*" or shall patent or cause to be patented "*any machines adapted for use in the manufacture of boots or shoes*" or shall acquire interests in or under letters patent relating thereto, they shall assign and transfer to the defendants all such inventions and letters patent (italics ours) (R. Vol. 1, p. 1000). The District Court found with respect to these allegations as follows (Dodge, J., R. Vol. 1, p. 1141):—

> "These charges are not justified by the documents themselves, which have been produced. They are by no means uniform in their terms, there was no generally prescribed form for them, nor were they all the work of the same hands. Each was framed according to the circumstances of the particular transaction. In many cases, at least, the agreements required only that there should be no competition in the line of business involved in the particular transaction, or that all patents or inventions thereafter made in the particular line to which the acquired invention belonged should be transferred. There are enough of the agreements in these cases which are without covenants of the kind described, to leave the allegation unjustified that such covenants were required in substantially all. And of the instances wherein covenants

are found in any degree answering the alleged description, it may be said generally that none are clearly shown to have exceeded what the law permits. Still less reasonable would it be to regard what is found in them as indicating a consistent purpose on the defendants' part to exclude all those with whom the agreements were made from all possible future competition with the United Company."

This finding of the District Court is fully supported by the record.

The covenants were only such covenants as are usual and customary in the case of a purchase of a business, the purchase of patents, or a contract of employment with an inventor.

In the case of the purchase of a business it is well recognized as usual and necessary to require the vendor to covenant not to compete with the business sold. Such a covenant in nowise violates the Sherman Act.

When an inventor sells his patents it is recognized as equally essential that he covenant to transfer his future inventions covering the same subject-matter in order to give the purchaser protection. It is common experience that an inventor at the time of sale may have in mind inventions which he has not yet patented which may render valueless what he is selling.

When an inventor is employed and taken into the employer's experimental department a covenant to assign future inventions is even more essential. Not only must much expense be incurred in providing draughtsmen and mechanics to work out his inventions, but the inventor has every opportunity to acquire highly confidential information. It is accordingly essential that he be required to agree that if he leaves the company's employ, he will assign future inventions because, first, such inventions are likely to be the fruits of his labors while with the company and in reality the results of the work which the company has paid for; second, there is serious danger that if he has not agreed to transfer future inventions he will not disclose an important invention, but leave the company's employ and then patent the invention, taking to himself the benefit of the work for which the company has paid; and, third, there is grave danger that if unscrupulous he will appropriate the inventions of others with which his

confidential relations have permitted him to become familiar, and will patent them himself,—dangers which render such covenants both usual and normal.

In the present case the covenants in each and every instance were necessary for the protection of the United Company, and the District Court so found. But this is not the material issue in the present case. Whether or not a covenant in a particular case is absolutely necessary for the protection of one of the parties is a question of judgment which must be determined in the light of the circumstances surrounding that particular case, a question difficult alike for the Court and for the parties themselves to decide, with reference to which the law has been developing and changing and differs in different states. The material fact here is that the covenants are of the general character which are customary, normal, and proper in such transactions, and afford no evidence whatsoever of a design to take broader covenants than the parties fairly believed to be necessary and usual.

The record shows that the officers of the company had no plan or design whatsoever with respect to these covenants and did nothing but leave it to the attorney who drew the papers to insert such clauses as were usual to protect the company as purchaser.

Thus Mr. Howe testified:—

> "Neither the directors nor officers of the company, as far as I know, ever had anything to do with them [the covenants]. In fact, except in special instances, where they may have read that part of the contract, I doubt if they knew what they were" (R. Vol. 1, p. 667, lines 16–19).

He further testified (R. Vol. 1, p. 667, lines 20–27):—

> "*Q.* Or did you receive directions from President Winslow as to the covenants you should use?
> "*A.* Neither from the president nor from any officer.
> "*Q.* You then exercised your own judgment as a lawyer?
> "*A.* That matter was all left to the legal department.
> "*Q.* Was there any intent upon your part to bring about a monopoly or an unlawful restraint of trade by the use of those covenants?

"*A.* No intention whatever. It was merely intended for the protection of the company in what it had paid for, or what it had contracted to pay for."

Mr. Winslow testified (R. Vol. 1, p. 502, lines 19–30):—

"With reference to the covenants in agreements of purchase of properties by the United Company, I have had nothing to do with the covenants of the vendors, with respect to their future activities, in agreements relating to acquisitions by the United Company. The drafting of those papers was left entirely to the United Company's legal department; I did not direct anything to be inserted and no action was taken by me, or by the board of directors, or by any officer of the company that I knew of, directing or requiring the insertion of any such restrictive covenants in any agreement. These matters were left to counsel like the drawing of a deed, and I paid no attention to whether they put in covenants or what covenants they put in."

In thirteen transactions there were no covenants whatever as to competition or to future inventions. These were: The Corrugated Wire Fastening Company (R. Vol. 3, p. 530); Seaver Process Lasting Company (R. Vol. 3, p. 591); Lincoln Sewing Machine Company (R. Vol. 3, p. 628); Bay State International Shoe Machinery Company (R. Vol. 3, p. 655); Swain-Fuller Manufacturing Company (R. Vol. 3, p. 660); Globe Sewing Machine Company (R. Vol. 3, p. 662); Boot & Shoe Sole Laying Company (R. Vol. 3, p. 666); Marlboro Awl & Needle Company (R. Vol. 4, pp. 693, 703); The T. A. Norris Machine Company (R. Vol. 4, p. 734); W. W. Cross & Company, Incorporated (R. Vol. 4, p. 744); Brockton Supply Company (R. Vol. 4, p. 831); Metallic Heel & Counter Company (R. Vol. 4, p. 843); B. F. Sturtevant Company (R. Vol. 4, p. 928).

In the case of most of the transactions where covenants were inserted especial pains were evidently taken to limit the covenant strictly to the particular kind of machines or goods which were sold. The allegation in the petition that the vendors who made covenants not to compete were restrained in all cases from engaging in competition in shoe machinery generally and that inventors were required to convey patents on shoe machinery generally which they might thereafter invent or

acquire is absolutely without foundation. The very few cases in which general covenants were taken were either employment contracts where such broad protection was necessary or the general covenants were justified by the special circumstances of the case. Furthermore in nearly every case the covenants have been limited in time.

In the only case in which the United Company has sought to enforce any of these covenants they were held to be reasonable and the defendant was restrained (*United Shoe Machinery Company* v. *Kimball*, 193 Mass. 351). That was the contract with Kimball & Hadley (R. Vol. 4, p. 814).

2. LAW AS TO COVENANTS NOT TO COMPETE.

That a covenant not to compete when made as part of the sale of a business, although it directly undertakes to restrain trade, is not within the prohibition of the Sherman Act is settled by *Cincinnati Packet Co.* v. *Bay*, 200 U. S. 179. The court there says (pp. 184–5):—

> "Presumably all that there was to sell, besides certain instruments of competition, was the competition itself, and the purchasers did not want the vendors' names.
>
> "This being our view of the covenant in question, whatever differences of opinion there may have been with regard to the scope of the Act of July 2, 1890, there has been no intimation from anyone, we believe, that such a contract, made as part of the sale of a business and not as a device to control commerce, would fall within the act. On the contrary, it has been suggested repeatedly that such a contract is not within the letter or spirit of the statute, *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 329, *United States* v. *Joint Traffic Association*, 171 U. S. 505, 568, and it was so decided in the case of a patent. *Bement* v. *National Harrow Co.*, 186 U. S. 70, 92."

See also

Darius Coal Transportation Co. v. *White Star Line*, 186 Fed. 63 at p. 65.

Blount Mfg. Co. v. *Yale & Towne Mfg. Co.*, 166 Fed. 555 at p. 558.

Indeed, a covenant not to compete is so necessary to the protection of a purchaser of a business, that in Massachusetts, where most of these contracts were made, a covenant not to compete is implied by law where the good-will of a business is sold and such covenant is necessary or proper for the protection of the purchaser.

Marshall Engine Co. v. *New Marshall Engine Co.*, 203 Mass. 410.

It appears then that even if the United Company had not taken express covenants not to compete, its right to take such covenants is so clear that the law would have protected it by implying them.

The law goes so far that under such an implied covenant the vendor may be forbidden to set up a competing business in any part of the world.

In *Marshall Engine Co.* v. *New Marshall Engine Co.*, supra, the Court said (p. 422),—

> "On the other hand had there been no covenant in the sale by Nordenfelt of his good will as a manufacturer of guns and ammunition, which was before the House of Lords in *Nordenfelt* v. *Maxim Nordenfelt Guns & Ammunition Co.* (1894) A. C. 535, under the Massachusetts rule he could not have set up a similar business anywhere. Where the governments of the world are the customers, the place of business is of no consequence."

Such a covenant not to compete may, if necessary for the vendee's protection, be unlimited both in time and space.

In *Marshall Engine Co.* v. *New Marshall Engine Co.*, supra, the Court said (p. 424),—

> "The defendants have argued that if Marshall had entered into a covenant never to engage in the business of manufacturing Marshall Perfecting Engines it would have been void as a covenant in restraint of trade. But it is now settled that a covenant, even if it be unlimited both in time and space (*United Shoe Machinery Co.* v. *Kimball*, 193 Mass. 351, 358), not to engage in a particular business is valid if it is coupled with the sale of a business and is necessary to give to the purchaser what he has

bought. *Anchor Electric Co.* v. *Hawkes*, 171 Mass. 101. *United Shoe Machinery Co.* v. *Kimball*, 193 Mass. 351."

Where necessary to protect the vendee, a covenant not to compete with the business of the vendee generally, although that business is broader than the particular business sold, is valid.

Anchor Electric Company v. *Hawkes*, 171 Mass. 101.

3. LAW AS TO COVENANTS TO ASSIGN FUTURE INVENTIONS.

Covenants, by vendors of patents or by inventors who enter the employ of the company, not to compete are even more necessary for the vendee's or employer's protection than covenants not to compete made upon the sale of a business.

This is well recognized by numerous decisions.

In *Aspinwall Mfg. Co.* v. *Gill*, 32 Fed. 697, Mr. Justice Bradley said (p. 700):—

> "But where a man purchases a particular machine secured by a patent, and open to an indefinite line of improvements, it is often of great consequence to him that he should have the benefit of any future improvements that may be made to it. Without that the whole value of the thing may be taken away from him the next day. A better machine might be made by the inventor, and sold to another party, which would make the machine acquired by the first purchaser entirely useless. *These things happen every day. And hence it has become the practice, in many cases, to stipulate for all future improvements that may be made by the same inventor upon any particular machine which he induces a party to purchase from him, sometimes by way of license to use such improvements and sometimes by way of purchase and ownership thereof.* Where the inventor is connected in business with the party making such stipulation, or is interested in the profits arising from the business in which the invention is used, the arrangement seems to be altogether unobjectionable. But such a connection or interest does not seem to be necessary to the validity of such bargains" (italics ours).

In *Hulse* v. *Bonsack Machine Co.*, 65 Fed. Rep. 864, an agreement by an employee to assign all inventions made by him while in the company's employ or at any time thereafter was held reasonable and valid. The Court said (p. 867):—

> "Is this contract unreasonable or unconscionable? The Bonsack Machine Company owned valuable patented machines, employed in the manufacture of cigarettes. Comparatively the invention was in its infancy, and the machinery was known to be difficult of operation, and open to improvement. Any one entering into the employment of the company had full opportunity of learning the merits of the machines, and, by constant and daily use, could see where the machine was defective, and where improvement was needed. If any improvement suggested itself to his mind, he could, by using the machine and the time and material of the company, experiment upon it, and ascertain its value. The improvement would be his own idea. But it owed its suggestion and origin, its progressive development and perfection, to the business, the practical working, the opportunity afforded by the company. When, therefore, the company, taught by costly experience, determined to protect itself from the discovery of improvements by its own servants, it did a natural and reasonable thing; and, when it protected itself by a covenant in advance of any employment with those seeking its service, it did a fair thing. Nor was that part of the contract which put in the same category improvements made while in the employment of the company and those made at any time thereafter unconscionable or unreasonable."

See also *Westinghouse Air Brake Co.* v. *Chicago Brake Mfg. Co.*, 85 Fed. Rep. 786.

In *Registering Company* v. *Sampson*, L. R. 19, Eq. 462, the Court said:—

> "Now nothing is better known than this, that when persons have turned their attention to a particular class of invention they are likely to go on and invent, and likely to continuously improve the nature of their invention, and continuously to discover new modes of attaining the end desired. Persons, therefore, who buy patents of inventors are in the habit of protecting themselves from the utter destruction of the value of the thing purchased by

bargaining with the seller that he shall not use any new invention of his for producing that product in which they are about to deal at a cheaper rate, because if he were allowed to do so he might, the day after he had sold his patent, produce something which, *without being technically an infringement, and without being technically an improvement*, might accomplish the desired object in some other way, and utterly destroy the value of that which they had purchased. They, therefore, not unreasonably, and not unusually, make it a part of their bargain that whatever the man discovers of the same kind in the shape of machinery or apparatus which will produce the product in which they are about to deal shall belong to them. They say, 'We cannot buy on any other terms, because otherwise we are exposed to the instantaneous, or almost instantaneous, competition of the inventor with the benefit of his previous experience.' That, as I said before, is not an unusual, nor is it an unreasonable, bargain" (italics ours).

Reece Folding Machine Company v. *Fenwick*, 140 Fed. Rep. 287, decided in the First Circuit in 1905, is a strong case on this point. Judge Putnam in the opinion of the Court, page 288, says:—

"By the last contract Fenwick agreed to assign all the inventions which he had already made, together with any which he might thereafter make, appertaining to the particular subject-matter to which the prior contracts related; that is, certain details in the manufacture of collars and cuffs. . . .

"The defense is set up that such contracts for an indefinite period, covering inventions to be afterwards made, are against public policy. On the other hand, whether based on agreements for employment or on other valuable considerations, such contracts have been extensively made, and have never been doubted until of late. They are essential to the business of the contracting parties, and are not unjust. A person may purchase an invention, and pay therefor a very large sum, and proceed to make use of it. The inventor, according to a practice not uncommon, may subsequently overlap that invention by improvements, which, though small, may be enough, in these days of sharp competition, to build up a successful hostile business. This court recognized these principles to a certain extent in *Thibodeau* v. *Hildreth*, 124 Fed. 892, 893, 60 C. C. A. 78, 63 L. R. A. 480. Therefore it is

right and reasonable, and legal, that contracts of the kind in suit should be made and sustained where they relate to improvements upon inventions already purchased, as in the case at bar."

See also

American Brake Beam Company v. *Pungs*, 141 Fed. 923.
Thibodeau v. *Hildreth*, 124 Fed. 892.
McKinnon Pen Co. v. *Fountain Ink Co.*, 48 N. Y. Super. Ct. 442.
Wright v. *Vocalion Organ Co.*, 148 Fed. 209.
Brown v. *Rounsavell*, 78 Ill. 589.
Long v. *Towl*, 42 Mo. 545.

4. MISSTATEMENTS MADE IN THE PETITION AS TO THE COVENANTS.

In its statement of the alleged facts regarding the acquisitions (R. Vol. 1, pp. 999–1023) the petition purports to state the substance of the agreements and the covenants contained in the agreements entered into in connection with the respective transactions. Many of these statements are entirely inaccurate and grossly exaggerate the nature and scope of the covenants.

These statements are inexcusably unfair; the United States had the original, executed agreements continuously in its possession for months prior to the filing of the petition (R. Vol. 1, p. 37, lines 15–20; p. 78, lines 24–29).

Some of the most glaring misstatements will now be pointed out.

John Ritchie and John Ritchie Company.

The petition charges that:—

(1) The United Company "acquired all of the *business* of" this concern "relating to the *manufacture*" of certain specified shoe machines (italics ours).

(2) The vendors agreed that they would not engage "in *any business* in competition with" said United Company (italics ours) (R. Vol. 1, p. 1004).

Counsel for the United States made statements to the same effect during the trial (R. Vol. 1, p. 40, lines 6–14; p. 46, lines 6–9).

The facts shown by the record are:—

(1) The Ritchie Company was not in the business of *manufacturing machines* as alleged but was engaged in the manufacture of *boots and shoes*. It had one machine for the manufacture of *wire* (R. Vol. 1, p. 46, lines 15–30; Vol. 3, pp. 586, 587, 589, par. 5; Vol. 5, p. 475).

(2) The covenant against competition did not cover "*any business*," but *only* business relating to "wire fastening shoe machinery, or machines for making the same, or parts thereof," or wire, "or other fastening materials" (italics ours) (R. Vol. 3, p. 586).

Erastus E. Winkley and Benjamin Phillips.

The petition sets forth:—

> "The vendors, for the same consideration, agreed to convey to defendants all inventions or improvements in sole-leveling machines which they should thereafter make *or acquire*" (italics ours) (R. Vol. 1, pp. 1005–1006).

There is absolutely no support in the agreement for these last two words "*or acquire*" (R. Vol. 3, pp. 618, 619, par. 7).

Counsel for the United States made the same erroneous statement during the trial (R. Vol. 1, p. 40, lines 25–28).

Lincoln Sewing Machine Company.

The petition charges that defendants—

> "acquired the *business* of Lincoln Sewing Machine Company . . . *engaged* in the manufacture, sale, lease, and shipment in interstate commerce, of sewing machines designed and used for the manufacture of boots and shoes" (italics ours) (R. Vol. 1, p. 1006).

The exhibits of the United States show that the Lincoln Company had *gone out of business in 1897*, when it sold all its property to the Goodyear Shoe Machinery Company, so that

there remained simply "certain payments and obligations on the part of the Goodyear Company to be made or performed to or toward the Lincoln Company" (R. Vol. 3, pp. 623, 629).

These undisputed facts are also clearly set forth in the record (R. Vol. 1, p. 49, lines 25–37; Vol. 5, pp. 470, 471).

Boston Fast Color Eyelet Company.

In the agreement relating to this transaction the covenant against competition was *limited to covered eyelets*, the subject-matter of the transaction (R. Vol. 3, pp. 636, 637).

In the statement of the petition *this important limitation is omitted* (R. Vol. 1, p. 1007).

Enamel Eyelet Company.

The petition sets forth that—

> "The vendors and each of them also agreed that they would not, for a period of 15 years, engage in any *business in competition* with defendants" (italics ours) (R. Vol. 1, p. 1007).

That covenant was in fact limited to *enamel eyelet* business, the subject-matter of this transaction (R. Vol. 3, pp. 647, 648).

William J. Young.

In its statement of the covenant relative to competition (R. Vol. 1, p. 1010) the petition *omits entirely the limitation* in that covenant to "machinery or devices intended or adapted for use in any way in the manufacture or preparation of *heels*" (italics ours) (R. Vol. 4, p. 717).

Again, in its statement of the covenant to assign future inventions relating to such machines (R. Vol. 1, p. 1010) the petition omits the limitation to "*countries other than the United States and the Dominion of Canada*" (italics ours) (R. Vol. 4, p. 714).

J. K. Krieg & Company.

The statement in the petition regarding the covenant in the agreement with this concern includes—

> "all such supplies to be purchased from defendants" (R. Vol. 1, p. 1012).

The agreement contains no such provision (R. Vol. 4, p. 746).

Joseph W. Leary.

The petition states that the vendor—

> "agreed to *convey* to the vendee and its successors *all inventions and improvements* which the vendor should make or acquire within ten years from the date of the termination of such employment by said United Company" (italics ours) (R. Vol. 1, p. 1013).

The fact is that Leary made no covenant whatever to convey any inventions or improvements (R. Vol. 4, p. 765). On the other hand, the agreement provided that—

> "The said Leary shall not be required to disclose his secret formulæ for making cements, blackings or stains" (R. Vol. 4, p. 768).

Counsel for the United States made substantially the same erroneous statement during the trial (R. Vol. 1, p. 61, lines 37–41).

The F. G. Farnham Brush Manufacturing Co.

The petition states that—

> "The vendors agreed that they would not engage, directly or indirectly, or in any way assist in *any competition*, . . . for a period of 15 years" (italics ours) (R. Vol. 1, p. 1013).

In fact, the covenant was *limited to* "*brushes* or parts or supplies therefor" (italics ours) (R. Vol. 4, p. 774).

Counsel for the United States made the same erroneous statement during the trial (R. Vol. 1, p. 62, lines 20–24).

Zotique Beaudry.

The statement in the petition as to Beaudry's covenant to disclose future inventions relating to heel burnishing machinery (R. Vol. 1, p. 1016) *omits the limitation* to the period of fifteen years (R. Vol. 4, pp. 851, 852).

Richardson Shoe Machinery Company.

The petition alleges that the vendors agreed that they would not for a period of ten years "compete with the *business* carried on by defendants" (R. Vol. 1, p. 1017) and Mr. Fowler made the same broad allegation during the trial, but, on being corrected, admitted that the agreement was *limited* to "*McKay sewing*" and "*clicking*" machines (italics ours) (R. Vol. 1, p. 69, lines 27–31; Vol. 4, pp. 875, 876).

Harry L. Rice and Fred LaChapelle.

The petition states that the vendors covenanted to assign all inventions, etc.,—

> "relating to any methods, machinery, mechanisms, tools, or devices intended for use *in the manufacture of boots and shoes*" (italics ours);

and that the vendors also covenanted—

> "that neither of them would, directly or indirectly, engage in *any business* which would interfere or compete *with the business of defendants*" (italics ours) (R. Vol. 1, pp. 1018, 1019).

Both these covenants were in fact *limited* to methods, machinery, etc., adapted—

> "for use in attaching in whole or in part the welts, outsoles, or insoles of welted or turned footwear" (R. Vol. 4, pp. 899–901).

The same erroneous statement was made by Counsel for the United States during the trial (R. Vol. 1, p. 71, lines 21–28).

Ellis Lacer Company.

The petition sets forth that the vendors covenanted that—

(1) "They would not, directly, or indirectly, engage in *any business in competition* with defendants, and that"

(2) "they would convey to defendants, without additional consideration, *all inventions* and letters patent of the United States and of *all* other countries which they or either of them might make or acquire at any time within five years" (italics ours) (R. Vol. 1, p. 1019).

Both statements are grossly exaggerated. Both covenants were strictly limited to the subject-matter of this transaction.

(1) The covenant against competition was limited to machinery, devices, etc., "useful for or adapted to the purpose for which *Ellis lacers* are designed," and it was limited to a period of *five years* (italics ours) (R. Vol. 4, p. 908).

(2) The covenant to convey future inventions and patents within five years was limited to the *Western Hemisphere* and to inventions "adapted to the purpose for which *Ellis lacers* are designed" (italics ours) (R. Vol. 4, p. 908, par. 6).

Counsel for the United States made similar erroneous statements during the trial (R. Vol. 1, p. 72, lines 14–20).

The Wentworth Company.

The petition states that the covenant against competition covered—

> "*any* machinery or devices that would *in any way compete* or interfere with the business of said United Shoe Machinery Company" (italics ours) (R. Vol. 1, p. 1019).

This covenant was in fact *limited* to—

> "any machinery or devices of any kind *heretofore dealt in*, exploited, manufactured, or built (whether in the form of a model, experimental or commercial machine or device) or originated *by or for the said The Wentworth Company*" (italics ours) (R. Vol. 4, p. 918).

Adam H. Prenzel.

The petition states that Prenzel agreed to assign inventions and Letters Patent which he should *thereafter* acquire, relating to the class of machines covered by the agreement (R. Vol. 1, p. 1022).

The covenant was in fact *limited in time* by the expiration of the patent assigned or to be obtained upon any application assigned which should last expire (R. Vol. 4, p. 1048).

Counsel for the United States made the same erroneous statement during the trial (R. Vol. 1, p. 75, lines 38–41).

VI.

THE PURCHASE OF THE PATENTS AND INVENTIONS OF THOMAS G. PLANT.

1. INTRODUCTORY STATEMENT.

In September, 1910, the United Company acquired the patents and inventions of Thomas G. Plant. In the same transaction it acquired from Plant sixty per cent. of the capital stock of the Thomas G. Plant Company, a corporation manufacturing women's shoes. The consideration was $3,000,000 in cash and $1,500,000 in common stock of the United Company at par, the market value of which was $3,000,000.

The United States has laid great stress upon the Plant Purchase, because it is the only acquisition made by the United Company involving patents relating to any considerable number of machines and involving a substantial purchase price. Except that the patents thereby acquired were of great value, and when incorporated into the United Company's machines resulted in the greatly increased efficiency of a number of machines, whereas the other transactions were mostly concerned with a single patented improvement or machine, the Plant transaction did not differ from the more or less insignificant transactions which we have considered above. It was not made to eliminate a competitor, as the District Court found and the record abundantly proves, but to enable the United Company to incorporate the Plant patented improvements in its superior machines and to settle a vast amount of threatened and pending patent litigation which would have seriously interfered with the development of the United Company's machines.

It is not unimportant to note that this transaction upon which so much reliance is placed by counsel for the United States took place over eleven years after the formation of the

United Company. Even if it were of the character which the United States alleges, and were in and of itself unlawful, it would have little weight in proving the unlawful charge made by the petition. The petition charges an unlawful project formed in 1899 to acquire all shoe machinery concerns and to refuse to lease machinery unless practically all machinery was so taken. The acquisition of the Plant patents eleven years later would have little significance in proving this unlawful project unless proved to be part of such a continuing plan formed in 1899 and continuing up to 1910, which the record abundantly refutes.

The petition alleges that Plant—

> "was engaged in the manufacture of machines designed and adapted for use in performing all the principal operations in the manufacture of boots and shoes which can be performed by the aid and use of machinery" (R. Vol. 1, p. 1019).

This statement and many others in the petition regarding this transaction are incorrect and are entirely unsupported by the evidence.

Plant was not "engaged in the manufacture of machines." He was and had been for many years engaged in the manufacture of shoes (R. Vol. 1, p. 557, lines 22–26). He had, however, conceived valuable inventions relating to shoe machinery, and he had constructed a number of experimental machines embodying his inventions and had installed them in the shoe factory which he controlled where women's shoes were made exclusively, the factory of the Thomas G. Plant Company. He had not put any machines into any other factory. To avoid confusion it should be clearly understood that "the Plant machines" which will be frequently referred to in the briefs and arguments for both parties were those machines in the factory of the Shoe Company; they were not machines that Plant had to sell or machines that the United Company purchased. Those machines had been bought and paid for by the Plant shoe manufacturing concern and they were not for sale. Their only importance in this case is that they were concrete evidence showing how much or how little Plant had accomplished.

Plant was not a competitor of the United Company. He was not carrying on any shoe machinery business and he was not prepared to supply any machines. He declared that he did not want to go into the shoe machinery business, that he desired to retire from business; and after the purchase he did retire. There is uncontradicted evidence showing that the sole purpose of the Plant enterprise was to create something which he could sell to the United Company. He so stated himself and the history of his negotiations with the United Company proves this to be the fact. He offered a large commission—$250,000 and later $500,000—to an influential shoe manufacturer if he succeeded in effecting a sale to the United Company, and he later offered and had to pay a commission of five per cent. to another intermediary who undertook to effect a sale to the United Company.

The record establishes that the Plant machines were crude, really in the experimental stage, entirely useless for men's shoes and unfit for the making of women's shoes; that in their use in the Plant shoe factory they were constantly breaking down; that they broke a great number of lasts; that it was necessary to employ a large number of men to repair shoes that were defective on account of the poor work of the machines; that it cost three and a quarter cents per pair more to make shoes on them than it cost on the United Company machines; that the profits of the Plant shoe business after the Plant machines were installed were one-half less than they had been when the United Company machines were used; that the machines could not be used for manufacturing shoes according to the methods universally followed by other shoe manufacturers; and that after the purchase the managers of the shoe factory, Plant's former associates, found it impracticable to continue the manufacture of shoes with Plant's machines and of their own volition discontinued the use of those machines and substituted United Company machines.

This evidence was almost entirely uncontradicted. After it had been introduced the United States made no effort in its rebuttal case to meet this evidence.

On the other hand, in the course of his experimental work Plant had made many inventions and his machines were

patented. Although their mechanical embodiments in Plant's crude machines were defective and unsatisfactory, the United Company's experts could see that many of those inventions were extremely valuable and represented important advances in the shoe machinery art. Plant's patents claimed those inventions broadly.

Plant had, however, developed his inventions and constructed his experimental machines upon the foundation which for many years the United Company and its predecessors had been building; he had added his improvements to old machines of the United Company, and all of his important machines infringed the United Company's patents,—a great number of claims in approximately a hundred patents,—as shown by evidence entirely uncontradicted. Many suits had already been brought by the United Company for infringements of its patents by the Plant machines. On the other hand, fifteen of the United Company's machines, including a number of its most important machines, infringed twenty patents owned by Plant. There were also pending in the United States Patent Office twenty-three interferences between patent applications owned by Plant and applications owned by the United Company. The patent complications in which the extremely valuable Plant welter and stitcher improvements were involved were such that neither Plant nor the United Company could have supplied those inventions to the public without infringing the other's patents.

The United Company had never sought nor even considered any purchase from Plant until overtures were made by Plant. The interviews resulting from those overtures were all sought by Plant and his proposals were several times declined without encouragement to renew them. Throughout the negotiations Mr. Winslow insisted that he would not consider the purchase unless there were opportunity for the United Company's experts to examine the Plant machines and determine the value of his inventions, and that he would consider purchasing those inventions upon no basis other than the value which they would have to the shoe industry and to the United Company in the advancement of the art.

After negotiations had several times been broken off by

the United Company and renewed by Plant, he finally permitted its experts to examine the machines in the Plant shoe factory. As a result of the extended and thorough examination which was then made it was determined that while the Plant machines themselves were crude and unsatisfactory, Plant had made some very valuable inventions which could be incorporated n the United Company's machines with great advantage to the United Company and to its customers. Accordingly, when Plant offered to sell those inventions at a much lower price than he had previously named, and offered also to include his valuable holdings in the shoe manufacturing company, the United Company accepted the offer. The primary reason for the purchase was the great value of the Plant inventions, but the United Company's officials were also greatly influenced by a realization that common ownership of the patents and applications of the two parties would avoid endless litigation and chaotic conditions in the shoe manufacturing industry which would have been intolerable. The record shows conclusively that the sole reasons for this purchase were the great benefits to the United Company and to the shoe manufacturing industry which would result, first, from incorporating Plant's valuable inventions in the superior machines of the United Company and, second, from the avoidance of endless litigation and chaotic and intolerable conditions in the shoe manufacturing industry which could be averted only through common ownership of the patents and applications of the two parties. The record also shows that the Plant patents were worth more than the United Company paid for them.

Immediately after the acquisition of the Plant patents and inventions the United Company put many inventors at work to adapt to the United Company's machines the most important Plant inventions, the value of which had already been determined, and its inventors and mechanics worked night and day until those inventions had been successfully embodied in its machines. This work was necessary because the United Company's modern machines were of entirely different design from the Plant machines and different mechanical constructions were required to fit the Plant inventions to the United Company's machines. Experts were immediately sent to

the Plant shoe factory to make a thorough study of the Plant machines and inventions and to recommend what should be done with each Plant machine and invention. They spent many weeks in that investigation and their exhaustive written report is an exhibit.

The United Company improved and adopted seventeen of Plant's patented machines, and inventions covered by forty-three of the patents acquired from Plant have been incorporated in twenty-six of the United Company's machines. Of these the welter and stitcher inventions are so valuable that alone they more than justify the price paid for all the Plant inventions. The record abounds with testimony as to the savings in material and other economies, the increased output and the improved working conditions, both in higher wages and in convenience of operation, which have been effected by these improvements as they have been incorporated in the United Company's machines (*infra*, pp. 523, 541–550).

That the shoe manufacturing industry has been greatly benefited by common ownership of the Plant patents and those of the United Company is beyond dispute. Shoe manufacturers now have the best machines available, incorporating the valuable inventions of both parties, which could not have been had without common ownership of the patents, and intolerable conditions which otherwise would have inevitably resulted from the chaotic patent situation have been avoided.

We propose to discuss the evidence relating to the Plant purchase in the following order:—

(1) The evidence showing that Plant was not in competition with the United Company and did not desire or intend to go into the shoe machinery business.

(2) The evidence that the Plant machines were not commercially successful.

(3) The evidence as to Plant's valuable inventions and the use which the United Company has made of them.

(4) The evidence showing that the Plant purchase resulted in great benefits to the shoe manufacturing industry.

(5) The evidence showing that these great benefits were the only reason for the purchase.

(6) The evidence that the Plant patents were worth more than was paid for them.

(7) The evidence showing the history of the negotiations between Plant and the United Company.

(8) The evidence regarding the alleged attempt of certain shoe manufacturers to purchase Plant's patents after he had agreed to sell to the United Company.

(9) The evidence regarding misstatements as to facts by the patent expert for the United States.

2. PLANT WAS NOT IN COMPETITION WITH THE UNITED COMPANY, HE HAD NO MACHINES TO SELL, AND THE MACHINES WHICH HE HAD CONSTRUCTED AND HAD SOLD TO HIS OWN SHOE COMPANY WERE NOT COMMERCIALLY SUCCESSFUL.

A. Plant was not Engaged in Shoe Machinery Business, He did not Intend to Engage in that Business, and He had no Machines to Sell.

The only machines which Plant had constructed were the crude and defective machines which months before he had forced into his own shoe factory, of which he owned sixty per cent. of the stock (R. Vol. 1, p. 777, lines 18–23). Those machines had been bought and paid for by the Shoe Company (R. Vol. 1, p. 778, lines 13–14, 20–21), and accordingly had been definitely and completely withdrawn from the field of shoe machinery competition; there is no evidence that in September, 1910, Plant had any machines to sell or that he intended to make any machines.

As we have already pointed out, it should be clearly understood that the "Plant machines," about which there is so much testimony and which will frequently be referred to in the briefs and arguments for both parties, were those machines in the Plant shoe factory, and that they were not machines which the United Company purchased or which Plant had for sale.

The petition alleges that Plant had advertised his machines extensively through the public press (R. Vol. 1, p. 1020). The United States failed to put any such advertisements in

evidence, although it had no difficulty in producing other advertisements published before the United Company was formed. The record shows that the advertisements which Plant did publish were not advertisements of machinery.

> "There were advertisements of the opinions of lawyers in regard to the shoe machinery leases. . . . The advertisements attacked the United Company's leases; but they were not advertisements of machinery in the sense of advertisements of anything for sale" (Herrick, R. Vol. 1, p. 611, lines 17–21).
>
> "They were advertisements calculated to 'bear' the stock of the United Shoe" (Howe, R. Vol. 1, p. 687, lines 44–45).

The petition alleges that Plant—

> "had solicited among shoe manufacturers, in various parts of the United States orders for the sale and lease of such machines" (R. Vol. 1, p. 1020).

Absolutely the only evidence suggesting any attempt by Plant to put machines into any shoe factory is the testimony regarding his offers, declined in both instances (R. Vol. 1, p. 576, lines 15–21; p. 720, line 5), to equip the factories of the Commonwealth Shoe & Leather Company (of which C. H. Jones is president) and the Endicott, Johnson Company, as a part of his scheme for forcing a sale to the United Company. Mr. Endicott testified that Plant in May, 1910,—

> "stated that his plan was to fit up three factories—the Thomas G. Plant factory, Commonwealth Shoe & Leather Company factory, and Endicott, Johnson Company's factories—with his machinery, and then sell out to the United Company" (R. Vol. 1, p. 575, lines 41–45; p. 576, lines 25–26).
>
> "I think his proposition to equip our factory and the Commonwealth factory and the T. G. Plant factory was made to me in the presence of my partner and my expert, I think, and in the presence of Mr. Charles H. Jones and Mr. Clarence D. Reed. Mr. Reed is Mr. Jones's associate and is the practical man in the Commonwealth Shoe Company" (R. Vol. 1, p. 576, lines 27–32).
>
> "He stated to me, as I testified, that he wanted to fit us up, use us as a club to sell out to the Machinery people" (R. Vol. 1, p. 576, lines 34–36).

"He said he would like to fit up our factory to help him to sell out to the United Shoe Machinery Company" (R. Vol. 1, p. 585, lines 2–4).

As to these offers it was found by the District Court (Dodge, J., R. Vol. 1, p. 1142):—

"There is uncontradicted evidence of declarations by Plant in 1909 that his intention was to equip these two other factories and his own with his new machines and then sell out to the United Company. That the effecting of such a sale, and not any actual competition in the market with machines then in use, was his real purpose, is hardly left doubtful by the history of his subsequent negotiations with the defendants."

Robert Hazzard, a shoe manufacturer, testified:—

"Mr. Plant sent me one of his statements and wrote me a very nice letter about the wonderful things he had in machinery at the time he started his newspaper campaign. I told him I was very much interested and should like to bring my superintendent to Boston and look the plant over, but he wrote me that the plant was not open for inspection. Afterwards he sent a nice illustrated pamphlet and I told him I could not see any use in sending it out if he didn't have anything to sell; and that if he did, I would like to see it. My letter was never answered. I never had anything to do with the operation of Plant's machines; he would not let me see them" (R. Vol. 1, p. 650, lines 28–38).

There is a great deal more testimony, entirely uncontradicted, showing that Plant never had any intention of going into the machinery business, but his real purpose, the sole object and end of his enterprise was to sell out to the United Company.

Plant himself made repeated declarations to this effect. For example:—

"Mr. Plant stated, as he had before, that *he wanted to get out of business entirely . . .* that *he didn't want to embark in the shoe machinery business*" (italics ours) (Winslow, R. Vol. 1, p. 487, lines 11–12, 15–16).

"Mr. Plant stated that he would like to get out of business" (Endicott, R. Vol. 1, p. 580, lines 36–37).

Plant had previously, in 1909, endeavored to interest Mr. Endicott in his venture, stating that the investment—

> "would require some nerve, but *would be a pretty quick turn-over*" (italics ours) (Endicott, R. Vol. 1, p. 576, lines 5–6).

Plant told Mr. Herrick that—

> "he was anxious to get out of business . . . that he would like to get the money and retire . . . *that he had always planned to so arrange himself that he would be free to sell out to the United Shoe Machinery Company*" (italics ours) (Herrick, R. Vol. 1, p. 603, lines 26–27, 30, 32–34).

At another time Plant told Mr. Herrick that while he had talked about putting his machinery in a factory he didn't intend to do it and that—

> "*he had always held himself in a position where he could trade with the United Shoe Machinery Company, and that was his plan*" (italics ours) (R. Vol. 1, p. 611, lines 3–5).

On cross-examination Mr. Herrick testified that during a conversation with Mr. Plant—

> "he never said anything to the effect that he was going to put competition into the field. *He always said that he had got it up to sell to the United Company*" (italics ours) (R. Vol. 1, p. 615, lines 26–28).

Harry W. Smith, whom Plant employed to effect the sale, testified that on July 22, 1910, Plant said to him "*that he wanted to play the game as he had figured to play it*" (italics ours), and also said:—

> "'I can do nothing on the eastern end. I have broken with Winslow, and Endicott has gone back on me.' . . . . 'Now, if you can get Barbour to send for me, as you told me you could, then I can get an opening with Barbour, and if you can get Herrick, so Herrick will come to my side of the case, I believe something can be done.' . . . He said Mr. Herrick and Mr. Barbour were the strongest against him" (R. Vol. 1, p. 769, lines 38–44; p. 770, lines 7–9).

Finally there is uncontradicted evidence that Plant agreed to pay Mr. Endicott a commission of $250,000 if he would effect or help effect a sale to the United Company and that later he increased the offer to $500,000 (Endicott, R. Vol. 1, p. 576, lines 39–41; p. 580, lines 16–18); and that he paid his intermediary, Smith, a commission of $300,000.

> "For accomplishing what he wanted me to do, he paid me five per cent. on the six million—$300,000" (Smith, R. Vol. 1, p. 771, lines 8–10).

After the sale of his patents Plant carried out his expressed intention of retiring from business (R. Vol. 1, p. 488, lines 24–25).

B. Even if the Plant Machines had been Commercially Successful They would not have been Accepted by Shoe Manufacturers because They Made Shoes by Obsolete Methods and could not be Used for Making Shoes according to the Methods Universally Followed by Other Shoe Manufacturers.

George E. Warren, defendants' practical expert, who spent over two days examining the Plant machines in the Plant shoe factory before the purchase and about eight weeks in continuous study of them after the purchase (R. Vol. 1, p. 785, lines 7–20; p. 808, lines 42–44; p. 809, lines 1–3; p. 814, lines 34–35; p. 815, line 44; p. 816, lines 1–2), testified that every manufacturer that he knows of is using the rounding and channeling machine. Plant had no rounding and channeling machine. His catalogue illustrates a "Rough Rounder," *i.e.*, rounding and channeling machine, but it "was never completed" and Plant told Warren that it "was not in any condition to be shown" (R. Vol. 1, p. 792, lines 16, 18–19; p. 793, lines 13, 30–31). McGaffee, general manager of the Plant shoe factory, had never seen such a machine; Plant told him "he didn't have any rough rounding machine" (R. Vol. 1, p. 776, line 29; p. 781, lines 2–3). Plant's method of making shoes without a rounding and channeling machine was obsolete before the United Company was formed. The invention of the rounding and channeling machine revolutionized the

method of attaching the outersole. By the old method which Plant used the outsole was shaped and then channeled before it was put on the shoe. By the modern method a blocked or unshaped outsole is temporarily cemented to the shoe and then is shaped to that particular shoe and the channel is formed in exactly the right location for that shoe, both operations being performed simultaneously by the rounding and channeling machine. The advantages of the modern method as compared with Plant's obsolete method are set forth in the record in detail, and an adequate explanation of the absence of a rounding and channeling machine from Plant's line will be found in the discussion of the United Company's patents on such machines (R. Vol. 1, p. 793, lines 13–15, 23–24; R. Vol. 2, pp. 2304–6, 2330, 2331).

Nine of Plant's machines were adapted only to peculiar methods which were in use only in the Plant shoe factory. For example, Plant used a peculiar kind of innersole and five of his machines were peculiarly adapted for making that innersole, of which Mr. Warren said, "We don't know of anybody that would care to make it" (R. Vol. 1, p. 792, lines 34–37, 42–43). Another of these machines was Plant's "cleaning and treeing leg" which operated according to an obsolete method and "the result was that the shape of the shoe was spoiled" (R. Vol. 1, p. 793, lines 34–43; p. 794, lines 1–9).

Plant's stitcher—

> "could not be used commercially, because it had never been organized to sew shoes with extension edges. This was a very serious defect, because almost every manufacturer wished to make shoes with extension edges" (Warren, R. Vol. 1, p. 794, lines 37–40).

Nearly all manufacturers used and insisted upon the extension edge organization (sometimes called the Baltimore Edge Attachment) and it produced a great deal better work (R. Vol. 1, p. 795, lines 25–27). Nearly all welt shoes, both men's and women's, are made with extension edges. The practical advantages of the extension edge and the importance and value of an organization in an outsole stitching machine

which will enable it to attach the soles of extension edge shoes are explained in full detail by defendants' experts (R. Vol. 1, p. 794, lines 41–44; p. 795, lines 1–5; Vol. 2, pp. 2281–3, 2762).

Mr. McGaffee stated that the lack of an extension edge organization on the Plant stitcher "was a great hindrance to the quality made on that machine" and that it resulted in the shoe ripping (R. Vol. 1, p. 775, lines 34–35, 43–45). Ryan, who operated a Plant stitcher, testified that through the lack of the extension edge device there was "a great deal of trouble running into seams and one thing and another" (R. Vol. 1, p. 707, lines 7–9).

Plant told McGaffee that he could not use an extension edge organization on account of the United Company's patents, which are set forth in the record (R. Vol. 1, p. 775, lines 32–34; p. 780, lines 1–7; Vol. 2, p. 2282).

Again, Plant had produced no pulling-over machine (R. Vol. 1, p. 792, lines 10–11), another of the "machines for preparing and attaching the bottoms to the uppers of shoes" (R. Vol. 1, p. 839, lines 13–14). The testimony regarding defendants' patents on that machine shows that Plant was wise not to enter that field (R. Vol. 2, pp. 2540–8).

Plant's heel slugger "couldn't handle the zinc wire or soft brass wire" which are commonly used for slugging, and in using that machine they had to slug the toplifts before they were attached to the shoe, thus not securing the advantages which are obtained by the general practice of inserting the slugs after the toplifts are attached to the shoe (R. Vol. 1, p. 796, lines 38–44; p. 797, lines 10–11; Vol. 2, p. 2464).

Also eight other Plant machines, including important machines such as the heel-seat dinker, stitch separator and sole rounder, were either unfinished or were regarded by Plant himself as experimental, and the Plant Shoe Company was making shoes without using those machines, getting along in one way or another as best it could (R. Vol. 1, p. 791, lines 35–45; p. 792, lines 1–33; p. 814, lines 1–7).

Mr. McGaffee testified that it cost three and one-quarter cents per pair more to manufacture shoes in the Plant factory in accordance with the Plant method than in accordance with the method of the United Company's machines (R. Vol. 1, p. 780, lines 43–45).

C. Even for Manufacturing Shoes according to Plant's Obsolete Methods, Differing Radically from Methods Universally Used, the Plant Machines were not Commercially Successful in the Plant Factory where Women's Shoes only were Made.

No better evidence on this proposition can be had than that of the man who as general manager of the Plant shoe factory had to make shoes on the Plant machines. Mr. McGaffee testified that the Plant machines "wouldn't stand up" (R. Vol. 1, p. 774, lines 15–16); that the profits of the shoe business the first year that the Plant machines were installed were one-half less than the profits of the preceding year when United Company machines were used, on account of "the great amount of bother and trouble we had with the Wonder Worker * machines" (R. Vol. 1, p. 778, lines 6–12); that an average of 235 pairs of lasts were broken each week on the Plant machines as compared with ten pairs a week on the United machines which were displaced by the Plant machines (R. Vol. 1, p. 777, lines 6–12; p. 780, lines 9–10); and that he had thirty repairers at one time repairing shoes after the Plant machines (R. Vol. 1, p. 776, lines 1–2).

> "The Wonder Worker would do the work so poorly that I would have to have somebody fixing the work up by hand before it could go to the next department" (R. Vol. 1, p. 779, lines 3–5).

He also testified as to the "continual breaking down" of the Plant machines (R. Vol. 1, p. 774, lines 22–23), and, finally, he stated as his reason for substituting the United Company machines for the Plant machines,—

> "I put those machines in for the simple reason that I couldn't make the shoes with the Wonder Worker" (R. Vol. 1, p. 774, lines 40–41).

Mr. Winslow testified,—

> "During our inspection we saw many machines that were broken down, not in condition to operate" (R. Vol. 1, p. 491, lines 24–26).

* Plant called his machines "Wonder Workers" (R. Vol. 1, p. 773, lines 20–22).

Mr. Warren testified that of the sixty-nine machines in the Plant catalogue (P.'s Ex. 266) ten machines were unfinished or had only been used experimentally (R. Vol. 1, p. 788, line 27; p. 791, lines 35–40); that eleven more machines were not commercial, with detailed explanations (R. Vol. 1, pp. 794–7); that seven other machines were "faulty in construction," also with detailed explanations (R. Vol. 1, p. 797, lines 28–45).

Among his criticisms of specific machines he testified that he observed frequent breakage in the welter, in the stitcher and in the heel-attaching machine, and observed also the very noticeable breakage of lasts (R. Vol. 1, p. 790, lines 35–40; p. 791, lines 6–7); and stated that the Plant welter was mechanically defective and had to be run at practically maximum speed all the time "or else it would stop" (R. Vol. 1, p. 797, lines 23–27; p. 818, lines 26–37). The necessity of capacity for different speeds is explained in McGaffee's comparison of the Plant welter with the United Company welter (R. Vol. 1, p. 775, lines 23–28). Even the valuable improvements in the welter and stitcher "had not been carried out in a mechanical way," and Mr. Warren "felt satisfied that they would not stand up and do the work" (R. Vol. 1, p. 788, lines 3–7).

Of another defect in the welter Mr. Warren said:—

> "A particular weakness was the construction of the welt-guide and back-gage movement. With the particular mechanism used and the lightness of its construction this would not have lasted any time at all" (R. Vol. 1, p. 810, lines 20–24).

The leveler was constantly breaking lasts and required a great number of expensive forms,—the forms used at the Plant factory cost over $4,000. The custom sole layer required the same expensive forms and it was 50 per cent. slower than the United Company machine (R. Vol. 1, p. 795, lines 44–45; p. 796, lines 1–14, 24–28).

Four operators at the Plant shoe factory testified that the Plant toe and heel laster was much slower, that the work on the machine was very hard, and that accordingly the operators on those machines were given a raise in wages (R. Vol. 1, p. 761, lines 27–29; p. 762, lines 41–43; p. 764, lines 42–44; p. 765, lines 1–2, 31–38).

The testimony just referred to is typical of the evidence regarding the Plant machines, which is well summarized in Mr. Warren's following general comments:—

> "Generally speaking they were of such construction that *they would break and get out of order*" (italics ours) (R. Vol. 1, p. 794, lines 17–18).
>
> "And in looking over all these Plant machines we found by a careful examination that they were *faulty in construction, light in weight in places, and badly designed*" (italics ours) (R. Vol. 1, p. 790, lines 28–31).
>
> "These machines of Mr. Plant's, built as they were, in my opinion *would not have been commercially successful* to do work under the varying conditions under which machines have to be supplied to shoe manufacturers" (italics ours) (R. Vol. 1, p. 790, lines 15–18).

Mr. Warren further testified that he expressed emphatically to Mr. Winslow his opinion that—

> "the Plant machines as they were *would not be commercial;* we could not use them as they were, but that we would have to work them over entirely" (italics ours) (R. Vol. 1, p. 815, lines 25–27).

But perhaps the most conclusive evidence is the action of the Plant Shoe Company in throwing out the Plant machines, for which they had paid $400,000 less than three years before, and substituting the United Company's machines (R. Vol. 1, p. 774, lines 33–44; p. 778, lines 13–14).

Mr. McGaffee, general manager and vice-president of the Plant Shoe Company, stated his reasons for discarding the Plant machines as follows:—

> "I changed back again because I wanted to see if I could get a line of machinery that would stand up and manufacture shoes, without manufacturing machines all the time. I was absolutely satisfied that the Wonder Workers wouldn't stand up . . . the longer they ran the weaker they got. . . . I was not able to get out the work. . . . I couldn't make the shoes with the Wonder Worker" (R. Vol. 1, p. 774, lines 13–16, 23, 24, 40–41).

Mr. McGaffee further testified:—

> "The United Company has not in the slightest way interfered with my management of the business, or in any

> way attempted to exercise any influence or control over my judgment in the management of the business. . . . It was my judgment that determined the policy of the company with respect to the changing over from the Wonder Workers. . . . My action in putting in the United Company machines was governed absolutely by my own wishes and my own independent judgment. I did it because I felt that it was for the interests of the business of the Thomas G. Plant Company, of which I am a stockholder. The United Company never approached me in any way" (R. Vol. 1, p. 773, lines 15–19; p. 774, lines 16–18; p. 775, lines 1–6).

He found that the work of the United machines was "a great deal less expensive," that on those machines they saved three cents and a quarter a pair as compared with the work on the Plant machines, and that his operators could do a good deal more work and make more money than they could on the Plant machines (R. Vol. 1, p. 775, lines 13–16; p. 776, lines 17–22; p. 777, lines 24–28).

Mr. McLeod, "practical man" and a director of the Plant Shoe Company, who shared the responsibility for the selection of machinery, decided that the United machines would be best for their business and approved the change. Among his reasons he stated that the United machines—

> "do not tire an operator so much, so that the operator can do better work and feel fresher at night. . . . He can turn out a bigger day's work with the United machine than he could with the Wonder Worker machine" (R. Vol. 1, p. 782, lines 3–20, 25–27, 30–32).

He testified that he was in accord with what Mr. McGaffee said as to the economies and advantages effected by the change, the United Company did not bring any pressure or influence to bear, no suggestion was made that it would be advantageous to change machines, and the change was made in the exercise of his honest and independent judgment (R. Vol. 1, p. 783, lines 25–28, 33–39). Both these men had been connected with the Plant Shoe Company for over twenty years (R. Vol. 1, p. 773, lines 4–6; p. 782, line 6).

In its effort to meet this evidence the United States relies upon the testimony of McElroy, Florsheim, Selz, and Jones

(R. Vol. 1, p. 189, lines 15–25; p. 193, lines 11–26; p. 160, lines 35–39; p. 145, lines 40–44; p. 146; p. 114, lines 26–36; p. 124, lines 16–27). But beyond bare expressions of opinion by Selz and Jones that Plant's machines could have been used on men's shoes (see *infra*, pp. 528–530), none of these four witnesses went any further than to express an opinion about the quality of the *shoes* operated upon by the Plant machines. None of them said anything which controverts in any manner the evidence as to the weakness and numerous other defects of the Plant machines which has just been reviewed.

And after all this evidence had been put in by defendants the United States made no attempt whatever to meet it in its rebuttal evidence.

D. Much less could the Plant Machines have been Used on Men's Shoes, which Require much Stronger Machines and Frequently Machines of Entirely Different Types from Those Used on Women's Shoes.

It is not disputed that women's shoes exclusively were made in the Plant shoe factory and that there had been no use of the Plant machines in any other factory.

It is clear from the record that the problems that have to be solved in handling men's shoes, which are larger, made of heavier leather and with heavier box toes and counters and in which durability and wearing qualities are the first requisite, are entirely different from the problems met in producing machines for making women's shoes, which are smaller, made of lighter materials throughout, and in which the primary consideration is style and appearance. Accordingly for many operations the machines used on men's shoes and women's shoes are different. For example, we have seen that the Chase lasting machine was structurally not adapted and was never used for lasting women's welt shoes, while the Ideal lasting machine was structurally not adapted and was not successfully used for lasting men's welt shoes (*supra*, pp. 100–106).

All the testimony which we have reviewed above (*supra*,

pp. 517–523) showing that many of Plant's machines could be used for making shoes only by obsolete methods or by peculiar methods used only in the Plant shoe factory, and at prohibitive expense, condemns the machines for men's work as well as for women's work. The testimony that as used in the Plant shoe factory on women's shoes the machines were continually breaking down, that they were destroying lasts and that they did the work so poorly that it had to be fixed up by hand (*supra*, pp. 520–521), is further conclusive proof that the machines were entirely impracticable for use on men's shoes.

In addition to that evidence there is testimony bearing directly upon the capacity of the Plant machines for men's work and the possibility of using them on that work.

Mr. McGaffee, general manager of the Plant shoe factory, testified,—

> "I don't think you could have manufactured men's shoes on that line of machinery that Mr. Plant had got out and do it anywhere near satisfactory at all" (R. Vol. 1, p. 774, lines 30–32).

Mr. Howe, who examined the Plant machines with Mr. Winslow, testified that the Plant machines were—

> "too light to stand commercial use for making men's work,"—

and that they—

> "were not strong enough for continuous use, in my judgment, on his own manufacture, women's welts" (R. Vol. 1, p. 668, lines 35–37; p. 688, line 44; p. 689, lines 8–9).

Mr. Warren testified that in his opinion the Plant machines—

> "would not have been commercially successful to do work under the varying conditions under which machines have to be supplied to shoe manufacturers . . . it has always been the experience of anybody that has designed or made any shoe machinery that you can't tell by trial on one kind of work whether a machine will become commercial or not" (R. Vol. 1, p. 790, lines 16–18, 21–24).

The mechanical and shoemaking reasons why the various Plant machines could not be used for men's shoes were explained in great detail by Mr. Warren. Typical of his criticisms of specific machines are the following:—

HEELER AND ATTACHER: "The pressure in closing the heel down on to the shoe is much greater on a man's shoe than on a woman's shoe. We found parts that would break on a woman's shoe on account of this pressure, and we knew that when we attempted to apply any more pressure the breakage would be more frequent; and, also, there are more nails to drive in a man's shoe than in a woman's shoe, and that would have put additional strain on the machine, so that there would have been continual trouble in that respect, as there was in doing the woman's shoes" (R. Vol. 1, p. 794, lines 24–33).

HEEL AND TOE LASTER: "We knew that it did not compare with our No. 5 machine for strength, and that trouble would come if it was attempted to be used on any heavy grade of work" (R. Vol. 1, p. 796, lines 34–37).

HEEL LOADER: "The machines in use at the Plant factory were continually giving trouble, and they only had to handle a small number of nails. Now, the wear and strain on the machine when used for men's work would have been a great deal worse" (R. Vol. 1, p. 797, lines 14–18).

"The LOOSE NAILER had the disadvantage that it was so constructed that you could not handle a nail longer than seven-eighths of an inch. In some classes of work, heavy double outersoles and spring heels, it is necessary quite often to drive nails longer than that" (R. Vol. 1, p. 797, lines 41–45).

"The WELT BEATER was not provided with any means for what is called slashing the welt . . . all men's work had to be slashed in order to beat it out properly" (R. Vol. 1, p. 795, lines 34–35, 40–41).

"The HEEL BREASTER was particularly adapted for women's work. There are several types of heels used in men's factories that could not be done on this machine, because either the knife or some of the mechanism was in the way" (R. Vol. 1, p. 797, lines 19–22).

Two Manufacturers of Men's Shoes to whom Plant Offered his Machines Examined the Machines and Decided that they were not Practicable for Men's Shoes.

As we have shown (*supra*, p. 514), Plant made an effort to put these machines into the factories of two shoe manufacturers as a part of his scheme for forcing a sale to the United Company. In consequence of those offers his machines were examined by those manufacturers.

Clarence D. Reed, treasurer of the Commonwealth Shoe & Leather Company (of which witness for the United States, C. H. Jones, is president), who has charge of all the factories, the machinery and the selection of the machinery for that company (R. Vol. 1, p. 119, lines 16–17; p. 719, lines 25–26, 34–36), examined the Plant machines with particular reference to their adaptability for his factories, and "decided we better not have them" (R. Vol. 1, p. 720, line 5). He testified:—

> "Of course the machines looked light to us, and our work is men's work, which is heavier, and we thought there would be danger of breakage and trouble. . . . We thought that it would be too much of a risk, and that we should have to lower our standard of shoemaking. . . . We should get poorer work" (R. Vol. 1, p. 720, lines 7–9, 12–13, 16).

Henry B. Endicott, of the firm of Endicott, Johnson & Company, who made 40,000 pairs a day of all kinds of men's shoes (R. Vol. 1, p. 575, line 31; p. 576, lines 21–23), testified that he, his partner, and one of his superintendents spent a day examining the Plant machines (R. Vol. 1, p. 583, lines 28–30), and that—

> "as a result of my own examination and the reports of my experts the conclusion which I came to, as a practical shoe manufacturer, in regard to the equipment of my factory with Plant's inventions, was *not to put in his machines.* The reason for that conclusion was that, from the reports of my experts, my own judgment was that *the machines were not strong enough or practical to do our work*" (italics ours) (R. Vol. 1, p. 576, lines 15–21).

On cross-examination he testified,—

> "From the reports my experts gave me, I felt they were not practical for our business" (R. Vol. 1, p. 584, lines 8–9).

Fruitless Efforts of the United States to Show that the Plant Machines could have been Used for Men's Shoes.

In support of its contention that the Plant machines could have been used on men's shoes, the United States relies upon the testimony of three witnesses, McElroy, Selz, and Jones.

McElroy testified that he examined the Plant machines and that—

> "They were actually at work on women's shoes. I saw men's shoes there which were made upon them" (R. Vol. 1, p. 189, lines 24–25).

On cross-examination he testified that the men's shoes that he saw there had been stitched but not heeled, that he didn't know when they had been stitched, and that to the best of his information men's shoes had never been made for the market on the Plant machines (R. Vol. 1, p. 193, lines 13–17). He added:—

> "I questioned the strength of those machines for making men's shoes. . . . The making of men's welts involves dealing with heavier material and requires more strength in the machine than the making of women's welts. If his machines had been used commercially on men's shoes the frames should have been stronger. As a commercial proposition they would have to be built heavier to make them available for that purpose" (R. Vol. 1, p. 193, lines 17–18, 20–26).

Selz, another shoe manufacturer, testified that he spent half a day examining the Plant machines and that they could have been used in making men's shoes (R. Vol. 1, p. 146, lines 1–2, 28–30). On cross-examination he testified that he questioned the strength of the Plant machines for making men's shoes and that he had never seen them used for making men's shoes (R. Vol. 1, p. 155, lines 33–45; p. 156, lines 1–3).

Selz was a prejudiced witness. He is a large stockholder and a director in the Boylston Manufacturing Company, a competing shoe machinery company (R. Vol. 1, p. 150, line 28).

Selz also testified that with several others, including Mr. Jones, he had visited the Attorney-General's office in Washington on shoe machinery business (R. Vol. 1, p. 155, lines 1–4).

Jones's testimony goes no further. Basing his expression of opinion upon an examination of Plant's machines "at different times during one entire day" (R. Vol. 1, p. 114, lines 29–30), he said that those machines could be used on men's shoes,—although admitting that he never knew of men's shoes being made on them (R. Vol. 1, p. 124, lines 16–27). That is all,—the barest expression of opinion without a bit of technical or practical explanation. But Jones's opinion on a matter requiring practical and technical knowledge is of no weight. He is not a practical shoe manufacturer. He admitted, "I haven't visited the factory for three years." He was so thoroughly out of touch with his company's factory that he testified that they did not use the No. 5 Lasting Machine, when as a matter of fact all the shoes being made in that factory were being lasted upon 38 No. 5 machines (R. Vol. 1, p. 127, lines 8–10; Vol. 2, p. 2372, lines 3–6).

And against his testimony we have that of Clarence D. Reed, the treasurer of Jones's company, the Commonwealth Shoe & Leather Company, who owns over one-third of that company, and who has charge of the manufacturing end of the business, including the making of the shoes. He testified that he had charge of all the factories and has had charge of the selecting of the machinery for the factories for over ten years. He said that he examined the Plant machines in 1910, "saw them operating and went through them," considered the question of equipping his factories with those machines, and decided not to take them. His reasons were that the machines were too light, that "there would be danger of breakage and trouble," and that they would "get poorer work."

> "We thought that it would be too much of a risk, and that we should have to lower our standard of shoemaking" (R. Vol. 1, pp. 719–21).

Furthermore, Jones, like Selz, was a prejudiced witness. He testified:—

> "I am a stockholder and director in the Boylston Manufacturing Company. I have a stockholding interest in it that is large for me" (R. Vol. 1, p. 122, lines 28–30).

His well-known hostility to and activities against the United Company were evidenced by reluctant admissions and evasive answers throughout his cross-examination. When questioned about his attacks on and activities against the United Company he admitted that he had made "perhaps three visits to Washington" and that he had appeared before the Massachusetts Legislature; that he had called on the Attorney-General and appeared before committees of Congress making complaints against the United Company:—

> "*Q.* And you spent a number of days there detached from your shoe business in Massachusetts, sitting around committee rooms and making complaints, didn't you?
> "*A.* Yes, sir";

that he had furnished information regarding the United Company to assistants to the Attorney-General; that he had appeared before a committee of the Massachusetts Legislature making complaints against the United Company's leases; and that he had published articles in the newspapers attacking the United Company's method of leasing machinery (R. Vol. 1, p. 119, lines 34–44; pp. 120, 121; p. 122, lines 1–24).

These bare expressions of opinion by three witnesses,—none of whom went so far as to say that the Plant machines were capable of *actual commercial use* on men's shoes,—constituted the entire showing of the United States on this point; and, as we have seen, Selz and Jones were prejudiced witnesses and Selz and McElroy retracted on cross-examination. And after defendants had introduced overwhelming testimony of many witnesses showing that the Plant machines were absolutely unfit for use on men's shoes (*supra*, pp. 524–528), no attempt to answer that evidence was made by the United States in its rebuttal.

E. There is Nothing in the Record to Indicate that Plant could have made his Machines Commercially Successful.

The United States urges that there is nothing in the record to indicate that the defects in the Plant machines could not have been easily remedied, and points to the evidence that Plant and his assistants were possessed of a very high grade of inventive genius. But it is common knowledge that inventive genius is frequently unaccompanied by mechanical genius and that many a successful inventor is not even able to construct experimental devices embodying his inventions, —much less produce successful commercial machines.

On the contrary, there is nothing in the record to indicate that Plant ever could have made his machines commercially successful for either men's or women's shoes. But the record does contain abundant evidence as to the time that is required and the difficulties that must be overcome in transforming an experimental shoe machine into a commercially successful machine. That evidence shows that after a new machine has been constructed so that it can actually be used in making shoes, it frequently takes years of continuous experimental work before the machine becomes a commercial success, that is, before the machine can be satisfactorily used under commercial conditions, and that during all that period there is no assurance that it ever will be made commercial.

The inseam trimming machine, which was put out by the Goodyear Company prior to 1899, did not become an entirely successful machine until 1909, after ten years of experimental work resulting in a long series of improvements (R. Vol. 2, pp. 2505–7).

Experimental work upon a new slugging machine began in 1902 and has been continuously carried on ever since; the third design was given a shoe factory trial in 1907 and it then seemed sufficiently promising to justify building a number of machines to try out in different factories, and fourteen machines of that design were put into factories. It was confidently believed that the difficulties which were encountered in the use of those machines could all be overcome in time,

but those problems have not been solved and the machine is not yet successful (R. Vol. 2, pp. 2468–70).

> "Whether or not the machine will ever become commercially successful is still problematical. Considerably over $100,000 has been spent already in the experimental work upon this machine" (Howard, R. Vol. 2, p. 2470).

Again, it was not until the third experimental pulling-over machine was constructed that the machine was deemed worthy of a factory trial, and after that nearly four years of continuous experimental work was required before the machine became a commercial success. During that period the United Company built and put into shoe factories over a hundred experimental machines, but, after a commercially successful machine had been produced, all of those machines, which had all been built less than three years before, were broken up for junk. Nearly a million dollars was spent in the development of the pulling-over machine before any revenue was derived from it (R. Vol. 2, pp. 2542, 2552, 2553).

The power heel breasting machine, which the McKay Company had started to develop before 1899, did not become commercially successful until 1902, when the invention purchased from Brewer was put into the machine. Up to that time experimental work on that machine had been carried on continuously; some fifty experimental machines had been constructed and put into shoe factories, but none of them was commercially successful, none was operated at all after a few months' trial and eventually all of those fifty machines were junked (R. Vol. 1, p. 45, lines 9–16; R. Vol. 2, pp. 2473, 2474).

Another machine which was started before 1899, the tack puller and resetter, did not become commercially successful until 1910, after experimental work extending over a period of more than ten years, during which a number of experimental machines had been successively constructed (R. Vol. 2, pp. 2525, 2526).

The United Company spent two years in the endeavor to make the Breach sole rounding machine commercially successful and had to give it up. This endeavor cost the United

Company $40,000 (R. Vol. 2, pp. 2068, 2084, 2100; Defs.' Ex. 231, R. Vol. 5, p. 467).

The Beaudry experimental heel finishing machine contained inventions of which the United Company thought so highly that they paid $12,500 for the experimental machine. After it was acquired,—

> "We constructed several experimental machines. . . . We tried in all sorts of ways to make it practicable, but the extreme inconvenience to which the operator would be put by a machine so organized finally condemned it as entirely impracticable" (R. Vol. 1, p. 86, lines 1–3, 12–15; Defs.' Ex. 231, R. Vol. 5, p. 469).

Mr. Howard testified as to two other machines:—

> "We were unable to make a practicable machine embodying the Courteau invention. We made a very determined effort to make it practicable. . . . We did the best we could with it but could not develop anything out of it, and it was given up" (R. Vol. 1, p. 87, lines 38–40; p. 88, lines 3–4).
>
> "The Curtis machine did not prove commercially acceptable and was not a success. We did what we could to make it a commercial success. We put out some forty-five of them, but they were constantly giving trouble. . . . Most of the machines which we put out have come back" (R. Vol. 1, p. 92, lines 13–16, 19–20).

Another difficulty frequently encountered in developing shoe machinery, of which the record affords many specific illustrations, was stated by Mr. Winslow:—

> "In other words, a machine may be constructed that will work perfectly in A's factory, but is entirely imperfect when you try to use it in B's factory in work that varies to the ordinary eye but very little. In the list that I presented to the Court the other day we have one machine on there which we have been at work on for seven or eight years to accomplish just that very thing" (R. Vol. 1, p. 491, lines 40–45; p. 492, line 1).

Mr. Warren testified that, "because conditions vary so in different factories," before the United Company adopts improved devices,—

"We will try out a machine with improved devices in one factory for several months, and then we give the machine a similar trial in some other factory on another kind of work, and we try it out in that way in six or eight different factories" (R. Vol. 1, p. 790, lines 7–14).

This testimony shows what Plant would have had to go through before he could have made his machines commercially successful, if indeed he ever could have done that.

Mr. Howe thus summarized the situation:—

"To redesign and strengthen the machines would require first the making of working drawings and then changes in the patterns and tools for making the machines and making dies for parts that were to be drop-forged, or else making the first machines by hand work in order to test them; it would require going back to first principles" (R. Vol. 1, p. 689, lines 1–6).

Mr. Warren testified:—

"Well, it would have taken him years to remedy those things. . . .

"*Q.* Couldn't it have been made a little heavier?

"*A.* When we say that, that leads to a change in some other part of the machine. It might finally mean a total reorganization of a machine to make it better.

"*Q.* But you don't mean to say, Mr. Warren, that that machine could not have been taken up by a mechanical expert or five mechanical experts, and those various defects taken out of it within a few months' time or a year's time, say?

"*A.* I think when they had done that they would probably have had a machine like ours" (R. Vol. 1, p. 809, lines 42–43; p. 810, lines 25–34).

F. Finding of the District Court as to the Character and Capacity of the Plant Machines.

"Whatever the merits of Plant's inventions, these machines in which he had first embodied them are not shown by the evidence to have been commercially successful in September, 1910, or to have been capable of such success in their then stage of development. They are shown to have been lightly built, not adapted to produce men's

shoes, and by no means satisfactory in making women's shoes, the kind of work to which the Plant factory was devoted. The evidence is uncontradicted that, while operated there, they fell behind the United Company's machines, which they had supplanted, in efficiency—that breaking down and defective work was more frequent with them—and the cost per pair of making shoes with them distinctly greater. Though some of them, as later developed and improved by the United Company, proved to have merit, the most that can be fairly said of them in 1910, on the evidence, is that they were more or less promising experimental machines. There was no complete set of them for combined operation; for that purpose several important machines were yet to be developed. In the state in which the United Company took them over, they were not found capable of profitable use. Nothing is found in the evidence which affords reasonable support for the petitioner's contention that they were 'right at the threshold of extensive competition with the United Company'" (Dodge, J., R. Vol. 1, p. 1143).

3. CRUDE AND UNSATISFACTORY AS THE PLANT MACHINES WERE, PLANT HAD INCORPORATED IN THEM MANY VERY VALUABLE INVENTIONS WHICH WERE CAPABLE OF BEING USED IN THE UNITED COMPANY'S MACHINES.

While, as we have seen, the Plant machines were crude and not adapted for commercial use, Plant had nevertheless incorporated in them many extremely valuable inventions. Although the mechanical embodiments of those inventions in the Plant machines were also crude and unsatisfactory, the United Company's experts were able to see that the inventions had great value and that when the Plant mechanisms had been reconstructed to overcome their mechanical defects and to adapt them to the United Company's superior machines, those inventions would be of great value both to the United Company and its customers.

Mr. Winslow testified that the more important of the Plant inventions, "that were of special service in the development of our machinery," were those relating to the welt sewing

machine, stitching machine, lasting machine, rough rounding machine and heel attaching machine (R. Vol. 1, p. 559, lines 11–13, 21–27). These inventions and numerous others, covered by forty-three of Plant's patents, are now embodied in twenty-six of the United Company's machines (Defs.' Ex. 342, R. Vol. 5, p. 949).

To explain here the nature and importance of inventions claimed in forty-three patents and to review the evidence regarding those inventions is of course out of the question. Accordingly we shall confine ourselves to a brief summary of the testimony regarding Plant's improvements on the welter and the outsole stitcher, the two machines which the patent counsel for the United States characterized as "the only indispensable machines required for the commercial bottoming of shoes by machinery" (R. Vol. 2, p. 2808, Int. 10).

The Plant Welter Inventions.

For the first time in the history of the industry Plant had embodied in a welt sewing machine means for cutting off the welt close to the end of the seam, means for holding the end of the welt in proper position to start on the next shoe with minimum waste of welting, a welt measurer which determined the amount of welt left on the shoe when it was cut off and positively prevented waste, and, finally, means for automatically stopping the machine and casting off the last loop of thread from the barb of the needle. Always before, even in the United Company's new Model G Welter, it had been necessary for the operator to stop the machine by putting his hand on the belt pulley, first slowing down the machine, then stopping it, and finally turning the machine backward at such time and in such manner as to free the needle from the last loop of thread, in order to free the shoe from the machine. Then with a hand knife he cut the welt. In starting with the next shoe he had to hold the end of the welt with his finger and this involved wasting about two inches of welting upon each pair of shoes, worth at least a quarter of a cent per pair, —more on men's shoes (R. Vol. 1, p. 488, lines 28–45; p. 489; p. 490, lines 1–7; p. 786, lines 29–46; p. 787, lines 1–3; p.

810, lines 43–44; p. 811, lines 1–8; p. 812, lines 23–32; Vol. 2, pp. 2259, 2260, 2263, 2268).

Mr. Warren reported to Mr. Winslow "that the advance made in the welter was very great" (R. Vol. 1, p. 786, lines 1–2). Mr. Winslow testified that he "studied those machines personally as an expert" and that he regarded those welter improvements "as of the *very greatest practical importance and of very great value*,"—"*almost incalculable*" (italics ours) (R. Vol. 1, p. 485, lines 15, 41–42; p. 488, line 32). Mr. Howard explained their importance and value in great detail and quoted typical claims from the Plant patents which covered all of these inventions broadly (R. Vol. 2, pp. 2259, 2265).

The Plant Stitcher Inventions.

The practical advantages of the Plant Stitcher improvements were explained in detail by Mr. Howard (R. Vol. 2, pp. 2296, 2298). The nature of these improvements was indicated by Mr. Warren (R. Vol. 1, p. 787, lines 16–23, 26–30) as follows:—

> "The stitcher was provided with a stop motion similar to that one on the welter, so arranged that the machine would always stop in a proper position to remove a shoe, and so that another could be inserted, and in this stopping it raised the presser-foot which helps hold the shoe in position. Before this it always had been necessary for the operator to stop the machine by hand—remove one hand from the shoe, stop the machine, and then raise the presser-foot so he could remove the work. . . . Also, under the old method, it was necessary for the operator to lift the presser-foot so he could introduce a shoe. Now, in this machine, after the shoe had been finished and removed, it was all ready to start again. This was a great saving in time and a great saving in the exertion of the operator."

Mr. Winslow testified,—

> "That was fundamental; it was a very important invention" (R. Vol. 1, p. 560, lines 11–12).

Speaking of the welter and stitcher inventions together, Mr. Warren testified:—

"I was much impressed with the improvements. . . . I reported to Mr. Winslow that they were very valuable indeed. . . . I told Mr. Winslow that we should have them" (R. Vol. 1, p. 787, lines 34–35; p. 788, line 7; p. 809, line 35).

Testimony of shoe manufacturers and machine operators showing the great value of these Plant inventions as they have been incorporated in the United Company's machines will be reviewed later (*infra*, pp. 544–548).

4. USE MADE BY THE UNITED COMPANY OF THE PLANT INVENTIONS.

The general policy which the United Company has followed in regard to the Plant inventions was set forth by Mr. Howe. He said that ever since the purchase the resources of the United Company's Experimental Department had been crowded to the full in the work of embodying the Plant inventions in the United Company's machines or building new machines to incorporate those inventions (R. Vol. 1, p. 670, lines 41–44; p. 671, lines 11–13).

Mr. Winslow testified (R. Vol. 1, p. 491, lines 12–14),—

"We have offered every one of them to our customers as fast as we have perfected them, or where we have been able to take them without the necessity for perfection."

Mr. Warren testified that out of Plant's 69 machines and devices the United Company had so far made use of 30 and was still at work upon others which had not yet been satisfactorily worked out (R. Vol. 1, p. 799, lines 15–17).

The United Company adopted seventeen of the Plant machines, although they all required more or less development or improvement, and those machines have all been offered to the trade. Mr. Warren testified:—

"Seventeen were adopted, but we found after adopting them that a number of them were not as good as we thought they would be, and especially when they were

put on another kind of work. And the result is that several have been wholly reconstructed. Others we had to make some changes in to suit conditions that were different from the conditions in the Plant factory" (R. Vol. 1, p. 789, lines 33–39).

The United Company has also incorporated in its own machines thirteen devices which were found in the Plant machines. Mr. Warren said about these:—

> "We found many devices which would either assist the operator to do more work or better work, which we thought if they were embodied in our machines would be a great improvement, and we recommended that quite a number of those be adopted. And out of that number there were finally thirteen embodied in our machines. A great many more were tried, but were found to be inoperative or not practical" (R. Vol. 1, p. 789, lines 17–24).

Striking illustrations of the United Company's aggressive work in adapting the Plant inventions to its machines are afforded by the history of the Plant welter and stitcher inventions after the purchase.

The United Company immediately put to work six inventors to adapt the Plant welter improvements for the United Company's Model G Welter, which was of different design from the Plant welter and required different mechanical embodiments of the Plant inventions (R. Vol. 1, p. 811, lines 40–43; p. 812, lines 23–37). They worked night and day and the result was the Model K Welter, which embodied all of the Plant inventions and also important improvements on them made by the United Company's inventors, and which was put out for commercial use in June, 1911. On January 1, 1914, 1,024 of these Model K Welters were in use (R. Vol. 1, p. 810, lines 1–10; p. 812, lines 38–42; p. 817, lines 8–14; p. 863, lines 3–5; Vol. 2, pp. 2259, 2260, 2765). The advantages of the Plant improvements as embodied in the Model K Welter will be referred to later (*infra*, pp. 541–546).

Immediately after the purchase five different inventors were put to work to adapt Plant's stitcher improvements to the United Company's Model K Stitcher. Their combined work resulted in the Model M Stitcher, which was first supplied to

manufacturers in June, 1911, and of which 1,158 were in use on January 1, 1914 (R. Vol. 1, p. 863, lines 5–7; R. Vol. 2, pp. 2297, 2836(42). The advantages of the Plant improvements in that machine will be summarized later (*infra*, pp. 547–549).

The Mayo and Warren Report.

Immediately after the purchase of Plant's inventions two of the United Company's experts, Messrs. Mayo and Warren, were sent to the Plant shoe factory to make a thorough examination of the Plant machines and the inventions incorporated in them and to recommend what should be done with each machine and each invention. Their entire time for eight weeks was spent in that work, and upon its completion on November 26, 1910, they submitted an exhaustive report (R. Vol. 1, p. 785, lines 35–43; p. 815, lines 43–44; p. 816, lines 1–2). Mr. Winslow testified that this report was made—

> "to show what machines or improvements could be adopted to benefit our machines and in what respects. . . . Also to show if an invention in Plant's machines was in commercial shape or condition, or if it required and was advisable to try to develop it—that is to say, whether it gave promise of being of value to our customers in the trade" (R. Vol. 1, p. 594, lines 32–39).

The original signed report is Plaintiff's Exhibit 267, a physical exhibit. The typewritten matter in that report, but not the numerous illustrations, is reproduced in the record (R. Vol. 4, pp. 1396–1441). The letter which introduces the report (R. Vol. 4, p. 1395) shows how thoroughly their examination was conducted and how intelligently their report was prepared. Mr. Warren's testimony shows that the United Company has adopted practically all the machines and devices which they recommended (R. Vol. 1, p. 789, line 40; p. 790, line 6). Could any doubt remain as to the United Company's motives in acquiring the Plant inventions, that doubt would be removed by this Mayo and Warren report and by the United Company's conduct in accordance with it.

5. THE ACQUISITION OF THE PLANT PATENTS BY THE UNITED COMPANY RESULTED IN GREAT BENEFITS TO THE SHOE MANUFACTURING INDUSTRY.

A. Common ownership of the Plant patents and the United Company's patents made possible, first, the use of the valuable Plant inventions by shoe manufacturers without infringement of the controlling patents owned by the United Company; second, the incorporation of the Plant inventions in the superior machines of the United Company; and, third, further important improvements on those inventions by United Company inventors,—improvements which otherwise would never have been made.

The benefits to the shoe manufacturing industry which have resulted from common ownership of the Plant patents and the United Company's patents are strikingly illustrated by the testimony showing how the United Company has used and has improved upon the Plant welter and stitcher inventions.

Welter.

The testimony is uncontradicted that Plant's welter, incorporating his improvements, infringed United Company's patent No. 700,279, May 20, 1902, Winkley, which claimed a welt holder broadly (R. Vol. 2, p. 2262; Defs.' Ex. 273, R. Vol. 5, p. 739), and suits had already been brought by the United Company on that patent against Plant and the Plant Shoe Company (Defs.' Ex. 270, R. Vol. 5, p. 723). But the United Company had not succeeded in producing a commercially successful welt holder, the Winkley mechanism was only experimental, it did not include any means for either cutting or measuring the welt, and in Plant's improvements it was the combination of means for holding, cutting, and measuring that saved the welting (R. Vol. 1, p. 684, lines 10–24; p. 689, lines 20–29; p. 786, lines 13–18, 29–46; p. 787, lines 1–3; p. 816, lines 17–26; Defs.' Ex. 273, R. Vol. 5, p. 739). All these Plant improvements, and also his valuable

invention of means for stopping the machine and casting off the loop of thread held by the needle, are broadly claimed in his patents (R. Vol. 2, pp. 2262–5).

In Mr. Winslow's words:—

> "In a broad way it was a perfect deadlock. He had controlling patents for a practical way of doing it while we had the controlling patents of the invention itself" (R. Vol. 1, p. 488, lines 41–43).

Common ownership of the Winkley patent and the Plant patents removed this deadlock and made possible the use of these valuable improvements by shoe manufacturers without infringement. It also enabled the United Company to incorporate the Plant improvements in its own Model G Welter, which was much superior to Plant's (R. Vol. 1, p. 787, lines 36–37, 43–45; p. 809, lines 28–38; p. 815, lines 29–31; p. 818, lines 24–33), and which Mr. Winslow characterized as—

> "the highest development of sewing mechanism for attaching the welt, innersole, and upper together that had been developed in the world up to that time" (R. Vol. 1, p. 560, lines 34–36).

The Plant welter was "constructed substantially on the lines of the United Company's 1899 machine" and was "not so satisfactory a machine as was the United Company's 1899 machine" (Vol. 2, p. 2266). Plant added these improved devices to the old type of machine (Warren, R. Vol. 1, p. 787, lines 6–7).

> "It was not, therefore, until these improvements were incorporated in the high speed Model G machine of the United Company that the advantages and utility of the improvements were fully realized" (Howard, R. Vol. 2, p. 2266).

This was an extremely important development in the industry, but still further advantages resulted. In the United Company's experimental work in adapting the Plant improvements to its Model G Welter,—

> "improvements were made which represent almost as important advances in the industry as did the Plant improvements" (Howard, R. Vol. 2, pp. 2260, 2261).

For example, in the use of the Plant welter the operator had to step on a treadle to actuate the welt holder and cutter, while it is automatic in the Model K Machine,—the new United machine incorporating the Plant improvements,—"the machine itself operates it when the man gets ready to remove the shoe" (R. Vol. 1, p. 812, lines 3–4; R. Vol. 2, p. 2261). Again, the Plant mechanism for stopping the machine and freeing the shoe by casting off the loop of thread held by the needle was so constructed that the Plant machine had to be run "practically at one speed all the time . . . or else it would stop" (R. Vol. 1, p. 818, lines 31–32, 37). This was bad, because it is essential that a welter have capacity for being run at a reduced speed around the toe, where the work is most difficult. The Model K Machine can be slowed down at any time when the operator desires (R. Vol. 1, p. 491, lines 6–7; p. 660, lines 3–4; p. 775, lines 26–28).

Also the mechanical embodiments of the Plant inventions in his machine were not commercially satisfactory.

> "The welter was defective in the stop motion and in the mechanisms for holding and cutting the welt. . . . The ideas were excellent, but they hadn't been carried out in such a manner that they could have been used in other factories" (Warren, R. Vol. 1, p. 797, lines 23–27).

These defects were all remedied when the Plant inventions were adapted to the United Company's machine.

> "We improved the stop mechanism very much, and also the cutting mechanism and the welt holder. We also made over the back gage and welt guide motion so as to put it on our machine in better shape than on the Plant machine" (Warren, R. Vol. 1, p. 798, lines 39–43).

The result of the incorporation of the valuable Plant inventions in the United Company's machine in commercially successful constructions, with the improvements made on them by the United Company's inventors, was the new Model K Welter, "a very much better machine" than either the United Company or Plant had before (R. Vol. 1, p. 799, lines 1–3). The record abounds with testimony to this effect.

McGaffee testified that in the Plant factory they "do 50 pairs of shoes a day more" on the Model K Welter embodying the Plant improvements than they did on the Plant welter, and that the operators can make a great deal more money (R. Vol. 1, p. 777, lines 24–32; p. 779, lines 42–44).

Hazzard testified that in his factory the average wages of operators on the Model K Welter are 36 per cent. higher than the average wages of operators on the old model previously put out by the United Company, although the piece price was higher on the old machine than on the new; that the average output of the old welter was 25 dozen pairs a day, while the average on the new welter is 40 dozen pairs per day; that the new welter sews a tighter seam; and that the saving in welting by the welt holding and cutting device is at least half a cent a pair and amounts to $24 a day in his factory, five or six hundred dollars a year on each of their thirteen machines (R. Vol. 1, p. 646, lines 14–18, 41–44; p. 647, lines 1–3, 25–26, 41–44; p. 648, lines 6–7, 10).

Strootman, a manufacturer of women's shoes, testified that the new welters were about one-third more efficient, doing more work and better work, and that the saving in welting in his factory is about a quarter of a cent a pair (R. Vol. 1, p. 742, line 42; p. 743, lines 5–11).

Eaton, another manufacturer, testified,—

> "We have found that the saving in welting by the Model K welter, as compared with the Model G welter, was five per cent. under exactly similar conditions" (R. Vol. 1, p. 753, lines 6–8).

Allen testified that the new machine saves four inches of welting on a pair of shoes; that while on the old machine operators in his factory earned from $30 up to $40 a week, operators on the new machine had been earning over $50 a week (R. Vol. 1, p. 723, lines 1–2, 10–12).

Welch testified that in his factory they make a saving of a quarter of a cent per pair in the length of welting and also a saving in the width of welting which amounts to from one-quarter to three-quarters of a cent, according to the quality of the welting (R. Vol. 1, p. 710, lines 37–44).

Blagden, who had operated different types of welters since

1903, explained in detail the disadvantages and inconveniences of the old welter from the operator's standpoint. He said that the new machine—

> "saves his time and saves his strength and quickens him in his work";

that on the old machine 25 dozen pairs were considered a good day's work, while an average day's work on the Model K Machine is 40 dozen pairs, and that he had done 65 dozen pairs in a day; that he earned 20 per cent. more on the Model K Welter than he did on the old welter and didn't have to work so hard, although the piece price on the old welter was about one-third more. He also said that there was a saving in both the length and width of the welting and a saving in thread on the new machine (R. Vol. 1, pp. 658–60).

Figuring the saving in welting at $500 per machine (which was Mr. Hazzard's minimum figure), the aggregate saving in welting alone effected by the 1,024 Model K Welters in use on January 1, 1914 (R. Vol. 1, p. 810, lines 1–10), amounts to $512,000 per year. The Model K Welters were rapidly displacing the old machines and when the 2,527 machines which were out on March 1, 1911 (Defs.' Ex. 226, R. Vol. 5, p. 424) are all displaced, the saving in welting alone, figured on the same basis, will amount to $1,263,500 per year. Adding the large savings due to the greater capacity of the machine and the increase in the wages which were in consequence earned by the operators, the total economies effected for manufacturers and operators by each Model K Machine must be at least $800 per year. When the substitution of the new machines for the old ones has been completed, this saving on 2,527 machines when in active use through the year will aggregate over $2,000,000 per year.

For an extended technical explanation of the commercial superiority of the Model K Machine see pages 2259–68 of Vol. 2 of the record. On January 1, 1914, 1,024 of the Model K Machines were being used (R. Vol. 1, p. 863, lines 3–4).

It is obvious that the industry would not have had this important machine with all these striking advantages if the Plant patents had not been acquired by the United Company. In no other way could it have been possible for shoe manu-

facturers to have a machine which embodied, first, the broad invention of the United Company's Winkley patent for holding the welt, which it had not made commercially successful; second, the valuable Plant inventions comprising the first practical mechanisms ever devised for holding, measuring, and cutting off the welt, and the combined stop motion and loop cast-off (all broadly claimed in four Plant patents) (R. Vol. 2, pp. 2262, 2263, 2266, 2267); and, third, the important improvements upon those Plant inventions made by the United Company's inventors, on which many applications for patents have been made (R. Vol. 1, p. 812, lines 42–44; Vol. 2, p. 2117).

The United States urges that the fact that the United Company changed and so much improved the mechanical structures in which Plant had used his welter inventions shows that the inventions were of little use to the United Company. But the United Company's welter in which the Plant improvements were embodied *was of different design* from the Plant machine, so that "the mechanical construction had to be entirely changed in order to apply it to our machine" (R. Vol. 1, p. 811, lines 40–43; Vol. 2, p. 2260). That in reorganizing these Plant mechanical structures to fit its machine the United Company's inventors should make still further improvements was to be expected and was consistent with the constant improvement of its machines which the United Company is always making. But these improved mechanical structures in which the Plant improvements were embodied in the United Company's new welter *all contained the Plant inventions and were all covered by the Plant patents.* Typical broad claims of the Plant patents which cover the United Company's machine are quoted in the record (R. Vol. 2, pp. 2262–5). These Plant inventions are the heart and core of the welt holding, the welt cutting, the welt measuring, and the stopping and loop cast-off mechanisms of the Model K Welter by which the tremendous savings have been effected (*supra*, pp. 544–545).

Stitcher.

One of the two extremely valuable improvements in the Plant stitcher, the mechanism for automatically lifting the presser-foot to free the shoe from the machine when the machine stopped, infringed two of the United Company's patents and five allowed claims of an application filed in 1906 on which has been granted patent No. 1,087,602, February 17, 1914, Nash (R. Vol. 2, pp. 2836(67), 2836(68); Defs.' Ex. 273, R. Vol. 5, p. 741).

On the other hand, the United Company had never had in its stitcher—even its new Model K Stitcher adopted in May, 1910 (R. Vol. 2, p. 2290),—any mechanism for automatically stopping the machine and lifting the presser-foot, or any mechanism for stopping the machine in proper position to permit the shoe to be removed and a new shoe put into the machine,—Plant's notable improvements (*supra*, p. 537).

Immediately after the acquisition of the Plant patents the United Company put to work five different inventors upon the problem of embodying these Plant inventions in satisfactory mechanical form and adapting them for the United Company's new Model K Stitcher (R. Vol. 2, p. 2297). That machine, after it was reorganized to embody these improvements, was named the Model M, and was first put into commercial use in June, 1911 (R. Vol. 2, p. 2836(24)). On January 1, 1914, 1,158 Model M Stitchers, incorporating these Plant improvements, were in use (R. Vol. 1, p. 863, lines 5–6).

Mr. Howard's detailed statement of the advantages of the new machine as compared with the United Company's old machine (R. Vol. 2, pp. 2296–8) is strongly confirmed by the testimony of shoe manufacturers and machine operators.

For example, Eaton, a manufacturer, testified,—

> "Our stitcher will show an advance by comparison with the same operator under the same conditions a fifteen to twenty per cent. increased capacity over the old, because it is a higher speed machine and it takes less operations to work it" (R. Vol. 1, p. 753, lines 16–19).

Hazzard testified that on the Model M Stitcher, as compared with the old machine, there was—

> "an increase in the average wage of about 24 per cent., while the piece price on the old model was 40 per cent. more than we are paying on the Model M" (R. Vol. 1, p. 647, lines 12–14).

He also said that this was not a fair showing because they had been educating nearly all of their operators, and that a comparison of the best operators on the old stitcher and on the new showed an increase in wages on the new machine of 45 per cent., with a piece price 40 per cent. less than that on the old stitcher (R. Vol. 1, p. 647, lines 21–23).

Strootman, another manufacturer, testified that the new stitchers were about one-third more efficient, doing more work and better work (R. Vol. 1, p. 743, lines 5–7).

Ryan, a stitcher operator who had worked on the successive models of the United Company's stitcher and also on the Plant stitcher, explained in detail the difficulties in operating the old United Company machine and the advantages of the Model M Stitcher from the operator's standpoint (R. Vol. 1, p. 705, lines 1–38). He said that his average day's work on the Model M Stitcher was fifty pairs per day more than the average on the old machine, and further:—

> "The work on the Model M stitcher is a great deal easier. I earn more money. I will average fifty to seventy-five cents a day more on the Model M stitcher than on the old stitcher; and that is in less hours than I worked on the old stitcher" (R. Vol. 1, p. 706, lines 4–8).

McGaffee testified that—

> "the operator could make a great deal more money on the United stitcher than he could on the Wonder Worker" (R. Vol. 1, p. 777, lines 29–31).

This great advance in the industry was made possible by the purchase of Plant's patents by the United Company. In a word, this is the story of the Model M Stitcher. Those valuable Plant improvements, embodied by him in a stitcher which was like the United Company's 1899 machine and, like

that machine, operated at a speed of only 375 revolutions per minute (R. Vol. 1, p. 787, lines 31–32; p. 818, lines 15–16); which was not organized to sew shoes with extension edges, which nearly all welt shoes have, because such an organization would infringe patents of the United Company (R. Vol. 1, p. 775, lines 32–34; p. 780, lines 1–7; p. 818, lines 17–18, 20–23; R. Vol. 2, pp. 2283, 2762); and which was defective and frequently breaking (R. Vol. 1, p. 790, lines 30–31, 36–38; p. 815, line 14), "the weakest machine we had," "the one that caused the greatest trouble" (McGaffee, R. Vol. 1, p. 773, lines 37–38; p. 777, line 29), were incorporated by the United Company in its much superior stitcher, which operated at a speed of 540 to 550 stitches per minute (R. Vol. 2, p. 2293), and in greatly improved mechanical constructions (R. Vol. 2, pp. 2836(44), 2836(45); R. Vol. 1, p. 798, lines 22–23).

That is, through common ownership of the United Company's patents which Plant infringed, Plant's patents on his improvements, and the United Company's patents and applications on the further improvements which it in turn made on Plant's inventions, the industry has been provided with the Model M Stitcher, in which all of these inventions and improvements are combined, and which is greatly superior both to Plant's machine and to any machine which the United Company had before (R. Vol. 1, p. 799, lines 1–3).

This welter and stitcher situation was thus summarized by Mr. Warren, from the standpoint of the practical expert:—

> "Assuming that each party had its patents on its respective inventions and devices, neither party could have accomplished the development of the machine which we have now developed, either as a stitcher or a welter, without the aid of the other; nor could either party have developed so satisfactory a machine" (R. Vol. 1, p. 799, lines 4–9).

Mr. Winslow emphatically expressed his opinion as follows:

> "I think it would have been a crime to the art of shoe manufacturing if they could not have been combined, those improvements that Plant had—combined with the

best welt and stitching machine that was in existence at that time, which was one that we had" (R. Vol. 1, p. 560, line 42 *et seq.*).

And it will be remembered that in accordance with the United Company's invariable practice the new welters and stitchers, containing all these valuable improvements, were substituted for the older models without any charge whatever and without any increase in royalty, although the Model G Welter, previously the United Company's standard welter, had been put out only since October, 1908, and the Model K Stitcher, formerly its standard stitcher, had been put out only since May, 1910 (R. Vol. 2, pp. 2254, 2290).

The Other Plant Inventions.

Including the Plant welter and stitcher improvements the United Company, as already stated, has incorporated the inventions of forty-three of Plant's patents in twenty-six of its machines, among which, in addition to the Model K Welter and the Model M Outsole Stitcher, are such important machines as the No. 5 Lasting Machine, the Model B Heeling Machine, the Lightning Heeling Machine, the Pulling-over Machine, and the Model E Rounding and Channeling Machine (R. Vol. 1, p. 799, lines 13, 14; Defs.' Ex. 342, R. Vol. 5, p. 949). The Plant purchase has made it possible for shoe manufacturers to use machines embodying these inventions without infringement of either Plant's patents or the United Company's patents.

B. Chaotic conditions in the shoe industry have been averted by common ownership of the patents of the United Company and the Plant patents.

As was found by the District Court,—

> "And between Plant, or concerns wherewith he was identified, and the United Company there were pending interferences, claims of infringement on both sides, and pending infringement suits, raising questions relating to his or its patents so numerous, complicated and important

as to threaten interminable controversy" (Dodge, J., R. Vol. 1, p. 1145).

(1) Infringement of the United Company's Patents by Plant.

Plant had patterned his machines after the United Company's machines. The welter and stitcher were substantially the same as the machines which the United Company had been putting out in 1899, with the addition of Plant's improvements, fifteen other Plant machines were "practically duplicates" of the United Company's machines, and nearly all "had a family resemblance to the United Company's machines" (R. Vol. 1, p. 485, lines 29–31; p. 668, lines 42–45; p. 669, line 1; p. 789, lines 13–16; p. 814, lines 22–23; p. 818, lines 15–16, 24–26; Vol. 2, p. 2266).

> "He had taken our machines, whether he had a right to or not, and had made certain improvements on them" (Howe, R. Vol. 1, p. 669, lines 17–18).

With this situation extensive infringement of the United Company's patents was to be expected.

Defendants' patent expert Howard testified that in his opinion 37 of Plant's machines, including practically all of his important machines, infringed claims in 99 patents and three pending applications owned by the United Company, amounting in the aggregate to 546 claims; and that many claims were infringed by more than one machine, with the result that there were 708 distinct cases of infringement of United Company's patents by Plant machines (R. Vol. 1, p. 799, lines 31–44; p. 800, lines 1–6; p. 801, lines 26–39; Defs.' Ex. 273, R. Vol. 5, p. 750). Defendants' Exhibit 273, Mr. Howard's detailed statement of these infringements, shows their serious character (R. Vol. 5, p. 733).

During the trial counsel for the United States repeatedly stated that it was their intention to introduce testimony to contradict this evidence (R. Vol. 1, p. 394, lines 26–29; p. 800, lines 23–30; p. 803, lines 26–27, 38–40), and they secured an opportunity to do so by the order of February 10, 1914 (R. Vol. 1, pp. 984, 985).

All of the Plant machines were placed at the disposal of

counsel for the United States and its patent expert, and, assisted by Mr. Warren, they made an extended investigation of the machines (R. Vol. 1, p. 984, lines 24–39; Vol. 2, p. 2836 (156–159)); but no attempt to controvert this testimony was made by the United States. It is submitted, therefore, that for the purposes of this suit defendants have proved these infringements. In fact counsel for the United States said during the trial,—

> "If we don't contest it then the case rests . . . that there was an infringement by Plant" (R. Vol. 1, p. 394, lines 40, 43).

Eight infringement suits against Plant and ten suits against the Plant Shoe Company had already been begun, and bills of complaint had been prepared and signed in suits on six more patents (R. Vol. 1, p. 802, lines 7–11; Defs.' Ex. 270, R. Vol. 5, p. 723). For many months nearly all of Mr. Howard's time and a large part of the time of his associates had been spent on these infringements, and the United Company was "ready to go ahead" with a large number of suits (R. Vol. 1, p. 801, lines 5–7; p. 822, lines 3–7). Mr. Winslow testified,—

> "It was our intention to bring suits to protect our rights, and undoubtedly we should have done so" (R. Vol. 1, p. 566, lines 38–39).

There was also a suit pending against the Plant Shoe Company and Plant for the purpose of enforcing the contracts which the Shoe Company had made with the United Company and which it had violated by substituting Plant's machines (R. Vol. 1, p. 688, lines 1–8; P.'s Ex. 162, a physical exhibit).

During the negotiations between Mr. Plant and Mr. Winslow, Plant expressed great concern over these suits and repeatedly stated that his refusal to allow an examination of his machines by the United Company's experts was due to his fear that additional infringement suits would be brought as a result of such an examination, and he stated that his counsel refused to sanction the examination for that reason (R. Vol. 1, p. 480, lines 15–22, 44–45; p. 481, lines 1–2, 45–46; p. 482, lines 6–8; p. 577, lines 29–33; p. 609, lines 38–42; p. 611, lines 38–45).

"He seemed to be quite fearful that the experts would be of great assistance in the patent suits that were being brought and that were likely to be brought" (Endicott, R. Vol. 1, p. 580, lines 24–26).

So great was Plant's concern over these infringements that he made it a condition of the purchase that the United Company should release and discharge him from "claims of infringement of Letters Patent by said Plant" (P.'s Ex. 132, R. Vol. 4, pp. 932, 934; P.'s Ex. 139, R. Vol. 4, p. 1039).

(2) Infringement of Plant's Patents by the United Company.

Mr. Howard testified that in his opinion fifteen of the United Company's machines infringed twenty Plant patents. Defendants' Exhibit 274 (R. Vol. 5, p. 750), which is his detailed statement of these infringements, shows that a large number of claims of those patents were infringed.

These infringements were due to the fact that for several years Plant's inventive work and that of the United Company's inventors had been going on simultaneously with the result that in a number of instances the United Company had embodied inventions in its machines which were later found to infringe Plant's patents (Winslow, R. Vol. 1, p. 870, lines 43–44; p. 871, lines 1–9; Howe, R. Vol. 1, p. 877, lines 12–26). In this embarrassing situation were involved some of the United Company's most important machines, such as its new Model K Outsole Stitcher, its No. 5 Lasting Machine, its new Model B Heel Attaching Machine, its American Lightning Nailing Machine, its new Model E Rounding and Channeling Machine. The serious character of these infringements is shown by testimony of Mr. Browne, Mr. Warren, and Mr. Howard (R. Vol. 2, p. 2836(125) (130–135) (154–156); Defs.' Ex. 274, pp. 751–754).

Ample opportunity was afforded counsel for the United States and its patent expert, Mr. Chapman, to examine these fifteen infringing United Company machines, and Mr. Chapman did examine them (R. Vol. 2, p. 2836(156–159)), but he took issue with Mr. Howard as to only six. Mr. Chap-

man's testimony was completely answered by the noted patent expert Arthur S. Browne, who agreed with Mr. Howard's views as to infringement in every instance (R. Vol. 2, p. 2836(123–153)). It is submitted that Mr. Browne's testimony, supporting the testimony of defendants' expert in all respects and disagreeing with all the opinions expressed by the expert for the United States, establishes the defendants' claim that for the purposes of this case it has been proved that those six United Company machines, as well as the other nine, infringed Plant's patents. At the end of this discussion (*infra*, pp. 579–580) attention will be called to many misstatements as to facts made by Mr. Chapman in his testimony.

(3) Interferences.

There had been declared by the United States Patent Office 23 interferences between patent applications owned by Plant and applications owned by the United Company. These involved important machines of the United Company, such as lasting machines, heel nailing machines, impression stitch machines, welt preparing machines, heel seat rounding machines, leveling machines, shank trimming machines, machines for operating on insoles, the pulling-over machine, and the clicking machine (R. Vol. 1, p. 819, lines 23–31; p. 846, lines 14–17; Defs.' Ex. 272, R. Vol. 5, p. 730).

Intolerable Conditions would have Resulted if the Plant Purchase had not been Made.

It cannot be doubted that if Plant had kept on he would have enforced his rights under his patents and would have brought suits on account of the infringements by the United Company's machines; indeed, his intention to bring suits was asserted over his signature in Plaintiff's Exhibit 137, a release signed by Plant on September 30, 1910:—

> "I . . . have planned to bring certain suits against said United Shoe Machinery Company" (P.'s Ex. 137, R. Vol. 4, p. 1037).

Mr. Winslow and Mr. Howe fully expected that Plant would bring suits against these infringing machines (R. Vol. 1, p. 862, lines 25–26; p. 877, lines 27–30; p. 878, lines 1–2).

The inconvenience and embarrassment to which the United Company and its customers would have been put if Plant had succeeded in litigation against these machines would have been intolerable. It might well have involved replacing thousands of machines or very likely discarding them altogether,—in any event endless experimental work in developing organizations which would avoid infringement, at an expense, to say nothing of the cost of the litigation, which would have mounted to a staggering sum. No wonder the United Company took pains to obtain from Plant a release from—

> "all manner of actions and causes of action . . . and demands of every name and nature in law or equity" (P.'s Ex. 137, R. Vol. 4, p. 1037).

On the other hand, it is difficult to imagine the chaotic condition which would have resulted if Plant had put his machines in a number of shoe factories. Mr. Winslow declared,—

> "It was our intention to bring suits to protect our rights, and undoubtedly we should have done so" (R. Vol. 1, p. 566, lines 38–39).

The record shows that this intention was being aggressively carried out. Many suits had already been brought, a considerable number of bills of complaint had been prepared and were ready for filing, counsel had been engaged for months in work on these infringements and were "ready to go ahead" on nearly all of them before the date of the purchase (R. Vol. 1, p. 800, lines 36–44; p. 801, lines 1–11; p. 821, lines 20–34; p. 822, lines 1–7; p. 877, lines 5–12, 31–33).

The interminable litigation which would have resulted from this situation would have caused great annoyance and embarrassment to the shoe manufacturers and the public. As the great number of suits were terminated one after another, injunctions would have issued restraining the use of the infringing machines. Since, under the peculiar condi-

tions of the shoe industry, with shoes constantly moving through a factory from one group of machines to another, the business of the factory is stopped when one group of machines for doing a particular part of the work is stopped (R. Vol. 1, p. 25, lines 18–39; p. 382, lines 30–35; Vol. 2, p. 2665), it is obvious that a most serious condition would have developed, with consequent inconvenience and annoyance to the general public.

The chaotic and intolerable conditions which would surely have resulted from the situation as it then existed were of course averted by bringing the conflicting patents into a common ownership.

As to this situation the District Court held:—

> "The evidence shows also, without serious contradiction, that one result of the bargain made with Plant was to relieve the United Company from an amount of litigation, then pending or in prospect, which would otherwise have burdened and hindered it to an extent far greater than it had ever had reason to apprehend from any litigation with which it had before been concerned.
>
> "A suit by it to restrain the Plant Company from breaking the leases of its machines, displaced in order to install the Plant machines as above, had been pending since May, 1910. And between Plant or concerns wherewith he was identified and the United Company there were pending interferences, claims of infringement on both sides, and pending infringement suits, raising questions relating to his or its patents, so numerous, complicated, and important as to threaten interminable controversy" (Dodge, J., R. Vol. 1, p. 1145).

The evidence which we have just reviewed proves that the expectations of the United Company in purchasing Plant's patents were fully realized. These great benefits were anticipated and were the reasons for the purchase, as we shall now show.

6. THE UNITED COMPANY ACQUIRED THE PLANT PATENTS BECAUSE ITS OFFICERS BELIEVED THAT THE ACQUISITION WOULD RESULT IN GREAT BENEFITS TO THE SHOE MANUFACTURING INDUSTRY.

A. The controlling consideration was the value to the shoe manufacturing industry which the valuable Plant inventions would have if incorporated in the United Company's superior machines.

Typical of numerous statements in Mr. Winslow's testimony is the following:—

> "My entire and only interest was whether those patents could be made of benefit to our customers and the trade. If they could be of benefit, if they were of large benefit, and the trade ought to have them, I should be very glad to buy them and embody them in our machines for what I thought they were worth, irrespective of what they had cost him,—but I would not pay a cent more for them" (R. Vol. 1, p. 482, lines 26–32).

Mr. Howe testified:—

> "After we examined it, Mr. Winslow and I . . . agreed that Plant had some very valuable improvements that if we could get the ownership of at the right price could be introduced into our machinery in conjunction with our own experiments in the way of improvements that had then been under way for several years, and that by utilizing them in that way Plant's inventions could be made very valuable" (R. Vol. 1, p. 670, lines 29–37).

Mr. Endicott testified that Mr. Winslow told Mr. Plant that—

> "he could not consider the proposition at all until he knew the value, and he stated then that he meant the value to the advancing of the art of shoemaking" (R. Vol. 1, p. 577, lines 12–14),—

and that at a later interview Mr. Winslow said that he—

> "would only purchase it if it was of value—if it was a good, fair offer at the price and was of value to the shoe

trade and to the United Company" (R. Vol. 1, p. 582, lines 14–16).

Mr. Winslow's attitude is further shown by his refusal to consider the purchase at all—

> "without seeing the machines, having them fully examined by our experts, and a full report made to me by them as to the advantages that there might be in those machines.
>
> "I always declined to have anything to do not only with buying but considering his propositions without a full and complete right to examine his machinery, determine the value of the inventions—the patents that he had" (R. Vol. 1, p. 482, lines 20–24; p. 484, lines 16–19).

Mr. Howe confirms this:—

> "At these conferences and all along Mr. Winslow always took the position of declining to discuss prices or a price for the machinery and inventions until he had convinced himself by experts, in whom he had confidence, as to the value of these inventions to the United Shoe Machinery Company and to its lessees, . . . declined to have anything to do with any proposition unless he could have the machines examined by our experts and demonstrate that they would be of value to the United Company and its lessees" (R. Vol. 1, p. 670, lines 18–22; p. 687, lines 20–23).

Mr. Herrick testified that at a conference which he attended Mr. Winslow took the position—

> "that there would be no consideration of that machinery without a careful examination by men who were competent to value what Mr. Plant had, and that there would have to be time enough for that, and that there would have to be a thorough examination,"

and that Mr. Winslow said to Mr. Plant:—

> "'If we see it has got value, we are perfectly ready to negotiate on the basis of whatever actual value it has got, and there will be no hurry about it, and we will not deal at all without seeing it, and then we will only deal after the examination, and if we can't have the examination we won't deal at all'" (R. Vol. 1, p. 604, lines 17–21, 41–44; p. 605, lines 1–2).

Mr. Endicott and Plant's intermediary, Smith, testified to the same effect (R. Vol. 1, p. 577, lines 12–14; p. 772, lines 33–35).

As to the instructions given by Mr. Winslow to the experts, when Plant, after repeated refusals, had finally decided to permit the examination, Mr. Warren testified that he—

> "was told to go with the rest of the gentlemen that were there to the Plant factory and look at any or all of the machines in that factory, and examine them to see what features there might be, if any, about the machines that would be valuable if added to our machines, or if they would be any addition in any way to the manufacture of shoes" (R. Vol. 1, p. 785, lines 27–32).
>
> "My orders were to look at the machines and tell Mr. Winslow, or report, what I could see in the machines that would be of value or that would improve our machines, to improve the art of making shoes" (R. Vol. 1, p. 814, lines 38–41).

The District Court found:—

> "The agreement to take the patents and inventions was not made until after a careful examination and report as to their merits. The belief thereon founded that, used as above, they would be worth acquiring upon the terms proposed, is shown to have been justified by the result, and the acquisition cannot be criticised so far as it was occasioned by that belief. As developed and added to its own machines by the United Company, some of the inventions acquired have proved to be of a value such as fairly justifies their claim that the patents acquired were the controlling feature of the purchase" (Dodge, J., R. Vol. 1, p. 1145).

B. Another consideration was the avoidance of endless litigation and intolerable conditions in the industry which would have resulted from the hopelessly complicated patent situation.

We have already shown (*supra*, pp. 551–556) that there was uncontradicted testimony that there were 708 distinct cases of infringement of the United Company's patents by thirty-seven Plant machines, including all of his more important

machines; that the evidence shows that fifteen of the United Company's machines, including many of its most important machines, infringed a large number of claims in twenty Plant patents,—evidence contradicted by the United States as to only six machines, and as to those amply corroborated; and that twenty-three interferences had been declared by the United States Patent Office between patent applications owned by Plant and applications owned by the United Company, in which many of the United Company's most important machines were involved. We have explained that many suits had been brought against Plant for infringement by his machines, and that the United Company was prepared and intended to bring a large number of additional suits.

Before the Plant purchase all these patent complications were the subject of extended discussion by Mr. Howe, Mr. Howard, and other counsel with Mr. Winslow (R. Vol. 1, p. 821, lines 20–34; p. 862, lines 11–21; p. 877, lines 31–33).

Mr. Winslow testified (R. Vol. 1, p. 862, lines 24–31):—

> "The confusion and conflict in the patent situation of my own company and of Mr. Plant, the chaos which might result from conflicting claims and constant litigation, was a substantial consideration in my mind, affecting my negotiations or willingness to negotiate with Mr. Plant, and when Mr. Plant offered to me the patents at a price which to my mind was less than their value to the art of shoe manufacturing when combined with our machines, it might be said to be a controlling factor."

Mr. Howe testified:—

> "There would have been a large amount of litigation both by the owners of the Plant patents against the United Company, and by the United Company against Plant machines. . . . This chaotic condition which might result from the patent situation had considerable weight in my mind. Of course, the controlling consideration for the purchase of the Plant patents, was the value, the great value, it seemed to me, of his inventions, especially when combined with and merged in our machines. Then another consideration for the purchase was this avoidance of litigation either by ourselves against him, which would have cost a great deal of money and would have annoyed

the trade very much, the shoe manufacturers, and also the cost and annoyance of having to be sued by Plant" (R. Vol. 1, p. 877, lines 28–31, 36–44; p. 878, lines 1–2).

It was held by the District Court (Dodge, J., R. Vol. 1, p. 1145):—

> "It was part of the bargain with Plant, or followed from it as a result, that the above controversies were settled or avoided. That the prospect of accomplishing this result was a further normal, natural, and powerful inducement to the agreement made with him cannot be reasonably doubted. In so far as the agreement was thus intended, no criticism of it can be valid."

In *Bement* v. *National Harrow Company*, 186 U. S. 70, it was said by this Court (p. 93):—

> "There had been, as the referee finds, a large amount of litigation between the many parties claiming to own various patents covering these implements. Suits for infringements and for injunction had been frequent, and it was desirable to prevent them in the future. This execution of these contracts did in fact settle a large amount of litigation regarding the validity of many patents as found by the referee. This was a legitimate and desirable result in itself."

7. THE PLANT PATENTS WERE WORTH MORE THAN THE PRICE PAID FOR THEM.

For the Plant inventions and patents and for 60 per cent. of the stock of the Thomas G. Plant Company, the shoe manufacturing concern, the United Company paid Plant $6,000,000, and of this amount Mr. Winslow considered that $2,500,000 ($1,250,000 in United Company stock at twice par) was paid for the Plant patents and inventions (R. Vol. 1, p. 490, lines 35–39; p. 569, lines 17–22; P.'s Ex. 132, R. Vol. 4, p. 935).

The stock of the Shoe Company was purchased because Plant refused to sell the inventions unless that stock were also purchased. He wanted to get out of business and retire

(R. Vol. 1, p. 486, lines 2–7; p. 487, lines 11–16; p. 562, lines 11–13; p. 580, lines 36–39; p. 603, lines 26–30; P.'s Ex. 132, R. Vol. 4, p. 932). Mr. Winslow testified that he did not want the Shoe Company stock, but thought that it was a good bargain at the price, and that he could dispose of it (R. Vol. 1, p. 562, lines 17–18; p. 568, lines 14–16).

Mr. Winslow valued the shoe company stock purchased at $3,500,000 (R. Vol. 1, p. 490, lines 35–36). This seems a conservative estimate as the company was extremely prosperous. Its earnings for the past four years had averaged $738,000 annually and for the year preceding the use of Plant's own machinery had amounted to $1,122,196.28. These figures are taken from a sworn statement by a public accountant (P.'s Ex. 132, R. Vol. 4, pp. 1013–15). Mr. Winslow required Plant to guarantee the accuracy of that statement (R. Vol. 1, p. 496, lines 21–27; P.'s Ex. 132, R. Vol. 4, p. 1017).

Plant owned and sold 60 per cent. interest in the stock of the Shoe Company. Sixty per cent. of the average earnings for the past four years amounted to $442,800 annually. Capitalized at 10 per cent. this would show a value for the Shoe Company's stock which was purchased of $4,428,000.

The District Court held (Dodge, J., R. Vol. 1, pp. 1144–5):—

> "That it was of great value is shown beyond question by the dividends then and afterwards paid on the stock acquired by the United Company. These, and the ultimate disposition of the stock itself, afford every reason to believe its actual value when acquired sufficiently great to reduce the actual cost of the patented improvements also acquired to a comparatively small proportion of the total payment made to Plant."

Assuming, however, that the Shoe Company's stock was worth no more than $3,500,000, this would leave $2,500,000 to represent the patents. They are undoubtedly worth more than this to the United Company.

Mr. Winslow testified that to his mind this price was "less than their value to the art of shoe manufacturing when combined with our machines," that he would have considered them a very cheap purchase at a sum "much in excess of

that price," that he would be "very glad to buy the same value next week," and that—

> "If my judgment hadn't been that they were worth more than we paid for them, we never should have bought them" (R. Vol. 1, p. 490, lines 28–34; p. 569, lines 22–23; p. 862, lines 29–30).

Mr. Warren testified that it was his opinion and that soon after the purchase he told Mr. Winslow that the improvements on the *welter and stitcher alone* were worth all Mr. Winslow gave for the entire property (R. Vol. 1, p. 788, lines 8–10; p. 813, lines 6–9).

The United States urges strenuously that the Plant inventions were not worth as much as was paid for them. But the United States contends that the Western manufacturers were willing to pay $1,600,000 for only a *half interest* in Plant's patents and inventions, *not* including any interest in the Shoe Company (R. Vol. 1, p. 126, lines 14–28; p. 189, lines 5–15). If the record supports that contention, the Western manufacturers were setting a value of $3,200,000 on the patents and inventions alone, and the United States cannot consistently claim that they were not worth the $2,500,000 which the United Company paid for them.

The District Court held (Dodge, J., R. Vol. 1, p. 1145):—

> "Taking the transaction as a whole, if the total amount paid by the United Company was large, the total value of all that was received in exchange also appears, not as matter of opinion merely, but by actual results shown, quite sufficient to negative any claim that the defendants paid an exorbitant price for what they got.
>
> "The evidence that among these patented improvements obtained from Plant there were enough of sufficient value, in the defendants' hands and used as they only could have used them in further developing and perfecting the machines they were then producing or trying to produce, to make this part of the total acquisition extremely profitable to the United Company was not met by any sufficient proof to the contrary."

8. THAT THE UNITED COMPANY PURCHASED THE PLANT PATENTS BECAUSE IT WAS BELIEVED THAT THE PURCHASE WOULD RESULT IN GREAT BENEFITS TO THE SHOE MANUFACTURING INDUSTRY, AND FOR NO OTHER REASON, IS FURTHER SHOWN BY THE HISTORY OF THE NEGOTIATIONS.

The United Company never approached Plant in any way directly or indirectly with reference to acquiring either his patents or his stock in the Plant Shoe Company (R. Vol. 1, p. 559, lines 5–6; p. 566, lines 27–28). There is no evidence that before Plant made his overtures the United Company had ever considered acquiring his patents.

Negotiations were Opened by Plant.

Plant asked Henry B. Endicott, a shoe manufacturer, to help him make a sale of his patents to the United Company, and he offered Mr. Endicott a commission of $250,000 if he would effect the sale. He later increased that offer to $500,000 (Endicott, R. Vol. 1, p. 576, lines 33–43; p. 580, lines 16–18).

Accordingly Endicott invited Winslow to meet Plant at Endicott's house. That meeting was held in June, 1910 (Winslow, R. Vol. 1, p. 479, lines 27–40; Endicott, p. 577, lines 1–3).

At this first meeting, after explaining the merits of his machines, claiming that they were wonderful and very valuable, Plant offered to sell his patents for $6,000,000 and said that at the end of the week the price would go up $500,000 (Winslow, R. Vol. 1, p. 479, lines 41–45; p. 480, lines 1, 29–32; Endicott, p. 577, lines 6–10).

From the Start Winslow Insisted that He would not Purchase Plant's Patents until Their Value had been Determined by an Expert Examination, and then only if They would be of Value to the Shoe Manufacturing Industry.

Winslow told Plant that he could form no opinion regarding the value of Plant's inventions until his experts had examined Plant's machines. He said to Plant that—

> "it was the value of the patents to our customers and the trade, the art of making shoes, that I was interested in, and when I could know what he had, why, then I could know what I thought they were worth to me" (R. Vol. 1, p. 480, lines 4–6, 34–38).

Endicott testified that at this interview Winslow told Plant that—

> "he could not consider the proposition at all until he knew the value, and he stated then that he meant the value to the advancing of the art of shoemaking" (R. Vol. 1, p. 577, lines 12–14).

At this interview Plant questioned whether the United Company's mechanical experts ought to see his machines, fearing that infringement suits might be brought as a result of such an examination. The interview was adjourned with the understanding that Plant would consult his attorneys in New York as to an examination by experts (Winslow, R. Vol. 1, p. 480, lines 6–9, 15–22).

Winslow Continues to Insist that He would not Purchase without an Examination and not unless Plant had Improvements that would be of Value to the Industry.

When the discussion was resumed on June 23, 1910, at a meeting arranged by Mr. Endicott, Plant said that he could not consent to the United Company's experts seeing his machines; that his New York attorneys did not agree to it. He threatened that if Winslow did not trade with him without seeing his machines he would publish advertisements which would attack the United Company and its methods of doing

business and also would publish letters from attorneys. At both interviews nothing but Plant's inventions and patents was discussed. The Shoe Company's stock was not mentioned (Winslow, R. Vol. 1, p. 481, lines 4–46; Endicott, p. 577, lines 15–28; p. 586, lines 43–45; p. 587, lines 1–4). This interview was concluded by this statement to Plant by Winslow:—

> "I said that of course I could not consider trading with him without seeing his machines and I was not interested in what he had unless he had improvements that would be of value to our customers. I was very sorry, but I could not do any business" (R. Vol. 1, p. 481, lines 41–44).

The Interview on June 27.

At the next interview, arranged by Endicott, on June 27, Plant said that his price was now $6,500,000 and that it would be $7,000,000 the next week. Plant again indicated that he desired very much to sell his patents and inventions, but was very reluctant to have the United Company see his machines. He made a proposition that the United Company should give him a million dollars and two of its officers could then examine his machines. Of this proposition Winslow said:—

> "If we did not buy, the million dollars was to be forfeited to Mr. Plant, so that a look at his machines would have cost us a million dollars.
> "I did not accept that proposition."

Winslow repeated that he would not even consider Plant's offers without a thorough examination to determine the value of the inventions (Winslow, R. Vol. 1, p. 482, lines 1–32; Endicott, p. 587, lines 4–9).

Endicott then suggested that Messrs. Keith and Hanan, both shoe manufacturers and directors of the United Company, should examine the machines and decide whether it would be right for Winslow to pay a million dollars for the option in order to get an opportunity for his mechanical experts to examine the machines; but Keith and Hanan refused to accept this responsibility (Winslow, R. Vol. 1, p. 482, lines

33–45; p. 483, lines 1–2; Endicott, p. 577, lines 29–45; p. 578, lines 1–9).

Winslow again Breaks off Negotiations.

Winslow then notified Endicott that—

> "in view of the fact that Mr. Plant would not allow us to have our experts examine his machines we should drop all negotiations" (Winslow, R. Vol. 1, p. 483, lines 11–12).

Endicott confirms this (Endicott, R. Vol. 1, p. 578, lines 10–15).

This ended Endicott's connection with the negotiations as Plant's representative. The next day he called upon Winslow, told him he believed the United Company ought to have Plant's patents for the benefit of the industry, stated that if he had been a director he would have been willing to take the responsibility which Keith and Hanan refused to take, and suggested that if the United Company wished to elect him a director he would be willing to share that responsibility and examine the machines with Keith and Hanan. He told Winslow that he was so strongly convinced that the United Company ought to have the Plant inventions for the benefit of its customers that he wanted to do everything he could to bring that about. This statement was based on the report of Endicott's experts, who had examined Plant's machines, that there were many things in them which when combined with the United Company's machines would make them more valuable (Winslow, R. Vol. 1, p. 483, lines 15–35; Endicott, R. Vol. 1, p. 578, lines 19–31; p. 585, lines 24–28).

In accordance with Mr. Endicott's suggestion he was elected a director of the United Company and he thereupon notified Plant that he could no longer act in Plant's interest and that Plant's agreement to pay him a commission was terminated (Winslow, R. Vol. 1, p. 479, lines 29–32; p. 483, lines 26–43; Endicott, p. 579, lines 3–13).

Endicott, Keith, and Hanan, with Endicott's practical men, then examined the Plant machines on July 5 and they reported that evening at a meeting of the officers and counsel of the United Company. Endicott was in favor of putting up the

million dollars, and Keith and Hanan were against it (Winslow, R. Vol. 1, p. 483, lines 44–45; p. 484, lines 1–15; Endicott, p. 579, lines 28–32).

Winslow once more Breaks off Negotiations.

Winslow testified,—

> "What was decided then was to decline to purchase, without seeing the machines, having them fully examined by our experts, and a full report made to me by them as to the advantages that there might be in those machines."

That decision was communicated to Plant (Winslow, R. Vol. 1, p. 484, lines 16–21).

Plant Employs Smith to Effect a Sale.

Harry A. Smith, of Worcester, Mass., testified that he had frequently argued with Plant that his patents and the United Company's patents ought to be put together so that the trade could get their value and that he had offered his services as an intermediary in effecting a sale to the United Company (R. Vol. 1, p. 769, lines 1–8, 19–25; p. 770, lines 14–20; p. 771, lines 26–29).

On July 21, 1910, Plant telephoned Smith from New York and asked him to come to New York to see him. Smith went to New York and Plant told him that he had been negotiating with the United Company and that the negotiations had been broken off. Plant then suggested to Smith for the first time selling his interest in the shoe factory as well as his patents. Plant asked Smith to get him in touch with Mr. Barbour, vice-president of the United Company, and Mr. Herrick, one of its counsel. Smith told Plant that he would not start at all unless Plant withdrew his demand for a million dollars before permitting the inventions to be examined, and Plant said he would withdraw it (R. Vol. 1, p. 769, lines 26–45; p. 770, lines 1–13, 34–44).

Smith Gets Plant in Touch with Barbour, Vice-President of the United Company.

Accordingly Smith first arranged an interview with Barbour, and Plant spent six hours talking to Barbour about the value of his inventions. Smith testified that they also saw Barbour the next day and that Barbour then decided to come to Boston to take the matter up with the directors of the United Company (R. Vol. 1, p. 770, lines 21–33; p. 771, lines 1–4).

Smith Gets Plant in Touch with Herrick, Counsel for the United Company.

Smith went to Mr. Herrick's summer home and also to his office in Boston and asked him to meet Plant. Herrick told him he would meet Plant if Plant's counsel approved, and Smith arranged for a meeting between Plant and Herrick in the latter part of July. Plant told Herrick that he wished to sell what he had to the United Company. Plant still objected to an examination of his machines through fear of infringement suits (Herrick, R. Vol. 1, p. 602, lines 17–40; Smith, p. 771, lines 5–6).

Shortly after Plant asked Herrick to go out to his shoe factory and took Herrick over the factory. Plant was still unwilling to have an examination. Herrick testified,—

> "I told him that there could be no negotiations excepting on the most careful examination and that there could be no agreements whatever as to bringing any suits."

At this interview Plant said that "he was anxious to get out of business" and that he would like to sell his interest in the shoe business as well as his patents and inventions. He said that he would like to retire from business and that—

> "*he had always planned to so arrange himself that he would be free to sell out to the United Shoe Machinery Company*" (italics ours) (Herrick, R. Vol. 1, p. 603, lines 1–13, 20–34).

Smith Sees Winslow.

Smith saw Winslow on the 6th or 8th of August. Winslow told him that if Plant's patents had value he would look at them for his company, but that he would never buy them until he had looked at them (Smith, R. Vol. 1, p. 771, lines 6–7; p. 772, lines 29–35).

Plant Asks Endicott to Arrange Another Meeting with Winslow.

Early in September Plant saw Endicott and told him that he would make one more throw of the dice if Endicott was willing to arrange a meeting for him with Winslow. Plant told Endicott that his price was $6,500,000, but that he would give Endicott all that he got for it over $6,000,000. Endicott of course told him that he could not accept any commission. Plant did not say anything about selling his shoe company stock (Endicott, R. Vol. 1, p. 580, lines 3–19, 31–33).

The Meeting on September 13.

At Plant's request Endicott arranged a meeting on September 13. Plant, Winslow, Endicott, and Herrick were present. At that interview Winslow again told Plant that he would not consider any proposition or carry on any negotiations unless Plant would permit the United Company's experts to examine his machinery and ascertain the value of his inventions to the art of shoemaking, and that that was all he was interested in (Winslow, R. Vol. 1, p. 484, lines 26–35; Endicott, p. 580, lines 20–30). Herrick testified that Winslow told Plant—

> "that there would be no consideration of that machinery without a careful examination by men who were competent to value what Mr. Plant had, and that there would have to be time enough for that, and that there would have to be a thorough examination,"

and that the United Company was ready to negotiate on the basis of the actual value of Plant's inventions, but only after

an examination, and that if they couldn't have the examination they wouldn't deal at all (Herrick, R. Vol. 1, p. 604, lines 10–21, 41–44; p. 605, lines 1–2).

After a final statement by Winslow that he would have no further negotiations without an examination of Plant's machines, Plant consented to the examination on the understanding that no more suits for infringement of the United Company's patents should be filed for two weeks (Winslow, R. Vol. 1, p. 484, lines 35–45; p. 485, lines 1–6).

The Examination of Plant's Machines.

On September 14 and 15 Messrs. Winslow and Howe, with a committee of machinery experts and patent experts, went to the Plant shoe factory and examined the machines embodying Plant's inventions. The experts continued their examination on the 16th. They reported to Mr. Winslow each night (Winslow, R. Vol. 1, p. 485, lines 4–14; p. 559, lines 34–36; Warren, R. Vol. 1, p. 785, lines 21–34; p. 808, line 29–p. 809, line 3; p. 815, lines 19–21).

The Meeting on September 16.

Plant, Endicott, and Winslow met on September 16 after the examination by the experts. Plant then said that he wanted to get out of business altogether and offered to sell his patents and his stock in the Plant Shoe Company, 60 per cent. of its total capital stock, for $8,000,000 or $8,500,000. Winslow told him that that was an impossible figure and that that price didn't interest him. That ended that interview (Winslow, R. Vol. 1, p. 486, lines 1–44; Endicott, p. 580, lines 34–45; p. 581, lines 1–13).

The Meeting on September 20.

Plant asked Endicott to arrange another interview with Winslow. Endicott arranged one on September 20 at which

Plant, Winslow, Herrick, and Plant's attorney Carr were present (Winslow, R. Vol. 1, p. 487, lines 1–10; Endicott, p. 581, lines 30–39; Herrick, p. 605, lines 34–37).

At this meeting Plant said again that "he wanted to get out of business entirely" and that "he did not want to embark in the shoe machinery business." He said to Herrick:—

> "'I am sick of all this waiting. Everybody advises me to sell. I have talked with Mr. Whipple; he advises me to sell. I have talked with Mr. Brandeis; he advises me to sell. And everybody advises me to sell. I could keep on and make a lot of money, but I prefer to get out of the business and pay my debts and retire on my cash.'"

Plant finally offered to sell his patents and inventions and his stock in the Plant Shoe Company for $3,000,000 in cash and $1,500,000 in stock of the United Company at par. This offer was accepted by Winslow subject to approval by his executive committee (Winslow, R. Vol. 1, p. 487, lines 11–42; Herrick, p. 606, lines 7–33).

The Purchase is Made.

On the morning of September 22 a check for $500,000 was delivered to Plant's attorney, Plant having insisted that that amount should be paid on account. The agreements were then prepared and were signed during the night of that day (Winslow, R. Vol. 1, p. 488, lines 1–5; Herrick, p. 607, lines 5–10, 21–39).

Throughout the Negotiations Mr. Winslow never Made any Offer to Plant.

Throughout these extended negotiations, begun by Plant and renewed by him several times after Winslow had definitely broken them off, Winslow never made any offer to Plant. He testified on cross-examination,—

"I didn't make any proposition at any time, from the time I first met him until the time that we parted, of any sort, name, or description" (R. Vol. 1, p. 559, lines 16–18).

Mr. Herrick testified,—

"There never was any offer made to Mr. Plant at any time during all the negotiations" (R. Vol. 1, p. 606, lines 36–37).

Finding of the District Court as to the Negotiations.

The District Court said of these negotiations (Dodge, J., R. Vol. 1, pp. 1142–3):—

"There is uncontradicted evidence of declarations by Plant in 1909, that his intention was to equip these two other factories and his own with his new machines and then sell out to the United Company. That the effecting of such a sale, and not any actual competition in the market with machines then in use, was his real purpose, is hardly left doubtful by the history of his subsequent negotiations with the defendants. These, set on foot by him and at first stopped by the defendants' unqualified rejection of his proposals, he persisted in renewing, through various intermediaries, until they resulted in the purchase above described. It appears without contradiction that Plant was for a time under agreement to pay an influential shoe manufacturer, whose assistance he procured, $250,000 if he succeeded in bringing about the desired sale; also that he later offered and ultimately had to pay a commission of five per cent. on the price obtained to another intermediary who undertook to put the transaction through for him.

"The evidence regarding Plant's negotiations with the defendants sufficiently proves that they were never sought by the defendants and that there was never any attempt on their part to get Plant to sell them his inventions or machines or anything else; but that, on the contrary, all the efforts towards such a purchase were made by him. The first overtures toward it came from him; he began them soon after he had put his machines into the Plant factory; they led to interviews, all of which he sought and at which his proposals were declined without encouragement to renew them. Nowhere in the evidence is any

indication found that before Plant's overtures were thus made any purchase whatever from him had been suggested to or considered by the defendants."

Allegations in the Petition that Certain Shoe Manufactu ers were Endeavoring to Acquire Plant's Patents and that Defendants Made the Purchase on that Account.

The petition alleges that on September 22, 1910, certain shoe manufacturers were in conference with Plant with a view to either purchasing an interest in his inventions or making some arrangement which would enable them to obtain machines for use in their factories; that defendants were advised of the purpose and intent of said manufacturers, knew that if they made an arrangement with Plant defendants' machines would be removed from their factories and competition would thus be created; and made the agreement for the Plant purchase in order to prevent such competition.

The evidence shows that on September 22, 1910, a number of shoe manufacturers, members of the Shoe Manufacturers' Alliance, were in Boston, having come to confer with Plant (R. Vol. 1, pp. 114–5).

What these manufacturers really thought Plant had to sell is shown by the testimony of petitioner's witness McElroy, who testified regarding the inspection of the Plant machines which he made for them in 1910:—

> "The object of that inspection was looking to buying or acquiring *the Plant patents.* There were some western manufacturers that contemplated this, and I was sent as an expert to look over the machinery and make a report" (italics ours) (R. Vol. 1, p. 189, lines 8–12).

Prior to this time Plant had been negotiating with the United Company for several months; he had agreed on September 13th that the United Company's experts might examine his machines and on September 20th had practically concluded the sale to the United Company. There is absolutely no evidence that the United Company knew of any negotiations with these shoe manufacturers until the sale to

the United Company was practically concluded on September 20th.

Mr. Howe first heard the Western manufacturers were in Boston on the morning of September 23d. The United Company had paid $500,000 before that (R. Vol. 1, p. 688, lines 16–21).

On the evening of September 20th Plant told Winslow he should put up to the Western manufacturers a proposition which they could not accept (R. Vol. 1, p. 488, lines 18–21).

And he did (R. Vol. 1, p. 115, lines 17–21).

There is not the slightest evidence, therefore, that possible negotiations with these shoe manufacturers were known to the United Company prior to the practical consummation of the purchase, or in any way affected the United Company's action. Furthermore, the evidence shows that Plant desired to sell not only his patents but also his interest in the Plant Shoe Company and retire from business. The evidence shows that no such purchase was contemplated by the shoe manufacturers, nor does it appear that they were in a position to carry such transaction through. It is quite evident that Plant preferred and desired to sell to the United Company if such transaction could be consummated.

It is also clear from the record that if Plant had not refused for about two months to permit the United Company's experts to examine his machines the sale would have been consummated long before the Western manufacturers came to Boston. Mr. Winslow testified that, at the very beginning of Plant's efforts to make the sale,—

> "I told Mr. Plant that I should be very glad to acquire his patents if he had the valuable improvements and inventions that he claimed to have; but, of course, I could have no opinion regarding the value of his machines unless I had my experts examine them" (R. Vol. 1, p. 480, lines 2–6).

This was on June 16, 1910 (R. Vol. 1, p. 557, lines 36–37; p. 558, lines 40–41).

After the examination was made on September 14–16, the transaction was completed in less than a week. The history of the negotiations (*supra*, pp. 565–573) shows that the pur-

chase would undoubtedly have been effected much earlier had it not been for Plant's continued refusal to permit the machines to be examined.

The Great Benefits which have Resulted from the Plant Purchase would not have been Secured if the Western Manufacturers had Purchased the Plant Patents.

The United States contends that the industry would have been equally as well off if the Western manufacturers had purchased Plant's patents. But this is not so. None of the great benefits which have resulted from the purchase of Plant's patents by the United Company would have been secured if the Western manufacturers or any other party had purchased those patents.

A. A purchase of Plant's patents by any other party would not have permitted the combination of Plant's patents with the United Company's patents, which has resulted in much better machines than either the United Company or Plant had before.

We have shown that one of the great benefits resulting from the Plant purchase has been the incorporation of the valuable Plant inventions in the United Company's superior modern machines,—the combination of the inventions embodied in the United Company's superior machines with Plant's inventions which, although extremely valuable, had been incorporated by Plant in machines which were practically copies of old machines long before discarded by the United Company (*supra*, p. 551). As we have seen, the inventions of 43 Plant patents are incorporated in 26 of the United Company's most important machines (*supra*, p. 550). It is perfectly obvious that that combination of the valuable inventions of the United Company and Plant could have been secured in no other way than by common ownership of the United Company's patents and Plant's patents.

B. The intolerable conditions which would have resulted from the great number of infringements, both by the United Company's machines of Plant's patents and by the Plant machines of the United Company's patents, would not have been avoided in any degree if the Plant patents had been purchased by another party.

A purchase of Plant's patents by the Western manufacturers or by any party other than the United Company would not in any way have remedied or relieved the intolerable conditions which would have resulted from the great amount of patent litigation existing and threatened on account of the large number of infringements by both Plant and the United Company of the other's patents. As already explained in detail, there were 708 distinct cases of infringement of the United Company's patents by 37 of Plant's machines, including practically all of his important machines, while, on the other hand, a large number of claims in 20 Plant patents were infringed by 15 of the United Company's machines, including some of the United Company's most important machines (*supra*, pp. 551–554). A purchase by the Western manufacturers would merely have substituted them for Plant as a party to interminable litigation, with all the unfortunate results to the shoe machinery industry, the shoe manufacturers, and the public which would certainly have followed (*supra*, pp. 554–556).

Finding of the District Court as to These Allegations.

The District Court said with reference to these allegations (Dodge, J., R. Vol. 1, p. 1144):—

> "But the evidence fails to support these allegations. It does not charge the defendants with any knowledge, at the time they came to terms with Plant, of any negotiations between him and the manufacturers referred to. No reference appears to have been made to them or their doings during the defendants' negotiations with Plant, and no reason is found to believe that apprehension lest he might conclude some arrangement with them induced

in any degree the defendants' final agreement with him. Were it important, it might be added that so far as the evidence can be said to show anything regarding Plant's intentions toward them, it shows that he never really meant to enter into any arrangement with others if he could get the defendants to take off his hands everything which he desired to sell; and no purchase so extensive as this appears to have been at any time contemplated by the manufacturers mentioned in the petition."

The Claim of the United States that Other Capitalists Contemplated Purchasing Plant's Patents.

The United States attaches much importance to the testimony of Mr. Herrick, one of the counsel for the United Company, in regard to an interview which he had with Mr. Wallace, president of the Central Trust Company of New York, at the request of Mr. Wallace. In its brief and argument at the former hearing the United States presented this insignificant and unimportant incident in a wholly different light from that which is given by Mr. Herrick's testimony. The effect of that testimony is merely that Mr. Wallace was trying to see whether he could get the United Company to make an offer with a view, in case it did, of trying to buy Plant's patents at a lower figure and make something on the turnover. "They had no idea of putting any money out" (R. Vol. 1, p. 613, lines 44–45).

The utter insignificance of this incident is shown by the following testimony of Mr. Herrick:—

> "Mr. Wallace said that he and this large international banking concern, which had an immense amount of influence, were seriously considering acquiring an interest in the Plant factory. *I did not believe him.* My reasons for thinking that Mr. Wallace did not mean what he said were, first, I knew Mr. Wallace; then he spoke in a perfectly easy, comfortable way about how he was going to do these things. I was convinced he did not know what he was talking about and that *all he had in mind was to see if he couldn't make a turn by getting a bid from the United Company and then dealing with Plant. He almost said so*" (italics ours) (R. Vol. 1, p. 614, lines 31–40).

There is no evidence that the United Company's officials ever heard of this interview. It is inconceivable that if they had they could have been influenced by it to the slightest degree.

9. MISSTATEMENTS AS TO FACTS IN MR. CHAPMAN'S DEPOSITION REGARDING INFRINGEMENT OF PLANT PATENTS BY UNITED COMPANY MACHINES.

In Mr. Chapman's deposition (R. Vol. 2, pp. 2836(91–119)) controverting Mr. Howard's testimony that fifteen United Company machines infringed twenty of Plant's patents, in which Mr. Chapman took issue as to six only of those fifteen machines, Mr. Chapman misstated the facts as to the construction of the infringing mechanism of three of the six machines.

As to Loading and Attaching Machine—Model B: McKay Automatic Heel, Mr. Chapman admitted ignorance of the matters inquired about in Cross-Ints. 41 and 42 (R. Vol. 2, p. 2836(98)), which interrogatories were directed to the essence of the infringement set forth in Defendants' Exhibit 274 (R. Vol. 5, p. 751). Compare his answer to Int. 20 (R. Vol. 2, p. 2836(92)), as to which Mr. Browne comments, "Mr. Chapman is wrong as to the facts" (R. Vol. 2, p. 2836(130), Int. 6).

Again, attention is called to a portion of his testimony regarding Indenting and Burnishing Machine: Goodyear Welt:—

> "*Cross-Int.* 96. Did it also comprise worm and worm wheel connections geared to and to rotate said table in any of its positions?
> "*Ans.* No.
> "*Cross-Int.* 97. What mechanism referred to in my last question did it lack?
> "*Ans.* All the mechanism stated by the question."
> "*Cross-Int.* 100. And you feel as positive in this matter as you do with regard to your other statements which you have made as to machines which you examined?
> "*Ans.* Yes" (R. Vol. 2, p. 2836(109)).

Mr. Browne testified that the machine had the mechanism referred to in Cross-Int. 96, above quoted, "which Mr. Chap-

man evidently overlooked in his examination of this machine" (R. Vol. 2, p. 2836(127)).

In his testimony in regard to Pulling-over Machine—Model B: Rex, Mr. Chapman was handed a copy of patent to Ashton, No. 1,030,763, June 25, 1912 (Defs.' Ex. 351, a physical exhibit), and was asked:—

> "*Cross-Int.* 136. . . . whether or not it illustrates in the drawings and describes in the specification any features of the pulling-over machine examined by you and in regard to which you testified in your direct examination?
>
> ". . . (Objection not quoted.)
>
> "*Ans.* I do not recognize in the patent anything of the construction of the machine which I examined as stated by me in my direct examination" (R. Vol. 2, p. 2836(117, 118)).

Mr. Browne testified that this Ashton patent showed in one of its figures substantially the infringing construction of the machine in question, and that "Mr. Chapman when he testified evidently had forgotten the construction of the Model B Rex machine" (R. Vol. 2, p. 2836(124), Int. 4). Mr. Chapman also testified that he found a gauging device in that machine—

> "consisting of a pivoted, bent lever, having in one end an aperture through which had been thrust a nail" (R. Vol. 2, p. 2836(117), Int. 134).

Mr. Browne stated,—

> "This is not true of the Model B Rex machine" (R. Vol. 2, p. 2836(124), Int. 4).

Thus the record shows that, although he was afforded "ample opportunity for the examination of all the machines" about which Mr. Howard testified (Stipulation, R. Vol. 2, p. 2836(158)), Mr. Chapman did not, when he testified, remember the construction of the infringing parts of the machines, but nevertheless had no hesitation in making positive statements about them. It is submitted that this evidence as to his superficial work casts a cloud upon all his testimony in this suit.

10. FINDING OF THE DISTRICT COURT AS TO THE REASONS FOR THE PLANT PURCHASE.

The record completely supports the conclusions which were reached by the District Court, after summarizing the evidence which we have reviewed:—

> "The above reasons, none of them open to any charge of illegality, seem to me to have been the really operative reasons which must have induced the defendants to enter into the Plant bargain upon the terms which he finally offered them. They appear so adequate as legitimate business reasons for doing this as in my opinion to leave no reasonable ground for holding, against the defendants' denial, that it was really a purchase to suppress competition. No such competition or prospect of competition at the time is proved as would justify such a conclusion. . . . The property acquired being proved to have been worth the amount paid, the argument that the defendants were so anxious to hold a monopoly as to be willing to pay $6,000,000, or any other large sum, in order to get rid of a competitor, or that this was done in pursuance of a general plan conceived in 1899, fails completely" (Dodge, J., R. Vol. 1, pp. 1145, 1146).

11. THE PRACTICAL IMPOSSIBILITY OF SEGREGATING THE PLANT INVENTIONS PROVES THAT THE PLANT PURCHASE WAS A NORMAL AND LAWFUL TRANSACTION.

We have seen (*supra*, pp. 541–550) that the Plant inventions have been assimilated into the United Company's machines and that the United Company has made improvements upon those inventions which are built upon and around them, interwoven with them. Those inventions, covered by 43 Plant patents, have been incorporated in 26 of the United Company's machines, including many of its most important machines, such as the Model K Welter, the Model M Outsole Stitcher, the No. 5 Lasting Machine, the

Model B Heeling Machine, the Lightning Heeling Mach[illegible], the Pulling-over Machine, and the Model E Rounding [illegible] Channeling Machine. To take those inventions out of [the] United Company's machines would leave unworkable, wo[rth]less skeletons; there are no machines to take their places, [for] the machines which they superseded have been junked; [and] the United Company would have to develop new mach[ines] and build tens of thousands of them to take the places of [the] stripped machines. This ruthless surgery would set b[ack] the development of the industry a full decade.

It is respectfully submitted that this extraordinary sit[ua]tion is in itself the strongest evidence that the purchase [of] Plant's patents and inventions was a normal and lawful s[tep] in the normal development of the business of a concern which is engaged in inventing, manufacturing, and putting out patented machines.

12. CONCLUSION AS TO THE PURCHASE OF PLANT'S PATENTS AND INVENTIONS.

Even if it were unlawful, the acquisition in September, 1910, of Plant's patents and inventions could not reasonably be regarded as proving the alleged intent conceived early in 1899, more than eleven years before and many years before Plant had made any inventions, to monopolize shoe machinery and destroy existing competition, as is set forth in the petition. Nor could this transaction be connected to that alleged intent on the theory that it was but one of a series of acquisitions extending through the intervening years and made in pursuance of the alleged original scheme, since, as we have shown and as the District Court found, the other acquisitions were not unlawful, they were proper and reasonable steps in the normal and lawful development of the United Company's business and, accordingly, they were not made in pursuance of any unlawful purpose.

But the Plant transaction was not unlawful. It is established by the record and the findings of the District Court that Plant was not in competition with the United Company;

that he did not desire or intend to go into the shoe machinery business; that his sole purpose was to sell his patents to the United Company so that their purchase was a mere purchase of inventions made for the express purpose of being so purchased and combined with the United Company's patents; that the machines which he had constructed and installed in his own shoe factory were crude, really only experimental, constantly breaking down, and making shoes by obsolete and very expensive methods; but that in those commercially unsuccessful machines Plant had incorporated some very valuable inventions which were capable of use in the United Company's superior machines to the great benefit of the shoe manufacturing industry; that both the machines of Plant and those of the United Company infringed a large number of patents owned by the other so that there would have been a great amount of litigation which would have resulted in chaotic and intolerable conditions; that the great benefit to the industry which would result from incorporating Plant's valuable inventions in the superior machines of the United Company and from the avoidance of the great amount of threatened litigation were the sole reasons for the purchase of Plant's patents by the United Company; and that the Plant patents were worth more than the United Company paid for them.

The lawfulness of the Plant purchase can hardly be questioned. The purpose of the purchase was to enable the United Company to perfect its machines and avoid chaotic litigation. The transaction was, therefore, not unlawful because of the intent with which it was done. And obviously it was not inherently unlawful. Indeed, the evident advantages to the shoe machinery industry and to the shoe manufacturers of combining the Plant patents with the United Company's patents, were so obviously beneficial to the public generally and so normal and natural a transaction that, like the formation of the United Company considered in *United States* v. *Winslow*, supra, it was not only not inherently unlawful, but no intent could make it unlawful.

As we have stated, the Sherman Act is directed only against restraints which prejudice the public interests.

In *Nash* v. *United States*, 229 U. S. 373, the Court said (p. 376),—

> ". . . only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade."

In *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, the Court said (p. 174),—

> "In other words, founded upon broad conceptions of public policy, the prohibitions of the statute were enacted to prevent not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented."

In the present case, as we have clearly shown, had the Plant purchase not been made, the public would have been deprived of those machines which combined the latest and best improvements known to the art of shoe machinery, and shoe manufacturers would have been obliged to use far less efficient machines. A transaction which necessarily resulted in so great benefit to the industry, a result which could not otherwise have been accomplished, can clearly not be said to "prejudice the public interests" or produce "harm to the general public." On the contrary, such a transaction is one which public policy must necessarily favor from its self-evident advantage to the public, whatever the motive or intent which induced it. As such a transaction cannot result in "harm to the general public" or "prejudice the public interests," it is inherently lawful and cannot fall within the prohibitions of the Sherman Act.

If—which we deny—it could be contended that the transaction was not so beneficial to the public as to be necessarily lawful, but that it was a transaction which unlawful purpose might bring within the prohibition of the statute, the record clearly shows that no uniawful purpose existed. Being entered into for the purpose of enabling the United Company to produce more efficient machines and to avoid chaotic patent litigation, which would not only have been very annoying and expensive, but would have resulted in preventing its putting out even as efficient machines as it was then manufacturing, the transaction was clearly a "normal" contract entered into

for the purpose of "reasonably forwarding personal interest and developing trade." (*Standard Oil Co.* v. *United States*, supra.)

Can it possibly be contended that the purchase was not made for the direct purpose of acquiring and using the Plant patents and ending the existing and threatened patent litigation? We do not understand that the United States denies that these purposes existed. While the United States has attempted to minimize the value of the patents, it must admit that they were bought to be used by the United Company, that they have been so used, and that they have proved to be of very great value to the United Company and the shoe manufacturers. The contention of the United States apparently is that the United Company feared that Plant might become a competitor, and that this was an additional inducement to make the purchase. The record clearly refutes this contention, showing that the officials of the United Company believed that the Plant machines would not be commercially successful, that they purchased Plant's patents at his solicitation, that they would not purchase until after a thorough examination had convinced them that the patents would be of great value in increasing the efficiency of the United Company's machines, and that they realized the chaotic patent situation which existed and the intolerable conditions which would result. If it can be doubted that these were the sole purposes which actuated the transaction, it certainly cannot be questioned that Plant's patents were of great value and that the United Company desired to use them, and the most that can be contended is that possible competition by Plant was an added motive for the purchase. But if possible competition by Plant influenced the United Company, which we deny, this can only have been because the United Company believed Plant's patents to be so valuable that he would be able to offer machines attractive to customers which the United Company by reason of Plant's patent monopolies could not make. Plant had no established shoe machinery business or good-will, and the machines which he had constructed were so defective and unsatisfactory that if he had desired to go into the shoe machinery business he would have been obliged to develop and build a new line of machines. He had no better or greater

opportunity to compete with the United Company than any other one of thousands of American business men except in one respect, namely, his patents. If he could enter the shoe machinery business successfully, it would be solely because his patents enabled him to offer machines which the United Company was legally restrained from making. In other words, if the United Company feared competition, it was a competition which consisted in offering machines which the United Company could not manufacture, and, therefore, a competition which it could not meet on equal terms and which neither public policy nor the Sherman Act would prohibit it from meeting by the acquisition of the patents. In attempting to meet such competition, the United Company would be under a legal restraint, the restraint imposed by the lawful patent monopolies held by Plant. The Sherman Act was intended to prevent unnatural, abnormal restraint imposed on "the free flow of commerce." The removal of a restraint imposed by patent monopolies through the purchase of such monopolies cannot constitute the imposition of a restraint on the free flow of commerce such as the Sherman Act was designed to prohibit.

For a further discussion of decisions of this Court as to the right to acquire patents see *supra*, pages 486–487.

VII.

THE CHARGE THAT THE UNITED COMPANY COMMITTED VARIOUS UNFAIR, OPPRESSIVE OR MONOPOLISTIC ACTS IS UNFOUNDED.

1. THE CHARGES SPECIFIED IN THE BILL OF PARTICULARS.

In Section VI of the petition (R. Vol. 1, p. 999) defendants are charged with having made various threats or committed various unfair and oppressive acts. No specific instances are set out in the petition, but a bill of particulars, setting forth the specific instances charged, was filed during the course of the trial (R. Vol. 1, p. 1075). The bill of particulars sets forth over fifty different alleged acts or threats. **As to at least thirty no evidence whatever was offered by the United States. This fact illustrates the unfounded character of the charges.**

Some instances consisted merely of requests by the United Company to lessees that they conform to the terms of their leases. In a few cases the United Company undertook to enforce such terms. In several instances these leases had been put out by the constituent companies prior to the formation of the United Company. In every such instance if there is criticism it must be with the terms of the lease and not with the request to observe or the enforcement of these terms.

Some instances consisted of alleged threatening statements of officers of the company made to other shoe machinery manufacturers as to what it would do. In no case was the alleged threatened action taken. These alleged threats are all disputed by the company and involve the credibility of witnesses and the truth or probability of their statements.

Practically all of the evidence introduced by the United States with respect to these alleged threats or acts came from patent owners or competitors who had sought unsuccessfully

to sell out their property to the United Company, or from lessees with whom the company had had a disagreement.

The number of instances referred to by the United States is surprisingly small, considering that the entire business life of the company has been examined and extraordinary efforts made to put in evidence all acts or remarks of the officials or agents of the company occurring over this extended period of time, as to which any contention of unfairness or dissatisfaction could be made. The company has over 1,000 lessees with whom it is constantly in touch through its service men and with whom it is constantly dealing, making leases for new machines, taking back old machines, checking up royalties and furnishing service and new parts. Owing to the great variety of machines, of findings, and of supplies used in the shoe machinery business the United Company is constantly being asked to acquire new patents and businesses. For example, 493 different ideas, suggestions, and inventions have been submitted to the company by persons not employed by it as inventors, and have been declined (Defs.' Ex. 222, R. Vol. 5, p. 370). Over 75 different concerns have been offered for sale to the United Company and their purchase declined (Defs.' Ex. 233, R. Vol. 5, p. 527).

The District Court, after considering the facts in respect to such of these transactions as were relied on by the United States in argument, concluded as follows (R. Vol. 1, pp. 1152–3):—

> "The history of the proceedings in this case indicates that efforts which may fairly be described as extraordinary have been made to bring before the court, so far as possible, all sayings or doings of any of the numerous defendants or their representatives, during the period beginning with 1899 and ending with 1911, which might afford ground for charging them with oppressive, coercive, or like unfair conduct toward competitors of the United Company or the public. In view of the long period and wide fields thus searched, the numerous abandoned attempts to prove something of the kind above indicated, and the insignificant result of the evidence actually offered and finally relied on, the conclusion seems fully justified that the policy and methods pursued by the defendants and by the United Company have been, in general, above reproach in any of these respects."

In view of the District Court's finding and the complete failure of the United States to substantiate these charges, it hardly seems necessary to consider the evidence relating to them in detail; however, a detailed statement of the evidence is given in the Appendix (see Appendix II, *infra*, pp. 743–807), and we will summarize here the evidence relating to those charges which were supported by any evidence:—

1. The United States charged that the United Company removed its machines from Peter Tessier & Company's factory where a competing machine was used.

The evidence shows that Tessier leased seven machines from the United Company. He obtained other machines to do his work and discontinued entirely the use of the United Company's machines except that he used the auxiliaries without paying anything for such use. The United Company therefore removed its machines which were not being used at all or were being used without payment (see Appendix II, p. 743).

2. The United States charged that the United Company removed its machines from Bottomley's factory where a competitor's machine was used.

The evidence shows that Bottomley had stopped using the United Company's machines in his factory and notified it that he would pay no further royalties on them. The United Company therefore merely removed machines which the lessee no longer desired to use or pay for (see Appendix II, p. 746).

3. The United States charged that the United Company threatened to take back its machines from T. D. Barry Company in order to force the removal of competing machines.

The evidence shows that the T. D. Barry Company gave up the use of its Goodyear welters and stitchers, but continued to use Goodyear auxiliary machines without paying any royalty for them. The United Company, therefore, brought a replevin suit to take back its machines. The dispute was adjusted, and Barry retained the United Company's machines (see Appendix II, p. 748).

4. The United States charged that the United Company threatened Curtis & Jones and caused them to remove from their factory other machinery.

The evidence shows that Curtis & Jones in 1897 had agreed with the old Goodyear Company to use its turn machines ex-

clusively in consideration of a 50% reduction in royalties. They broke this agreement and their attention was called to it and they gave up the use of the other machines. The superintendent of the factory testified he made up his mind that the Goodyear machines were better and cheaper to operate and that the United Company's service was preferable (see Appendix II, p. 750).

5. The United States charged that Hilliard & Tabor installed a Haverhill Turn Sewing Machine and the United Company threatened to make the terms of its lease covering its turn machines more onerous if the lessee used the Haverhill machine.

The evidence shows that Hilliard & Tabor had a Goodyear Turn Machine and then installed a Haverhill machine, continuing to use the Goodyear auxiliaries without payment of royalty. After some months Mr. Hilliard happened to be at the United Company's office and his attention was called to the situation, and he was offered the initial payment form of lease if he wished to continue using the Haverhill machine (see Appendix II, p. 754).

6. The United States charged that the Harsh-Edmonds Shoe Company desired to take a clicking machine from a competitor and was warned and threatened not to, and therefore took the United Company's machine.

It appears that the Harsh-Edmonds Shoe Company obtained a clicking machine from the Richardson Company. Mr. Harsh objected to the United Company's lease covering clicking machines. He testified that Mr. Wilson, of the United Company, told him, or, as appeared on cross-examination, he thought intimated to him, that it would be better for him to cease his activity against the United Company and take things as they were. Mr. Wilson pointed out to him that he already had another lease of the same character. Mr. Wilson was dead at the time of the trial. Mr. Harsh took the United Company's machine, which he admitted was the only commercial machine in the market. He also admitted that Wilson's advice was sound (see Appendix II, p. 756).

7. The United States charged that a threat of onerous terms was made to George A. Learned if he continued to use competitors' machines.

Mr. Learned testified he had Goodyear machines. He later

obtained a Haverhill machine and claimed that Mr. Winslow told him he must pay on all the shoes he made or be driven out of business, and the least the United Company would do would be to take out its machines. This evidence was absolutely contradicted by Mr. Winslow and by Mr. Brown, who was present at the interview. Mr. Endicott testified that Learned later admitted he had been mistaken. No action was taken by the United Company, and Learned is still using the Haverhill machine (see Appendix II, p. 759).

8. The United States charged that William Barbour, one of the directors of the United Company, made threatening statements to James N. Darrah, of the Standard Shoe Machinery Company, a competitor of the United Company.

Mr. Darrah testified Mr. Barbour told him he was making a big mistake not to sell; that if the United Company could not buy out its competitors it crushed them; that he could not get any money to compete, as the United Company's influence was too great with the banks both in Boston and New York. Mr. Barbour absolutely denied making any such statements. Mr. Darrah was shown to be without financial responsibility or settled business (see Appendix II, p. 761).

9. The United States charged that E. P. Hurd, of the United Company, threatened H. E. Cilley.

Mr. Cilley testified that he interviewed Mr. Hurd as to the sale of a leveling machine which Cilley had invented, and that Mr. Hurd said, "Cilley, you are thick. If you were offered fifteen or twenty thousand dollars I think under the circumstances you ought to be very well satisfied," and further told him that he could not do business except on the United Company's sufferance. It did not appear that Cilley was interfered with in any way. Cilley had been in litigation with United Company since 1903 (see Appendix II, p. 764).

10. The United States charged that Mr. Winslow threatened Charles H. Morse, who was endeavoring to market the Frechette pegging machine and a slugging machine.

Mr. Morse testified he called on Mr. Winslow about a purchase of his business. Mr. Winslow said, "You don't suppose we are going to allow you to put them on the market" (meaning Mr. Morse's machines). Mr. Winslow denied making such a statement. It further appeared probable that Mr. Morse

had not seen Mr. Winslow since the United Company was formed, and that the conversation referred to, if it took place at all, occurred before the United Company was formed. It did not appear that Mr. Morse was interfered with in any way (see Appendix II, p. 765).

11. The United States charged that E. P. Hurd, of the United Company, threatened G. H. Clark and refused to let him have one of the United Company's machines to experiment with.

Mr. Clark testified he had invented a method for molding or lasting shoes and put one of his machines in a shoe factory; that he called on Mr. Hurd to get a lockstitch machine to put in the same factory and Mr. Hurd told him the United Company must protect its interests and not put one of its machines into a factory for Clark to experiment with (see Appendix II, p. 766).

12. The United States charged that Kimball & Hadley, who manufactured needles and awls, were threatened by the United Company, and that in consequence they sold their business to the United Company.

Hadley testified that Bayley, an agent of the United Company, told him that he could not manufacture needles as cheap as the United Company, which could give them away if necessary. Mr. Bayley was in a sanitarium and could not testify. Mr. Hadley also testified that certain manufacturers had stated that the use of his needles and awls was in violation of the leases of the United Company. This testimony was absolutely denied by the manufacturers, and no lease of the United Company does contain such a provision. Hadley had been unsuccessful in litigation with the United Company and had been enjoined by the court (see Appendix II, p. 767).

13. The United States charged that three operatives of the Plant factory were employed by Willson, general manager of the United Company, to organize a union of the employees at the factory and start a strike.

These three men testified they called on Mr. Willson, who agreed to pay them $2,000 apiece and their expenses if they would organize the employees of the Plant factory and start a strike. They testified they spent $1,500 in entertaining the employees and giving them a good time. They testified their

wages averaged about $15 a week, and this sum represented the savings of eleven or twelve years. They had no papers, receipts, or written evidence of any kind to support their story, claiming they had destroyed all their papers and the list of operatives' names. Their story was flatly contradicted by nine operatives in the Plant factory, who testified that they worked in the same room with the men who claimed they were so employed, and knew them well, and they had no knowledge of any union being organized or of any strike being attempted, and that no money was spent among the employees as testified to.

The testimony of these witnesses is incredible (see Appendix II, pp. 776–779). The District Court said of it (R. Vol. 1, p. 1152),—

> "Not only does the evidence of these three witnesses appear unworthy of belief in view of its improbability, its lack of corroboration, and the evidence tending to discredit it, but it is difficult to understand how the petitioner could seriously have expected the court to accept such testimony, or have considered itself justified in offering it."

14. The United States charged that in 1910 the agents of the United Company induced a former employee of the Plant Company to demonstrate one of the Plant machines.

This was not denied, but was a harmless performance (see Appendix II, p. 780).

15. The United States charged that Mr. Winslow threatened C. S. Johnson and duplicated his machine.

Mr. Johnson testified that he was connected with a company which put out a leveling machine, that he agreed with Mr. Winslow upon a sale to the United Company of the machine, but the contract for purchase when prepared was not satisfactory to him and he declined to sign it. Mr. Winslow suggested he had better sign it because he was going to have the business anyway, or words to that effect, and that shortly afterwards the United Company put a similar machine on the market. Johnson admitted he had a grievance against the United Company and was hostile to it (Appendix II, p. 782). Winslow denied any such conversation, and testified that the United Company had never interfered with Johnson's business.

16. The United States charged that Mr. Winslow threatened Frank L. Harmon, an inventor, and treated him unfairly in various ways.

Mr. Harmon testified he was developing some machine, and, having no business experience, he came to Mr. Winslow for information, who advised him that he was foolish to go into the machinery business with the small amount of capital he had. This conversation took place about twenty-five years before, and long previous to the formation of the United Company (see Appendix II, p. 783).

17. The United States charged that the N. D. Dodge Shoe Company was using machines of the Haverhill Shoe Machinery Company but when they desired to put in the United Company's welt machines they had to discontinue using the Haverhill machines because the installation charges demanded were so large.

The only evidence in support of this charge was hearsay evidence of L. H. Harriman, treasurer of the Haverhill Company, who testified that the Haverhill machines were discontinued by the Dodge concern because the Haverhill Company could not supply the welt machinery which they wanted and the United Company would not do so as long as they used Haverhill machines.

William G. Dodge testified that they tried the Haverhill machines while they were waiting for new machines of the United Company and that when the new machines were ready they discontinued the Haverhill machines because the United Company machines were more efficient (see Appendix II, p. 787).

18. The United States charged that Carlton & Hunt were using machines of the Haverhill Shoe Machinery Company and desired to obtain welt machines of the defendants, and were informed they would have to discontinue the use of the Haverhill machine or pay a prohibitive installation charge on their new machines.

The only evidence in support of this charge was the hearsay statement made by Harriman, an agent of the Haverhill Company, to the effect that Mr. Hunt had told him he could not get United Company's welt machines unless he discontinued using the Haverhill Turn Machine. Carleton & Hunt

were using in connection with the Haverhill machine a number of United Company machines for the use of which the United Company was not receiving any compensation (see Appendix II, p. 790).

19. The United States charged that one Webster was operating two Pettengill nailing machines, and because of this fact could not get pulling-over and toe-capping machines from the United Company without paying excessive installation charges, and he therefore removed the Pettengill machines.

Webster testified that the United Company offered him these machines without restrictions if he paid an initial payment or, as an alternative, offered him a restricted lease without the initial payment. The initial payment, he said, would cost him more than it would if he used the United Company's entire machinery (see Appendix II, pp. 790–791).

Charges as to Rebates.

The United States charged that the United Company granted rebates to manufacturers to effect an exclusive use of its machinery, (1) by making distribution of its stock to users of its Goodyear machines and, (2) by cancelling the royalty on the Gem Insole Machines to users of its other machinery.

1. On June 10, 1910, the United Company sent a circular letter to its lessees in which it stated that beginning January 1, 1910, it would create a fund by investing each year for three years in the common stock of the United Company a percentage increasing each year of the amounts received from lessees for the use of Goodyear Welting, Stitching, and Turn Sewing Machines in the United States. At the end of three years it agreed to distribute the entire amount of stock held in the fund among those lessees who used the Goodyear Welting, Stitching, and Turn Sewing Machines, and who should have faithfully observed the covenants of their leases, each lessee to receive a share of the fund proportionate to the amounts paid by him for the use of such machines. It agreed that not less than 15% of the amount received from welting and stitching machines and 10% of the amount received from turn machines would be so invested (P.'s Ex. 146, R. Vol. 4, p. 1067).

This offer did not require an exclusive use of the United Company's machines, but merely proposed to return a portion of the royalties received from lessees who used Goodyear welting, stitching, or turn machinery if they observed the covenants of their leases which, of course, they were morally and legally required to do. It amounted merely to a reduction in the price charged for this machinery, such reduction to be represented by stock of the United Company. This was not unlawful.

Wilder v. *Corn Products Co.*, supra.

The Attorney-General was notified during the pendency of this suit that the United Company proposed to carry out this plan, and he offered no objection to it (R. Vol. 1, p. 979, and Defs.' Ex. 344, R. Vol. 5, p. 953).

2. On January 29, 1900, the executive committee of the United Company voted that a rebate be granted to exclusive users of the company's machines, such rebate to be made by quarterly payments of amounts equal to the sums paid by them respectively as royalty on the Gem Insole Machines during the quarter for which the rebate was made (R. Vol. 1, p. 351, line 39–p. 352, line 6).

The United Company after it was formed acquired the Gem Insole Machines, which had been put out previously for a royalty charge of one-half cent per pair (R. Vol. 1, p. 430, lines 11–13). This machine was used in the manufacture of Goodyear Welt shoes. It was practically made, upon its acquisition, an auxiliary of the Welt Set. A number of these machines were already out on leases, and the machine was therefore put out by the United Company on a separate lease, but the royalty was repaid or credited to manufacturers who used the Goodyear Set of machines. It was necessary to have a general vote to apply to machines already out on lease as well as those which might be put out, and that was the purpose of the general vote (R. Vol. 1, p. 852, lines 33–41; p. 664, lines 31–36).

2. OTHER CHARGES OF UNFAIR, OPPRESSIVE OR MONOPOLISTIC ACTS, NOT SPECIFIED IN THE BILL OF PARTICULARS.

The United States also claims that the United Company has committed certain other unfair or oppressive acts, although they were not specified in the bill of particulars.

The evidence which the United States relies on to support these charges consists for the most part in the evidence of competitors who were endeavoring to displace the United Company's machines by their own and who in their testimony repeated statements alleged to have been made to them by shoe manufacturers.

In each instance the shoe manufacturer had the United Company's machines which he had agreed to use so far as he had work for them and substitution of the competitor's machines would have resulted in his setting the United Company's machines aside and letting them stand idle. This would, of course, have been a violation of the Full Capacity Clause in his leases.

Furthermore, it should be remembered that if a shoe manufacturer does not want a competitor's machines it is easier for him to say he cannot take them than to argue their relative merit with the salesman. Remarks made by shoe manufacturers to salesmen as to the reasons why they do not take such salesmen's machines cannot be treated with great seriousness.

So far as the evidence bearing on these charges shows anything material it shows that the United Company was always willing so to arrange a shoe manufacturer's leases that he could use with the United Company's machines any other kinds of machines obtained from competitors which he wished to use.

The evidence regarding these charges is reviewed and discussed in Appendix II (*infra*, pp. 791–804), and at the end of that discussion will be found quotations from the opinion of the District Court showing its findings as to the charges of unfair and oppressive acts and as to the charges that provisions of the leases have been arbitrarily enforced (Appendix II, *infra*, pp. 804–807).

VIII.

THE UNITED COMPANY HAS NOT MADE EXORBITANT PROFITS AS CHARGED IN THE PETITION.

The petition charges that the United Company has made enormous and unreasonable profits (R. Vol. 1, p. 1026). This charge is without foundation.

The only purpose of this allegation is to support the charge that one object of the defendants' conspiracy or project was to "enhance the cost of said machines to users thereof" (R. Vol. 1, p. 997). As the record shows that the United Company has very materially reduced the cost to shoe manufacturers of their machines by removing initial payments, reducing royalties in certain cases, and giving shoe manufacturers enormously improved machines, this charge of intent to enhance the cost of shoe machinery to shoe manufacturers is proved to be absolutely unfounded. If the economies and improvements introduced by the United Company have enabled it not only to reduce the cost to shoe manufacturers of their machines, but also to make large profits itself, this shows no illegal or unlawful purpose.

But the charge that the United Company has made unreasonable profits is without foundation.

The United States in support of this charge called Richard N. Morton, auditor of the United Company and of the United Shoe Machinery Corporation. His testimony showed that the earnings based on the net assets of the United Company and the United Corporation for the period from March 1, 1905, to March 1, 1911 (the period chosen by the United States), were 14.01% and the average rate per cent. of cash dividends to net assets was 7.10% (R. Vol. 1, pp. 359–360) (Defs.' Ex. 95, R. Vol. 5, p. 124).

Mr. Morton showed that the allegations in the petition that

the United Company had made $45,314,261 in the period from March 1, 1905, to March 1, 1911, was due to erroneously combining the earnings of United Shoe Machinery Corporation and its subsidiary, the United Company, thus including a large part of its earnings twice (R. Vol. 1, p. 360). The charge in the petition that these earnings were made on $20,000,000 of invested capital was not true (R. Vol. 1, p. 360). The net assets at all times during this period exceeded this amount and in 1910 amounted to $40,771,821.

In Mr. Morton's figures practically no value is placed on the patents owned by the United Company. The company has carried its patents during this period at only $400,000. The patents on the 150 new machines developed by the United Company, including the valuable patents on the pulling-over machine, which cost the United Company nearly $1,000,000 to develop, the clicking machine patents and numerous other valuable patents, including patents on thirty-nine machines which perform work previously done by hand, which have been invented and acquired by the United Company since its organization, have not been capitalized. If these patents were included in the assets at a fair valuation the percentage of profits would be greatly reduced.

The District Court found as follows with respect to this charge (R. Vol. 1, p. 1135):—

> "No support is found in the evidence, for the charge in the petition (Par. X) that 'enormous and unreasonable profits' had been made. . . . Nothing shown by the evidence warrants the conclusion that profits unreasonably out of proportion to the extremely large cost at which the business has been developed and is maintained, the great investment of capital it has required, and the enterprise, inventive skill, and business ability devoted to it, have been realized. Nor has it been made to appear that the charges made for the privilege of using the machines are exorbitant or unreasonable; especially in view of the great benefit to manufacturers using them, in lessening their cost of production."

IX.

FORMATION OF THE UNITED SHOE MACHINERY CORPORATION.

The petition charges (par. Ninth, R. Vol. 1, p. 1024) that the United Shoe Machinery Corporation was organized in 1905 and acquired practically all the stock of the United Company in order to provide means for distributing a portion of the accumulated surplus of the United Company and to secure better means for destroying competition and monopolizing commerce.

The United Shoe Machinery Corporation issued its preferred stock, share for share, for preferred stock of the United Company and issued 1½ shares of its common stock for each 1 share of the common stock of United Company (R. Vol. 1, p. 358, line 27).

The petition admits that the business of the United Shoe Machinery Corporation has been confined to holding the stock of the United Company (R. Vol. 1, p. 1025). No other evidence was introduced relating to the United Shoe Machinery Corporation. The charge that it was formed to restrain trade or monopolize more effectively is therefore shown to be without foundation.

X.

THE UNITED COMPANY HAS NO UNLAWFUL MONOPOLY OF SHOE MACHINERY. THIS FACT NECESSARILY DISPOSES OF THE PRESENT SUIT.

1. Introductory Statement.

The petition charges that the defendants in or prior to 1899 "determined to acquire a complete monopoly of the manufacture, sale and lease of shoe machinery" and that the various acts described in the petition were steps in carrying out this unlawful project (R. Vol. 1, p. 994). After setting forth the various acts charged it alleges that the defendants have thereby acquired a monopoly in shoe machinery (R. Vol. 1, p. 1027).

It is essential to the case of the United States that it prove the existence of this monopoly.

In the first place, there is no evidence of the unlawful plan or project charged in the petition or of any unlawful purpose unless it can be inferred from the acts of the defendants as proved in the record. If these acts during a period of more than twelve years have not resulted in an illegal monopoly, it is obvious that they are not of a character to cause such result, and, therefore, cannot well give rise to any inference of an unlawful plan to obtain an illegal monopoly. An unlawful plan to accomplish an illegal result cannot be shown by proof of acts which are either not adapted to or cannot accomplish the result.

In the second place, the purpose of this suit is primarily (1) to have the United Company dissolved because it is an unlawful monopoly, and (2) to have the leases declared un-

lawful because they have created or aided in creating this unlawful monopoly. If the United Company is not an unlawful monopoly it should not be dissolved. If no unlawful monopoly exists, it is evident that the leases have had no unlawful effect, *i.e.*, they have not created or aided in the creation of an unlawful monopoly, and they, therefore, cannot be held unlawful on the ground that they have done so.

2. The United Company has not obtained a Monopoly of all Shoe Machinery as Charged in the Petition.

The District Court said with reference to this charge (R. Vol. 1, p. 1127):—

> "The restraint or monopoly alleged in the petition is restraint or monopoly of interstate commerce in 'any and all kinds of shoe machinery,' *i.e.*, in shoe machinery generally.
>
> "But it appeared early in the trial that no such charge could be proved, because neither the business of the component companies in 1899 nor that of the United Shoe Company from its beginning until the bill was filed related to 'all kinds of shoe machinery.' Both were always limited to certain kinds only. This was finally conceded. . . ."

There is a large field of shoe machinery not manufactured by the United Company at all, such as all the different machines for sewing the uppers of shoes (machines exceedingly important in the manufacture of a shoe), and many others.

In addition there are manufacturers who, in competition with the United Company, furnish every kind of a machine needed in the manufacture of shoes. Of course such competitors do not manufacture machines exactly like the machines of the United Company, because these machines are made under patents and the United Company has a lawful monopoly of their manufacture.

The failure to prove the charge of monopoly in all shoe machinery is illustrated by the following facts:—

R. P. Hazzard, a shoe manufacturer, making Goodyear Welt shoes, with an output of 5,000 pairs a day (R. Vol. 1, p. 641,

line 10), testified that he used in the Bottoming Department all the machines that the United Company produces and he could get (R. Vol. 1, p. 641, lines 26–28; p. 651, lines 10–13). A complete list of the machines in his factory appears in Defendants' Exhibit 262 (R. Vol. 5, p. 707). It shows that Mr. Hazzard had a total of 746 machines in his factory, of which only 327, or less than 44%, were obtained from the United Company. Counting as United Company machines only those which it leases only (that is, excluding General Department machines, which can be bought outright or bought elsewhere and as to which no monopoly is charged), this list shows that Mr. Hazzard had only 296 United Company machines out of a total of 746 machines; in other words, that less than 40% were United Company machines. This list further shows that Mr. Hazzard had 258 machines in his stitching-rooms of which only 8 were obtained from the United Company.

Jonathan Brown & Sons manufacture McKay shoes, the class of shoes most largely made in the United States. Mr. Brown stated that he wished every machine in his factory was under the control of the United Company on account of its service (R. Vol. 1, p. 731, lines 3–12). He, therefore, took as many United Company machines as he could use. A list of the machines in his factory is given in Plaintiff's Exhibit 269 (R. Vol. 4, p. 1441). This list shows that out of a total of 424 machines only 128, or 30%, were obtained from the United Company. Excluding from the list of United Company machines General Department machines, which could be bought outright from the United Company, or bought elsewhere and as to which no monopoly is charged, the list shows that only 64 machines, or 15%, were United Company machines (R. Vol. 4, p. 1446). This list further shows that out of 191 machines in the stitching-rooms only 6 were obtained from the United Company.

Charles H. Jones, a witness for the United States, testified that his company, the Commonwealth Shoe and Leather Company, had an output of between 6,000 and 7,000 pairs a day, mainly men's welt shoes with a few pegged and Standard Screw shoes (R. Vol. 1, p. 105). A list of the machinery in the factory of this company is given in Plaintiff's

Exhibit 279 (R. Vol. 4, p. 1557). This list shows a total of 1,316 machines, of which only 584, or 44% were obtained from the United Company. Mr. Winslow showed, however, that Mr. Jones had included in this list as obtained from the United Company 73 hand tackers, which are not machines at all, but merely hand tools without power and similar to a hammer, and 41 attachments placed on other machines (R. Vol. 1, p. 976). Deducting these 114 tools and attachments leaves only 470 machines obtained from the United Company out of a total of 1,202, or less than 40%. Deducting the 119 General Department machines which could be bought outright (R. Vol. 1, p. 976, lines 37–40), leaves only 351 machines obtained from the United Company, or less than 30%. This list further shows that out of 465 machines in the fitting-room only 8 were obtained from the United Company.

The International Shoe Co., one of the largest in the world, did not take more than 50% of its machines of the United Company (R. Vol. 1, p. 183, lines 37–42).

The machines manufactured by the constituent companies, as we have said, occupied a comparatively small portion of the entire shoe machinery field. As to the comparative size of this field, Mr. Winslow testified,—

> "The ratio of the machines of the constituent companies to all shoe machines in 1899 was 26 to 138; that is, in round numbers there were 26,000 of United Company machines and 112,000 of machines of other companies, a total of 138,000 in 1899" (R. Vol. 1, p. 452, lines 11–15).

The machines of the Goodyear Company were used wholly for making welt and turn shoes. The manufacture of welt shoes increased enormously after 1899, namely, from 22,700,000 pairs out of a total of 172,786,000 pairs to 86,231,000 pairs out of a total of 278,916,000 pairs (Defs.' Ex. 215, R. Vol. 1, p. 424). The number of auxiliary machines also greatly increased. In 1899 only about 50% of the shoes made were lasted by machines, while to-day practically all shoes are so lasted. In spite of this, the percentage of machines of the kind previously put out by the constituent companies as compared with other machines increased very slightly. Mr. Winslow testified:—

"On the nearest date to the beginning of this suit for which I was able to make a compilation there were 41,602 machines of the Goodyear, heeling, lasting, and metallic departments, compared with 181,000 of all kinds of machines, a ratio of 41 to 181. In this comparison I did not include lasting or metallic auxiliaries, because they are more devices than machines.

"In round numbers the United Company's machines in 1899 were about one in every five and a quarter, and in 1910 about one in every four and a half" (R. Vol. 1, p. 452, lines 16–24).

Defendant's Exhibit 235 (R. Vol. 5, pp. 531–671) sets out each consecutive operation in the manufacture of eight different kinds of shoes most commonly made, viz.: men's McKay sewed shoes, women's McKay sewed shoes, men's welt shoes, women's welt shoes, women's turn shoes, men's loose-nailed shoes, surface standard screwed shoes, and channel standard screwed shoes. It gives under the heading of each operation the name of the machine furnished by the United Company, where it furnishes the machine for performing the operation, and also the names of other concerns furnishing machines for performing the same operation. An examination of this list will show that for practically every operation performed by machines for which work the United Company furnishes a machine there is a competitor, and in most cases there are numerous competitors, prepared to furnish machines for performing the same work. This list further shows that in the manufacture of a man's Goodyear welt button shoe in a factory where the counters are made by the manufacturer, there are 157 different operations of which 44 are performed by hand leaving 113 different operations performed by machine. The United Company furnishes no machines for 35 of these operations. When the shoes have no buttons and the counters are not prepared by the manufacturer there are 94 machine operations, and the United Company furnishes no machines for 22 of these operations. The United Company has no machines for 35 operations which may be performed by machines in the manufacture of a woman's McKay button shoe.

Defendants' Exhibit 336 (R. Vol. 5, pp. 849–905) is a list of shoe machinery manufacturers or dealers setting out the

machines they offer for sale taken from Defendants' Physical Exhibits 311 to 321, which consist of catalogues, letters, and advertisements of such manufacturers and dealers. It shows over 125 different manufacturers and dealers offering every kind of machine, a number of them offering complete lines of machines.

3. The United States of Record Limited its Charge to a Monopoly of Machines for Preparing and Attaching the Bottoms to the Uppers of Shoes, Eyeletting Machines and Clicking Machines.

The evidence having utterly failed to support the charge of a monopoly of all shoe machinery, the United States, as stated above (*supra*, pp. 11–15), admitted during the course of the trial that the United Company did not have a monopoly of all shoe machinery. It conceded of record that it limited its charge to a monopoly of—

> "machines for preparing and attaching the bottoms to the uppers of boots and shoes, the eyeletting machines and the clicking machines" (R. Vol. 1, p. 839, lines 13–22).

While a considerable number of the General Department machines, of which the United Company makes 172 different kinds, are used in preparing the bottoms of shoes, Mr. Smyth, counsel for the United States, at the first argument before this Court further limited the field of the monopoly charged by disclaiming any charge of monopoly of General Department machines. He said, according to the stenographic report of his argument:—

> "Something has been said about the General Department machines. We make no question with respect to them, and they are not involved in this law suit."

The foregoing concessions of the United States limit the charge of monopoly to a comparatively few machines. Thus there are excluded from the charge of monopoly the following machines:—

(*a*) All machines for sewing and preparing the uppers of shoes, including sewing, buttonhole, and other machines which are not manufactured by the United Company at all.

This excludes a large portion of the machines used in any factory. For example, in R. P. Hazzard's factory, containing a total of 746 machines, there were 245 machines in the stitching-room alone which were of this character and which were not furnished by the United Company (see Defs.' Ex. 262, R. Vol. 5, p. 707).

(*b*) All General Department machines, of which the United Company manufactures 172 different kinds.

(*c*) All lacing, treeing, and various other miscellaneous machines used in every shoe factory.

It limits the charge of monopoly to a monopoly of the kinds of machines manufactured by the constituent companies, namely, Goodyear Department, that is, welting machines, lasting machines, heeling machines, metallic machines, and pegging machines, and the following machines which have since its formation been invented or put out by the United Company, viz., clicking machines, eyeletting machines, pulling-over machines, and McKay Sewing Machines.

In considering the charge of a monopoly in this limited field we submit that the record shows:—

1. That the United Company has not an actual monopoly of these machines, but, on the contrary, that there are active competitors ready to furnish machines for performing any and all of the operations for which these machines furnished by the United Company are adapted;

2. That whatever portion of the field of shoe machinery the United Company enjoys is due to the excellence of its machines, which are patented and cannot be manufactured by others,—in other words, to its lawful patent monopolies; to the excellence of its service rendered with its machines, which no other company renders to any satisfactory extent; to its satisfactory business methods and the reasonable terms it offers which have appealed to shoe manufacturers (as Charles H. Jones, a witness for the United States said, "The terms which the Machinery Company have recently

offered their patrons on certain lines of machinery are so liberal that the outsiders cannot compete" (P.'s Ex. 147, Vol. 4, p. 1074); to the fact that the United Company has specialized in certain lines of machines, notably those for making Goodyear welt shoes, has instructed, encouraged, and assisted manufacturers in their manufacture and so has created almost entirely the market which they supply.

Each of the constituent companies, due to the patents held by them, manufactured at the date the United Company was formed practically all the machines of the kind it made which were used in the country. The United Company has therefore not acquired any monopoly of the machines which were manufactured by the constituent companies, but has, by continuous patent development, merely continued the monopoly already lawfully acquired and held by the constituent companies under their patents.

4. Machines for Preparing and Attaching the Bottoms to the Uppers of Shoes, Eyeletting Machines and Clicking Machines can be obtained of Numerous Competitors of the United Company.

The record shows that shoe manufacturers do not take the United Company's machines of the classes enumerated above as to which the United States charges a monopoly because they cannot obtain machines for performing the same work elsewhere. There are competitors ready to furnish these machines to any manufacturer desiring them.

Mr. Winslow testified:—

> "Some of the companies which I have named, like the Hamel Company, Haverhill Shoe Machinery Company, and the R. H. Long Company, are larger than any shoe machinery companies doing business in the United States or anywhere else in 1898, except the three companies which came into the United Company; and they are better fitted to build machines and do build to-day a larger number of different kinds of machines than any concern in

existence in 1899, including the three companies that went into the United Company. It is generally true of shoe machinery manufacturers doing business just prior to the bringing of this suit, as compared with the outside manufacturers doing business in 1899, that they are larger and are capable of furnishing a more complete equipment to factories" (R. Vol. 1, p. 859, lines 22–34).

"The manufacture of shoe machinery does not require any particular kind of machine tools. The standard machine tools used in manufacturing all ordinary machines are the tools that are used in every factory making shoe machinery" (R. Vol. 1, p. 858, lines 25–29).

One of the most important machines used in the bottoming of shoes is the McKay Sewing Machine. This machine was used to attach the sole to the upper of nearly 40% of the shoes made in 1910 (Defs.' Ex. 215, R. Vol. 1, p. 424). The United Company did not even manufacture this machine for a number of years after its formation nor until 1908. Shoe manufacturers have always been able to obtain it from any one of a large number of dealers in machinery. A list of seventeen American dealers and ten foreign dealers furnishing this machine is set out at R. Vol. 1, pp. 858–9.

Mr. Brown testified that there was no difficulty in buying all the McKay machines he wanted at any time (R. Vol. 1, p. 730, lines 18–22). He had thirteen of these machines, only three of which he had obtained from the United Company (R. Vol. 1, p. 730, lines 23–25). The United Company never in any way interfered with his buying McKay Sewing Machines elsewhere (R. Vol. 1, p. 730, lines 26–30).

In 1909 there were in the principal shoe manufacturing districts 1,488 McKay Sewing Machines, of which 308 were supplied by the United Company and 1,180 by others. In the Lynn District there were 59 McKay machines supplied by the United Company and 367 supplied by others (R. Vol. 1, p. 977, lines 16–31).

John Bulmer, witness for the United States, testified: "McKay Sewing Machines are to be had from about all the shoe manufacturers. They pass through our hands more or less frequently, and we rebuild or repair them and furnish them to others. We have no difficulty in getting them at any time" (R. Vol. 1, p. 908, lines 38–41).

This is the case of the bottoming machine used to attach the sole on the type of shoes made in the largest quantities. It is clear that there are a very large number of manufacturers and dealers ready to furnish the machine and the United Company has furnished only a small percentage of the total machines outstanding.

In respect to other machines of the type of which monopoly is charged, namely, machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines, Defendants' Exhibit 337 (R. Vol. 5, p. 906), compiled from the catalogues, letters, and advertisements of various shoe manufacturers, gives a list of manufacturers and dealers prepared to furnish these machines. Each machine is listed separately and the names of the concerns offering it are given.

Defendants' Exhibit 331 (R. Vol. 5, p. 838) gives a list of concerns putting out welt and turn machines and outsole stitching machines from 1899 to 1911.

Defendants' Exhibit 332 (R. Vol. 5, p. 843) gives a list of Goodyear auxiliary machines and machines which other machinery manufacturers offered for doing the same work.

These lists are too long to copy in full upon the brief. They show the very large number of shoe machinery manufacturers making these kinds of machines and the considerable number of competitors prepared to furnish each kind of machine.

Appendix III to this brief (*infra*, pp. 808–834) gives a summary of the testimony of a large number of machinery manufacturers who furnish machines which compete with the United Company's machines. While a considerable number of them furnish General Department machines which are now excluded from the charge of monopoly, a considerable number furnish machines of the classes as to which the charge of monopoly is limited. Some of these manufacturers are prepared to furnish complete lines of shoe machinery.

C. A. Hamel, who took over the Duplessis Company in 1909, and the Duplessis Company prior thereto, from 1903 to 1909, have done a considerable business in shoe machinery. Hamel testified: "We have a complete set of machines for making turn shoes and a complete set of machines for making

welt shoes" (R. Vol. 1, p. 327, lines 15–16). A list of the number of machines put out by the Duplessis Company and Hamel, as its successor, is given at R. Vol. 1, page 326. It shows that they have put out 148 welt and turn machines (86 in this country and 62 abroad); 61 rapid outsole stitchers (41 in this country and 20 abroad); 90 insole channelers (70 in this country and 20 abroad); 55 loose nailers (24 in this country and 31 abroad); and 35 sluggers (22 in this country and 13 abroad).

Owing to the large capacity of each machine, and, therefore, the small number of machines of each type required in the shoe machinery industry, the above represents a very considerable business compared with the business done by the United Company.

For example, it shows that Hamel and his predecessor have put out since 1903, 35 sluggers. From 1903 to 1913, owing to improvement in capacity of its machines, the number of slugging machines which the United Company had out declined from 1862 to 1838 (Defs.' Ex. 226, R. Vol. 5, p. 424). It shows that Hamel put out from 1903, 148 welt and turn machines. The United Company from 1903 to 1913 increased the number of its welt and turn machines outstanding by only 963 (Defs.' Ex. 226, R. Vol. 5, p. 424). It shows that Hamel put out 55 loose nailers. The United Company from 1903 to 1913 increased the number of loose nailers outstanding by only 838 (Defs.' Ex. 226, R. Vol. 5, p. 424).

R. H. Long, through the R. H. Long Machinery Company, is prepared to furnish a complete line of machines (see Physical Exhibits, R. H. Long Machinery Company catalogues, Defs.' Ex. 72, Defs.' Ex. 73). J. J. Doidge, manager of the company, testified that the company was ready to supply a full line of machinery for welt or turn shoes (R. Vol. 1, p. 345, lines 43–44). The company has practically completed and is ready to furnish the trade with 450 outsole stitching machines, 30 welters, 25 lasting machines, and 4 or 5 heeling machines (R. Vol. 1, p. 345, lines 39–42). It can also supply metallic fastening machines (R. Vol. 1, p. 346, line 1).

The Haverhill Shoe Machinery Company offers a full line of machines.

Edwin A. Webster, a director of the company, testified:—

> "We [the Haverhill Company] undertake to fill the requirements of a manufacturer whatever they are. We advertise that we furnish any manufacturer a full line of all kinds of shoe machinery, whether it is for welts or McKays, or turns or pegs or anything else. We are prepared to make good if our people that manufacture machines don't go back on us" (R. Vol. 1, p. 301, lines 4–9).

The Haverhill Company has put out about 25 heel nailing machines (R. Vol. 1, p. 291, lines 10–11); about 60 or 65 turn channeling machines (R. Vol. 1, p. 291, lines 35–36); and about 65 turn and welt machines of which 13 are in the company's own factories (R. Vol. 1, p. 292, lines 7–9), and various other machines (R. Vol. 1, pp. 291–2). The company has machines with 58 shoe manufacturers of whom 38 also use the United Company's machines (R. Vol. 1, p. 299, lines 4 [illegible]). It has five agents who solicit orders and keep the machines in repair (R. Vol. 1, p. 292, lines 40–42).

In addition there are several foreign firms prepared to furnish complete lines of machines. John Cavanaugh, a salesman of shoe machinery connected with the Boylston Manufacturing Company, and a witness for the United States, testified that the Standard Rotary Machine Company of England and Johnson of Paris are good-sized concerns and manufacture complete lines of machines. The Standard Engineering Company is ready to do business in the United States and he should say the other companies would do so (R. Vol. 1, p. 957, lines 31–40). The Atlas Company of Leipsic manufactures a complete line of machines for welt, turn, and McKay shoes (R. Vol. 1, p. 342, lines 8–9).

Moreover, not only do competitors of the United Company offer complete lines of shoe machinery, but such machines, including machines for preparing and attaching bottoms, obtained from others than the United Company are found in large numbers even in those shoe factories where, generally speaking, the United Company's machines are preferred.

Only three shoe manufacturers, Messrs. Brown, Hazzard and Jones, furnished complete lists of all the machines used in their factories and the source from which each machine was obtained (*supra*, pp. 602–604). Each of these witnesses is a

lessee of the United Company and manufactures from 5,000 to 7,500 pairs of shoes per day. These lists show that Jones has 110, Hazzard 87 and Brown 54 machines, obtained outside the United Company, in the departments or "rooms" for preparing and attaching bottoms. Furthermore, Jones and Hazzard both have three times as many eyeletting machines obtained from others as they have from the United Company (P.'s Exs. 269, 279, R. Vol. 4, pp. 1441–6; 1556–64; Defs.' Ex. 262, R. Vol. 5, pp. 707–711).

That shoe factories can be equipped without using United Company machines is admitted.

The Framingham Shoe Company, owned by R. H. Long, uses no United Company machines, nor does the Buffalo Shoe Company (R. Vol. 1, p. 30, lines 31–38).

Henry P. Guptill, a witness for the United States, whose factory has a capacity of 2,500 to 3,000 pairs of turn shoes a day, and is therefore a large factory, testified he used no United Company machines (R. Vol. 1, p. 290, lines 11–15, 24–25).

Frank Albert Brackett, a witness for the United States, testified that Mr. Henry H. Rogers' factory was equipped to make as many as 1200 pairs per day of men's welt shoes. He said:—

> "We had no machines obtained from the United Company. We got them all elsewhere" (R. Vol. 1, p. 951, lines 28–33).

Mr. Long testified that the Taylor Shoe Company of Lynn used no United Company machines (R. Vol. 1, p. 232, lines 29–31). Mr. Webster, of the Haverhill Shoe Machinery Company, showed that 20 of the 58 shoe manufacturers who used his machines did not use United Company machines (R. Vol. 1, p. 299, lines 4–7).

The Non-Royalty Shoe Company was organized by the Shoe Manufacturers' Alliance, which was opposed to the United Company, for the purpose of operating a factory without the use of United Company machines. Warren F. McElroy, a member of the Shoe Manufacturers' Alliance, equipped the factory. He obtained no machinery from the United Company, except one General Department creasing machine which he bought. A few machines he obtained from

abroad. The factory was equipped to make welt shoes. According to Mr. McElroy's testimony, the Non-Royalty factory made a welt shoe which he considered a better shoe than the Goodyear Welt (R. Vol. 1, p. 194, lines 16–17). The factory was equipped to make 600 to 1,000 pairs a day (R. Vol. 1, p. 194, lines 21–22). The factory closed down in 1913 because of a fire (R. Vol. 1, p. 194, lines 17–18). At that time the machinery was offered for sale though the sale was postponed. A list of the machinery advertised for sale appears in Defs.' Ex. 42 (R. Vol. 5, p. 48).

It did not appear definitely how many shoe manufacturers there are in the United States. The United Company had 1,033 lessees who were shoe manufacturers during the year 1911 (R. Vol. 1, p. 26, lines 38–40). Mr. Donham testified that he did not know how many shoe manufacturers there were in the United States at that time, but should say there were somewhere between 1,300 and 1,500. The census for 1910 showed somewhere in the neighborhood of 1,300 (R. Vol. 1, pp. 26–27), and the petition alleges there were in 1911 about 1,300 (R. Vol. 1, p. 991).

The District Court found that the defendants were not monopolists, saying (R. Vol. 1, p. 1135):—

> "There is no question that the above described development of the United Company's business has resulted in a very great commercial success. Its machines, as was the case with those produced by the component companies in 1899, have ever since been those which shoe manufacturers in general can use to the best advantage and therefore prefer. The increase in the number of its machines in the hands of users has been very large. Nor is there any question that of all the machines, of the kinds to which this case relates, in use when the petition was filed, those of the United Company constituted all but a very small proportion.
>
> "It is nevertheless true that, considering the whole field of machinery for stitching together the bottoms and uppers of shoes, there has all the time been free competition. The use of other machinery to accomplish the purpose has always been open to shoe manufacturers. **In that part of the field of trade in shoe machinery to which the case is now limited as above, the defendants have been not monopolists but competitors. Their only means for holding the field have been legitimate**

means,—better machines. Their specialization in machines for bottoming shoes, and not a monopoly of such machines, has been the cause of their success" (BLACK LETTERS ours).

5. The United Company Lawfully Occupies the Field it Enjoys Under its Patents.

It is of the utmost importance to bear in mind that the United Company's machines are and always have been patented. The United Company, therefore, has a lawful monopoly of these machines. No one else can manufacture machines of this type, and there is a natural presumption that if they are generally or exclusively used this is due to their superiority over other types of machines if such exist and not to any illegal restraint of trade. As said of these machines, by this Court, in *United States* v. *Winslow*, 227 U. S. 202, 217,—

> "The machines are patented, making them is a monopoly in any case, the exclusion of competitors from the use of them is of the very essence of the right conferred by the patents, *Paper Bag Patent Case*, 210 U. S. 405, 429, and it may be assumed that the success of the several groups was due to their patents having been the best."

There is a vital difference between an industry concerned with the manufacture of unpatented goods or machines and an industry in which the product is dominated by patents. In a business free from patents, such as the tobacco or oil business, and the manufacture of cotton or woolen goods, the business is open to any one. It would be surprising to find a single manufacturer refining all the oil, making practically all the cigars, or cigarettes, or all the cotton or woolen goods used in the country. Instantly there would arise a suspicion, if not a presumption, of employment of illegal methods to obtain such a monopoly. Such presumption would be strengthened if it were found that such monopoly were obtained by combining a large number of concerns previously competing which could have continued to manufacture goods if left to operate independently. The same would be true in

the case of an industry in which, though the product was patented, the patents covered minor parts or methods and had no important or dominating influence, so that a manufacturer could enter the business and compete without the use of patented inventions.

In an industry like the shoe machinery industry, however, in which patents dominate the entire situation the inference is quite different. It would be difficult to sell machinery of so old a type that the patents on it have expired. Such machinery would express the stage of development which machines had reached seventeen to twenty years previously, and as the art is comparatively young and has been constantly advancing such machines would be so far inferior to the latest patented machines that there would be little market for them. The manufacturer who can hope to engage in this industry successfully is one who has patents either better than or as good as those of the manufacturer or manufacturers already in the field. Furthermore, even if a manufacturer holds such patents and is therefore able to enter the industry, he must maintain his position by the acquisition or development of new patented inventions, or his machines will rapidly become antiquated and will not be taken by shoe manufacturers. The rapid development of the industry, the remarkable increase in efficiency of improved machines every few years makes this essential.

In such an industry dominated by patents either the inventions originally made completely control the industry and no other inventions are made, except improvements or additions to the original inventions, which are of value only in connection with the original inventions, and, therefore, the original inventors or their successors are the only persons who manufacture the patented product; or one manufacturer's patents are almost inevitably better than the patents held by any other manufacturer and his machines are therefore used almost exclusively. In such an industry, then, it is almost inevitable that one manufacturer will dominate the industry lawfully by reason of his patents until such time as the industry has developed to a point where the important inventions have all been made and the patents thereon have expired, and inventors must confine themselves to minor improvements

and refinements which are not of vital importance. When that point is reached the industry will be open to all; prior to that time it is for practical purposes open only to those having the best patents. So long as it is dominated by patents the fact that the manufacturer who has the best patents produces the larger share of the product does not give rise to any presumption of illegal methods, but is natural and to be expected.

The United States points to the large proportion of the trade in shoe machinery held by the United Company and the fact that shoe manufacturers must turn to it if they wish the best machines as evidence of an unlawful monopoly. This is entirely unjustified. The right of an owner of patents to exclude all others from making use of his inventions and to draw to himself all trade in the patented articles and, as a consequence, to acquire a commanding position in the industry if no other patented articles are equally good is undoubted. This Court in *United States* v. *Bell Telephone Company*, 167 U. S. 224, p. 250, said:—

> "Counsel seem to argue that one who has made an invention and thereupon applies for a patent therefor, occupies, as it were, the position of a quasi trustee for the public; that he is under a sort of moral obligation to see that the public acquires the right to the free use of that invention as soon as is conveniently possible. We dissent entirely from the thought thus urged. The inventor is one who has discovered something of value. It is his absolute property. He may withhold the knowledge of it from the public, and he may insist upon all the advantages and benefits which the statute promises to him who discloses to the public his invention. He does not make the law. He does not determine the measure of his rights. . . . As the law-making power has prescribed what the public will give, specified the terms and conditions of purchase, indicated the time and methods of determining the right of compensation, he on his part has an absolute legal right to avail himself of all the provisions thus made."

No case presenting facts in any way similar to the present has ever before been decided by this Court under the Sherman Act, except the case of *United States* v. *Winslow*, supra, in

which the formation of the United Company and its acquisition of the constituent companies holding patents which gave them a practical monopoly of the business was before this Court and was held lawful. In no other case heretofore decided has the product which the defendant has been accused of monopolizing been protected by dominating patents which restricted competitors to the marketing of machines of a different and inferior type. In practically every case in which the monopoly of an industry has been charged such monopoly has been created by a combination of competing concerns, the combination of which was not necessary to enable the defendant to produce a satisfactory product. In the present case the United Company was a combination of non-competing concerns and its subsequent acquisitions have been mainly of small non-competing concerns of minor importance having little or no influence in the trade, acquired in order to enable the company to give its customers a broader line of machines, or to obtain patents required to improve its own machines. In all cases where such acquisitions were made there were left outstanding competitors (R. Vol. 1, p. 465, lines 20–23).

The presumptions and inferences applicable in other cases are inapplicable in the present case. The combination of non-competing concerns is lawful, no intent can make it unlawful, and it, therefore, can give rise to no unlawful inference (*United States* v. *Winslow*, supra). The defendants' patented machines are presumed to be the best of their kind (*United States* v. *Winslow*, supra), and the fact that the United Company has a large portion of the business of furnishing shoe machinery is therefore natural and gives rise to no inference of unlawful methods.

The District Court said (R. Vol. 1, p. 1136):—

> "The business which the defendants have developed and established is not, and has never been, one in which everybody might freely engage. No one else could lawfully make or use machines containing improvements covered by the defendants' patents. Nor can it be said that the demand for such machines which they have supplied existed independently of the defendants; on the contrary, they have created it by the new methods of

shoe manufacture which their improvements have educated and enabled manufacturers to follow. It cannot justly be said that the case is one in which a field of commerce normally belonging to all has been captured by a single concern. The principles applying in such cases cannot justly be applied here."

6. The Constituent Companies had Lawful Patent Monopolies of the Machines They Manufactured. The United Company has not Acquired Any New Monopoly in These Machines.

If previously to the formation of the United Company the constituent companies had supplied only a small portion of the machines of the kind they manufactured, and there had been competitors furnishing similar machines to a large portion of the shoe manufacturers, and if, after the formation of the United Company, such competitors had disappeared and the United Company had thus acquired all or the greater part of the trade, there might be a presumption or inference that such result was caused by illegal methods which would call for a careful scrutiny of the causes. Such, however, is not the fact. The constituent companies, at the time of the formation of the United Company, had a larger proportion of the trade in the machines they manufactured than the United Company now holds and this was due to the fact that these machines were the best and were protected by patents which prevented others from manufacturing them. The shoe machinery industry was new and the constituent companies, which held the only practical patents, had created the industry, and, therefore, naturally had the greater part of the business.

The petition admits and alleges that the constituent companies had a lawful monopoly of the machines they manufactured. It sets out that the principal essential machines used in the manufacture of shoes are lasting machines, welt sewing and outsole stitching machines, heeling machines, and metallic fastening machines (R. Vol. 1, p. 991). It alleges that the principal concerns engaged in the business were the constituent companies (R. Vol. 1, p. 992). It alleges that

the constituent companies were "manufacturing their machines and parts thereof under Letters Patent of the United States and of other countries" (R. Vol. 1, p. 993). It then alleges that the defendants, "not being satisfied with the benefit of lawful monopolies and rights belonging to them under Letters Patent of the United States and of other countries," formed an unlawful project to unlawfully expand their monopolies and rights (R. Vol. 1, p. 994). Finally it alleges that the United Company, by the acquisition of the constituent companies, "acquired control of the greater portion of the manufacture of, and trade and commerce in, the machines included in each and all of the groups of machines" mentioned (R. Vol. 1, p. 996).

In other words, the petition admits that the constituent companies had patents which gave them lawfully the greater part of the trade in lasting, welt sewing, and outsole stitching, metallic fastening, and heeling machines.

There were other concerns putting out machines, but the constituent companies' machines were the best (R. Vol. 1, p. 532, lines 16–18, 29–32). The constituent companies' machines were doing about all the welting, outsole stitching, lasting, and metallic fastening that was being done in the United States (R. Vol. 1, p. 537, lines 32–37). No other company had put out heeling machines for several years prior to 1899 and the McKay Company was putting out all of the heeling machines that were being made in the United States (R. Vol. 1, p. 851, lines 27–30).

The reason is obvious. The shoe machinery industry was of very recent origin. Previous to 1850 or 1860 all shoes were made almost entirely by hand (R. Vol. 1, p. 521, lines 15–16). Shoe machinery had only been gradually developed since that date, and, as we have shown, many important machines had not been invented in 1899. In respect to the machines put out by the constituent companies, their invention was new, and important improvements were constantly being made in them. The constituent companies held the patents under which they had originally been constructed; they were the ones most interested in developing and improving the machines and they, therefore, developed the machines, and held the patents on the new improvements. The constituent

companies, therefore, had practically all the business as a result of these lawful patent monopolies.

To illustrate: The Goodyear machines were designed to make a welt shoe by machinery. Welt shoes had been made for many years previously, but always by hand. The system ran back to 1870 or 1868 (R. Vol. 1, p. 625, line 20). The Goodyear Company, however, revolutionized its machines about 1890 by the use of new inventions (R. Vol. 1, p. 678, lines 6–9). The auxiliary machines needed to make the system a practical success were only gradually developed and were still in process of development in 1899. The Goodyear Company in 1899 was still endeavoring to introduce its machines into general use. In 1899, after the formation of the United Company, only 22,700,000 pairs of welt shoes were made out of a total production of 172,786,000 shoes (R. Vol. 1, p. 424). In other words, the industry of making welt machinery had been created by the Goodyear Company; no one else had invented machines comparable to the Goodyear machines, so that inevitably the Goodyear Company, by reason of its patents, had practically all of this new field which it had created.

The lasting machine industry was more recent still. In 1890 very few shoes were lasted by machines except heavy brogans, which were, of course, limited in number and which were lasted on the McKay & Copeland machine (R. Vol. 1, p. 401, lines 14–16). Shoe manufacturers at that time were sceptical as to the possibility of developing a lasting machine at all (R. Vol. 1, p. 401, lines 24–26). The industry dates from that period only nine years previous to the formation of the United Company. Even when the machines had become commercially useful the difficulty of introducing them, due to the opposition of operatives, the necessity of instructing operatives in the use of the machines, and the scepticism of shoe manufacturers was enormous (R. Vol. 1, pp. 401–3). In 1899 not more than 50% of the shoes made were lasted by machines (R. Vol. 1, p. 402, lines 14–18). Here again we find the lasting machine industry a new industry created by the Consolidated Company and only partially developed after some years of labor and inventions, and protected by patents. The fact that the Consolidated Company put out practically

all of the lasting machines was no more remarkable than that the Bell Telephone Company, after the invention of the telephone, was the only concern engaged in making telephone instruments.

7. The Other Machines not Manufactured by the Constituent Companies as to which Monopoly is Charged were New Inventions Developed by the United Company and Protected by Lawful Patent Monopolies. Any Monopoly Acquired by the United Company in these Machines was due to the Fact that the United Company Created them and the Fact that they were Lawful Patent Monopolies.

The pulling-over machines were invented by the United Company and first put out in 1902. The pulling-over operation was previously done by hand exclusively (R. Vol. 1, p. 425, lines 33–34). Various auxiliary machines were developed later (R. Vol. 1, p. 12, lines 1–8). The first lease including auxiliaries was put out in 1905 (R. Vol. 1, p. 12, line 9). The pulling-over machine is a remarkable invention and an entirely new creation. Its development cost the United Company nearly $1,000,000 (R. Vol. 2, p. 2552). It had been in existence at the date the petition was filed only nine years (R. Vol. 2, p. 2542). It is protected by 19 patents (R. Vol. 2, p. 2573), and the auxiliary machines are protected by over 28 different patents (R. Vol. 2, pp. 2523–5, 2572–4. See pulling-over system lease, P.'s Ex. 39, R. Vol. 3, pp. 363, 364). The fact that no one else had developed or invented a different type of machine which was as satisfactory to shoe manufacturers and in genera luse is therefore not remarkable; on the contrary, it would be surprising if any one had done so.

The clicking machine was another remarkable invention developed by the Experimental Department of the United Company, which probably saves more money for the shoe manufacturer than any machine ever produced (R. Vol. 1, pp. 425–6). It was first made commercial in 1908 and was then first leased (R. Vol. 1, p. 14, lines 30–33; Vol. 2, p. 2589). The machine cuts out the uppers of shoes in such a way as to effect an enormous saving of leather; previously to its invention the shoe manufacturer generally cut the upper by a hand

knife, resulting in a considerable loss of stock (R. Vol. 1, p. 426, lines 2–24).

Mr. Winslow testified:—

> "The clicking machine was another machine which was developed by the Experimental Department of our company and perhaps saves more money for the manufacturer than any other machine which has been produced" (R. Vol. 1, pp. 425–6, lines 43–44, 1–2).
>
> "Since my knowledge of the shoe art no machine has accomplished so much for the art as the clicking machine" (R. Vol. 1, p. 426, lines 19–20).

This machine had been put out less than four years before the present petition was brought. It is protected by 13 patents (R. Vol. 2, p. 2598). George Harsh, witness for the United States, testified that the United Company's clicking machine was the only commercial machine in the market (R. Vol. 1, p. 198, lines 30–32). It is obvious that the success it had was due to its merit and that the large trade in this machine which the United Company had was due to the lawful patent monopoly which prevented its manufacture by others.

The United Company's eyeletting machines were likewise patented machines developed by it (R. Vol. 1, p. 14, lines 21–23). The Duplex machine, which is the standard machine for regular work, was first put out in 1902 (R. Vol. 2, p. 2617). It is protected by 12 patents (R. Vol. 2, p. 2617). It is the only machine ever produced which inserts eyelets on both sides of the shoe at once (R. Vol. 2, p. 2618). The Universal machine is another type likewise adopted in 1902 and it is now protected by five patents and one patent application (R. Vol. 2, p. 2636). As to the McKay sewing machine, while the United Company acquired a business of manufacturing this machine, it clearly has no monopoly, as such machines can be obtained of many machinery dealers. Such success as the United Company has had in furnishing this machine is due to the fact that it is putting out an improved patented machine (*supra*, p. 297; R. Vol. 1, p. 83, lines 9–15; P.'s Ex. 170, Vol. 4, p. 1161).

The above list includes all the machines as to which monopoly is charged by the United States.

From the foregoing it appears that the constituent com-

panies of the United Company, at the time of the formation of the United Company, furnished practically all the welt and turn machines, lasting machines, metallic fastening machines and heeling machines used in the country. The trade in these machines had only recently been created by inventions which made the machines possible, and the constituent companies held the best of the patents covering these inventions. Such monopoly as they had resulted lawfully from the patents. The United Company, therefore, did not acquire any new monopoly in these machines; it merely continued the lawful monopoly, if it can be called such, held by the constituent companies. The charge of the United States that the United Company acquired a monopoly is absolutely unfounded. The only possible contention the United States could make is that the United Company maintained this monopoly by unlawful methods.

In respect to the pulling-over machines, clicking machines, and the eyeletting machines, it appears that they were developed by the United Company, that the United Company had a lawful and inevitable monopoly in these machines when first put out, because the United Company held strong patents covering them and no one else had invented any other machines to do the same work. Here again the original acquisition of the business by the United Company was unquestionably lawful, and the only possible contention that the United States can make is that these lawful patent monopolies have in some way been illegally maintained.

As to the McKay sewing machines, the United Company obviously has no monopoly (*supra*, p. 609).

8. The United Company has Maintained the Business in Shoe Machinery which it Acquired, not by Unlawful Methods, but by Reason of the Excellence of its Patented Machines and the Service it Renders with Them.

We have shown above that the United Company lawfully acquired its business in the machines as to which a monopoly is charged. We submit the record shows that this business has been maintained by lawful methods.

The business was acquired by reason of the patented inven-

tions held by the United Company and its constituent companies. The development of the machines since that date has been constant; the United Company has spent enormous sums in invention and development of machines and to-day the United Company has as strong if not stronger patents on its machines than it had in 1899 or has had at any time since (*supra*, pp. 187–190, 217–225). There is absolutely no evidence that other persons have invented better machines or equally good machines. If the United Company's patents in 1899 gave it most of the business in the machines which it manufactured, there is every reason that its patents should have enabled it to retain this business.

In addition, however, the United Company has developed a service in connection with its machines at enormous cost to itself, which has proved of the utmost importance to shoe manufacturers, which is given by no other shoe machinery company and which shoe manufacturers testified was vital (*supra*, pp. 178–185). It has in no instance increased its charges for machines; on the contrary, it has in certain instances reduced its royalties and it has removed the initial premiums charged in 1899 (*supra*, pp. 191, 192, 196). It has furnished new machines as they have been invented, free of charge, taking back the old machines, and it has added many important auxiliary machines without additional charge (*supra*, pp. 189–190, 195–196).

By these various means it has added enormously to the efficiency and usefulness of its machines. If owing to their excellence they were used almost entirely by shoe manufacturers in 1899, there is still more reason they should be so used to-day.

We submit that the United States has wholly failed to show that the United Company's continuance of the success of the constituent companies has been due to the acquisition of competing concerns, or to the effect of its leases.

That this is true is proved conclusively by an examination of certain machines as to which monopoly is charged.

Take, for example, eyeletting machines. The record does not show a single instance in which the United Company has acquired any eyeletting machines or any company dealing in eyeletting machines. Obviously the success of the United

Company in furnishing eyeletting machines has not been due to the acquisition of competitors. The eyeletting machines under one form of lease are restricted to use with certain other machines, but not a single lease of such other machines restricts them to use with the United Company's eyeletting machines. The shoe manufacturer can take any machine he pleases from the United Company under a restricted lease and use it with a competitor's eyeletting machines. Obviously the restricted clauses in the leases of other machines have not compelled or induced a use of the United Company's eyeletting machines. Whatever success these machines have had must, therefore, be due solely to the excellence of the machines and the service rendered with them.

The same is true of the clicking machines. No acquisition of any competing clicking machine has ever been made, nor is any other machine restricted to use with the clicking machine. Its success cannot have been due to the acquisition of competitors or to the fact that lessees are induced or compelled by restrictive clauses in the leases of other machines to use them.

The same is also true of the pulling-over machines. The United Company has never acquired a competitor putting out pulling-over machines. The only acquisition has been that of the Seaver Experimental Pulling-over Machine, which stood in the way of the development of the United Company's machine (Appendix I, p. 673). The only machine restricted to use with the pulling-over machines is the No. 5 Lasting Machine; but this is a comparatively new machine, and shoe manufacturers can use hand method machines for their lasting. The result is that the success of the United Company's pulling-over machines has not been due to the acquisition of competitors or the restrictive clauses in the leases.

The same is true of the Goodyear welt and turn auxiliaries, of which 43 different kinds are furnished by the United Company. No acquisitions of competing concerns furnishing these machines have been made which are of the slightest significance, and no other machines are restricted to use with these auxiliary machines.

Although the United Company has acquired the Richardson Company's patents on an improved McKay sewing machine, because such patents would improve its machine, and be-

cause the United Company's machine infringed such patents (see Appendix I, pp. 722, 723), and although the United Company acquired the Stanley Company's business of manufacturing McKay machines, it did not thereby acquire any monopoly in the manufacture of McKay machines, since they can at any time be obtained from a large number of machinery dealers (*supra*, p. 609). No other machine put out by the United Company is under any form of lease restricted to use with the McKay machine, so that no shoe manufacturer is compelled or induced to use the McKay machine by reason of the restricted clauses in the leases of any other machines.

The result is that obviously the success of the United Company in furnishing eyeletting, pulling-over, clicking, Goodyear auxiliary, and McKay sewing machines has not been due to the elimination of competitors or to the restricted clauses in the leases.

The only other machines as to which monopoly is charged are the welter, stitcher, lasting, metallic, heeling, and pegging machines. As to all these machines it is admitted that the constituent companies had lawful patent monopolies in 1899 and no other persons were furnishing such machines to any material extent. To-day good-sized competitors are furnishing them.

If the United Company's success in furnishing eyeletting, clicking, pulling-over, Goodyear auxiliary, and McKay sewing machines has clearly been due to the excellence of its machines and service, and not to the elimination of competitors or the restricted clauses in the leases, it would take strong evidence to prove that such success as the United Company has had in maintaining the business of the constituent companies in welters, stitchers, lasting, metallic, heeling, and pegging machines has not been due to the same causes, but, on the contrary, has been due to the elimination of competitors and the effect of the restricted leases. The failure to show any elimination of competitors, the limited effect of the restricted leases, and the offer on the part of the United Company of unrestricted leases to all who desire them, justify no contention that this success has been due to the elimination of competitors or to the restricted leases.

We submit that whatever view may be taken of the acts

in evidence in this suit, whether any of them considered individually are deemed lawful or unlawful, the fact is clear from the record that the excellence of its patented machines which gave the constituent companies their success, coupled with the great improvement in the machines effected by the United Company, and the service it renders with them, is the cause of the success of the United Company to-day. The District Court so found, saying:—

> (R. Vol. 1, p. 1135.) "There is no question that the above described development of the United Company's business has resulted in a very great commercial success. Its machines, as was the case with those produced by the component companies in 1899, have ever since been those which shoe manufacturers in general can use to the best advantage and therefore prefer. The increase in the number of its machines in the hands of users has been very large. Nor is there any question that of all the machines, of the kinds to which this case relates, in use when the petition was filed, those of the United Company constituted all but a very small proportion."
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> . . . . . .
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> "If there is any sense in which the result attained as above can be called a 'monopoly,' it does not follow, in view of the circumstances shown, that the defendants have either restrained trade or been guilty of monopolizing, or attempting to monopolize, within the meaning of the act. Nor can I regard the case as one in which any presumption arises, from the fact that so large a proportion of the users of these machines use the defendants'—that the defendants have committed any of the above forbidden acts in accomplishing the above result. The proof is too complete that it has been in fact reached by the use of methods entirely lawful, the leading features whereof are below indicated."
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> . . . . . .
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> (R. Vol. 1, p. 1137.) "That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question. It is not disputed that, when the petition was filed, its machines represented, in number and

amount, the highest development ever reached in the art to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason."

. . . . . .

(R. Vol. 1, p. 1187.) "It is impossible to believe that the defendants' equipment is in so many shoe factories for any other substantial reason than the merits of what they have had to offer. To say that this is due, in any substantial degree, to the fact that its leases run beyond the terms of patents, or because of the exclusive use, prohibitive or cancellation clauses, rests largely, if not entirely, upon assumption. But that the business of these defendants rests upon the lease provisions objected to in such a substantial amount as to constitute any factor of independent force in securing or maintaining a monopoly does not appear."

XI.

RELIEF ASKED FOR BY THE UNITED STATES.

The Impossibility of Granting the Relief asked for by the United States without Irreparable Damage to the Public proves the Lawfulness of the United Company's Business.

The petition prays:—

1. That the United Company and the United Shoe Machinery Corporation "be dissolved and separated into such parts that no one of them will constitute a monopoly" (R. Vol. 1, pp. 1030–1); and

2. That the leases of the United Company containing like or similar provisions to those complained of be declared illegal and void and the defendants be enjoined from enforcing such provisions (R. Vol. 1, pp. 1029–30).

The petition prays for other incidental relief, but the foregoing is the primary and material relief requested.

1. A Separation of the United Company's Business would Irreparably Damage Shoe Manufacturers and the Public.

In the case of the American Tobacco Company, the Standard Oil Company, and other companies in which dissolution has been ordered by this Court, or by the lower courts, the business dissolved has consisted of an accumulation of different manufacturing plants and businesses, each of which, if separated, would or might compete with all or a part of the others. When separated, they could continue to carry on separately and in competition the business previously conducted by the company which was dissolved. As a result of such dissolution, each of the companies among which the business was divided had its own plant or plants in which to

manufacture its goods and the same class and character of goods as previously could be manufactured, and the only difference has been that competition between these separate companies into which the business was divided was created.

In the case of the United Company no such situation exists or can be created.

1. In the first place, the business of the United Company as to which monopoly is charged consists in manufacturing a variety of patented machines. No two machines which it manufactures compete with each other in any practical sense. In practically no case has it two distinct machines each protected by its own patents which do the same work and are, therefore, capable of competition. In certain cases there are two types of machines for doing similar work, but they are used for different purposes or they embody to a considerable extent the same patents. For example, the welt leveler is used exclusively for welt shoes, and the McKay leveler is used exclusively for McKay shoes, and neither can be used to do the work of the other, and, therefore, they are not capable of competition. In certain other cases there is a new improved model and an older model, but in such cases the new model is not only superior to the old model so that the old model is becoming obsolete, but it almost invariably embodies some patents which are also embodied in the old model.

In other words, the business of manufacturing each of the machines which the United Company produces cannot be carried on without the ownership of the patents embodied in the machine and under which it was created. It would be utterly impossible, therefore, to transfer to two or more separate companies the right to manufacture any one of these machines and thereby create competition without cancelling the patents under which such machine is manufactured.

2. In the second place, the United Company has a single manufacturing plant at Beverly, where all its machines of any importance are manufactured. The only other plants which it controls are a small plant for making treeing machines (O. A. Miller Treeing Machine Company), a small plant for making fudge edge and beading machines (owned by the Booth Brothers Company), and plants for making supplies, such as eyelets, blacking-brushes, etc. If the Beverly factory

were retained and these other small plants were transferred to a separate company or companies, such company or companies would not thereby be placed in a position to manufacture shoe machinery.

The United Company's plant at Beverly, which is the only factory owned by the United Company which is used or suitable for manufacturing shoe machinery on any scale, and the only factory which has the tools and patents for manufacturing the machines as to which monopoly is charged, is a single plant with a single foundry and designed for use by a single concern. If the United Company were divided into two or more companies, it would, therefore, be necessary for one to take the plant at Beverly and for the other company or companies to obtain new plants.

A division of the United Company's business could be attempted in only one of three different ways,—either

(1) By dividing the business into its original component parts, that is, by dividing the business of two or more non-competing concerns, each of which took the patents covering certain distinct types of machines; or

(2) By attempting to divide the business among two or more competing concerns, each of which took one or more of the patents covering each machine; or

(3) By attempting to compel the United Company to dispose of all machines and businesses which the United States contends were unlawfully acquired since its formation in 1899.

If an attempt were made to divide the business into its original component parts or into other non-competing groups, that is, if the Goodyear business acquired from the Goodyear Company were set apart in one company, the lasting machine business acquired from the Consolidated Company in another company, the heeling and metallic machines acquired from the McKay Company in another company, and the new machines, such as the pulling-over machines, clicking machines, eyeletting machines, and General Department machines invented by the United Company, or acquired since the formation of the United Company, were set apart in still another company, we should have four non-competing companies. These companies could, unless enjoined, consolidate

again because it would be entirely lawful to do so, as held in *United States* v. *Winslow*, supra. No competition would be created by such a division and no beneficial result would be accomplished. On the contrary, the public would lose the benefit of the increased efficiency which results from the consolidation in one company of these different types of machines, such as better service to shoe manufacturers, the maintenance of a large experimental department, wholesale prices, and reduction of expenses.

If an attempt were made to divide the business of the United Company into competing concerns, this could only be done by taking each machine separately and transferring to one company a portion of the patents covering the machine and to another the remainder of the patents covering it. A division of the patents covering a machine between two concerns would, of course, make it impossible for either to manufacture the machine as now manufactured. Suppose, for example, the Court should order that one-half the patents on the welter or pulling-over machine should be sold or disposed of. Neither the United Company, which retained half the patents, nor the vendee of the other half of the patents, could make the welter or pulling-over machine as it is now manufactured and put out. The result would be disastrous to the industry, as it would necessarily mean far less efficient machines, or in some cases that no machine at all could be manufactured without infringement.

Nor would a better result be accomplished if the Court should order that the acquisitions which the United States contends are unlawful should be disposed of.

The sale by the United Company of the concerns manufacturing supplies which it has acquired would certainly not create competition in shoe machinery. Nor would it create competition in such supplies, since the United Company has not acquired two or more competing concerns of this character. Upon the sale of the business of supplying peg-wood, blacking, eyelets, etc., the result would merely be that shoe manufacturers would be deprived of the benefit of obtaining these supplies from the United Company's various service stations, and would likewise be deprived of the right to obtain them at the prices which the United Company is able to quote

because of the fact that it has an established organization in constant touch with shoe manufacturers through which it can furnish these supplies with comparatively little additional expense.

Take the acquisitions of machines which the United Company was not manufacturing until such acquisition. If the United Company should sell these machines and the patents covering them, no competition would be created, as the United Company would have no machines left to compete with. The result would merely be that the shoe manufacturers would probably have to pay more for the machines and would get a poorer service with them, as the United Company with its large factory can manufacture these machines more cheaply and on account of the number of machines it puts out can furnish service more economically than would be possible for a purchaser of these patents.

Take the acquisition of patents which were acquired to be embodied in machines which the United Company was at the time producing or developing. If these patents were sold, the United Company would be unable to manufacture machines containing the improvements protected by these patents. On the other hand, the purchaser of these patents would not be able to manufacture the machine now produced by the United Company which embodies other patents, which the United Company would retain.

An examination of our discussion of the acquisitions (*supra*, pp. 436–490) will show that none of the businesses, patents, or machines acquired by these so-called acquisitions could be sold so as to benefit the public and create competition.

In a number of cases the particular machine the acquisition of which is criticised by the United States, has become entirely obsolete, and if any competition did exist, which we deny, none could be created by selling such machine or the patents covering it.

For example, the Ideal Machine and the Eppler Machine, acquired in the original organization of the United Company are now both obsolete. Anybody is free to manufacture these machines to-day, as the patents under which they were made in 1899 have expired; but nobody does manufacture them, because nobody wishes to use them. There are no patents cov-

ering these machines to sell and no business of manufacturing them to dispose of.

Take the patents acquired from the Richardson Shoe Machinery Company (see Appendix I, *infra*, p. 722). Those patents covered inventions which the United Company did not have and which it has embodied, together with many of its own inventions, in its new Model K Welter, its new Model M Outsole Stitcher and the new McKay Sewing Machine which it has produced since those patents were acquired; and its Model B McKay Sewing Machine infringed one of those patents. If the United Company sold those patents it would no longer be able to supply machines embodying those improvements. The purchaser, on the other hand, would not be able to supply machines nearly as efficient as the United Company's machines in which those improvements have been embodied because they have been combined with many other important improvements which have been developed by the United Company and which are covered by its patents. The result of such a sale would merely be to reduce the efficiency of existing machines.

Take the Plant acquisition. A sale by the United Company of the Plant patents would prevent its manufacturing the improved Model K Welter, which is enormously more efficient than either the former Plant welter or the former United Company welter. The loss to shoe manufacturers would amount to hundreds of dollars a year on each new machine. Such sale of the Plant patents would also mean that patents on 26 machines now put out by the United Company would be transferred and the United Company would have to give up the manufacture of these machines or would have to remodel them materially to avoid infringement of the transferred patents and thus make them far less efficient. On the other hand, it is extremely doubtful if the grantee of the patents would attempt to manufacture under them. If he did, he would be unable to manufacture efficient machines which he could market, or if he did make efficient machines he would infringe patents of the United Company which must be combined with the Plant patents to make efficient machines.

These instances are typical of all the acquisitions of patents for shoe machinery or machines.

The fact that the United Company's business cannot be separated without such consequences proves conclusively that its creation was inherently lawful and for the purpose of greater efficiency and to enable it to furnish more efficient machines.

The Sherman Act, as we have shown, is intended to prevent "not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented."

Wilder Mfg. Co. v. *Corn Products Co.*, 236 U. S. 165, 174.

It may possibly be true that if the United Company's patents should be distributed among two concerns, neither of which held all the patents on one machine, and neither of which was therefore able to make the latest improved machines, competitors of the United Company would be benefited. Shoe manufacturers and the public generally, however, would be disastrously affected. The Sherman Act was never intended to produce such a result.

In *United States* v. *St. Louis Terminal*, 236 U. S. 194, the decree of the lower court in a suit under the Sherman Act enjoined the defendant company from doing a transportation business which originated and terminated on its own lines. This Court held that the decree should be qualified so as to recognize the defendants' right to do such business (p. 205),—

> "Because not to so decide would lead inevitably to the conclusion that the decision of this court contemplated safe-guarding one public interest by destroying another and in effect proposed making the movement of transportation freer in some channels by absolutely obstructing all possibility of its flow in others."

2. To Hold the Leases Void would disastrously Affect Shoe Manufacturers and the Public.

The United Company owns the leased machines, and shoe manufacturers are only entitled to hold them under the lease and license agreements under which they were placed in such lessees' factories. If the leases were held void, lessees would

no longer have a right to retain or use the machines now held by them until they made a new agreement with the United Company permitting them to do so.

But if the leases were held void because the provisions now contained in the leases are illegal, the United Company would necessarily be unable to permit the use of its machines on the favorable terms on which lessees now hold them.

Under the present system the shoe manufacturer obtains the machines practically without initial cost, and, apart from nominal rentals charged for certain auxiliary machines, the shoe manufacturer pays for the machines only to the extent that he uses them. Such an arrangement is possible only when the lessee agrees to use the machines if he has work for them to perform. Otherwise valuable machines would be placed in the lessee's hands and he would be under no obligation to pay anything to the United Company if he did not choose to use them. But if the Full Capacity Clause were held illegal, the lessee could not be asked to agree to use the machines and, therefore, the United Company could not let him have them on the present terms. It would be obliged either to sell the machines or charge a large initial payment or a fixed annual rental sufficient to compensate it for the machines and payable whether the lessee had work for the machines or not.

If the United Company should therefore determine to sell its machines or charge a large initial payment, the result would be that the shoe manufacturer whose capital is small might be unable to make the payments required of him and therefore be unable to continue in business, or if he did succeed in making the payments he might find himself with insufficient quick capital to conduct his business properly. Small manufacturers without sufficient capital to pay for their machines would be unable to enter business in the future, as they can now do.

If a fixed rental should be charged it would necessarily be based on the capacity of the machines. This again would injure the small shoe manufacturer. If he made only 200 pairs a day, as many shoe manufacturers do, he would have to pay for a machine like the heeling machine, which has a capacity of over 1,200 pairs per day, as much as the large manufacturer making 1,200 pairs per day and using the machine to its full capacity would have to pay.

Under the present system a shoe manufacturer using a series of machines gets the benefit of the reduced price which the United Company is able to offer when such a series is used. If the Restricted Use Clause were forbidden and the United Company were forced to lease each machine separately, regardless of whether it were to be used separately or not, the royalty or price charged would have to be based on the cost of caring for and the probable return from each machine if used separately, and not as part of a series of machines.

It is obvious, as we have shown, that a series of machines, for example, a welter, stitcher, 10 auxiliaries, lasting, heeling, and metallic machines, can be cared for more economically and will return more revenue if used together in one factory than if each machine is in a separate factory in a separate place. Yet, if the Restricted Use Clause were forbidden, the shoe manufacturer taking the series of machines would have to pay for their use a price which would be the total charge if he took each machine separately. The shoe manufacturer using the series would therefore be charged more than he pays at present.

Most of the United Company's customers, as many of them testified, consider the United Company's machines the best made and prefer to take the entire series. These shoe manufacturers would necessarily suffer.

If the United Company cannot protect itself by the Exclusive Use Clause permitting it to take back its machines if others of the same kind are used and for this reason it does not get a fair return, if it cannot protect itself by the Cancellation Clause permitting it to cancel its leases if the lessee violates his agreements, and if it cannot protect itself by the Repair Clause requiring the lessee to use in repairing its machines parts which are made for them and which it knows are proper, the United Company cannot put in its lessees' hands millions of dollars worth of machinery without charging an initial payment sufficient to cover possible losses arising from these various contingencies.

If the seventeen-year term is held illegal and the United Company is forbidden to enter into an agreement to lease the machinery for an extended term, the United Company cannot afford to construct expensive machinery to be placed

without charge in the hands of its lessees, which might be returned for some whim of the lessee after a short period.

The present remarkable system of leasing machines without initial payment, to be paid for only as used, is made possible only by the use of these clauses or similar clauses which are essential to the protection of the lessor. It is inevitable that if these clauses were held illegal the United Company would be obliged to abandon the lease system entirely or charge very large initial payments and also charge more for each machine though used as part of a series than would be charged if it could lease the series as a whole. Such a result would be a misfortune to the shoe manufacturing industry. The cost of machinery would increase and many manufacturers of small capital would be unable to retain their machinery or to obtain all the machinery they need for the most efficient conduct of their business and many men of small means would be debarred in the future from entering into business at all. The only persons who would be pleased would be a few large shoe manufacturers who object to the present system because it enables the small manufacturer to enter business and compete, and who do not care what they pay for their machines (provided it does not exceed the amount paid by others) if they can eliminate the competition of the small manufacturers which has been encouraged by the United Company.

3. If the Clauses in the Leases Objected to by the United States are Illegal, the Leases as a Whole must necessarily be Void.

Counsel for the United States seeks to avoid the foregoing consequences in the following way. Although the petition prays that all leases containing these clauses "be declared illegal and void" and their enforcement enjoined (R. Vol. 1, p. 1029), counsel suggested at the former hearing of this case that they did not ask that the leases be declared void, but only asked that the United Company be enjoined from enforcing the clauses objected to. In this way they suggest shoe manufacturers may retain their machines without paying more than

at present and be freed from all these provisions which pro ect the United Company. In other words, they submit that such a decree would work to the advantage of the shoe manufacturers.

Such a decree, of course, would not compel the United Company to lease additional machines to existing lessees or to new manufacturers hereafter entering business except on such new terms as to payment as the United Company should determine it necessary to charge. It would therefore not give shoe manufacturers in the future the benefit of the present conditions.

But furthermore as applied to present leases this proposal is absolutely without justification. The clauses in question go to the very root of the leases. If they were held illegal and their enforcement enjoined, there would be no contract left between the parties, and the leases would necessarily be illegal and unenforceable by either party, or at least could be cancelled by either party at any time.

For example, take the seventeen-year term. If the United Company were enjoined from enforcing this clause, it would mean that the United Company could not compel a lessee to retain his machines for the period of seventeen years, but that the lessee could return them at any time. But if the United Company were so enjoined, it must be because the clause is illegal. If so, it clearly follows that the lessee could not enforce the clause. In other words, there would be no term for the lease, and the lessee could return the machines, or the United Company could withdraw them at any time. The lease could be cancelled by the United Company at once and the United Company would certainly be obliged to make such cancellation. In other words, it is impossible to enjoin the United Company from enforcing this seventeen-year clause without cancelling the leases or making them terminable at the option of either party.

Take the Full Capacity Clause. Machines held under leases containing this clause were leased on an understanding that they should be used as contemplated in the Full Capacity Clause. If they are not so used, the United Company may get no return for its machines, as its royalty is dependent on the use of the machines. This clause goes to the very essence of the contract. If it were held illegal, the whole lease must

be illegal, and therefore the lessee would no longer have any right to retain the machines without the permission of the United Company. To hold otherwise would be to hold that the Court can decree that machines owned by the United Company shall be held by a shoe manufacturer on terms not contemplated or agreed to by either party. In other words, it would be to hold that the Court by its decree can create a new contract between the parties which would be totally unfair to one of them and in some instances might deprive it of practically its entire return on its investment.

Take the clause contained in some of the Goodyear leases requiring the lessee to pay a royalty for the use of the machines based upon the total factory output of the lessee. This is the only clause in the lease requiring the lessee to pay any royalty to the United Company (except a small minimum payment). This clause goes to the very essence of the contract. If the United Company were enjoined from enforcing it, it could not obtain any compensation for its machines whatsoever. To enjoin the United Company from enforcing it and at the same time to hold that the lessee may continue to retain and use the machines would be to confiscate the United Company's machines.

Take the Auxiliary Restricted Use Clause. The United Company has thousands of patented Goodyear auxiliary machines on lease. No royalty is charged directly for the use of these machines but they are restricted to use with the Goodyear Welter and Stitcher. The United Company receives its return for the entire group of machines from the royalties paid for the Welter and Stitcher.

Is it possible that the Court could enjoin the United Company from enforcing the restrictions placed on the use of these Goodyear auxiliaries and at the same time hold that the lessee had a right to continue to retain the machines under his lease and use them in connection with any machines he pleased? If so, it would mean that the Court would confiscate millions of dollars worth of machines owned by the United Company, for the result would be that lessees could continue to hold and use thousands of machines without making any royalty payment direct or indirect to the United Company for their use, excepting in some cases a nominal rental.

These auxiliary machines are patented machines. The only license the lessee has to use them is the restricted license contained in the leases authorizing their use on certain shoes. If, as the United States contends, this license is unlawful, then it necessarily follows that the lessee has no license at all to use the machines. If a patent suit is brought against him by the United Company for an infringement by the use of the machines, the lessee can defend only by setting up a license and of course it cannot set up an unlawful license. Therefore, if the restricted license were held unlawful, it clearly follows that the lessee would have no license to use the machines at all. To hold the only license which has been granted unlawful and at the same time to decree that the lessee has a right to use the machines as he pleases would be to create by decree of this Court a patent license which the United Company has never granted.

In the case of leases of machines containing the Restricted Use Clause, restricting their use to use in connection with machines of other departments, the same situation obtains. Such machines are leased at a reduced rate on the agreement that they are to be used as part of a series. To permit the lessee to use them otherwise would be to force a contract upon the United Company which it never entered into. Furthermore, the only license to use these patented machines is the restricted license contained in the leases which would be held unlawful. Lessees could not be authorized to continue their use unless a new license were granted them by the United Company.

The contention of counsel for the United States that the enforcement of these clauses can be enjoined and at the same time the lessees can be authorized to retain and use their machines for the term of the leases without complying with these provisions is, we submit, without justification.

In *Darius Cole Transportation Co.* v. *White Star Line*, 186 Fed. 63, a steamer was leased for three years at a specified rental, to be used on certain routes including a route between Toledo and Detroit. The lessor agreed to surrender to the lessee all of the good-will of the "river business," so-called, and agreed not to enter into competition with the lessee upon the routes named in the lease. It was held under the circum-

stances of the case that the lease resulted in giving the lessee a monopoly of the business between Detroit and Toledo, which constituted interstate commerce, and that it was, therefore, void because in violation of the Sherman Act. It was urged by the lessor that the agreement in relation to the interstate route between Detroit and Toledo be held void and the remainder of the lease be held valid and enforceable. The Court said (p. 68),—

> "The only use which respondent had of the Idlewild was under the contract, and that being void, and no basis existing for an apportionment of earnings under the interstate route from those earned wholly within the state, and thus no means of separating the legal from the illegal provision, it follows that no recovery can be had."

In *Dennehy* v. *M'Nulta*, 86 Fed. 825, a distilling company delivered to purchasers of its goods vouchers by which it agreed to pay a rebate on such purchases on condition that the vendee bought of it all his goods of a certain kind for a specified period. The condition was held illegal. The holders of the vouchers sought to recover the amount of the rebates provided for thereunder, although the conditions had not been complied with, on the ground that such conditions were unlawful. The Court said (p. 828):—

> "But assuming, for the argument, that both premises are well taken, no relief can then be granted for enforcement of the contract, as no consideration is left to support the promise. The condition is the sole consideration for the promise, and, if that is illegal, the promise falls with it. Even if the consideration were invalid only in part, the same result would follow, the promise being indivisible. Bish. Cont. §§74, 487; 3 Am. & Eng. Enc. Law, 886; Greenh. Pub. Pol. rule 24. No element of the contract as actually made between the parties remains to be enforced. *A court of equity cannot make a new contract for them, nor can it destroy the substance of the one which they have entered into, and at the same time preserve the contract obligation.* Recovery upon the vouchers in question, with the conditions unfulfilled, would have that effect, and must be denied in equity as well as in law" (italics ours).

In *Bishop* v. *Palmer*, 146 Mass. 469, the defendants purchased a certain business and property together with the goodwill for a consideration to be paid in instalments and the plaintiff agreed not to compete. The agreement not to compete was held invalid. The plaintiff sued the defendant for failure to pay the instalments due. The Court held that, since a portion of the consideration given by the plaintiff, namely, his contract not to compete, was unlawful, he could not compel the defendants to fulfil their agreement to pay for the property purchased. The Court said (p. 475):—

> "If they [the defendants] pay to the plaintiff the whole sum called for by the terms of the contract, it may well be that they can call on him to perform all of his agreements except such as are unlawful. In such case, they would merely waive or forego a part of what they were to receive, and recover or enforce the rest. It does not, however, follow from this that they can be compelled to pay the sum promised by them, when a part of the consideration of such promise was illegal. They are at liberty to repudiate the contract on this ground; and, having done so, the present action founded on the contract cannot be maintained; . . ."

4. The Leases cannot be Declared Unlawful or the United Company Enjoined from Enforcing them, as the Lessees are not Parties to the Suit.

We have shown above that the United Company cannot be enjoined from enforcing these leases without declaring the leases void, or at least without permitting the United Company to cancel the leases which it would necessarily be obliged to do. The lessees, therefore, are as vitally interested in the question of whether these leases are held valid as is the United Company itself. They now hold a valuable equipment of machines which have cost them no capital expenditure and for the use of which they pay very low royalties. They are entitled to hold these machines for long terms at the rates provided for in the lease and license agreements. If the leases were held void, in order to retain these machines they would be obliged to pay such prices as the United Company

might determine to exact from them. If the United Company chose, it could exact such terms as would make it impossible for many of them to continue in business, and, as we have shown, it would necessarily be required to charge prices which would seriously injure hundreds of small manufacturers.

Under these circumstances, in accordance with decisions of this Court, the lessees are necessary parties to a suit which seeks to declare these leases void or which seeks to declare provisions in the leases illegal which if held illegal would necessarily make the leases void or subject to cancellation by either party.

Minnesota v. *Northern Securities Co.*, 184 U. S. 199.
Gregory v. *Stetson*, 133 U. S. 579.
Shields v. *Barrow*, 17 How. 130.

In *Minnesota* v. *Northern Securities Co.* (*supra*) the State of Minnesota charged that a majority of the stockholders of the Northern Pacific and Great Northern Railroads had combined and transferred their stock to the Northern Securities Co. in order that the Northern Securities Co. might exercise a joint control over these two roads in violation of the laws of the State. It asked that the Northern Securities Co. be enjoined from voting its stock in the two roads or exercising control over them. This Court held that the Northern Pacific and Great Northern Railway Companies or their minority stockholders whom they represented were interested in the suit and were, therefore, necessary parties. It dismissed the bill on this ground. The Court said (p. 235):—

> "The general rule in equity is that all persons materially interested, either legally or beneficially, in the subject-matter of a suit, are to be made parties to it, so that there may be a complete decree, which shall bind them all. By this means the court is enabled to make a complete decree between the parties, to prevent future litigation, by taking away the necessity of a multiplicity of suits, and to make it perfectly certain that no injustice is done, either to the parties before it, or to others who are interested in the subject-matter, by a decree which might otherwise be granted upon a partial view only of the real merits. When all the parties are before the court, the whole case may be seen; but it may not, where all the conflicting

interests are not brought out upon the pleadings by the original parties thereto (Story's Eq. Plds. sec. 72).

"The established practice of courts of equity to dismiss the plaintiff's bill if it appears that to grant the relief prayed for would injuriously affect persons materially interested in the subject-matter who are not made parties to the suit, is founded upon clear reasons, and may be enforced by the court, *sua sponte*, though not raised by the pleadings or suggested by the counsel. *Shields* v. *Barrow*, 17 How. 130. *Hipp* v. *Babin*, 19 How. 271, 278; *Parker* v. *Winnipiseogee Lake Cotton and Woolen Co.*, 2 Black, 545."

If the Northern Pacific and Great Northern Railway Companies are necessary parties in a suit to enjoin another corporation holding stock in them from voting its stock or exercising control over them, it would seem clear that a lessee in the present case having a valuable set of machines under lease on very favorable terms is a necessary party to a suit to hold such lease invalid.

The United States contends that this suit is not like a private suit involving only private rights, but *Minnesota* v. *Northern Securities Co.* equally involved public rights. The United States also relies upon *United States* v. *du Pont de Nemours & Co.*, 188 Fed. 127, in which it was held that a trustee for bondholders of the company was not a necessary party to a suit for dissolution under the Sherman Act. But as the Court pointed out in that case, it was not dealing with titles to property. The obligations of the Company to its bondholders were not to be affected nor the bondholders deprived of their bonds nor of the security therefor. In the present case it is sought to hold the leases void and thereby deprive the lessees of their rights in the leased machines, thus directly affecting their property rights, and their contracts of lease.

If it is impractical to make all the lessees parties, at least certain of the lessees should be made parties as representatives of the class.

XII.

CONCLUSION.

We submit:—

1. That the United States has wholly failed to prove any part of the charge made in the petition, namely, that the defendants, finding that the patents of the constituent companies under which they did the greater part of the business of the country in the principal essential shoe machines were about to expire, planned to extend their patent monopolies unlawfully by—

(*A*) Combining and acquiring all concerns engaged in the shoe machinery business, and then

(*B*) Refusing to sell or lease any of said so-called essential machines to a shoe manufacturer except on condition that he take from them practically all other machinery which he required, and that

(*C*) They thereby acquired an unlawful monopoly of all shoe machinery.

There is no evidence of any such plan, and the record shows conclusively that the defendants never did anything to carry out such a plan, for, as the District Court found:—

(*A*) They did not acquire all concerns engaged in the shoe machinery business or attempt so to do.

(*B*) They did not refuse to lease the alleged essential machines except on condition that the shoe manufacturer take all other machines required by him from them. As the District Court found, this charge was wholly unfounded.

(*C*) They did not acquire an unlawful monopoly of all shoe machinery, as the United States itself conceded during the course of the trial.

2. The United States attempted during the course of the trial to limit its charge to a charge that the defendants planned to extend their patent monopolies unlawfully by—

(*A*) Combining and acquiring all concerns engaged in the business of manufacturing machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines and clicking machines, and

(*B*) Refusing to sell or lease any of the so-called essential machines to a shoe manufacturer except on condition that he take from them practically all other machines of the above named classes, and that

(*C*) The defendants carried out such plan and thereby acquired an unlawful monopoly of said classes of machinery.

There is equally no evidence of any such modified plan or of any monopoly obtained in pursuance of any such modified plan, for, as the District Court found,—

(*A*) The defendants did not acquire or attempt to acquire all concerns engaged in manufacturing shoe machinery of the above mentioned classes. On the contrary they expressly declined to purchase their largest competitors making such machines.

(*B*) They did not refuse to lease the so-called essential machines except on condition that the shoe manufacturer take all other machines from them. On the contrary the record shows that the United Company never required a shoe manufacturer leasing its so-called essential machines to take or use any other machines, and that the only clause employed in its leases at the time the petition was filed requiring any use whatsoever of its machines was the Full Capacity Clause which required only a use of the particular machines leased. It further shows that the United Company's so-called restricted leases not only did not require the lessee to agree to use other machines, but that they did not compel such a use in order to obtain the leased machines, since the lessee was offered alternative forms of leases without restrictions on terms as favorable, and in many cases more favorable than were offered him prior to the formation of the United Company.

(*C*) The defendants did not have an unlawful monopoly of machines of the above-mentioned classes. On the contrary not only were there a number of competitors, but the business the defendants had in such machines was due to the fact that the United Company and its constituent companies had created such business by reason of their patented inventions, that their machines had always been the best in the market, and their success was due to the excellence of the machines, the constant improvements made in them, the remarkable service rendered with them and the favorable terms offered lessees.

3. We further submit that the record utterly fails to justify any other charge of unlawful conduct or monopoly, even if such a charge had been made in the petition and it were therefore open to the United States.

The history of the development of the United Company and of its constituent companies is a remarkable history of the creation of a new industry. By constant efforts and intelligent experimentation conducted at great expense, it has produced what are unquestionably the best machines, and these machines are lawfully protected by patents so that others cannot manufacture them. Most of these machines when first put on the market were new creations doing work previously done by hand. Nearly all of the United Company's machines to-day are new machines or new models so improved as to constitute practically new machines, or are machines invented within a few years to do work previously done by hand. The United Company's success in furnishing these machines is as natural and lawful as was the success of the Bell Telephone Company as owner of the Bell patent in the telephone field.

In addition the United Company is furnishing its machines under a lease system whereby the lessee can obtain his machines with practically no initial cost, paying for them only as he has use for them, and under which he is permitted to share in the economies resulting from the combined use of the principal machines which are adapted for use together, and

the United Company furnishes at great expense to itself and without charge to its lessees a service with its machines which shoe manufacturers testified was vital to the proper conduct of their business.

During a period in which the cost of nearly all supplies and machinery has increased, the United Company has never increased its prices, but on the contrary has in numerous instances reduced them, and, in addition, for such prices it has furnished, not the machines put out in 1899, but greatly improved machines, and many additional auxiliary machines which save the shoe manufacturer more than the entire amount paid the United Company in royalties.

As the District Court found:—

> "That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question. It is not disputed that, when the petition was filed, its machines represented, in number and amount, the highest development ever reached in the art to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason" (R. Vol. 1, p. 1137).

The attempt of the United States to prove that the success of the United Company was not due to the above causes but to various unlawful means adopted in pursuance of a plan to monopolize failed utterly. The charges of the United States were made recklessly and without investigation. The petition is replete with allegations made without any foundation of fact whatsoever on which even to base a contention. Thus, for example, the allegation that the United Company discontinued the sale of machines; the allegation that the patents of the constituent companies were about to expire; the allegation that the leases required the lessee to covenant to use United Company's machines of the kind leased and all other kinds exclusively; the allegation that the United Company acquired various patents and held them without making any use of them, thus depriving the manufacturer and the

public of the benefits arising therefrom; the allegation that exorbitant prices were charged for repair parts; and the allegation that the constituent companies were taken over for values far in excess of real worth, and numerous other allegations, were shown to have no foundation whatsoever, although the true facts would have been disclosed upon the slightest investigation. The specifications of the United States with respect to the unfair acts alleged by it were shown to be equally unfounded. As to the majority of them, no evidence whatsoever was introduced, and as to the remainder the evidence showed an utter lack of foundation for the charges.

The District Court heard the witnesses in open court and thoroughly investigated the entire business history of the United Company. The facts on which its opinions are based are fully sustained by the record, and completely dispose of the contentions of the United States.

We respectfully submit that the decree of the District Court dismissing the bill should be affirmed.

Respectfully submitted,

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APPENDIX I.

THE "ACQUISITIONS."

Detailed Statements of the Facts.

(NOTE.—The companies are discussed in the same order as in the petition except the Boot & Shoe Sole Laying Company, a majority of the stock of which was acquired by the United Company in June, 1899, while the date of the acquisition stated in the petition is May 25, 1901; and except The T. A. Norris Machine Company, which was acquired July 1, 1902, not in March, 1903, as stated in the petition. The statements as to those companies will be found in their proper places in chronological order. The purchase of Plant's patents and inventions is not discussed here as the facts regarding that transaction have been set forth in our brief, *supra*, pp. 507–586.)

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Goddu Sons Metal Fastening Company.

This transaction took place March 1, 1899 (P.'s Ex. 60, R. Vol. 3, p. 514). The Goddu Sons Metal Fastening Company "had constructed a loose nailing machine, a slugging machine, a tacking machine, and a standard screw machine." Each of these machines was "in a state of development" and none of them was "in a condition to be placed in the hands of manufacturers for continuous operation" (Howard, R. Vol. 1, p. 41, lines 38–40; Winslow, R. Vol. 1, p. 436, lines 28–31). The Goddu Sons Company had no machines whatever in the hands of customers and accordingly was not engaged in interstate or foreign trade or commerce. These four machines, which were all patented, were all metallic fastening machines. The Goddu Sons Company had no factory and the experimental work had been done in a small machine shop with a few tools in it adjoining the house of Louis Goddu, the father of the "Goddu Sons" (R. Vol. 1, p. 103, lines 35–45; p. 104, lines 1–7; p. 436, lines 2–3, 27–28, 34–36).

Louis Goddu had been for a long time employed by the McKay Shoe Machinery Company and its predecessors, and his inventive work "had been very meritorious. It was the base of the McKay metallic machinery business" (Winslow, R. Vol. 1, p. 436, lines 15–19; Defs.' Ex. 101, R. Vol. 5, pp. 166, 168). All of his sons had also been employed by the McKay Company and several years prior to the organization of the United Company had all left the employ of the McKay Company (R. Vol. 1, p. 104, lines 8–10, 12–13).

The negotiations for this transaction were opened by the Goddus.

> "Mr. Goddu, senior, came to me and wanted the transfer, . . . to have the United Company take this property, . . . wanted to relieve himself of the position that he was in" (Winslow, R. Vol. 1, p. 436, lines 4, 5, 10).

Both Goddu, senior, and Van Wagenen had talked to Mr. Winslow about the situation before the United Company was organized (R. Vol. 1, p. 436, lines 20–23).

The United Company did not acquire anything whatever from the Goddu Sons Company. It acquired from Louis Goddu and his sons a majority of the stock of the Goddu Sons Company and a number of patents and applications for patents (R. Vol. 1, p. 41, lines 31–34; p. 534, lines 27–28). There were two reasons for this acquisition:

(1) It was claimed by officials of the McKay Shoe Machinery Company "that the inventions embodied in the machines of the Goddu Sons Company had been made by Louis Goddu, the father," who had agreed to assign his inventions to the McKay Metallic Fastening Association, a predecessor of the McKay Company, by his employment contracts which were still in force and under which he had been paid continuously, and was still being paid, for his exclusive services. Suit had been brought on those contracts "to compel the transfer of these inventions" which were in the Goddu Company's machines to the McKay Company (Winslow, R. Vol. 1, p. 436, lines 42–44; Howard, R. Vol. 2, p. 2071, Ints. 1578, 1579; Defs.' Ex. 104, R. Vol. 5, pp. 245–252).

The bill of complaint in that suit, which is Defendants' Exhibit 104 (R. Vol. 5, p. 243), reviewed the history of Louis Goddu's relations with the McKay Company, including his declaration that he would assign no more inventions (pp. 245–252), set forth that none of the sons had made any inventions while in the employ of the McKay Company (p. 253) and charged that Louis Goddu, his sons and Albert Van Wagenen, also formerly employed by the McKay Company, conspired to have Louis Goddu invent metallic machines, communicate such inventions to his sons and permit them to apply for patents upon the machines and transfer such patents to the Goddu Company (pp. 253–262).

Counsel of the highest standing, Mr. Louis D. Brandeis, appeared for the McKay Company in this suit (R. Vol. 5, p. 264).

The endless trouble which the McKay Company had had with Louis Goddu and threats that he had made are further set forth in the affidavit of James W. Brooks (Defs.' Ex. 101, R. Vol. 5, p. 161), prepared for use in the proposed infringement suits. Among illuminating facts developed by the evidence in the pending suit which are recited in this affidavit,

it appears that Louis Goddu, the father, had contributed $40,000 to the Goddu Sons' enterprise (p. 187) and that he had been working with his sons continuously for several years (pp. 183, 184).

Mr. Winslow testified,—

> "I knew Mr. Goddu, senior, quite well and believed personally that the patents then standing in his and his sons' names, and those that had been transferred to the Goddu Company, belonged in reality to the McKay Company" (R. Vol. 1, p. 435, lines 43–45; p. 436, lines 1–2; Defs.' Ex. 231, R. Vol. 5, p. 447).

That is, by this acquisition Mr. Winslow was securing control for the United Company of inventions and patents and applications for patents which he believed already belonged to the United Company, as successor of the McKay Company.

(2) There was very serious litigation existing and threatened between the parties. The pending suit which had been brought on the Louis Goddu contracts had been running for some time before the formation of the United Company, had been "very vigorously contested" and "a very large amount" of testimony had been taken, and the claims of the McKay Company had been developed and substantiated before the acquisition (R. Vol. 1, p. 104, lines 14–24; R. Vol. 2, p. 2082, Cr. Ints. 1618–1620; Defs.' Ex. 275, R. Vol. 5, p. 755).

In addition to this pending suit the McKay Company had—

> "caused to be prepared bills of complaint and affidavits to accompany motions for preliminary injunctions in suits for infringements of its patents by all of the machines of the Goddu Sons Metal Fastening Company" (Howard, R. Vol. 2, pp. 2077, 2078, Ints. 1609–1611; Defs.' Ex. 275, R. Vol. 5, p. 755).

A number of affidavits, including one by Joseph P. Livermore, and a bill of complaint had been printed prior to the formation of the United Company and printed copies constitute Defendants' Exhibit 101 (R. Vol. 5, p. 140). According to Mr. Livermore's affidavit, the Goddu Sons' loose nailer infringed six of the McKay Company's patents; its screw machine infringed two of the McKay Company's patents; its slugging machine infringed two of the McKay Company's patents.

and its string nailer infringed three of the McKay Company's patents (Defs.' Ex. 275, R. Vol. 5, p. 756).

Mr. Winslow testified:—

> "I very much desired to start the United Company free from all serious litigation. I was aware of the fact that there was serious litigation existing between the McKay Company and the Goddus."
>
> "I was very glad to get rid of the situation which meant I didn't know how much litigation and how much time it would require from me, and to get that whole matter cleaned up and clear the litigation."
>
> "I had had considerable experience in that sort of litigation.
>
> "*Q.* Did you acquire the Goddu Sons Company for the sake of getting rid of any competition?
>
> "*A.* I did not" (R. Vol. 1, p. 435, lines 40–43; p. 436, lines 10–14; p. 437, lines 6–10).

The practical reasons why the Goddu machines could not be manufactured and put out without *entire reconstruction* were set forth by defendants' expert Howard with detailed explanations. In July, 1898, Mr. Howard spent a week in examining the Goddu Sons' machines, making drawings and notes (R. Vol. 2, p. 2070, Int. 1577; pp. 2088, 2089, Cr. Int. 1660; p. 2099, Cr. Int. 1666).

Moreover, even if the machines had been practical, "the United Company couldn't have developed those machines if they wanted to" because "they were stopped by the action of the minority stockholders of the Goddu Company" (Winslow, R. Vol. 1, p. 534, lines 20–26).

It should also be noted that after the acquisition all but one of the Goddu Company's machines infringed patents of the United Company acquired from the Goddu Sons individually, which did not expire until 1915 and 1917 (Defs.' Ex. 275, R. Vol. 5, pp. 756, 757).

As to this transaction it was held by the District Court:

> "the metallic fastening machines acquired by purchase of a controlling interest in the company were none of them in the hands of users; their then state of development does not appear to have been such as made them capable of commercial use, whatever the merit of the inventive ideas they sought to embody; nor is the evidence suffi-

cient for a belief that without reconstruction, radical in character, anyone could have used them as competing machines" (Dodge, J., R. Vol. 1, p. 1140).

Pearson & Bennion, Ltd.

This transaction took place June 8, 1899 (P.'s Ex. 61, R. Vol. 3, p. 525). The reason for this purchase and the disposition of the acquired business after the purchase were summarized by Mr. Winslow as follows (R. Vol. 1, p. 420, lines 21–33):

> "Our agent in England for the Lasting Machine Company was Pearson & Bennion. They made or manufactured no machines that were made or manufactured by either of the companies which came together to form the United Shoe Machinery Company. They did make a few general department machines in England. Their principal business, probably eighty per cent of it, was the business they did as the agent for our lasting machine. We took their business, put our business with it and formed the British United Company. They entered our employ, and Mr. Bennion was made the general manager of that business. That was the reason; it was just putting in corporate form what had previously existed, only he was made the manager of all the business of these three companies."

As stated by Mr. Winslow: "The agreement of 1899 with Pearson & Bennion was in reality a consolidation of the foreign business of the United Company in England with Pearson and Bennion's business, and not a purchase" (Defs.' Ex. 231, R. Vol. 5, p. 450). Among the assets acquired was a new factory (R. Vol. 3, p. 530).

From Mr. Winslow's testimony, above quoted, that the few machines which Pearson & Bennion made were of the general department type, it is clear that Pearson & Bennion were in no way competing with the United Company since the United Company had no general department machines at that time. While the record does not name the Pearson & Bennion machines, they were presumably of the types used by English manufacturers, somewhat different from those used in this country. They were being manufactured under

patents (R. Vol. 1, p. 53, lines 3–5; R. Vol. 2, pp. 2787, 2788, Cr. Ints. 432, 433; R. Vol. 3, p. 527).

Boot & Shoe Sole Laying Company.

This acquisition is not referred to in its proper chronological order in the petition. The date alleged, May 25, 1901, is the date of the bill of sale formally transferring the company's property (P.'s Ex. 90, R. Vol. 3, p. 366). A majority of the stock of this company was acquired by the United Company in June, 1899 (R. Vol. 1, p. 457, lines 30–31; Defs.' Ex. 275, R. Vol. 5, p. 763). Accordingly this acquisition will be discussed here in its proper chronological relation to other acquisitions.

The Boot & Shoe Sole Laying Company was manufacturing and putting out a patented sole laying machine known as the Boston sole layer. It was doing a very small business. It owned no real estate and contracted with outside parties for such machines as it had built (R. Vol. 1, p. 54, lines 5–7; p. 99, lines 41, 43–45, R. Vol. 2, p. 2054, Ints. 1489, 1490; Defs.' Ex. 231, R. Vol. 5, p. 450).

The United Company did not have a satisfactory sole laying machine. They "had an inferior machine of different type," the rotary sole layer, "which was only adapted for large factories" and "which was very unsatisfactory because it was continually breaking down, particularly on men's shoes" (R. Vol. 1, p. 54, lines 20–21; Defs.' Ex. 231, R. Vol. 5, p. 450, and 275, R. Vol. 5, p. 763).

A further reason for this acquisition was that the United Company had "produced and desired to use the pressing form for sole laying machines shown and described in its patent 694,367 Mar. 4, 1902, Gifford (application filed Apr. 20, 1900)," but this form infringed a patent owned by the Boot & Shoe Sole Laying Company (Howard, Defs.' Ex. 275, R. Vol. 5, p. 763; R. Vol. 1, p. 665, lines 1–3). After this acquisition—

> "the United Company discarded the Rotary Sole Layer and adopted as its standard commercial machine the sole layer of the Boot and Shoe Laying Machine Company, using on that machine the pressing form of Gifford patent

No. 694,367. This machine, combining the best features of the rotary machine and the machine of the Boot and Shoe Sole Laying Company, has been much improved by a number of inventions made from time to time, and in the various stages of its development it has ever since been and is today the standard sole laying machine of the United Company" (Howard, Defs.' Ex. 275, R. Vol. 5, p. 763; R. Vol. 2, p. 2050, Ints. 1467, 1468).

The Corrugated Wire Fastening Company.

This transaction took place June 30, 1899 (P.'s Ex. 62, R. Vol. 3, p. 530). With regard to the Corrugated Wire Fastening Company, Mr. Howard testified that at the time of the purchase it—

> "had one machine, a tacking machine, and was doing a very small business in supplying wire for that machine. I believe they had not put out any of the machines for some years because it was completely out of date. It was a very old machine" (Howard, R. Vol. 1, p. 42, lines 12–17).
>
> "The only business that was left when the Corrugated Company was acquired was the supplying of wire and spare parts for the machine. They had not done any business in the way of supplying machines for some time, and there was no longer any demand for the machines, so that no business was done and no business could be done with that machine" (Howard, R. Vol. 1, p. 42, lines 28–33).

This company "was purchased in 1899 for $12,750 at the earnest solicitation of the owners, their business having become unprofitable. At the price we paid we thought we could get out of it with a small profit" (Winslow, R. Vol. 1, p. 464, lines 20–23).

The Corrugated Wire Fastening Company—

> "Owned no real estate. Leased a small room on South Street, Boston, where it employed two or three men" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 475).

After the purchase—

> "The United Company continued to supply wire and parts for those machines. They have parts in stock today" (Howard, R. Vol. 1, p. 42, lines 33–35).

The business of the Corrugated Company was characterized by the District Court as "making wire and spare parts for use in an obsolete metallic-fastening machine" (Dodge, J., R. Vol. 1, p. 1138).

Breach Manufacturing Company.

This transaction took place July 31, 1899 (P.'s Ex. 63, R. Vol. 3, p. 531). All that the United Company acquired from the Breach Manufacturing Company was an exclusive license under certain patents on a machine—

> "which was intended for cutting soles out of a side or strip of leather by a reciprocating knife which moved up and down through the stock as it went around" (Howard, R. Vol. 1, p. 42, lines 44–45; p. 43, line 1; R. Vol. 2, p. 2067, Int. 1559).

At that time the United Company had no machine for cutting out soles (R. Vol. 1, p. 43, lines 13–16, 22–24). The machine which it puts out now for that purpose is a General Department machine (R. Vol. 2, p. 2645).

The United Company paid the Breach Company $10,000 for an exclusive license under the Breach patents in the hope that a successful machine to cut the uppers of shoes (*i.e.*, to do the work done by the clicking machine invented some eight years later) would be developed under those patents (Defs.' Ex. 231, R. Vol. 5, p. 467).

Mr. Howard testified:

> "The United Company took Breach into its employ and for several years made strenuous efforts to develop something practical out of that machine. Breach worked on the machine during that period and spent a great deal of money, but finally came to a point where he could apparently do nothing more, and at that stage the machine was an entire failure as a commercial machine" (R. Vol. 1, p. 43, lines 16–22).

Also—

> "The United Company built experimental machines and put them out on trial but could not interest manufacturers to use them" (R. Vol. 2, p. 2068, Int. 1562).

"Every possible assistance" was given to Breach by the United Company in the endeavor to make commercial the ideas embodied in his inventions, and that work was continued for some two years (R. Vol. 2, p. 2084, Cr. Ints. 1635, 1636).

> "In this endeavor the United Company expended about $30,000 and then gave up the attempt" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 467; Howard, R. Vol. 2, p. 2100, Int. 1668).

An important reason for the commercial failure of the Breach inventions was stated by Mr. Howard to be that—

> "Shortly before the time of the acquisition of the Breach patents, sole-rounding machines of the so-called Stanley and Julian type were introduced, which used a wooden pattern instead of a metal pattern such as had been previously used in sole-rounding machines, and as was used in the Breach machine. That pattern cost but a small fraction of the cost of the metal pattern, and was a very great improvement because it obviated the necessity of lubricating the edge of the pattern, which had always presented a serious difficulty" (R. Vol. 2, p. 2085, Cr. Int. 1641).

Mr. Howard also said "the United Company offered to turn back the patents to the Breach Company, and I believe it did so" (R. Vol. 1, p. 43, lines 9–10).

It should be noted that by this transaction the United Company acquired only an exclusive license under certain patents; it acquired no tangible property of any description (R. Vol. 3, p. 531).

Peter A. Coupal and William Gordon.

This transaction took place August 1, 1899 (P.'s Exs. 64–66, R. Vol. 3, pp. 535, 537, 538). Coupal and Gordon were running a machine shop and doing a general machine shop business, "not particularly relating to shoe machinery." They had one or two unimportant machines and an experimental "Basting Machine" which infringed a patent of the United Company (Howard, R. Vol. 1, p. 43, lines 27–35; p. 103, lines 25–26; Defs.' Ex. 275, R. Vol. 5, p. 757).

> "The United Company was not engaged in putting out or manufacturing such machines as Coupal and Gordon were making and putting out, or machines for performing the same or similar work" (Howard, R. Vol. 1, p. 43, lines 36–39).

The United Company acquired certain patents from Coupal and Gordon, but this transaction was primarily an employment contract. Coupal and Gordon were both "very skilled mechanics" and "were in the employ of the Goodyear Company prior to, and at the time of, the organization of the United Company and the United Company desired to obtain all their time free from outside matters." Gordon agreed to enter the employ of the company in a managerial capacity and remained in the company's service until his death in 1912. Coupal agreed to enter the employ of the company, but "only remained in the company's service a few months" (R. Vol. 1, p. 103, lines 22–24, 28–29; P.'s Exs. 64, 65, R. Vol. 3, pp. 535, 537; Defs.' Ex. 231, R. Vol. 5, p. 472).

The size of their business and relative importance of their machines is indicated by the consideration of this transaction, which was $10,799.25,—the value of their inventory quoted in Plaintiff's Exhibit 66, pp. 539–563. No real estate was acquired (Defs.' Ex. 231, R. Vol. 5, p. 472).

> "Soon after the purchase the machinery was removed to one of the United Company's factories and the business was continued in conjunction with the other business of the company" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 472).

Timothy A. Bresnahan; Boston Shoe Tool Company.

This transaction took place August 16, 1899 (P.'s Ex. 67, R. Vol. 3, p. 563). The Boston Shoe Tool Company, which was Bresnahan's Company,—

> "was manufacturing and selling a patented edge trimming machine and a rotary edge setter, and was also making and selling forepart and shank cutters for use on the edge trimming machine, and edge setting irons for use on the rotary edge setter. The rotary edge setter was adapted only for the cheapest kind of work and never used on any

other work. It could not be used with profit on any other kind of work. . . . Every edge trimming machine has a forepart cutter for trimming the sole around the forepart and a shank cutter for trimming the sole in the shank. . . . The finish or shine that the edge has when the shoe is new is given to it by the edge setting operation, and the tool which operates upon the shoe in this operation is known as an edge setting iron. . . . At the time of this acquisition the United Company had no machines for doing the work of either of the two machines acquired from the Boston Shoe Tool Company and it was not manufacturing any edge cutters or any edge setting irons" (Howard, R. Vol. 1, p. 43, lines 40–45; p. 44, lines 1–23).

The United Company acquired the Boston Shoe Tool Company's factory and the patents on its cutter and its edge trimming machine (R. Vol. 1, p. 103, lines 19–21; Defs.' Ex. 231, R. Vol. 5, p. 460).

"The business was continued at the same plant for a considerable period of time. Subsequently, for convenience and economy of manufacture, the business was transferred to the Beverly Factory, where the United Company has ever since continued and increased the business" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 460).

Edge trimming and edge setting machines, the only two machines acquired from this concern, are General Department machines and are sold outright (R. Vol. 1, p. 12, line 37 *et seq.;* Vol. 5, pp. 425, 428, 429).

In regard to the covenant quoted in the petition (R. Vol. 1, p. 1003) Mr. Howe testified as to the reasons why the covenant was in this particular form (R. Vol. 1, p. 692, lines 34–44; p. 693, lines 1–6).

Edwin T. Freeman.

This transaction took place October 9, 1899 (P.'s Ex. 68, R. Vol. 3, p. 569). Edwin T. Freeman had constructed an experimental slugging machine (R. Vol. 1, p. 44, lines 24–29; Defs.' Ex. 275, R. Vol. 5, p. 757); operation explained (R. Vol. 2, p. 2464) which was patented (R. Vol. 1, p. 103, lines 15–18). He had no factory and was doing no business. He "had not put out any machines at all" (R. Vol. 1, p. 849, line 15;

Defs.' Ex. 231, R. Vol. 5, p. 467); accordingly he was not engaged in interstate or foreign trade or commerce.

At the time of this acquisition the United Company was developing an improved standard screw machine, which later became Screw Machine, Model B—Rapid Standard, which infringed one of Freeman's patents. There was an interference in the Patent Office between an application for reissue of that Freeman patent and the application on this standard screw machine which the United Company was developing (Defs.' Ex. 275, R. Vol. 5, p. 758).

On the other hand, the Freeman machine infringed one of the United Company's patents and after January 21, 1902, would have infringed another patent granted on that date. These infringements could not have been avoided without entirely reconstructing the Freeman machine to omit from it valuable inventions, on account of which the United Company purchased the Freeman patents. Furthermore, an important mechanism, without which Freeman's machine could not have been a commercial success, had been necessarily omitted from the Freeman machine because it was broadly covered by two of the United Company's patents (Defs.' Ex. 275, R. Vol. 5, pp. 757, 758).

This acquisition cleared up these serious patent complications and enabled the United Company to improve its slugging machine and to avoid infringement of the Freeman patents (Defs.' Ex. 231, R. Vol. 5, p. 467).

Since the purchase, inventions claimed in the patents assigned by Freeman have been embodied in three different types of machines which the United Company has built and put out; namely, Nailing Machine, No. 2 Loose; Slugging Machine, No. 5; Screw Machine—Model B, Rapid Standard (R. Vol. 2, pp. 2066, 2067, Ints. 1554, 1557; pp. 2090, 2091, Int. 1662).

George W. Freeman.

This transaction took place October 10, 1899 (P.'s Ex. 69, R. Vol. 3, p. 573). George W. Freeman is the son of Edwin T. Freeman, from whom certain patents were purchased in 1899, as above explained. "Nothing was acquired by the

United Company from George W. Freeman" (R. Vol. 1, p. 44, lines 42–43). Consequently the statement in the petition (R. Vol. 1, p. 1003) that the United Company acquired the interests of George W. Freeman relating to shoe machinery is absolutely erroneous. He had been engaged with his father in work upon his father's experimental machine and the acquisition of his father's patents left him without a job.

> "As this transaction left the son, George W., without a job, his father asked the company to take the son into its employ for at least one year at a compensation of $800."
>
> "Freeman has remained continuously in the employ of the company as a roadman and now receives $1200 per year. He has never made or assigned any inventions to the company" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 472).

Mr. Winslow explained this employment contract as follows:

> "It was undoubtedly in view of the fact that he had been associated with his father in experimental work, and on account of the possibility of his setting up some claim to the inventions assigned by his father, that the covenants in regard to competition and future inventions were made a part of the contract for employment of George W. Freeman" (Defs.' Ex. 231, R. Vol. 5, pp. 472, 473).

Mr. Winslow's explanation is supplemented by Mr. Howard's testimony:—

> "The agreement was made with him at that time simply because he was his father's son and had been engaged with his father in work upon his father's machine. It not infrequently happens that a son may be responsible for some of the inventing in a case like that. It was a matter of precaution" (R. Vol. 1, p. 44, line 45; p. 45, lines 1–4).

Albert G. Brewer.

This transaction took place October 11, 1899 (P.'s Ex. 70, R. Vol. 3, p. 575). Brewer had built one experimental heel breasting machine of the automatic type, which was covered

by a pending patent application. A heel breasting machine is used to trim the front end of a heel. At that time the United Company was not putting out any heel breasting machine but was experimenting on a machine in which the knife was driven through the heel by power (R. Vol. 1, p. 45, lines 7–29; p. 103, lines 12–14).

> "Prior to February, 1899, all heel breasting was done by foot power machines . . . all the power required for forcing the knife through the successive layers of stock in the heel being applied by the operator through the treadle" (Howard, R. Vol. 2, pp. 2472, 2473).

Owing to the fact that "all heels vary in height, even the heels of shoes which are intended to be substantially alike," no power operated machine had yet been produced—

> "which could deal successfully with the problem of cutting just far enough to sever completely the surplus stock and, at the same time, not cut far enough to deface the shank of the sole" (Howard, R. Vol. 2, p. 2473).

Mr. Howard further testified (R. Vol. 1, p. 45, lines 34–37):

> "The Brewer patent covered a better, a more sensitive, mechanism than we had for stopping the knife properly when it reached the shank, to prevent cutting into and possibly cutting through the shank."

The United Company's experimental machine did not become a commercial success until "after the invention which we acquired from Brewer had been embodied in our machine" (Howard, R. Vol. 1, p. 45, lines 14–16).

On the other hand, the Brewer experimental machine infringed fourteen claims of the United Company's broad Heys patent on mechanism for automatically stopping the knife (R. Vol. 1, p. 45, lines 27–28; Defs.' Ex. 275, R. Vol. 5, p. 758). As stated by Mr. Howard: "in my opinion Brewer could not have built a power heel-breasting machine without infringing that patent" (Defs.' Ex. 275, R. Vol. 5, p. 758). After the purchase "approximately 700" machines incorporating the Brewer inventions were put out by the United Company (R. Vol. 2, p. 2066), and "That machine, with some modifications, is still being manufactured and put out by the United

Company" (Howard, R. Vol. 2, p. 2065, Int. 1548; p. 2090, Int. 1662). It is a General Department machine and is sold outright (R. Vol. 1, p. 12, line 37 *et seq.;* Vol. 5, p. 425).

The one experimental machine which Brewer had constructed was turned over by him to the United Company with his patent application (P.'s Ex. 70, R. Vol. 3, p. 576). It follows, therefore, that Brewer was not engaged in interstate or foreign trade or commerce. No manufacturing plant of any kind was acquired (Defs.' Ex. 231, R. Vol. 5, p. 467).

Globe Shoe Tool Company.

This transaction took place October 24, 1899 (P.'s Exs. 71–73, R. Vol. 3, pp. 577, 580, 583). The Globe Shoe Tool Company was a co-partnership, H. M. Loomer being one of the partners. It was engaged in the business of manufacturing and selling forepart cutters and edge irons, which are tools, not machines. It was acquired at the earnest solicitation of the partners and because the United Company desired to obtain the services of Mr. Loomer as the head of its department for manufacturing such tools (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 460).

The agreement between Loomer and the United Company (P.'s Ex. 72, R. Vol. 3, p. 581) provides for the employment of Loomer by the United Company and recites that that had been agreed upon "as an inducement to the United Company to take over said business and to purchase the property and assets of said partnership."

On the other hand, the Globe Shoe Tool Company was infringing two patents of the United Company (Defs.' Ex. 275, R. Vol. 5, p. 759).

The Globe Company owned no real estate but leased floor space:—

> "Soon after its acquisition the business was transferred to the factory of the Boston Shoe Tool Company in South Boston" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 460).

After the Boston Shoe Tool Company and the Globe Shoe Tool Company acquisitions, very large reductions were made in the prices of the tools acquired, as follows:—

"The price of the heel cutter with blades in January, 1899, was $3.25; we reduced the price on March 1, 1900, to $2.25. In January, 1899, the price of the blades alone was $2; on March 1, 1900, we reduced the price for the blades alone to $1. The price of forepart and shank cutters in January, 1899, was thirty-five cents each, in small quantities, and twenty-five cents each in quantities of 100; on March 1, 1900, we reduced the price to twenty-five cents each in any quantity. The price of edge irons in January, 1899, was fifty cents; on March 1, 1900, we reduced the price to twenty-five cents" (Winslow, R. Vol. 1, p. 479, lines 10–19).

John Ritchie Company and John Ritchie.

This transaction took place November 2, 1899. "The John Ritchie Company was a concern manufacturing shoes," located at Quebec, Canada (R. Vol. 1, p. 46, lines 19–20; P.'s Ex. 74, R. Vol. 3, p. 585). This transaction was explained by Mr. Howard as follows:—

"They had manufactured, prior to the date in question, one old standard screw machine, so called, that being the type of machine which preceded the rapid standard screw machine, the greatly improved machine then in use for that kind of work. I think that machine was not being used by the John Ritchie Company, but had been sold by them. They had not built, and so far as I know did not contemplate building, any more machines, but they were making wire for use on standard screw machines. They were selling that wire to lessees of the United Company, who were obligated by their leases to buy wire from the United Company.

"It has sometimes happened that the United Company will find that a dishonest lessee, who has agreed to buy wire from the United Company, in payment of royalty for the use of a metallic machine, or, to be more specific, a standard screw machine, will buy wire from another concern at a lower price and use it on the United Company's standard screw machine. That was exactly what was happening in Canada. The John Ritchie Company were making and selling standard screw wire to lessees of the United Company, which, of course, was not getting any return whatever for the use of its machines during the period that the Ritchie wire was being used in them. The

purpose of this transaction was to eliminate that dishonest situation in Canada" (R. Vol. 1, p. 46, lines 20–42).

Mr. Winslow stated that—

> "The reason for this contract and purchase was to prevent manufacturers who held Metallic Machinery under lease from the United Company . . ., violating their leases and contracts by purchasing material from Ritchie" (Defs.' Ex. 231, R. Vol. 5, p. 475).

Mr. Winslow further stated:—

> "No existing competition, or business, was interfered with by this contract. . . . No real estate acquired; only help employed two or three boys" (Defs.' Ex. 231, R. Vol. 5, p. 476).

The United Company agreed to pay the Ritchie Company $750 per annum with the right to cancel this annual payment at any time by paying $15,000 (Defs.' Ex. 231, R. Vol. 5, p. 476).

Seaver Process Lasting Company.

This transaction took place January 13, 1900 (P.'s Ex. 75, R. Vol. 3, p. 591). The most important reason for this purchase was that the Seaver Company had patents which stood in the way of the development of the United Company's pulling-over machine. The experimental pulling-over machine of the Seaver Company, which "could be used for pulling over uppers, but it was slower than hand work," and the experimental pulling-over machine of the United Company each embodied a mechanism believed to be indispensable to a successful pulling-over machine. If the Seaver Company obtained a patent on this mechanism the United Company would be prevented from putting out commercially its pulling-over machine upon which already there had been an expenditure of hundreds of thousands of dollars. Both the experimental pulling-over machine of the Seaver Company and its lasting machine were patented. On the other hand, there were pending suits for infringement of two of the United

Company's patents by the Seaver lasting machine (R. Vol. 1, p. 47, lines 9–11; p. 103, lines 5–10; p. 456, lines 34–37; p. 849, lines 24–29; R. Vol. 2, pp. 2086, 2087; Defs.' Exs. 231, R. Vol. 5, p. 447, and 275, pp. 759, 760).

The Seaver Company was in debt to E. B. Seaver, a majority stockholder, for more than the amount paid by the United Company (P.'s Ex. 75, R. Vol. 3, p. 591). The Seaver Company was insolvent and unable to pay its debts; it had only six employees and its business had fallen to pieces, and it is obvious that the company could have offered no competition either then or later that would have been more than negligible. The purchase was made at the earnest solicitation of Mr. Seaver, to remove the patent complications which stood in the way of the development of the United Company's pulling-over machine and to settle the existing litigation (R. Vol. 1, p. 456, lines 28–39; p. 849, lines 24–29; Defs.' Exs. 231, R. Vol. 5, pp. 447, 448, and 275, pp. 759, 760).

The pulling-over machine inventions acquired from the Seaver Company have been embodied in all pulling-over machines put out by the United Company "and the mechanism embodying those features is of the utmost importance in that machine" (Howard, R. Vol. 2, p. 2086, Cr. Ints. 1650, 1653). It was a combination of the Seaver inventions and those upon which the United Company inventors were working that resulted in the present commercial pulling-over machine, in the development of which nearly a million dollars was spent (R. Vol. 2, pp. 2086, 2087, 2552). At that time the machine was only experimental and it did not become commercially successful for over two years (R. Vol. 2, p. 2542).

The lasting machine inventions did not prove as useful as was expected. In all respects the United Company's lasting machines were superior and there was no demand for the Seaver lasting machine (R. Vol. 2, p. 2087, Cr. Ints. 1654, 1655).

No real estate was acquired from the Seaver Company; it did its business in a leased room (Defs.' Ex. 231, R. Vol. 5, p. 447). Plaintiff's Exhibit 75 (R. Vol. 3, p. 591) recites that "the said Seaver Company is insolvent and is unable to continue its business or to pay its debts."

Erastus E. Winkley and Benjamin Phillips.

This transaction took place March 16, 1900 (P.'s Ex. 77, R. Vol. 3, p. 615). By the agreement with Winkley and Phillips, the United Company simply—

> "exercised the option which had previously existed between the Goodyear Company and Winkley and Phillips to take the exclusive right to the use of certain patents which had been transferred by Winkley and Phillips in 1898 to the Goodyear Company"

and under which they had reserved certain rights which were the subject-matter of this transaction (Defs.' Ex. 231, R. Vol. 5, p. 467).

Winkley and Phillips were not engaged in manufacturing anything. "No manufacturing plant of any kind was acquired" (Defs.' Ex. 231, R. Vol. 5, p. 468). Mr. Winkley is an inventor and Mr. Phillips is a patent lawyer (R. Vol. 1, p. 102, lines 38–39).

> "They did not have any going machine. Winkley and Phillips were associated with the United Company, and this was a friendly arrangement by which the United Company acquired the right to use the inventions of their patents in its machine" (Howard, R. Vol. 1, p. 48, lines 5–9).

These patents were named by Mr. Howard (R. Vol. 1, p. 48, lines 5–9; R. Vol. 2, p. 2062, Int. 1532). No machinery was acquired from Winkley and Phillips (R. Vol. 1, p. 48, lines 3–5).

The patented inventions acquired from Winkley and Phillips were embodied by the United Company in the Atlas Leveling Machine which is adapted peculiarly for use on McKay shoes (R. Vol. 2, p. 2584).

The United Company had no machine which could be used for leveling McKay shoes, while, on the other hand, the Atlas Leveling Machine cannot be used for leveling welt or turn shoes. The practical reasons why these different kinds of shoes require entirely different types of machines were pointed out in detail by Mr. Howard (R. Vol. 1, p. 102, lines 14–34; R. Vol. 2, pp. 2576–2579, Int. 106). The importance of the

inventions of the Winkley and Phillips patents was fully explained by Mr. Howard in his discussion of "Leveling Machine: Atlas" (R. Vol. 2, p. 2584 *et seq.*).

Since this acquisition—

> "the inventions acquired from Winkley and Phillips were experimented upon and developed, with the addition of other inventions, into a machine which was suitable for commercial use, and was put out for commercial use" (Howard, R. Vol. 2, p. 2062, Int. 1530).

The United Company has since continuously supplied the Atlas leveling machine to the trade and has put out about 500 machines (R. Vol. 2, p. 2084, Cr. Ints. 1631–1634). It is a General Department machine and is sold outright (R. Vol. 1, p. 12, line 37 *et seq.*; Vol. 2, p. 2587; Vol. 5, pp. 425, 427, line 3).

Stanley Manufacturing Company.

By this transaction, which took place March 19, 1900, the United Company acquired simply certain machines, parts and supplies which the Stanley Company had on hand at Frankfurt, Germany. This appears plainly from the agreement (P.'s Ex. 78, R. Vol. 3, p. 620), which provides,—

> "That the said United Company shall purchase from the said Stanley Company the stock of machines, parts and supplies which it now has on hand at Frankfurt, Germany, and in transit to Frankfurt, and all accounts and bills owing to the said Stanley Manufacturing Company in Germany."

For these parts the United Company paid cost prices with certain deductions (R. Vol. 3, p. 620).

The Stanley Company was putting out miscellaneous general department machines, the most important of which was a McKay sewing machine. "The United Company was then putting out no machine for doing the work of any one of those machines" (Howard, R. Vol. 1, p. 48, lines 19–21, 26–27; Winslow, Defs.' Ex. 231, R. Vol. 5, p. 451).

As stated by Mr. Winslow (Defs.' Ex. 231, R. Vol. 5, p. 451):—

> "The store in Germany acted as the agent for the McKay Shoe Machinery Company in handling its McKay

Heeling and Metallic Machines and parts, and this purchase amounted only to the acquirement of the selling agency for the goods manufactured by the Stanley Company in the United States."

"The reason for the purchase was that the United Company was establishing its own German Company and the local manager for the Stanley Company's business in Germany was sick, or had just died, and the Stanley Company desired to have the United Company take over its store and stock of goods and act as agents for the Stanley Company, if the United Company was going to do its own business in Germany.

"The contract, therefore, amounted simply to an agency contract, and that in itself necessitated the purchasing of the stock that the Stanley Company had in Frankfurt."

The agreement contained a covenant—

"that the said United Company shall use its best endeavors to sell in foreign countries, machines made by the said Stanley Company . . ."

and provided that in case the United Company should discontinue the purchase from the Stanley Company and sale—

"of any of the machines, parts or supplies made by the said Stanley Company . . . the said Stanley Company may then and thereafter sell such machines, parts or supplies thus discontinued to any and all persons without respect to the country to which they are to be sent.

"That the said Stanley Company may advertise and create and maintain in all proper business ways a demand for its machines in any and all countries in the world" (P.'s Ex. 78, R. Vol. 3, pp. 621, 622).

Lincoln Sewing Machine Company.

Contrary to the statement in the petition, the United Company by its agreement with the Lincoln Company, April 6, 1900 (P.'s Ex. 80, R. Vol. 3, p. 628), did not acquire the business of the Lincoln Company, nor did it acquire anything new whatsoever (R. Vol. 1, p. 49, lines 36–37). As is clear from the plain terms of the agreement, it was entered into simply for the purpose of canceling an obligation arising from

a previous contract made in 1897 (P.'s Ex. 79, R. Vol. 3, p. 623) between the Lincoln Company and the Goodyear Shoe Machinery Company, whereby the Goodyear Company was to pay a sum of money to the Lincoln Company each year for forty-nine years. Mr. Winslow testified to this effect (R. Vol. 1, p. 464, lines 9–13; see also Howard, R. Vol. 1, p. 49, lines 22–35). The reason for canceling the original obligation was "to avoid the necessity for maintaining the Goodyear Company as a separate organization and to transfer the Goodyear Company's property to the United Company" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 471).

The original agreement between the Lincoln Company and the Goodyear Company (P.'s Ex. 79, R. Vol. 3, p. 623) effected the transfer of patent rights (R. Vol. 2, pp. 2063, 2064, Ints. 1537–1539).

Boston Fast Color Eyelet Company.

This transaction took place June 30, 1900 (P.'s Ex. 81, R. Vol. 3, p. 630). As stated in the petition, this company was engaged in the manufacture and sale of "eyelets covered with celluloid." These eyelets are known as "fast color eyelets" and the Boston Company had a registered trademark, "Fast Color." The Boston Company owned patents on the eyelet, the dies for making the eyelet, and the method of covering the eyelet. The celluloid covering makes the eyelet expensive so that it has never been used except on the better grades of shoes and never at any time on more than ten per cent. of the shoes made. Its advantage is that it never wears down to the metal. (R. Vol. 1, p. 50, lines 40–45; p. 51, lines 1–5; p. 98, lines 26–27; R. Vol. 2, p. 2053, Int. 1487).

Prior to this acquisition neither the United Company nor any of its associate companies was engaged in the manufacture of eyelets or of machinery for making them (R. Vol. 1, p. 50, lines 10–13), and—

> "The United Company could not extend its field to include the manufacturing and marketing of fast color eyelets without acquiring the broad patents owned by the Boston Fast Color Eyelet Company which dominated that field" (Defs.' Ex. 275, R. Vol. 5, p. 760).

The business of the Boston Fast Color Eyelet Company was continued by the United Fast Color Eyelet Company, thus preserving the name "Fast Color." "That name was a very valuable asset" which "had designated this type of eyelet since it was invented." Since the acquisition, the fast color eyelet has been improved in ways that have made it possible to reduce its price and many new sizes have been made (Howard, R. Vol. 1, p. 50, lines 17–18; p. 99, lines 31–32, 36–37).

The Boston Fast Color Eyelet Company owned no real estate and did no manufacturing; their eyelets were manufactured by other parties under contract (Defs.' Ex. 231, R. Vol. 5, p. 461).

Enamel Eyelet Company.

This transaction took place June 30, 1900 (P.'s Ex. 83, R. Vol. 3, p. 645). The Enamel Eyelet Company was owned by the same people who owned the Boston Fast Color Eyelet Company, and this acquisition was "a part of the same transaction by which the stock of the Boston Fast Color Eyelet Company was acquired." The Enamel Company was attempting unsuccessfully to manufacture the type of eyelet known as the "enamel eyelet." "There was no competition whatever between the Boston Company and the Enamel Company." The differences in the constructions of the enamel eyelet and the fast color eyelet and in their fields are pointed out by Mr. Howard (Howard, R. Vol. 1, p. 51, lines 28–29; p. 98, lines 28–45; p. 99, lines 1–10, 13–18; Defs.' Ex. 275, R. Vol. 5, p. 760; Winslow, R. Vol. 1, p. 462, lines 13–14).

At the time of this acquisition neither the United Company nor any of its associate companies was engaged in the manufacture of eyelets (R. Vol. 1, p. 50, lines 10–12), and—

> "had it not acquired control of the Enamel Company the United Company could not have entered the enamel eyelet field without subjecting itself to the liability of suit under the Enamel Company's design patent 24,867, November 12, 1895, Kempshall. The Enamel Company had brought and vigorously prosecuted suit on that

patent against John C. Rhodes" (Howard, Defs.' Ex. 275, R. Vol. 5, p. 760).

By this acquisition the United Company made substantial progress in clearing up the patent situation in the enamel eyelet field. It proved, however, that the United Company had otherwise made no progress in the way of entering the enamel eyelet field; for although these people "knew well how to make fast color eyelets they did not know how to make enamel eyelets and were not producing a satisfactory enamel eyelet. We had to junk a large supply we had on hand which we couldn't get rid of." But the United Company continued to supply the Enamel Company's eyelets so far as there was any demand, and "if manufacturers would buy them, we should be glad to sell them" (Howard, R. Vol. 1, p. 99, lines 13–18, 25–30).

The division of the preferred stock issued in payment for the Boston Fast Color Eyelet Company and the Enamel Eyelet Company, as stated in the petition, was purely arbitrary, and at the request of the common owners of the two companies.

No real estate was acquired in this transaction. The Enamel Company did no manufacturing but had their eyelets made by others (Defs.' Ex. 231, R. Vol. 5, p. 461).

Ross-Moyer Manufacturing Company.

This transaction took place September 20, 1900 (P.'s Ex. 87, R. Vol. 3, p. 658). The Ross-Moyer Company had stores in Chicago and Cincinnati. It leased floor space in Cincinnati and employed thirty-five men. It had been in business for many years, and was putting out nineteen machines of "what are now known as the general department type." The patents on these machines were named by Mr. Howard (Howard, R. Vol. 1, p. 52, lines 40–43; p. 100, lines 31–41; p. 101, lines 16–30; Winslow, R. Vol. 1, p. 408, lines 23–24; p. 459, line 7; Defs.' Ex. 231, R. Vol. 5, p. 451).

With a single exception the United Company had no machines for doing the work of the machines acquired from the Ross-Moyer Company (R. Vol. 1, p. 101, lines 12–15).

"The acquisition of these machines was the first step toward the creation of the United Company's general department," and the machines acquired were the foundation of its general department (Howard, R. Vol. 1, p. 53, lines 3–5; p. 100, lines 42–43).

Another reason for this acquisition was the desire of the United Company to establish its own agencies in Cincinnati and Chicago, and to do this without taking away from the Ross-Moyer Company the business which it had been carrying on for many years as agent for the McKay Shoe Machinery Company and the Consolidated & McKay Lasting Machine Company (R. Vol. 1, p. 409, lines 2–5, 11–13; p. 418, lines 38–40), and which it was still carrying on for the United Company. The value and nature of the service rendered by the United Company are fully discussed elsewhere, and need not be dwelt upon at this time. The importance of having its service headquarters, supplies of parts, and material for all of its machines in one place in each trade centre and of having the service, supplies of parts, and materials for its machines entirely in its own control is obvious. The disadvantages of duplications of service, supply depots, and corps of "traveling mechanics and instructors" visiting the same factories, traveling to the same places, and carrying parts to the same places under conditions such as existed prior to 1899 are pointed out by Mr. Winslow (R. Vol. 1, p. 408, lines 7–44; p. 409; p. 410, lines 1–16). Accordingly—

> "The United Shoe Machinery Company desired to establish its own stores and offices in each one of the shoe manufacturing centres, for the purpose of furnishing a better service in connection with its machines than had heretofore been possible by each of the separate companies, and to carry a proper supply of spare parts and material used in its machines" (Defs.' Ex. 231, R. Vol. 5, p. 452).

Mr. Ross "at once took up the question with us as to where they would fit into the new company." Of course, when the concerns which had been agents for the old companies learned of the United Company's intention to establish its own headquarters they were much concerned. "In all of these cases the moving motive in making these arrangements was from

Mr. Ross in the Ross-Moyer, and Smith, and representatives of the Krieg estate, who wanted in the rearrangement to make the best arrangements for themselves" (Winslow, R. Vol. 1, p. 418, lines 36–45; p. 419, lines 42–44; p. 420, lines 1–2).

Mr. Winslow further stated:—

> "these concerns would necessarily lose the business which they had done acting as agents for the various companies, and it formed such a large portion of their whole business that they desired to have the United Company take over all their business relating to shoe machinery, or supplies, when the United Company was ready to establish its own offices."
>
> "An additional reason for the purchase of Ross-Moyer was to secure the services of Mr. Samuel Ross, who had long been associated with the McKay Company and was an experienced shoe machinery man and well liked by the trade. The United Company desired to secure his services to represent their interests throughout the middle west" (Defs.' Ex. 231, R. Vol. 5, p. 453).

This led to "the employment of Mr. Ross as the western agent of the company, in charge of all the western offices." He "was our general agent in the West until two or three weeks ago, when he died" (Winslow, R. Vol. 1, p. 419, lines 5–6, 10–12). Plaintiff's Exhibit 87 (R. Vol. 3, p. 658) is the employment agreement made with Mr. Ross.

Mr. Winslow testified (R. Vol. 1, p. 419, lines 7–10):—

> "There was absolutely nothing more in our doing that than our purpose of doing the square thing by Mr. Ross. They had been connected with the McKay Company and the Lasting Company for years; part of our own family, so to speak."

Since this purchase, the business has been carried on by the Ross-Moyer Manufacturing Company, all the machines of the Ross-Moyer Company being put into the United Company's General Department and sold. The United Company did not raise the prices or limit the sale or manufacture of these machines. "The only thing that happened regarding those machines was that we made them better than the Ross-Moyer. The trade was benefited in that respect." Also, the Ross-Moyer Company was made a depot for spare parts and the

headquarters of the United Company's repair force for the Cincinnati and Chicago districts (R. Vol. 1, p. 53, lines 8–9; p. 95, lines 28–35; p. 100, lines 42–44; p. 101, lines 1–2, 8–11; Winslow, R. Vol. 1, p. 459, lines 15–24).

Bay State International Shoe Machinery Company.

This transaction took place January 30, 1901 (P.'s Ex. 86, R. Vol. 3, p. 655). This company was organized to do foreign business and did not do any business in the United States, its only business being in England (R. Vol. 1, p. 52, lines 18–20; p. 101, lines 34–35). It had put out about ten sets of its machines in England (R. Vol. 2, p. 2059, Int. 1519). It owned no real estate and did no manufacturing business. Its machines were manufactured in Montreal, Canada; none whatever in this country. Its machines were covered by English and French patents. They were a welter, stitcher and rough rounder, which were distinctly inferior to the United Company's machines and were very different in construction (R. Vol. 1, p. 52, lines 20–21; p. 101, lines 31–33; R. Vol. 2, p. 2059, Ints. 1517–1518; p. 2085, Cr. Ints. 1642–1644; Defs.' Ex. 231, R. Vol. 5, p. 448).

Since this company was not organized to do business between Great Britain and the United States, did no such business, and did no business in the United States, obviously this acquisition has absolutely no bearing upon this case.

Machines of the Bay State International Shoe Machinery Company infringed claims of two of the United Company's English patents. The United Company owned continental patents corresponding to those two English patents (Defs.' Ex. 275, R. Vol. 5, p. 761).

The purchase was made "at the earnest solicitation of the people who were interested, who were also customers, shoe manufacturers, and customers of the United Company," because it was believed to be "the cheapest way to settle and dispose of the litigation." "This was a purchase of foreign patents," and the consideration was $25,000 in preferred stock of the United Company (Winslow, R. Vol. 1, p. 457, lines 21–26; Defs.' Ex. 231, R. Vol. 5, p. 448).

Swain-Fuller Manufacturing Company.

This transaction took place February 2, 1901 (P.'s Ex. 88, R. Vol. 3, p. 660). The Swain-Fuller Company was doing "a very small business" (R. Vol. 1, p. 53, line 18). "They owned no real estate; they leased a small amount of floor space in Boston; employed less than ten men" (Winslow, R. Vol. 1, p. 459, lines 25–27). Its principal business was manufacturing and putting out a machine of the "General Department" type known as the "Star Leveling Machine" for turn shoes, which was patented (R. Vol. 1, p. 53, line 18; p. 100, lines 22–24; R. Vol. 2, pp. 2054, 2055, Int. 1491).

> "The Star machine was a very light machine and was adapted and used only for leveling turn shoes, which, owing to the fact that they have but one sole, require and will stand a less degree of pressure than other types of shoes" (Howard, R. Vol. 2, p. 2063, Int. 1533).

Prior to this acquisition the United Company was not putting out any leveling machine adapted for use on turn shoes. "It would be impossible to use any machine that the United Company then had on turn shoes." On the other hand, "the Star machine could not be used with commercial profit on other work. It was too light and exerted too light a pressure for Goodyear work" (Howard, R. Vol. 1, p. 53, lines 20–24).

An important reason for this acquisition was the desire of the United Company to obtain a leveling machine adapted for leveling turn shoes, which it had not had before (Defs.' Ex. 275, R. Vol. 5, p. 761).

Another important reason for this acquisition was that the United Company had produced and desired to use a sole pressing form for sole laying machines, shown and described in Gifford patent No. 694,367, which infringed a patent owned by the Swain-Fuller Company (Defs.' Ex. 275, R. Vol. 5, p. 761).

Mr. Winslow stated: "This property was acquired at the solicitation of Mr. Fuller, who was the principal owner and desired to go out of shoe machinery business" (Defs.' Ex. 231, R. Vol. 5, p. 454). Mr. Winslow also testified: "We did not seek the Swain Fuller Company; they sought us" (R. Vol. 1,

p. 459, line 34). The importance of the transaction is indicated by the amount paid,—$13,201.92 (Defs.' Ex. 231, R. Vol. 5, p. 455).

After the purchase, the Star Leveling Machine was manufactured and put out by the United Company and was its standard machine for leveling turn shoes (R. Vol. 2, p. 2055, Ints. 1493, 1494; Defs.' Ex. 275, R. Vol. 5, p. 761). It is a General Department machine and is sold outright (R. Vol. 1, p. 12, line 37 *et seq.;* Vol. 5, pp. 425, 427, line 6). Also the United Company used on its commercial sole-laying machine, the one which it had previously acquired from the Boot & Shoe Sole Laying Company, the pressing form of the Gifford patent, which, as above explained, had infringed a patent owned by the Swain-Fuller Company (Defs.' Ex. 275, R. Vol. 5, p. 763).

Globe Sewing Machine Company.

This transaction took place February 15, 1901 (P.'s Ex. 89, R. Vol. 3, p. 662). The Globe Sewing Machine Company—

> "were attempting to use the same machine for sewing the welt to the upper and insole and for stitching the outsole to the welt. They had a lockstitch machine for both operations, and used some attachments for one operation and other attachments for the other."

It was not successful. They also had an experimental rough rounder. All of these machines were patented (Howard, R. Vol. 1, p. 100, lines 5–21; p. 104, lines 33–37; p. 528, lines 7–8; R. Vol. 2, p. 2002, Int. 1234). Mr. Winslow testified:—

> "The purchase was not one that the United Company sought, but was made at the earnest solicitation of Mr. Mellen Bray, to whom the Globe Company owed a very large sum of money. He wanted to get rid of having anything to do with the company, and came to me personally and besought me to acquire his interest. They owned no real estate and did no manufacturing. Such as they had done they had contracted outside" (Winslow, R. Vol. 1, p. 457, lines 5–12).

The Globe Company owed Bray $86,984 (R. Vol. 3, p. 665). The United Company paid $20,000 in its preferred stock for

a majority of the stock of the Globe Company (Defs.' Ex. 231, R. Vol. 5, p. 448, R. Vol. 1, p. 457, lines 13–18).

As explained by Mr. Howard in full detail, many of the patented features of the Globe lockstitch welter gave that machine marked superiority over the lockstitch welter which the United Company had just begun to put out (R. Vol. 2, pp. 2004, 2005, Ints. 1241, 1242).

On the other hand, all the Globe Company's machines infringed patents owned by the United Company. There were pending one infringement suit brought by the United Company against the Globe Company and five suits against users of the Globe Company's machines (Defs.' Ex. 275, R. Vol. 5, p. 762).

By this acquisition the United Company acquired control of the patents of the Globe Company which stood in the way of development by the United Company of its lockstitch welter, settled the existing patent litigation and avoided further patent litigation.

In explaining why the inventions of the Globe Company's patents were not adopted by the United Company, Mr. Howard testified:—

> "These two features of superiority, together with others of less striking importance, would undoubtedly have been adopted in the United Company's lockstitch welting machine had it not been for the fact that shortly after the acquisition of the Globe Company's patents shoe manufacturers decided that they did not desire to sew the inseam by a lockstitch, and they refused to use lockstitch welters. In the year ending March 1, 1902, we put out only nine lockstitch welters, and six were returned; in the year ending March 1, 1904, we did not put out any machines, and five were returned. By 'any machines' I mean of course lockstitch welting machines" (R. Vol. 2, p. 2005, Int. 1242).

In Mr. Howard's detailed discussion of the United Company's lockstitch welting machine, known as "Sewing Machine: Goodyear Universal Inseam," he explained that manufacturers "found that it was impossible to secure the tight inseam, which is indispensable in the inseam of a welt shoe" (R. Vol. 2, p. 2251, Int. 11).

In view of the facts above stated and particularly in view of the large indebtedness of the Globe Company stated in

Plaintiff's Exhibit 89 (R. Vol. 3, p. 665), as amounting to $92,075.69, it is perfectly clear that the Globe Company did not offer even potential competition to the United Company and that this transaction is of no importance.

J. C. Rhodes & Company.

This transaction took place June 19, 1901 (P.'s Ex. 91, R. Vol. 3, p. 668). "This company was an old, established eyelet-making concern" which "owned its own real estate and factory at New Bedford, Mass., employing about one hundred and sixteen men" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 461). They manufactured "a patented enamel eyelet, which was the one in general use at that time" (Howard, R. Vol. 1, p. 51, lines 41–42; p. 98, lines 16–17).

Their patent No. 565,091, August 4, 1896, contained—

> "broad claims to an enamel eyelet so constructed as to prevent breaking of the enamel coating by the pressure exerted in the eyelet setting operation."
>
> "Otherwise the flange would bend in the setting operation and the enamel would crack. That feature has never been dispensed with in any enamel eyelet which was commercially satisfactory" (Howard, Defs.' Ex. 275, R. Vol. 5, p. 764; R. Vol. 1, p. 98, lines 42–44).

The United Company had previously acquired the stock of the Enamel Eyelet Company, but—

> "Both the Rhodes eyelet and the Enamel eyelet were patented, and as a matter of fact each company was infringing the other's patent. The Enamel Company's eyelet was never a commercial success" (Howard, R. Vol. 1, p. 51, lines 43–44; p. 52, lines 1–2).

A suit had been brought by J. C. Rhodes & Company against "a user of the enamel eyelet put out by the Enamel Eyelet Company" (Howard, R. Vol. 2, p. 2080, Int. 1615). On the other hand: "The Enamel Eyelet Company had brought and was vigorously prosecuting a suit against John C. Rhodes for infringement of its design patent 24,867, November 12, 1895, Kempshall" (Howard, Defs.' Ex. 275, R. Vol. 5, p. 763).

By this acquisition the United Company accomplished three important objects: (1) It cleared up a complicated patent situation. If the eyelet of the Enamel Company had been commercially satisfactory, the United Company could not have put it out without infringing the Rhodes patent. (2) The United Company was able to put out a commercially satisfactory enamel eyelet without infringing the broad Rhodes patent. (3) It was able for the first time to procure satisfactory metal blanks for its fast color eyelets. "Prior to that time those blanks, which had been procured from different sources, had not been satisfactory" (Howard, Defs.' Ex. 275, R. Vol. 5, p. 764; R. Vol. 1, p. 591, lines 31–33).

With this acquisition the United Company really entered the enamel eyelet field for the first time. As explained in discussing the Enamel Eyelet Company,—

> "they did not know how to make enamel eyelets and were not producing a satisfactory enamel eyelet. We had had to junk a large supply we had on hand which we couldn't get rid of" (Howard, R. Vol. 1, p. 99, lines 15–18).

The United Company was at that time engaged in the manufacture of fast color eyelets, but the fast color eyelet—

> "was much more expensive than the enamel eyelet and was used only on the highest grade of shoes, never at any time on more than ten per cent of the shoes made."

The celluloid covering on the flange of the fast color eyelet makes it expensive, so that it has never been used except in the better grades of shoes (Howard, R. Vol. 1, p. 50, lines 41–45; p. 51, lines 1–5).

The enamel eyelet comprises a metal eyelet having a flange of the contour desired for the finished eyelet, which flange is coated with enamel, while in the fast color eyelet the flange merely serves to anchor the thick celluloid covering. The enamel eyelet is much less expensive and the enamel wears off after a time so that the eyelet has a brassy appearance and accordingly enamel eyelets are used only on the cheaper grades of shoes. There was no competition between fast color eyelets and enamel eyelets (R. Vol. 1, p. 51, lines 6–13; p. 98, lines 28–45; p. 99, lines 19–21).

The business of J. C. Rhodes & Company was continued by J. C. Rhodes & Company, Inc. Since the purchase, the factory facilities have been increased by building a large new factory (Defs.' Ex. 231, R. Vol. 5, p. 461).

The United Company continued to sell the Rhodes eyelets at the same prices at which they had been sold by the Rhodes Company,—

> "and in addition furnished the eyeletting machines in which the eyelets were used without charge to our customers, with no increase whatever in the prices; but the eyelets were sold to anyone, whether they used our machines or not" (Winslow, R. Vol. 1, p. 463, lines 39–43).

Also the Rhodes eyelet has been much improved and "many new sizes have been made which were not made in 1901" (Howard, R. Vol. 1, p. 99, lines 36–39).

Morley Button Manufacturing Company.

This transaction took place on December 14, 1901 (P.'s Ex. 92, R. Vol. 3, p. 675).

> "The Morley Button Manufacturing Company was primarily a button manufacturing company, manufacturing and selling buttons. In addition to this button business it was engaged in the business of manufacturing and selling a patented enamel eyelet. . . . The United Company acquired only the eyelet business of the Morley Company, and that company is now engaged in the business of manufacturing and selling buttons and similar articles as before" (Howard, R. Vol. 1, p. 54, lines 30–39).

"The United Company acquired no real estate or manufacturing plant with this purchase . . . the eyelet business was a very small part of its total business" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 462). The novel patented feature of the Morley eyelet was that the enamel coating did not extend down inside of the barrel.

> "This was different from both the Rhodes and Enamel Company eyelets. It was claimed that it was objection-

able to have the enamel inside the barrel. They made the eyelet by a secret process and by a secret formula" (Howard, R. Vol. 1, p. 99, lines 6–10).

By the process followed in making the Rhodes eyelet the inside of the barrel was covered with enamel.

Although the Rhodes and Morley eyelets were of different types, the Morley eyelet embodied the broadly patented feature of the Rhodes eyelet (R. Vol. 1, p. 98, lines 40–42; p. 99, line 4). At the time of this acquisition there were pending two suits brought by J. C. Rhodes & Company, Inc., against the Morley Company on Rhodes patent No. 565,091, August 4, 1896, and Kempshall design patent No. 24,867, November 12, 1895 (R. Vol. 2, p. 2080, Int. 1615). One of the considerations stated in the agreement for the sale of the Morley Company's business and patents was a covenant by the United Company that it would cause these two suits to be dismissed without costs and cause J. C. Rhodes & Company, Inc., to release the Morley Company from all claims for damages or profits on account of the infringement of the patents in suit. Another consideration was a further covenant that the Morley Company should be licensed under these two patents to manufacture eyelets in process to fill the orders which it had on hand (R. Vol. 3, pp. 677, 678; R. Vol. 2, p. 2081).

Mr. Winslow stated,—

"This purchase was made in 1901 as the best method of settling the litigation . . . and was believed to be a fair and equitable settlement of the existing situation, and by it the Rhodes Company acquired certain patents on eyelets which were valuable to it" (Defs.' Ex. 231, R. Vol. 5, p. 462).

The price paid was $31,000, for which the United Company obtained one patent and one application for a patent, and machinery, for making the Morley eyelets, etc., inventoried at $17,541.99 (R. Vol. 3, pp. 676, 677, 681).

The Morley eyelet was used on a cheaper grade of shoes than the Rhodes eyelet, but, after the acquisition, manufacturers demanded the superior Rhodes eyelet for all grades of

cheaper shoes and the demand for the inferior Morley eyelet was so small that it was supplied from the stock on hand, but so far as there was any demand for Morley eyelets the United Company has supplied them (Howard, R. Vol. 1, p. 99, lines 23–24, 28–30).

Oliver A. Miller.

This transaction took place February 15, 1902 (P.'s Ex. 93–95, R. Vol. 3, pp. 683, 687, 690). Miller was engaged in the manufacture of treeing machines, and tree legs and tree feet that are used on, and are parts of, treeing machines, which are used in all factories for cleaning and blacking shoes before they are packed (R. Vol. 1, p. 464, lines 29–34; p. 97, lines 42–45).

Mr. Winslow testified,—

> "We had no such machines. We were not in competition not in the slightest degree" (R. Vol. 1, p. 464, lines 37–38).

Mr. Howard testified,—

> "This was absolutely a new branch for the United Company. It had nothing of the sort before" (R. Vol. 1, p. 98, lines 3–4).

The purchase was made by the United Company "entirely for the purpose of extending its business" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 476). Miller's treeing machines, tree legs and tree feet were patented (R. Vol. 1, p. 98, lines 5–8).

Miller had become involved in financial difficulties, needed money and wished to sell; "he came to us and wanted to dispose of the business," negotiations being opened through Frank Hannigan, his manager (Winslow, R. Vol. 1, p. 464, lines 35–37; Defs.' Ex. 231, R. Vol. 5, p. 476).

> "The reputation of the Miller machines and the Miller business was high, and we found that we could secure the manager of that business, who had been with Mr. Miller for a great many years, to continue as manager for us,

and we finally accepted the company and continued that business" (Winslow, R. Vol. 1, p. 464, lines 38–43).

The Miller treeing machine business "has been continued by the O. A. Miller Treeing Machine Company, of which Mr. Hannigan, a minority stockholder, is manager" (Howard, R. Vol. 1, p. 55, lines 14–16), in the factory which was acquired from Miller, and which has been largely extended. The business has increased, 125 men are now employed there; Miller employed 65 men (R. Vol. 1, p. 465, lines 3–7; Defs.' Ex. 231, R. Vol. 5, p. 476).

Marlboro Awl & Needle Company.

This transaction took place June 30, 1902 (P.'s Exs. 96–97, R. Vol. 4, pp. 693, 703). This company owned no real estate, leased floor space in Marlboro and employed twelve men (Defs.' Ex. 231, R. Vol. 5, p. 462). It manufactured needles, awls and rawhide mallets (R. Vol. 1, p. 467, lines 3–7; R. Vol. 5, p. 476). The needles were for use in the McKay sewing machine; the awls were chiefly "hand awls, such as cobblers use for shoe repairing"; the mallets were rawhide mallets "used by shoe makers and cobblers" (Howard, R. Vol. 1, p. 97, lines 27–41). Neither the United Company nor any of its subsidiary companies was manufacturing needles of any kind, hand awls or rawhide mallets (R. Vol. 1, p. 55, lines 36–39).

A small company was formed called the United Awl and Needle Company and the Marlboro Company's business has been continued by the United Awl and Needle Company at its factory at West Medway, where it has employed twenty-eight or thirty men (R. Vol. 1, p. 55, lines 41–43; Defs.' Ex. 231, R. Vol. 5, p. 462).

The unimportance of this transaction is indicated by the facts above stated and by the amount of the consideration, $16,300 in preferred stock of the United Awl and Needle Company (Defs.' Ex. 231, R. Vol. 5, p. 462).

The T. A. Norris Machine Company.

This transaction is not named in its proper chronological order in the petition (R. Vol. 1, p. 1011). It took place July 1, 1902 (P.'s Ex. 102, R. Vol. 4, p. 734),—not in March, 1903, as stated in the petition.

The T. A. Norris Machine Company had no real estate, but operated a small machine shop in Brockton, employing about ten men, in which they did general machine shop work. "It was really a repair shop" (Winslow, R. Vol. 1, p. 460, lines 7–10). Their business was chiefly in second-hand machines, or, as Mr. Gregg puts it, "I think this company was more of a dealer than anything else," but they had manufactured for them six simple, minor machines (R. Vol. 1, p. 59, lines 19–23, 26–27; p. 93, lines 39–45; p. 460, lines 9–10).

The United Company had no machines for performing the operations of any of the six machines acquired from the Norris Company or even for doing similar work (R. Vol. 1, p. 59, lines 28–38; p. 94, lines 1–28).

The machine shop of the Norris Company was located in a building owned by T. A. Norris personally, in which building the United Company had its Brockton headquarters and repair shop, which it held under lease from Norris.

Mr. Winslow testified,—

> "This purchase was made upon the basis of the inventory, $11,526.78, and at the solicitation of Mr. Norris, who was heavily interested in real estate and wanted to retire from any machinery business" (R. Vol. 1, p. 460, lines 14–17; Defs.' Ex. 231, R. Vol. 5, p. 456).

As to the reasons for this purchase:—

(1) Mr. Winslow testified: "We wanted to increase our space in his building, and this business arrangement was made" (R. Vol. 1, p. 460, lines 17–18; R. Vol. 5, p. 456).

(2) The United Company extended its line of machines by adding to it the six "General Department" machines acquired from the Norris Company (R. Vol. 1, p. 461, lines 5–6).

(3) "Lasting machine parts were carried by the T. A. Norris Machine Company" (Winslow, R. Vol. 5, p. 453).

Consistently with its policy of having under its own control the supply of parts and the furnishing of service for its machines, as explained in the Ross-Moyer discussion (*supra* pp., 680–683), it was important for the United Company to continue this agency itself and in this instance, as in the other similar transactions, a fair adjustment of the situation was to take over the business of its former agent.

Since the purchase the United Company has continued putting out all the machines which it acquired from the Norris Company, and has operated the Norris machine shop as a repair shop (Defs.' Ex. 231, R. Vol. 5, p. 456).

American Sole Laying Machine Company.

This transaction took place September 25, 1902 (P.'s Ex. 98, R. Vol. 4, p. 705). The chief business of the American Sole Laying Machine Company was putting out a two-form laying machine which they were manufacturing under a license from the Tripp Giant Leveler Company under "the famous Cutcheon patent" (Howard, R. Vol. 1, p. 56, lines 15–18; p. 96, lines 33–34).

> "That machine had right and left forms and operated on a pair of shoes, rights and lefts, at one time, one being under pressure while the operator was putting the other in position to go into the machine" (Howard, R. Vol. 1, p. 96, lines 29–33).

The American Company also owned patents on their machine which prevented the United Company from adopting a satisfactory pad (R. Vol. 1, p. 96, lines 43–45; p. 97, lines 20–26). It "owned no real estate and did no manufacturing. Contracted with outside parties for such machines as it had built." This company was purchased for $5200 at the solicitation of Mr. Fuller, "who was the principal owner and desired to spend his time in the South" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 475). The agreement sets forth that "Fuller is the owner of a majority of the capital stock" and that "Fuller controls the actions of said company" (P.'s Ex. 98, R. Vol. 4, p. 705). Mr. Fuller had also been the principal owner and treasurer

of the Swain-Fuller Manufacturing Company, which had previously sold out its business to the United Company (Defs.' Ex. 231, R. Vol. 5, p. 455; P.'s Ex. 88, R. Vol. 3, p. 661).

> "The standard commercial machine of the United Company at that time was the machine which it had acquired from the Boot and Shoe Sole Laying Company . . . but that was a one-form or single machine" (Howard, Defs.' Ex. 275, R. Vol. 5, p. 765).

Mr. Howard further testified:—

> "We desired to turn this single machine into a double machine and we were able to do that after this transaction, in which we acquired the license which the American Company had under the Cutcheon patent. Counsel advised us that this license was assignable" (R. Vol. 1, p. 56, lines 25–29; p. 96, lines 38–40).

This license was also needed by the United Company to enable it to develop the Atlas leveling machine (Defs.' Ex. 231, R. Vol. 5, p. 475).

The Cutcheon patent had been sustained by the Court of Appeals in the First Circuit (Defs.' Ex. 275, R. Vol. 5, p. 765) and the patent expert for the United States, Mr. Chapman, described this patent as a pioneer and basic patent (R. Vol. 2, pp. 2813, 2814, Int. 15).

> "After this acquisition we incorporated in the machine which we got from the Boot & Shoe Sole Laying Company, the inventions acquired from the American Company, particularly the two-form construction and the pad invention. In other words, we got the method of sole laying from the Boot & Shoe Sole Laying Company, and we got the double application of that method from the American Company.
>
> "By combining the inventions embodied in two machines we made a better machine than either. The new machine has right and left forms and operates twice as fast as the single machine which we had previously been putting out" (Howard, R. Vol. 1, p. 97, lines 6–16).

That machine "has been placed with our customers in very large numbers" (Howard, R. Vol. 1, p. 97, lines 18–19). Also the United Company has "put out fifty sole-laying machines

substantially the same as the machines which had been put out by the American Sole Laying Company" and "The United Company continued putting out these machines so long as there was any demand for them from shoe manufacturers" (Howard, R. Vol. 2, p. 2098).

William J. Young.

That no tangible property was acquired from William J. Young by this transaction is clear from the agreement with him made October 1, 1902 (P.'s Ex. 99, R. Vol. 4, p. 713), and from the record. "No manufacturing plant of any kind was acquired" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 468). The only property acquired was "Young's English and German patents under which our foreign companies had agencies" and under which they were putting out Young's heel-compressing machine (Howard, R. Vol. 1, p. 57, lines 13–17; p. 95, lines 44–45), and for these patents the United Company paid $14,000 (R. Vol. 4, p. 717).

> "At this time our foreign companies had been putting out Young's machines for a number of years. They had been agents for his machine" (Howard, R. Vol. 1, p. 57, lines 15–17).

Neither the United Company nor any of its affiliated companies was putting out in Europe any heel-compressing machine other than Young's, and "The United Company had not shipped a heel-compressing machine to England or Germany, the countries where Young's patents were taken, for a period of over ten years" (Howard, R. Vol. 1, p. 57, lines 17–20; p. 96, lines 18–19).

> "The machine which we had before this was an old machine, very much inferior to Young's, which was of comparatively recent invention. He preceded us by two or three years in inventing a modern, satisfactory, high-speed heel-compressing machine" (Howard, R. Vol. 1, p. 96, lines 23–27).

An important reason for this transaction is thus stated by Mr. Howard:—

"Under the requirements of the German patent law it was necessary, in order to maintain Young's German patent, to manufacture his machine in Germany right after this time, and Young had no facilities for manufacturing machines in Germany, while the United Company had a factory" (R. Vol. 1, p. 57, lines 21–25; p. 96, lines 5–9).

In view of the situation just stated by Mr. Howard, this transaction was mutually advantageous. As agent for Young the United Company had established a business with his machine and it was the only machine which it was putting out in Europe. Failure to maintain the German patent would make this machine public property in Germany. On the other hand, if Young had not sold his German patent and had failed to manufacture under it, the patent would have become worthless.

From the standpoint of the United Company another reason for this transaction was that "as the machines made by Young were not well made, customers had complained regarding their quality" (Defs.' Ex. 231, R. Vol. 5, p. 468). After acquisition of the patents the United Company could remedy this by making the machines itself.

After acquiring the German patent the United Company began to manufacture in Germany and marketed the machines there. Young continued to put out this machine in the United States and he has put it out ever since in competition with the United Company. As witness for the United States, Young testified that he has put out over 300 of these machines. Young also testified that his business has been growing and named over a dozen different types of machines which his company is putting out, many of which have been put out in large numbers (R. Vol. 1, p. 96, lines 9–11, 13–17; pp. 942, 943).

The George A. Smith Machinery Company.

This transaction took place November 20, 1902 (P.'s Ex. 100, R. Vol. 4, p. 721). The George A. Smith Machinery Company had a store in Philadelphia. It owned no real estate and did no manufacturing. It employed one man re-

pairing second-hand machinery (Defs.' Ex. 231, R. Vol. 5, p. 451). The only machine which the Smith Company was putting out was the hand-operated boss spring heel scarfing machine, which was patented (R. Vol. 1, p. 58, lines 3–5; p. 95, lines 36–39). This machine was manufactured for the Smith Company in outside machine shops (Defs.' Ex. 231, R. Vol. 5, p. 451).

The United Company was not putting out a machine for doing work similar to that of the Smith Company's machine (R. Vol. 1, p. 58, lines 5–6). After the acquisition, the United Company sold this machine through its General Department and it is still being supplied to customers (R. Vol. 1, p. 95, lines 42–43).

A controlling reason for the acquisition of the Smith Company was the desire of the United Company to establish its own agency in Philadelphia and to do this without injustice to the Smith Company or to Mr. Smith, who was the majority stockholder of the Smith Company, as set forth in Plaintiff's Exhibit 100 (R. Vol. 4, p. 721).

> "The George A. Smith Machinery Company was agent for the United Company machines, except the Goodyear machines, as it had previously, before the formation of the United Company, been agent for all the predecessors of the United Company except the Goodyear Company. That business was taken over by the United Company" (Howard, R. Vol. 1, p. 57, lines 42–44; p. 58, lines 1–3).

Like the Ross-Moyer Manufacturing Company, the Smith Company had been the agent in Philadelphia for the McKay Shoe Machinery Company and the Consolidated & McKay Lasting Machine Company, carrying in stock spare parts for all the machines of those companies and the wire used in the machines of the McKay Company and after the formation of the United Company it had continued in the same relation to the United Company (Defs.' Ex. 231, R. Vol. 5, pp. 452, 453; Vol. 1, p. 419, lines 13–17).

Mr. Winslow testified,—

> "When Mr. Smith found that we were going to unify this service and bring it all under one head, he wanted we

should buy him out, and we did acquire his business" (Winslow, R. Vol. 1, p. 419, lines 17–20; p. 418, lines 36–38).

The United Company's reasons for desiring to establish an agency in Philadelphia and the importance of so doing were the same as in the case of the Ross-Moyer Company (Defs.' Ex. 231, R. Vol. 5, p. 453), and have already been explained in the discussion of that company (*supra*, pp. 680–683).

The United Company continued the business of The George A. Smith Machinery Company except the cut soles and findings business, which was excepted from the transaction, on the premises which had been occupied by the Smith Company in Philadelphia and established the headquarters of its repair force there and carried there its supplies of machine parts and materials for use on the machines (R. Vol. 1, p. 95, lines 18–35). The consideration for this transaction was $38,790.79, the inventory value of the property acquired (Defs.' Ex. 231, R. Vol. 5, p. 451).

George W. Emerson & Company.

This transaction took place December 18, 1902. George W. Emerson & Company, a co-partnership (P.'s Ex. 101, R. Vol. 4, p. 725), owned no real estate, leased two floors in a factory building in Lynn, and employed about thirty-five men (R. Vol. 1, p. 460, lines 3–5). Their principal business was "manufacturing and supplying lasts and forms for sole leveling machines of the 'Giant' type." They were also putting out a patented power spring heel scarfer, a patented heel-burnishing machine, and a tip scourer (Howard, R. Vol. 1, p. 58, lines 24–38, 44–45; p. 94, lines 29–44).

The United Company had no tip scourer and no power operated spring heel scarfer and it was developing a leveling machine on which lasts and forms are used (R. Vol. 1, p. 58, lines 22–24; p. 59, lines 3–10; p. 94, lines 29–31; p. 95, line 1). The patented heel-burnishing machine which the Emerson concern was putting out was of "a different type" and performed its operation in an entirely different way from the United Company's machine, which was also patented. Some manufacturers preferred and insisted upon having one type

of machine, while other manufacturers preferred and insisted upon having the other type (R. Vol. 1, p. 58, lines 39–45; p. 59, lines 1–2; p. 95, lines 4–11).

There were three important reasons for this acquisition:—

(1) The United Company extended its line by adding a tip scourer, a power operated spring heel scarfer, and a new type of heel burnisher which some manufacturers preferred. It also secured a source of supply for the lasts and forms which had to be used upon the leveling machine which it was developing.

(2) "We desired to obtain the services of William R. Sampson, who was the active man with Emerson and who today occupies with our company a very prominent position and has been with us ever since" (Winslow, R. Vol. 1, p. 459, lines 41–44).

(3) "To compose certain litigation then pending between the Xpedite Company and the Emerson Company for infringement of the Xpedite patents" (Winslow, R. Vol. 1, p. 460, lines 1–3).

As to (3) the Emerson heel-finishing machine infringed eleven claims of two patents of the United-Xpedite Finishing Company, one of which is "one of the most important patents on that machine" (Defs.' Ex. 275, R. Vol. 5, p. 766).

Mr. Winslow testified:—

> "This property was acquired at the earnest solicitation of George W. Emerson, who was interested in a trout farm on Cape Cod and desired to retire from the shoe machinery business. . . . The amount paid was based upon the inventory of the Emerson Company" (R. Vol. 1, p. 459, lines 35–40).

Since this acquisition the business of the Emerson concern has been continued by the United Company in its several departments and the machines acquired have all been supplied to customers (R. Vol. 1, p. 59, lines 12–13; p. 94, lines 37–38; p. 95, lines 1–3, 9–11). The tip scourer and power spring heel scarfer were both sold outright through the General Department. The heel burnishing machine was taken over by the United Xpedite Company (R. Vol. 1, p. 12, line 37 *et seq.;* p. 94, lines 37–38; p. 95, lines 1–3, 10–11).

Mr. Sampson was for several years the head of the General Department and was then promoted to the executive offices (R. Vol. 1, p. 95, lines 12–17).

W. W. Cross & Company, Incorporated.

This transaction took place February 18, 1903 (P.'s Ex. 103, R. Vol. 4, p. 744). This corporation was formed to take over the business owned by W. B. Cross, including his real estate and factory (Defs.' Ex. 231, R. Vol. 5, p. 463). He did not manufacture shoe machinery, but nails and tacks for use in the manufacture of shoes (R. Vol. 1, p. 60, lines 1–2).

The United Company was not engaged in the manufacture of nails and tacks (R. Vol. 1, p. 60, lines 3–5). The Consolidated & McKay Lasting Machine Company had obtained from Cross substantially all of its tacks, "many tons every week," these tacks being made particularly for the lasting machines put out by the Consolidated & McKay Company; and the United Company, in continuing to put out those machines, obtained its tacks from the same source (R. Vol. 1, p. 93, lines 31–38; Defs.' Ex. 231, R. Vol. 5, p. 463).

Mr. Cross was very closely associated with the United Company, which was the only large customer that he had and which took nearly his entire output (R. Vol. 1, p. 462, lines 28–34; p. 93, lines 35–36). The demand for tacks by the customers of the United Company grew to such proportions that it became a problem how to obtain a sufficient supply (R. Vol. 1, p. 672, lines 6–12), since Mr. Cross was not willing, without some assurance as to the future, to put up the capital necessary for such an enlargement of his output for the accommodation of a single customer (R. Vol. 1, p. 462, lines 30–32).

> "We simply acquired that business to be able to supply our lasting machine customers with tacks" (Howard, R. Vol. 1, p. 93, lines 36–38).

The agreement (P.'s Ex. 103, R. Vol. 4, p. 744) was entered into "for the purpose of enabling the Cross Company to extend their business and fix permanently the relations between the company and W. B. Cross" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 463).

Since the acquisition the United Company has continued to buy its tacks from W. W. Cross & Company, Inc., and the business has so increased that it now employs 317 men; it then employed about forty men (R. Vol. 1, p. 462, lines 33–34). However, that company by no means occupies this field exclusively. The Atlas Tack Company, in which the United Company has no interest, "is the largest manufacturer of tacks in this country" (Winslow, R. Vol. 1, p. 472, lines 39–41).

J. K. Krieg & Company.

This transaction took place May 6, 1903 (P.'s Ex. 104, R. Vol. 4, p. 746). J. K. Krieg & Company was a copartnership doing business in New York. They owned no real estate and had a small machine shop above their store where they employed four men and one boy, who were engaged principally in rebuilding old machines and repairing machines used in other lines of manufacturing, but who when not so engaged were employed in building the few machines, of General Department types, which Krieg put out (Defs.' Ex. 231, R. Vol. 5, p. 452).

Krieg had been local agent for the United Company and its predecessors for parts and supplies for all the machines except the Goodyear machines, and the Krieg store was the headquarters for the United Company's men. J. K. Krieg had died and his business was being carried on by his estate. Mr. Winslow testified,—

> "We dealt with that situation in this way: We acquired that part of the J. K. Krieg business, which related directly to the business that was done with shoe manufacturers. The younger Krieg retained the business that had to do with retailers" (R. Vol. 1, p. 419, lines 39–42).

One of the three machines which Krieg put out was a patented heel seat rounding machine especially constructed for rounding heel seats of Goodyear shoes. The only machine the United Company had for this operation was an edge-trimming machine provided with a larger cutter than was used for edge-trimming. This edge trimming machine effected

the trimming operation by chewing up the surplus stock into dust while the Krieg machine cut off the surplus stock so that the scraps cut off could be sold or utilized either for scrap leather or for manufacturing pieced heels, thus effecting a substantial and therefore important economy. The United Company "had no machine of that kind before" (R. Vol. 1, p. 60, lines 28–34; p. 92, lines 31–45; p. 93, lines 1–10; Vol. 2, p. 2045, Ints. 1446–1448).

Krieg also had manufactured by other parties and was putting out a Louis heel scarfing machine for cutting from the grain side of the outsole a strip of leather to be bent up over the undercut breast surface of a Louis heel, a wood heel, used in a particular type of woman's shoe. The United Company had no machine capable of performing the operation of that machine. Krieg also had an embossing machine for stamping names or trademarks on upper linings (R. Vol. 1, p. 60, lines 35–41; p. 93, lines 11–28).

By this transaction the United Company acquired machines which it did not have before and was thus extending its line.

But the more important reason for this acquisition had to do with the desire of the United Company to establish its own headquarters for its local repair men in the New York district and to take under its own control the carrying and supplying of spare parts for its machines to manufacturers in the New York district just as it had previously done in other parts of the country by the acquisition of the Ross-Moyer Manufacturing Company and The George A. Smith Machinery Company. The importance of this policy, both to the United Company and to the trade, and the general reasons why the United Company in establishing its own agencies acquired the properties of the concerns which had previously been its agents are fully explained in the discussion of the acquisition of the Ross-Moyer Manufacturing Company (*supra*, pp. 680–683).

Mr. Winslow testified,—

> "In all of these cases the moving motive in making these arrangements was from Mr. Ross in the Ross-Moyer and Smith, and representatives of the Krieg estate, who wanted

in the rearrangement to make the best arrangements for themselves" (R. Vol. 1, p. 419, lines 42–44; p. 420, lines 1–2).

The amount paid for this business was $97,056.52 (Def's. Ex. 231, R. Vol. 5, p. 451), which was the inventory value of the property "less proper deductions therefrom" for depreciation and for unsalable goods (P.'s Ex. 104, R. Vol. 4, p. 749).

After this acquisition the United Company used the Krieg store in New York as headquarters of its repair force, furnishing "very much better service," and kept there a complete line of parts and supplies for all its machines. The United Company also continued putting out the new machines which it had acquired from J. K. Krieg & Company (R. Vol. 1, p. 95, lines 30–35; p. 60, lines 32–34; p. 93, lines 19–21, 29–30).

Joseph P. Curtis.

By this transaction, which took place Oct. 20, 1903, the United Company acquired certain patent rights and nothing more. Curtis assigned two pending applications to the United Company. Curtis did not transfer his one experimental machine (P.'s Ex. 106, R. Vol. 4, p. 754; R. Vol. 1, p. 92, lines 21–22). These patent rights related to a machine for cementing a piece of fabric to an upper. The United Company had no machine for use in performing this operation nor any machine that could be used for this work, "which required a machine of an entirely different type and entirely different organization from any we had."

On the other hand, the Curtis machine could not be used for the same purpose as any machine of the United Company (R. Vol. 1, p. 61, lines 10–18; p. 92, lines 4–12).

The consideration in this transaction was "$500 cash and a royalty of $10 on each machine embodying the inventions" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 468).

The United Company subsequently obtained Letters Patent upon an application filed by Curtis and did all that it could to make the machine a commercial success, putting out in all about forty-five machines constructed according to that patent. The machines, however, did not prove to be a practical success, since the operation performed was not satisfactory. Most

of the machines which were put out were returned (R. Vol. 1, p. 92, lines 13–20; Vol. 2, p. 2045, Int. 1445). Moreover, "the Peerless Machine Company, under patents owned by them, were able to produce a better machine and have done the larger part of this business" (Winslow, Defs.' Ex. 231, R. Vol. 5, pp. 468, 469).

Fred H. Perry.

The agreement with Fred H. Perry, which was merely an employment contract, was made January 1, 1904 (P.'s Ex. 107, R. Vol. 4, p. 758). No property of any kind was acquired from Mr. Perry. He had entered the employment of the company as a machinist, at wages of thirty-four cents an hour, less than four years before the date of the contract referred to in the petition. He was given the opportunity in 1903 "at his own urgent request" to enter the inventive department of the company and demonstrate whatever inventive ability he might possess, and was paid $30 a week for the first eighteen months of this employment. Mr. Perry developed into a "very successful inventor," and has made some very important inventions for the company. He is still employed by the company and his salary has been materially increased several times, and on January 1, 1911, was raised to $4,000 a year. The important inventions that he has made have been embodied in commercial machines which have been given immediately to the trade and have been put out in large numbers. Among these machines are the present commercial Rounding and Channeling Machine—Model E: Goodyear Universal, and Jointing Machine: Goodyear, the importance and value of which are explained in detail by Mr. Howard (R. Vol. 1, p. 91, lines 18–40; Vol. 2, pp. 2309 *et seq.*, 2611 *et seq.*; Defs.' Ex. 231, R. Vol. 5, p. 473).

Joseph W. Leary.

The agreement with Joseph W. Leary made January 1, 1904, was primarily an employment contract (P.'s Ex. 109, R. Vol. 4, p. 769). The very small business which he was doing

was insignificant. He did no manufacturing of any kind, employed no men, and had no factory. He was engaged principally in retailing, in a small way, cements and blackings such as are used in the manufacture of shoes and are supplied by "hundreds of dealers." He also dealt in a very small way in second-hand sewing machines for sewing together the parts of an upper before the bottoming room operations, but dealt in no new machines except the Amazeen machine which he sold for the United Company (R. Vol. 1, p. 62, lines 1–11; p. 91, lines 1–8; Defs.' Ex. 231, R. Vol. 5, p. 473).

In connection with his small local sale business in Lynn, Leary was an agent for the Amazeen skiving machine which was being put out by the United Company. "He was an extremely capable salesman and mechanic, thoroughly familiar with the Amazeen machine, and unusually successful in selling it." His activities with reference to the machine were, however, in view of the local character of his business, entirely centered in Lynn, and the principal reason for entering into the contract of employment with him was to obtain his services in selling the machine in a much wider field (Howard, R. Vol. 1, p. 91, lines 9–17; Defs.' Ex. 231, R. Vol. 5, p. 474).

> "Mr. Leary stated that he would like to enter the employ of the United Company if the company would buy his stock of cement and second-hand machinery, and the company paid him $3052 for the small stock that he had on hand" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 474).

Leary is still employed by the United Company as an agent for the Amazeen machine (R. Vol. 1, p. 91, lines 16–17).

The F. G. Farnham Brush Manufacturing Co.

This transaction took place January 23, 1904 (P.'s Ex. 109, R. Vol. 4, p. 769). The Farnham Company was a small concern employing only six men. It leased floor space in a small factory in Honesdale, Pa. Almost its entire business was in putting out patented Tampico brushes for the cut glass trade, but it also put out a few patented brushes for the shoe trade and it put out the sleeves, collars, hubs and fillers that

are necessary parts of such brushes. Brushes are used in the shoe trade for cleaning and polishing only (R. Vol. 1, p. 62, lines 30–44; p. 89, lines 42–44; p. 90, lines 1–9, 36–39; R. Vol. 2, p. 2045, Int. 1444; Defs.' Ex. 231, R. Vol. 5, p. 464).

The United Company was putting out shoe brushes, sleeves, hubs and collars that it obtained from S. A. Felton & Son Company, in which the United Company has a half interest, but the United Company did no business in Tampico brushes (R. Vol. 1, p. 62, lines 34–36; Defs.' Ex. 231, R. Vol. 5, p. 462).

The important reason for this purchase was that the Farnham brush was much superior to the Felton brush.

> "The Farnham brush was very superior to our old brush, the Felton brush, with which we had been having great difficulty because the bristles were constantly coming out. For several years we had been having complaints all the time that the bristles would not stay in the brush. In this respect the Farnham brush was much superior to our old brush" (Howard, R. Vol. 1, p. 90, lines 15–20).

The Farnham Company had patents on its brush, brush section and a combined brush and hub; and the United Company wished to obtain these patents in order to furnish a better brush to the shoe trade (R. Vol. 1, p. 90, lines 36–39; Defs.' Ex. 231, R. Vol. 5, p. 464).

The Farnham Company was poorly located geographically for dealing with the shoe trade and desired to sell out; the purchase was made "at the earnest solicitation of the officials of the Farnham Company" for $25,915.32 (R. Vol. 1, p. 90, lines 7–9; Winslow, Defs.' Ex. 231, R. Vol. 5, p. 464).

After the purchase, the Farnham "business was continued at Honesdale for nearly a year and was then removed to the factory of S. A. Felton & Son Company, where the business has been continued." The business in brushes for the cut glass trade was continued and is still being carried on. The Farnham shoe brushes were supplied in considerable quantities for a time on account of its superiority to the old brush, "but it was more expensive, so that the demand for it has not been as great as it otherwise would have been" (Howard, R. Vol. 1, p. 90, lines 10–22; Defs.' Ex. 231, R. Vol. 5, p. 464). Mr. Howard testified:—

"After we acquired the Farnham brush we made use of the general idea of the Farnham brush and produced an improved brush of this same general type, with the addition of valuable improvements which completely overcame the difficulties which we had had before. . . . That construction afforded a complete solution of the difficulty which had been troubling us for several years." (R. Vol. 1, p. 90, lines 23–31).

This improved brush, which is very satisfactory, is the one the United Company is now principally putting out (R. Vol. 1, p. 90, lines 39–45).

American Glue Company.

This transaction was merely a contract entered into May 2, 1904 (P.'s Ex. 110, R. Vol. 4, p. 796) for the exclusive agency for the American Glue Company's sandpaper in the shoe trade:

"The American Glue Company transaction was merely a contract, terminable on three months' notice, relating to sand-paper in the shoe trade—not in other trades" (Winslow, R. Vol. 1, p. 462, lines 39–41).

"It is agreed, however, that either party shall have the right to terminate this agreement by a three months' notice in writing delivered to the other of said parties, and in case such notice shall be given, then this agreement shall, at the end of the said three months, terminate" (P.'s Ex. 110, R. Vol. 4, p. 798).

As stated by Mr. Winslow (R. Vol. 1, p. 472, lines 30–33):

"The American Glue Company wanted us to take over their molded sandpaper business, which is a part that especially applies to shoe making and does not include their entire business;"

but the United Company took only an agency for the United States and Canada such as it already had abroad, and "The United Company has no interest whatever in the American Glue Company" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 464; Howard, R. Vol. 1, p. 89, lines 35–36).

"The United Company made no goods of a similar character, but has marketed a large amount of goods for the American Glue Company under this contract" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 464).

"Sandpaper is used in the manufacture of shoes for the operations known as scouring and buffing. The general object of each operation is the same—to smooth up the particular part of the shoe on which the operation takes place.

"Prior to this agreement the United Company was agent for the American Glue Company abroad, and it had bought from the American Glue Company the sandpaper which it furnished to customers in this country. This agreement did not change the trade relations of the parties in the least. After making the agreement the United Company continued to furnish the same sandpaper to customers as liberally as before" (Howard, R. Vol. 1, p. 89, lines 31–41).

Zachary Taylor French.

This transaction took place January 1, 1904 (P.'s Ex. 111, R. Vol. 4, p. 803). Zachary Taylor French owned no real estate and no manufacturing plant was acquired. Contrary to the allegation in the petition (R. Vol. 1, p. 1014), "French had no business of his own, but had been for thirty years in the employ of the Goodyear Company, or its predecessors" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 471).

This transaction was thus explained by Mr. Howard:—

"Mr. French had for a great many years been in the employ of the United Company and its predecessor, the Goodyear Company, as an inventor, and later as superintendent of the Goodyear factory on Albany Street in Boston. His inventions were covered by a number of royalty agreements. He did not wish to move to Beverly when the plant there was opened about this time, and therefore desired to leave the employ of the company. A settlement was made of the royalties which would become due under his various contracts; and the agreement of plaintiff's Exhibit 111 incorporates the settlement which was made at that time" (R. Vol. 1, p. 63, lines 30–40).

"It had been the practice of the Goodyear Company to make royalty agreements with him from time to time which provided for payments for his inventions by way of royalties" (R. Vol. 1, p. 89, lines 25–27).

Mr. Winslow testified that the agreement was made—

> "to commute obligations existing prior to 1899 under royalty contracts for the right to manufacture under patents" (R. Vol. 1, p. 464, lines 9–14).
>
> "Reason for agreement to assign future inventions and not to compete with the United Company for ten years, was because French desired to leave the company's employ and to have his royalty contracts (which were entirely dependent upon the number of machines that might be put out) placed upon a definite basis of annual payment" (Defs.' Ex. 231, R. Vol. 5, p. 471).

The consideration was the United Company's agreement to pay $15,000 in annual instalments of $1500 each (P.'s Ex. 111, R. Vol. 4, p. 810).

Kimball and Hadley.

This transaction took place June 11, 1904 (P.'s Ex. 112, R. Vol. 4, p. 814). Kimball and Hadley were a copartnership. They leased small floor space in Lynn and employed two men and two boys. Their principal business was the manufacture of Goodyear needles, *i.e.*, the curved needles used on Goodyear welters and stitchers (R. Vol. 1, p. 64, lines 10–12; Defs.' Ex. 231, R. Vol. 5, p. 464).

The United Company was not making Goodyear needles (R. Vol. 1, p. 64, lines 15–16). Hadley, a witness for the United States, testified to the same effect:—

> "They obtained their Goodyear needles from the Smith Company in New Haven, Connecticut, and from the Excelsior Needle Company, of Torrington, Connecticut.
>
> "*Q.* But so far as you know they didn't make any of their own?
>
> "*A.* No. . . .
>
> "*Q.* You just told me they didn't manufacture any Goodyear needles.
>
> "*A.* They didn't" (R. Vol. 1, p. 310, lines 33–37; p. 311, lines 5–7).

By this acquisition the United Company was merely extending its field to include the manufacture of Goodyear needles. The United Company has continued to manufact-

ure Goodyear needles and to supply them at the same prices that had been charged by Kimball and Hadley (R. Vol. 1, p. 64, lines 21–22; Defs.' Ex. 231, R. Vol. 5, p. 465).

That this transaction was entirely negligible is proved by Mr. Hadley's testimony to the effect that at least two other concerns were engaged in the business of making Goodyear needles, by the size of the concern as above indicated, and by the amounts of the purchase price, $4750, and Hadley's original asking price, $5000 (Hadley, R. Vol. 1, p. 310, lines 33–35; p. 311, lines 13–14).

After this transaction Kimball and Hadley again engaged in the needle business despite their covenant to keep out of that business for fifteen years (P.'s Ex. 112, R. Vol. 4, p. 815), and in a suit to enforce the terms of their agreement with the United Company they were enjoined from continuing the business (Hadley, R. Vol. 1, p. 311, lines 15–20). The decision of the Supreme Court of Massachusetts affirming the granting of this injunction is reported in 193 Mass. 351. (See also *infra*, pp. 767–770.)

Arnold Machine & Supply Company (William B. Arnold).

This transaction took place June 28, 1904 (P.'s Ex. 113, R. Vol. 4, p. 816). The Arnold Machine & Supply Company was engaged in manufacturing a patented machine for applying cement to an insole for the purpose of securing a reinforcing strip of canvas to it in the process of making what is known as the Gem insole, of which Defendants' Exhibit 17 is a sample. The Arnold Company had put out only seven machines. This machine and two patents were all that was acquired by this transaction and the consideration was "$500 and royalties to be paid on machines when put out" (R. Vol. 1, p. 64, lines 39–46; p. 88, lines 20–30; Winslow, Defs.' Ex. 231, R. Vol. 5, p. 469).

"It had never been the practice before this machine was invented to apply cement to the insole rather than to the canvas." The United Company had no machine which could possibly be used for performing the operation of the Arnold machine which had to be specially constructed for the purpose

for which it was intended. "What had been used before was not a cementing machine; it was merely a cement pot through which the canvas was drawn on its way to the table, where it was cut off and applied to a piece of leather" (Howard, R. Vol. 1, p. 64, line 46; p. 65, lines 1–14; p. 92, lines 7–12).

The Arnold machine was a very satisfactory one; but immediately after the purchase by the United Company demand for the machine entirely ceased for the reason that the process of preparing the Gem insole was entirely revolutionized by the production of—

> "a new type of reinforcing canvas which was introduced about this time by concerns other than the United Company. That canvas was sold to manufacturers with the cement already on it, and it was steamed and heated and then stuck right on the sole. There were three concerns engaged in preparing and selling this new type of reinforcing canvas and it entirely revolutionized the prior processes of making Gem insoles. This new process was subsequently used instead of the cementing machine and entirely superseded it" (Howard, R. Vol. 1, p. 88, lines 31–43).

Leopold J. Courteau.

This transaction took place October 1, 1904 (P.'s Ex. 115, R. Vol. 4, p. 826). The United Company acquired from Leopold J. Courteau an invention; nothing more. As shown by the agreement, it did not even acquire title to the experimental machine in which Courteau had embodied his invention. The consideration was an agreement "to pay royalty of 10 per cent of the selling price until $1000 had been paid," and this agreement was conditional upon the United Company obtaining Letters Patent of the United States if its patent solicitors were of the opinion that such patent "can be obtained giving any substantial protection" (R. Vol. 1, p. 87, lines 35–37; Winslow, Defs.' Ex. 231, R. Vol. 5, p. 469; P.'s Ex. 115, R. Vol. 4, p. 827).

The object of this invention was "a mechanism for holding the linings of shoes during the process of pasting the outer [upper] leather to the lining." This cementing operation is performed to a limited extent on some kinds of shoes, and the

work had previously been done by hand. The United Company had no machine for performing this operation (R. Vol. 1, p. 66, lines 10–12; p. 87, lines 30–37; R. Vol. 4, p. 826).

An application for United States patent upon Courteau's invention was filed, and a patent was subsequently issued upon this application (R. Vol. 1, p. 87, lines 35–37; R. Vol. 2, p. 2043, Int. 1438).

The United Company was entirely unable to produce a practicable machine embodying the Courteau invention. Mr. Howard testified,—

> "Nothing ever came of this agreement. We were unable after the most strenuous efforts to make a practicable machine. During our experiments Courteau was often consulted and finally confessed himself that he saw no way to make the machine practicable" (R. Vol. 1, p. 66, lines 12–16).

And again,—

> "We made a very determined effort to make it practicable. Our inventors who were working upon it had frequent conferences with Courteau, and finally, when they were convinced that it was utterly impracticable, they made a final appeal to Courteau to see whether he could make any suggestions which would remedy the situation, and he was unable to do so. The concern with which Courteau was connected, which under the agreement was entitled to have machines at cost [see P.'s Ex. 115, R. Vol. 4, p. 829], considered the machines worthless and refused to take any machines. We did the best we could with it but could not develop anything out of it, and it was given up" (R. Vol. 1, p. 87, lines 39–45; p. 88, lines 1–4).

Booth Brothers (1904 Agreement).

By this transaction, which took place October 25, 1904, the United Company acquired a vamp-perforating machine referred to in the agreement of Plaintiff's Exhibit 114 (R. Vol. 4, p. 822) as "the experimental machine," and the patent on that machine; it acquired no plant or shop (R. Vol. 1, p. 88, lines 5–6; Defs.' Ex. 231, R. Vol. 5, p. 469).

The consideration in this transaction was $2,400 in cash and $7,600 to be paid in royalties (Defs.' Ex. 231, R. Vol. 5, p. 469; P.'s Ex. 114, R. Vol. 4, p. 823).

The Booth machine was designed for ornamenting uppers or parts of uppers. The United Company had no vamp-perforating machine nor any machine which could be used for perforating vamps (R. Vol. 1, p. 65, lines 31–42; p. 88, lines 6–16; R. Vol. 2, p. 2044, Int. 1439; Defs.' Ex. 231, R. Vol. 5, p. 469).

The acquisition of this patent enabled the United Company to extend its line to include a vamp-perforating machine.

This machine has been sold by the United Company through its General Department in large numbers and the business in it was very largely developed after the United Company acquired it (R. Vol. 1, p. 88, lines 17–20).

Brockton Supply Company.

As shown by Plaintiff's Exhibit 116 (R. Vol. 4, p. 831), by this transaction, which took place November 1, 1905, the United Company acquired from the Brockton Supply Company, a copartnership, two patents covering a machine for pulling lasting tacks. At this time the United Company had no commercial tack-pulling machine; "it was developing one, but had put none out" (Howard, R. Vol. 1, p. 66, lines 24–26; p. 87, lines 3–6, 25).

The United Company's experimental machine infringed two claims of one of the patents owned by the Brockton Supply Company. On the other hand, the Brockton Company's machine infringed seven claims of two applications owned by the United Company (R. Vol. 1, p. 66, lines 26–27; p. 87, lines 25–27; R. Vol. 2, p. 2043, Ints. 1436, 1437; Defs.' Ex. 275, R. Vol. 5, p. 767).

This situation created a patent deadlock which was removed by common ownership of the two groups of patents. Furthermore, the firm members of the Brockton Supply Company had had a serious disagreement and desired to liquidate their business. Also Mr. Campbell, one of the partners, was anxious to go out of business. They had already sold a part

of their business to another concern, and "Campbell had suggested to Nichols that he (Nichols) see if they could not sell the rest of their business to the United Company, which Nichols did," and the United Company was willing to make this acquisition, as it "had not been able up to that time to produce a tack-pulling machine" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 477; Howard, R. Vol. 1, p. 66, lines 28–29).

After this acquisition the United Company put out to a considerable extent the machine acquired from the Brockton Supply Company, but Mr. Howard testified that—

> "the most important use which we made of the inventions was to incorporate them in our experimental tack pulling and resetting machine, particularly the feature covered by claims of those patents which that machine had infringed. That machine was for use on Goodyear shoes and not only pulled the lasting tacks but drove the lighter tacks, called slivers, which hold the upper in place until after the welt has been sewed on. . . . Previously it had always been the practice to drive those slivers by hand. This new tack pulling and resetting machine of ours, in which we incorporated the inventions claimed in the patents acquired from the Brockton Supply Company, was the first machine in the art for performing the two operations at once. . . . After the acquisition we combined their inventions and ours in our machine and furnished it to customers in large numbers" (R. Vol. 1, p. 87, lines 8–15, 19–24, 27–29).

Smith Lacing Machine Company.

This transaction took place January 31, 1906 (P.'s Exs. 117, 118, R. Vol. 4, pp. 834, 840). The Smith Lacing Machine Company owned no real estate and did no manufacturing (Defs.' Ex. 231, R. Vol. 5, p. 477).

The Smith Company had produced an entirely new machine for lacing uppers.

> "The lacing machine is a wonderful machine, embodying a large number of patented inventions for automatically lacing and tying the opposed eyelets, of a shoe upper, preparatory to the lasting operation, for the purpose of

maintaining the edges at just the right distance apart during the lasting and subsequent operations. . . .

"Prior to this the practice had been for girls to insert strings through the eyelets and tie the ends of the string. This was handwork. . . . The United Company had no machine for performing this operation or for the purpose of holding together the tops of the uppers of shoes" (Howard, R. Vol. 1, p. 67, lines 3–8, 13–15, 18–20; p. 86, lines 25–30).

This machine "was not really on a commercial basis" and the Smith Company "had placed none upon the market" (Howard, R. Vol. 1, p. 86, lines 31–32; Winslow, Defs.' Ex. 231, R. Vol. 5, p. 477).

The Smith machine infringed many allowed claims in a pending application owned by the United Company. The machine of that application, however, "was only experimental, and was never used commercially" for reasons explained by Mr. Howard (R. Vol. 2, p. 2601 *et seq.*).

On the other hand, the essential organization for a successful lacing machine was—

"broadly covered by the claims of a patent owned by the Smith Company, which also owned other patents containing broad claims to many features of the machine which were found indispensable for a commercially successful machine.

"This situation resulted in a deadlock since neither the United Company nor the Smith Lacing Company was able to put out a commercial lacing machine without infringing a patent or patents owned by the other" (Howard, Defs.' Ex. 275, R. Vol. 5, pp. 767, 768).

Mr. Winslow testified that after the acquisition "we developed the lacing machine, till to-day it is used in pretty nearly every factory where they manufacture lace shoes" (R. Vol. 1, p. 463, lines 13–15).

"The Smith Company had intended to charge an initial payment and royalty for the use of the machine. The United Company furnished these machines to their customers without initial payment and at one-half the royalty that the Smith Company had intended to charge" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 478).

Up to March 1, 1913, the United Company had put out 1415 lacing machines. One of these machines will take care of as many shoes as from four to seven welt-sewing machines (R. Vol. 2, p. 2605, Int. 112).

The consideration in this transaction was a payment of $50,000 in cash and $67,500 to be paid in royalties. "This payment was completed within three years" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 477).

Metallic Heel and Counter Company.

This transaction took place January 31, 1906 (P.'s Ex. 119, R. Vol. 4, p. 843). The Metallic Heel and Counter Company owned no real estate, leased floor space, employed about seventy men, and manufactured metallic heels and counters (Defs.' Ex. 231, R. Vol. 5, p. 465).

> "The United Company acquired from the Metallic Heel and Counter Company patented machines used in the manufacture of a patented metallic heel and counter. This was used on very heavy shoes worn by miners, quarrymen, and others engaged in work of that character" (Howard, R. Vol. 1, p. 67, lines 30–34; p. 86, lines 38–44); (a shoe with metallic heel and counter is Defendants' Exhibit 20).
>
> "The Metallic Heel & Counter Company manufactured patented metallic heels and counters to go outside of shoes for miners' work or heavy outdoor work of that sort" (Winslow, R. Vol. 1, p. 462, lines 44–45; p. 463, line 1).

The United Company did not manufacture any metallic heels and counters and had no machinery that could be used for that purpose (R. Vol. 1, p. 67, lines 36–39; Defs.' Ex. 231, R. Vol. 5, p. 465).

Important reasons for this acquisition were the following:—

(1) The United Company extended its business by entering a new field.

(2) "A very substantial reason for acquiring this company and the Smith Lacing Machine Company was to secure

the undivided services of George Warren, J. B. Hadaway, and William Gordon, who were already in the employ of the United Company in other matters. Messrs. Warren and Hadaway are members of the United Company's Experimental Committee" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 465).

"The men who were interested in that company,—particularly two of them,—were men whom we used in our own business and consulted as experts. One of them was Mr. Warren" (Winslow, R. Vol. 1, p. 463, lines 3–6).

Mr. Warren, a mechanical engineer, one of defendants' expert witnesses in this suit, has been engaged in "designing and overseeing the manufacture of shoe machinery" for the United Company (Warren, R. Vol. 1, p. 785, lines 7–10).

(3) "The parties interested in the Smith Lacing Machine Company and the Metallic Heel & Counter Company were the same. We had to buy them both in order to get either" (Howard, R. Vol. 1, p. 86, lines 35–37).

"When we acquired that machine they wanted us to take over their whole enterprise, including the Heel & Counter Company, which was really the machine shop" (Winslow, R. Vol. 1, p. 463, lines 9–11).

"It was impossible to purchase the Smith Lacing Machine Company without acquiring this business" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 465).

Since the acquisition the United Company has supplied to the trade the metallic heel and counter in very considerable quantities and has a separate department at Beverly for manufacturing them, which is busy all the time (R. Vol. 1, p. 86, lines 44–45; p. 87, lines 1–2).

The consideration for this acquisition was $52,320.24 in cash and $67,500 in royalties payable on account of the lacing machine acquired from the Smith Lacing Machine Company; that is, the payment of more than half the consideration depended upon the commercial success of the Smith Lacing Machine (Defs.' Ex. 231, R. Vol. 5, p. 465; P.'s Ex. 119, R. Vol. 4, p. 845).

Zotique Beaudry.

This transaction took place September 4, 1906 (P.'s Ex. 120, R. Vol. 4, p. 850). Beaudry, as a witness for the United States, testified: "I am in the shoe machinery business, inventing and manufacturing." Mr. Winslow testified: "Beaudry was and is today a manufacturer of edge setters" (R. Vol. 1, p. 328, lines 42–43; p. 473, lines 3–4). That business was not acquired.

By this transaction the United Company acquired an "experimental heel-burnishing machine, which had not been even tried out in any shoe factory," and the patents on that machine, and no other property whatever. The patents were acquired on account of and were assigned to the United-Xpedite Finishing Company, a majority of the capital stock of which is owned by the United Company (Howard, Defs.' Ex. 275, R. Vol. 5, p. 768; R. Vol. 1, p. 68, lines 7–9; p. 86, lines 16–21).

> "At this time the United-Xpedite Company had a heel burnishing machine, but the Beaudry inventions covered appliances which could be added to the Xpedite machines corresponding to which the Xpedite Company had nothing at all. The Beaudry inventions, covered by several patent applications, embodied an entirely new idea" (Howard, R. Vol. 1, p. 68, lines 9–14).

Mr. Winslow stated: "that it was believed at the time that it would enable the United-Xpedite Company to improve its machines very materially. Beaudry had been the original inventor of the machine put out by the Xpedite Company" (Defs.' Ex. 231, R. Vol. 5, p. 469; Beaudry, R. Vol. 1, p. 329, lines 1–3).

Litigation was avoided by this acquisition. Beaudry's experimental machine infringed nine claims of a patent owned by the United-Xpedite Finishing Company (Defs.' Ex. 275, R. Vol. 5, p. 768).

Mr. Howard testified: "At the time we acquired the invention we thought very highly of it, as evidenced by the price that we paid for it" (R. Vol. 1, p. 86, lines 1–2). The consideration was $12,500 (Defs.' Ex. 231, R. Vol. 5, p. 469).

Mr. Howard testified that after the acquisition:—

> "We constructed several experimental machines. . . . We tried in all sorts of ways to make it practicable, but the extreme inconvenience to which the operator would be put by a machine so organized finally condemned it as entirely impracticable" (R. Vol. 1, p. 86, lines 2–15).

Mr. Winslow stated: "As a result of a great many experiments made after the purchase of the patents, this money was wasted" (Defs.' Ex. 231, R. Vol. 5, p. 469).

Booth Brothers (entire business).

This transaction took place November 1, 1907 (P.'s Exs. 121–124, R. Vol. 4, pp. 856, 861, 862, 867). This concern was "a partnership composed of Quentin W. Booth and Irving E. Booth. They owned no real estate but leased floor space in Rochester, New York, and employed about twenty-two men. The purchase was made in 1907 for $71,284.20" (Winslow, R. Vol. 1, p. 460, lines 21–25).

At this time Booth Brothers were putting out patented machines of four types (R. Vol. 1, p. 68, lines 35–45; p. 69, lines 1–8; p. 84, lines 12–15; p. 85, lines 1–27; R. Vol. 2, p. 2519, Int. 96). One of these machines was the patented impression stitch-burnishing machine for burnishing impression stitches on the upper face of the welt of a welt shoe. This machine was much superior to the machine which the United Company was attempting to use for the same work, but it infringed claims in a pending patent application owned by the United Company on which a patent was subsequently granted. The United Company's machine was not successful and after this transaction the United Company substituted the Booth machine for that work (R. Vol. 1, p. 85, lines 1–14; Defs.' Ex. 275, R. Vol. 5, p. 766).

Another Booth patented machine was a fudge edge making machine for making imitation stitches on the upper face of the sole edge and simultaneously setting or burnishing the edge of the sole. The United Company had no machine for doing the work of this machine (R. Vol. 1, p. 84, lines 12–23).

Booth Brothers were also putting out patented upper beading machines for beating down the seams after parts of uppers have been sewed together. These were better machines than the United Company's machine, which was satisfactory only on heavy work, and the United Company as agents had sold many of the Booth machines, which were much better on light work (R. Vol. 1, p. 69, lines 12–13; p. 84, lines 35–45; Defs.' Ex. 231, R. Vol. 5, p. 457).

They also had two types of wheeling machines which were used to define the imitation stitch on the upper face of a welt shoe preparatory to the stitch burnishing operation. Both of these machines infringed the United Company's patents. The United Company's wheeling machine was adapted for use only on McKay shoes, while the Booth machines, as stated, were used on welt shoes (R. Vol. 1, p. 84, lines 24–34; Defs.' Ex. 275, R. Vol. 5, p. 765).

Booth Brothers were also putting out "a simple contrivance, really a support for the shoe" known as an "Upper Shaping Machine" for holding the uppers of cloth-topped shoes while they were being cleaned. There was a small demand for it, and the United Company had nothing of the kind (Howard, R. Vol. 1, p. 85, lines 15–21; p. 69, lines 13–14).

The reasons for this acquisition were as follows:—

(1) As above explained, the United Company had either no machines or inferior machines for performing the operations of the Booth Brothers' machines and the Booth Brothers' machines were patented.

> "The Company felt that it could add these particular machines to its line of machines to advantage to its customers and to itself, as an ordinary business transaction; and also utilize the services of Irving E. Booth, who was a very capable man in that line of endeavor" (Winslow, R. Vol. 1, p. 460, lines 28–32).

(2) This business was acquired at the solicitation of Booth Brothers.

> "The reason given by them for soliciting the United Company to purchase their business was that Quentin W. Booth wished to retire from business and Irving E. Booth did not care to attempt to run the business alone, but did not wish to retire."

The United Company, "were persuaded to make this purchase" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 457).

(3) Three of the principal machines put out by Booth Brothers infringed claims of a patent and an application owned by the United Company (Defs.' Ex. 275, R. Vol. 5, pp. 766, 767).

After the purchase, a corporation was formed, of which Irving E. Booth was made the manager; the manufacture of the Booth machines was continued at the Booth factory, and through the Booth Company the United Company continued to put out in large numbers the machines which had previously been manufactured by Booth Brothers (R. Vol. 1, p. 85, lines 28–35; p. 460, lines 33–37; Defs.' Ex. 231, R. Vol. 5, p. 457).

Richardson Shoe Machinery Company.

This transaction took place December 1, 1908 (P.'s Ex. 125, R. Vol. 4, p. 871). The Richardson Company "owned no real estate; operated no factory. Contracted with outside parties to build its machines" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 478). The only machine which the Richardson Company put out was "a greatly improved McKay sewing machine; that is, a McKay sewing machine which had been adapted to do better work with greater speed by their inventions." This machine was patented (Howard, R. Vol. 1, p. 70, lines 6–9; p. 83, lines 5–8).

The United Company was putting out the old McKay sewing machine and also a new one called the Model B in this country, but not abroad. It was putting out the Richardson machine abroad (R. Vol. 1, p. 70, lines 10–15; p. 82, lines 29–33). That old machine was the "original McKay sewing machine which had been developed by Gordon McKay" and which the United Company was rebuilding and selling. Very few old style machines were being manufactured because there were plenty of second-hand ones to be had and the patents on the machine had expired long before (Winslow, R. Vol. 1, p. 564, lines 23–24, 44–45; Howe, p. 680, lines 24–35). Moreover, numerous other concerns supplied McKay sewing machines and in 1909, the year following the acquisition, there were 1488 old style McKay sewing machines in use in the United

States and 308 Model B and Richardson machines, that is, nearly five times as many old machines; so that these two companies had made relatively little impression in this field (R. Vol. 1, p. 565, lines 23–27; p. 977, lines 16–26).

Neither the Richardson nor the Model B machines could possibly be used for sewing welt shoes (R. Vol. 1, p. 83, lines 16–28).

The reasons for this acquisition were as follows:—

(1) The United Company's Model B machine infringed one of the Richardson Company's patents. A claim of one of these patents "clearly covered a very important feature of the Model B machine" (Howard, R. Vol. 1, p. 83, lines 9–13; Defs.' Ex. 275, R. Vol. 5, p. 768).

Mr. Winslow stated:—

> "Although the United Company had endeavored to avoid the infringement of all patents owned by the Richardson Company, this machine still infringed broad claim 16 of patent No. 710,613" (Defs.' Ex. 231, R. Vol. 5, p. 478).

(2) "The work of the Richardson machine was a great deal better." "European manufacturers demanded the Richardson machine and would not have our machine." (Howard, R. Vol. 1, p. 70, lines 12–13; p. 82, lines 35–36).

(3) "It was believed a better machine than either of the two could be constructed by the use of patents owned by both parties" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 479).

> "We could not develop our machine without combining it with the Richardson machine, and the result of combining the patented inventions of both machines was to produce a better machine than either company alone could develop" (Howard, R. Vol. 1, p. 83, lines 11–15).

(4) John H. Richardson, manager of the Richardson Company, initiated negotiations and stated that "he himself would like to come with the United Company," realizing that with only one machine as a business "the Richardson Company would not be able to make much of a success of its business." Also Mr. Rice, one of the largest stockholders, who is a shoe manufacturer, "wanted to get out of the shoe machinery business entirely" (Winslow, Defs.' Ex. 231, R. Vol. 5, pp. 470, 479).

Since this acquisition the United Company has continued to put out both the Richardson machine and the Model B machine "as desired by the trade" (Winslow, R. Vol. 1, p. 565, lines 20–22, 37; Defs.' Ex. 231, R. Vol. 5, p. 479; Howard, R. Vol. 2, p. 2039, Ints. 1407, 1408.) They are both General Department machines (R. Vol. 5, pp. 430, 437, lines 34, 35).

Further:

> "After the Richardson machine was obtained the United Company immediately put several inventors to work with instructions to combine, each in his own way, the best features of the two machines. The experimenting was carried on very aggressively."

As a result a machine was produced which is "far superior to either the Richardson machine or our Model B machine," and—

> "in its organization and its appearance it more nearly resembles the Richardson machine than it does the Model B. In this new machine many valuable improvements have been made by the United Company's inventors which could not have been embodied in a commercial machine and made available to shoe manufacturers had there not been common ownership of the United Company's patents and the Richardson Company's patents" (Howard, R. Vol. 1, p. 82, lines 39–45; p. 83, lines 1–4; Defs.' Ex. 275, R. Vol. 5, p. 769).

Again, improvements broadly claimed in two of the Richardson Company's patents have been embodied in the United Company's new outsole stitching machine, Lockstitch Machine—Model M: Goodyear Outsole Rapid (Defs.' Ex. 275, R. Vol. 5, p. 768; R. Vol. 2, pp. 2297–2299). Also the improvement of one of those patents has been embodied in the United Company's new Model K welter (R. Vol. 1, p. 83, lines 5–8; Vol. 2, p. 2266).

The petition states that the Richardson Company was "engaged in the manufacture, sale and shipment in interstate commerce of . . . machines known to the trade as 'clicking machines'" (R. Vol. 1, p. 1017). This is a misstatement. The Richardson Company had never made or sold a clicking machine. Through a contract with the Essex Machine Company it had a one-half interest in an experimental clicking machine which was being constructed by that company.

"The machine has never at any time become commercial" and clearly amounts to nothing in this suit, since such interest as the Richardson Company had was not available to enable it to put the machine on the market. "It is controlled by an outside concern." Furthermore, if the machine had been commercial and if the Richardson Company had had such control of it as to be able to put it out, it could not have manufactured or sold this machine without infringing thirty-seven claims of one of the United Company's patents and thirteen claims of two pending applications on which patents were granted subsequently to this acquisition (Howard, R. Vol. 1, p. 70, lines 17–23; Defs.' Ex. 275, R. Vol. 5, p. 769; Winslow, Defs.' Ex. 231, R. Vol. 5, p. 479; P.'s Ex. 125, R. Vol. 4, p. 883).

John H. Richardson.

The agreement with Richardson made December 1, 1908 (P.'s Ex. 126, R. Vol. 4, p. 887) was simply an employment contract. "Richardson had been the general manager of the Richardson Company and was not satisfied with his position." He "had been influential in bringing about the sale of that company to the United" Company and simultaneously with that sale he entered the employ of the United Company (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 474).

Since "Richardson was an inventor having executive ability" he promised to be a very useful and valuable man to the United Company and hence "it seemed proper to safeguard the company" by means of such an employment contract, if the company "expected to gradually promote Mr. Richardson to an important position in its executive forces." In fact, "he is at present in charge of the general department of the United Company and his salary has been repeatedly raised" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 474).

Carver Cotton Gin Company.

By this transaction which took place April 30, 1908 (P.'s Ex. 127, R. Vol. 4, p. 893) the United Company acquired no real estate or manufacturing plant. The Carver Cotton Gin

Company was engaged in the business of making cotton gins and "the manufacture of any shoe machinery with them was entirely a side line" (Winslow, R. Vol. 1, p. 460, lines 42–43; Defs.' Ex. 231, R. Vol. 5, p. 457).

> "They had got into it accidentally through having manufactured at one time or another machines on contract for parties who did not have shops of their own" (Howard, R. Vol. 1, p. 81, lines 27–29).

Mr. Winslow testified:—

> "As to the Carver Cotton Gin Company, we really got from them some jigs and tools, a small stock of parts, a few machines, all of which were in what is known as the general department" (R. Vol. 1, p. 460, lines 38–40).

These General Department machines which the Carver Company was putting out were the Acme leveling machine, a vamp-skiving machine, a leatherboard skiver, a counter-dividing machine, and a patented machine for finishing the top-lifts of heels known as the "Adams top-piece sanding machine." The United Company had no machines for performing the operations performed by any of these Carver machines (R. Vol. 1, p. 70, lines 32–45; p. 71, lines 1–15; p. 81, lines 30–44; p. 82, lines 1–23).

The Acme leveling machine "is used on freak shoes and samples, where the size and shape change with almost every shoe," because, "after leveling a shoe of one kind, it could take a shoe of an absolutely different size and shape and operate upon it without any adjustment at all."

It was not adapted for regular use on welt shoes "because it is extremely slow as compared with the automatic leveler, and the work which it does is not equal to the work of that machine." It could not be used on either turn or McKay shoes (Howard, R. Vol. 1, p. 70, lines 37–45; p. 81, lines 32–37; R. Vol. 2, p. 2034).

On the other hand, the United Company's machine, "the Goodyear automatic leveling machine, which is the machine in general use for leveling welt shoes, must be adjusted for every variation in size or shape of last. The automatic leveler is so very much faster and does so much better work than the

Acme that it is almost universally used for the regular work going through the factory" (Howard, R. Vol. 2, p. 2034).

> "It was by far the best machine in existence for the regular work of a factory, but where every shoe that came to the machine was of a different size and shape it would take a great deal of time to effect the necessary adjustments between each shoe. Accordingly these two machines occupied quite different fields" (Howard, R. Vol. 1, p. 81, lines 40–44).

By this acquisition the United Company extended its line by adding machines which perform operations for which it previously had no machines and it obtained the special tools and patterns for manufacturing those machines. For some years the United Company had been purchasing Acme leveling machines from the Carver Company and putting them out (R. Vol. 2, pp. 2032–2033, Ints. 1373–1376; Defs.' Ex. 231, R. Vol. 5, p. 458).

Mr. Winslow testified:—

> "This purchase was made at the solicitation of Mr. Hobart, the treasurer of the Carver Cotton Gin Company.... Their regular business had increased so that they had either got to add on to their factory or else dispose of some part of their business, and this portion of their business had been decreasing, and the price paid did not really cover the value of the tools plus the parts of machines" (R. Vol. 1, p. 460, lines 41–45; p. 461, lines 1–4).

As further stated by Mr. Winslow:—

> "The United Company had always been on friendly terms with the Carver Cotton Gin Company and had sold such machines as they made when desired by the trade, and the price paid [the total consideration was $16,883.79] above the inventory value for the machines on hand was less than it could have duplicated the patterns, tools, etc., which the Carver Cotton Gin Company desired to sell" (Defs.' Ex. 231, R. Vol. 5, p. 458).

Since this acquisition the United Company has continued the manufacture of the Carver Company machines at its Beverly factory and has put them out in large numbers (R.

Vol. 2, pp. 2033, 2035, Ints. 1375–1377, 1390; Defs.' Ex. 231, R. Vol. 5, p. 458). As stated by Mr. Winslow (*supra*, p. 726) these machines are all General Department machines and are sold outright (R. Vol. 1, p. 12, line 37 *et seq.*; Vol. 5, pp. 425, 426, 427).

Harry L. Rice and Fred LaChapelle.

This transaction took place January 20, 1909 (P.'s Ex. 128, R. Vol. 4, p. 898). "No manufacturing plant of any kind was acquired" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 470).

Mr. Howard testified:—

> "The United Company acquired an experimental welting machine embodying a patented invention radically new. This machine put an extra thread on the single-thread side of the chain stitch formed by the machine. . . . That was entirely new. The purpose was to strengthen the 'between substance'" as it is called (R. Vol. 1, p. 71, lines 30–38).
>
> "When we acquired the LaChapelle device he had made only one machine, which was experimental and far from being commercial" (R. Vol. 1, p. 81, lines 13–15).

The machine was protected by several applications upon which patents have since been granted (R. Vol. 1, p. 81, lines 6–12; R. Vol. 2, p. 2031, Ints. 1367–1369).

The consideration in this transaction was $11,500 (Defs.' Ex. 231, R. Vol. 5, p. 470).

The reasons for this acquisition were:—

(1) "In addition to strengthening the stitch it was believed, that by this invention an economy could be effected by using a thinner and less expensive insole than could be used with the present commercial type of welting machine, which puts only one thread inside the channel" (Howard, R. Vol. 1, p. 81, lines 19–23).

(2) Mr. Rice, a large shoe manufacturer, who was an officer of and one of the two largest stockholders in the Richardson Shoe Machinery Company (P.'s Ex. 125, R. Vol. 4, p. 871, Defs.' Ex. 231, R. Vol. 5, p. 478)—

"made it a condition of the purchase of the Richardson machine that the United Company should take over his rights in these inventions at a reasonable price because 'he wanted to get out of the shoe machinery business entirely'" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 470).

Mr. Howard testified:—

"We have been working on it since we acquired it and have tried it out several times in a shoe factory, but it is not yet commercial. We are still at work with the purpose of developing it into a commercial machine." "It takes a long time to develop one of these machines" (R. Vol. 1, p. 81, lines 15–18; p. 72, lines 3–4).

Ellis Lacer Company.

This transaction took place February 1, 1910 (P.'s Ex. 129, R. Vol. 4, p. 905). The Ellis Lacer Company was engaged in the business of manufacturing by patented machinery patented wire lacers for temporarily securing together the opposed eyeletted edges of shoe uppers to keep those edges at a proper distance apart during the lasting and subsequent operations. The Ellis lacer was the first lacer that had ever been used commercially. This company owned no real estate but leased floor space (R. Vol. 1, p. 72, lines 23–35; p. 80, lines 40–42; R. Vol. 2, pp. 2028, 2029, 2030, Ints. 1351, 1357, 1358; Defs.' Ex. 231, R. Vol. 5, p. 466).

Before this purchase the United Company never had put out any wire lacers, although prior to 1899 a company controlled by a predecessor of the United Company had attempted to develop and market a wire lacer, but "this device had not been successful, and attempts to market it had been discontinued before 1899" (Howard, R. Vol. 1, p. 72, lines 32–33 Defs.' Ex. 275, R. Vol. 5, p. 770).

The United Company could not put out a commercially satisfactory lacer without infringing the Ellis Company's patents because essential features of such a lacer were covered by broad claims in those patents (Defs.' Ex. 275, R. Vol. 5, p. 771).

On the other hand, the United Company controlled several antedating patents. Twenty-nine claims of those patents

were infringed by the Ellis lacers and completely dominated them. As a result of this patent deadlock "each company's patents if held valid and sustained would have prevented the other company from putting out lacers for commercial use" (Howard, R. Vol. 1, p. 81, lines 4–5; Defs.' Ex. 275, R. Vol. 5, p. 771; Winslow, Defs.' Ex. 231, R. Vol. 5, p. 466). Obviously, therefore, the United Company could not enter this new field without acquiring the patents of the Ellis Company, and the object of this purchase was to enable the United Company to go into this business without infringement.

The Ellis Company was notified of its infringement of the United Company's patents and opened negotiations which resulted in this acquisition. By this transaction no shoe machines whatever were required.

> "The only machinery acquired was a machine for making the wire lacer in our own factory. We did not sell or lease this machine, but furnished the product of the machine to the shoe manufacturers" (Howard, R. Vol. 1, p. 72, lines 27–31; Defs.' Ex. 275, R. Vol. 5, p. 771).

Since this purchase the Ellis lacers have been manufactured and sold in large numbers by the United Company. These lacers have, at all times, been fully protected by ten patents obtained from the Ellis Company or maturing on applications of the Ellis Company, the oldest of which was granted in 1901 (R. Vol. 1, p. 72, line 33; Vol. 2, pp. 2029, 2030, Ints. 1356–1358).

The Wentworth Company.

This transaction took place February 3, 1910 (P.'s Ex. 130, R. Vol. 4, p. 913). The Wentworth Company "owned no real estate. Leased floor space in a building in Cincinnati, Ohio, and employed about twelve men" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 449).

The Wentworth Company was putting out two patented machines, a heel seat beating machine and a shank sticking machine (R. Vol. 1, p. 73, lines 4–17; p. 80, lines 26–28, 34–38; R. Vol. 2, p. 2026, Ints. 1342–1344).

The Wentworth heel seat beating machine flattened the heel down by rubbing it with a yielding tool but did not beat

the heel. The United Company had a machine of an entirely different type "which flattened the heel by hammer blows." That machine was discarded after the Wentworth acquisition (R. Vol. 1, p. 73, lines 18–26).

The Wentworth shank sticking machine performed an operation which had been a hand operation before the introduction of that machine. The United Company did not have a commercial shank sticking machine and "it was experimenting on one with difficulty, because the Wentworth Company had a patent on theirs" (Howard, R. Vol. 1, p. 73, lines 29–34; p. 80, lines 28–31).

The Wentworth heel seat beating machine infringed twenty-three claims of a patent owned by the United-Xpedite Finishing Company (controlled by the United Shoe Machinery Company) and a suit brought on those claims had been prosecuted to final hearing and the claims were held to be valid and infringed. This machine also infringed thirteen claims of another patent owned by the United Company upon which a successful suit had been brought.

> "The patents upon which these two suits were brought covered indispensable features of the Wentworth machine and The Wentworth Company could no longer put out their heel seat beating machine" (Howard, Defs.' Ex. 275, R. Vol. 5, p. 772; R. Vol. 1, p. 73, lines 27–28).

Also the Wentworth shank sticking machine infringed three claims of a patent owned by the United Company (Defs.' Ex. 275, R. Vol. 5, p. 772).

Mr. Winslow testified that "prior to the decision of the litigation the Wentworth Company had approached the United Company many times to dispose of their business," and stated that "immediately after the decision they asked to open the negotiations with the United Company, which finally resulted in the purchase." He also testified,—

> "A great many of the Wentworth machines that had been put out were in the hands of our lessees, and as the easiest way of disposing of that whole question it seemed to be better to make a trade with the Wentworth Company and settle the litigation" (R. Vol. 1, p. 458, lines 5–9; Defs.' Ex. 231, R. Vol. 5, p. 449).

After the acquisition the Wentworth machines were manufactured at the United Company's Beverly factory, "from which factory the machines and parts have been supplied by the United Company" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 449). Mr. Howard testified that in further developing the United Company's shank sticking machine "the United Company eventually combined the best features of its experimental machine and the best features of the Wentworth machine in the machine which it is now putting out." That machine has been put out in large numbers (R. Vol. 1, p. 73, lines 31–34; R. Vol. 2, p. 2027, Int. 1348).

B. F. Sturtevant Company.

This transaction took place February 23, 1910 (P.'s Ex. 131, R. Vol. 4, p. 928). The B. F. Sturtevant Company "owned real estate at Conway, N.H., where it operated a factory for the manufacture of peg-wood and wood shanks. Number of men employed about twelve." The amount paid for the property, including "all the real estate . . . the mill site, the mill building, the storage buildings, and all other buildings" (P.'s Ex. 131, R. Vol. 4, p. 928) was $52,185.94; this price being based upon the inventory. "No machines that are used in the manufacture of shoes were obtained in this transaction" (Defs.' Ex. 231, R. Vol. 5, p. 466; Howard, R. Vol. 1, p. 74, lines 4–5).

The object of this purchase was to obtain a permanent and assured source of supply of manufactured strips of peg-wood for use on the pegging machines put out by the United Company, and of wooden shanks for shoes, both of which articles were supplied by the United Company to its customers. The United Company never had been engaged in the manufacture of peg-wood or wooden shanks, but had previously obtained its supply entirely from the Sturtevant Company, which was one of several manufacturers that were engaged in the peg-wood business. This business of the Sturtevant Company has been continued by the United Company at the same place with substantially the same number of men employed, and customers have been furnished with the Sturtevant products

just as before (R. Vol. 1, p. 73, lines 43–44; p. 74, lines 1–2; p. 80, lines 14–25; R. Vol. 2, p. 2046, Int. 1452; p. 2060, Int. 1521; Defs.' Ex. 231, R. Vol. 5, p. 466).

Adam H. Prenzel.

The transaction with Adam H. Prenzel, who is a shoe manufacturer at Halifax, Pa., took place November 22, 1910 (R. Vol. 2, pp. 2024, 2025, Ints. 1329, 1335; P.'s Ex. 143, R. Vol. 4, p. 1046). Mr. Howard testified:—

> "By that agreement the United Company acquired several machines which Prenzel had invented for use in producing a novel patented spring heel shoe, entirely different from any spring heel shoe ever before known. . . . The numerous Prenzel inventions related to turn shoes and for the first time made it possible to sew the sole to the upper all the way around and produce a satisfactory product. . . . Spring heel shoes are turn shoes."
>
> "It also acquired a machine for use in producing an infant's shoe, known as a 'cack.' . . . That machine was used, after the shoe had been finished, to press down the heel end of the sole so as to form a little heel, and at the same time it pressed in a heel seat piece to fill the space made by pressing down the heel end of the sole" (R. Vol. 1, p. 75, lines 43–45; p. 76, lines 1–18).

These were the only machines acquired from Prenzel. The patents acquired from Prenzel covered not only the machines for making these two novel shoes, but also covered the shoes themselves and the processes employed in manufacturing them (R. Vol. 1, p. 76, lines 19–20; R. Vol. 2, pp. 2023, 2024, Ints. 1328, 1330).

Mr. Howard further testified:—

> "The United Company had no machines for performing the special operations which were performed by the machines secured from Prenzel. It puts those machines out now and they are used by manufacturers" (R. Vol. 1, p. 76, lines 20–23).

One of the machines "which Prenzel was using in the manufacture of his improved turn shoe infringed two allowed claims of an application owned by the United Company," upon which the patent was granted in September, 1911, and still another improvement which Prenzel had made was incorporated in a machine covered by "several patents owned by the United Company" (Howard, R. Vol. 2, pp. 2327–2329; Defs.' Ex. 275, R. Vol. 5, pp. 772, 773).

By this acquisition the United Company extended its lines of machines and was enabled to supply its customers new machines for making new products. It was also enabled to use three Prenzel patents in one of its important machines (R. Vol. 2, p. 2329).

M. V. Bresnahan & Company.

This transaction took place December 19, 1910. As stated in Plaintiff's Exhibit 144 (R. Vol. 4, p. 1053), M. V. Bresnahan & Company was a copartnership and the property of the concern enumerated in Schedule A of that exhibit comprises personal property only.

They had a patented experimental lasting machine which had not yet reached a commercial stage. They also had "a heel-burnishing machine embodying a novel patented device for spraying the wax on the heel-burnishing tool." That machine infringed two patents controlled by the United Company (Howard, R. Vol. 1, p. 77, lines 1–6, 17–18, 22–23; p. 79, lines 36–38, 42–44; Defs.' Ex. 275, R. Vol. 5, p. 773).

The United Company did not have any machines which would accomplish the results secured by the inventions embodied in the Bresnahan machines.

Mr. Howard testified:—

> "The United Company was making lasting machines and heel burnishing machines, but they did not accomplish the same results as the Bresnahan machines, because they did not have the patented inventions that were in the Bresnahan machines. The Bresnahan lasting machine was only experimental.
>
> "The United Company is experimenting with machines constructed under both patents acquired from

Bresnahan, but has not yet put out any machines. There has not been time yet to make the machines commercial. The United Company has an experimental lasting machine running, embodying the inventions acquired from Bresnahan" (R. Vol. 1, p. 77, lines 18–29).

"The Bresnahan experimental lasting machine was not being marketed at the time by Bresnahan and he was only trying it out. It had not yet reached the commercial stage.

"The Bresnahan improvement on the heel burnishing machine related to the application of the wax. The United Company went to work to make that improvement commercial and give it to its customers. There was a patent application pending on this invention, and the United Company had nothing that would do what the mechanism embodying this invention would do" (R. Vol. 1, p. 79, lines 36–44).

Another important object of this transaction was the composing of a great amount of litigation. Mr. Howard testified:

"The transaction further involved the settlement of a large number of suits which had been pending for many years between the United Company and Bresnahan's concern in the earlier days before he sold out his interests to Plant" (R. Vol. 1, p. 77, lines 7–10).

"There had been a large number of suits, as many as eight or ten, between Bresnahan and the United Company which had been pending for a number of years, nearly all suits for infringements of patents. That litigation was all pending at the time of this acquisition" (R. Vol. 1, p. 79, lines 31–35).

In addition to the infringement suits (R. Vol. 2, p. 2023, Ints. 1325, 1326) there were pending four suits brought by Bresnahan or the Bresnahan Shoe Machinery Company against the United Company in the Superior Court for Suffolk County, Massachusetts (Defs.' Ex. 275, R. Vol. 5, p. 774).

"When Bresnahan sold his interest in the Bresnahan Shoe Machinery Company to Thomas G. Plant in January, 1906, the Bresnahan Company transferred to Bresnahan and Heys, who together owned all the stock of the Bresnahan Company, all interests under this litigation in the state courts between the United Company and the Bresnahan Company" (Howard, Defs.' Ex. 275, R. Vol. 5, pp. 773, 774).

By Section 6 of the agreement relating to this transaction the vendors released and discharged the United Company from all actions, causes of action, claims and demands, etc., "whether brought in their names or in the names of any of them, or in the name of the Bresnahan Shoe Machinery Company or in the name of M. V. Bresnahan & Co., or otherwise" (P.'s Ex. 144, R. Vol. 4, p. 1058).

The agreement for the purchase provided that all of the three partners should enter the employ of the United Company.

Charles P. Stanbon & Company.

This transaction took place April 22, 1911 (P.'s Ex. 145, R. Vol. 4, p. 1065). Charles P. Stanbon was manufacturing shoe machinery in Lynn, doing business under the name and style of Charles P. Stanbon & Company. Stanbon and Thomas G. Plant (Manufacturers' Machine Company) had made an agreement (P.'s Ex. 132, "Exhibit D," R. Vol. 4, p. 972). Plant had made it a condition of the sale of his patents to the United Company that the United Company should assume, and the United Company agreed to assume,—

> "all agreements, obligations and liabilities of said Plant and of said Manufacturers' Machine Company under said existing contracts between said Plant or said Manufacturers' Machine Company and Charles P. Stanbon. . . ." (P.'s Ex. 132, R. Vol. 4, pp. 932, 933, 935).

Mr. Winslow testified,—

> "We gave only the inventory value of the properties, and only because Mr. Stanbon was under option to Mr. Plant. Mr. Plant made it, as I remember it, a requisite of the arrangement that we should take Stanbon's property and then left it with Mr. Stanbon to agree whether he would turn in his property or not" (R. Vol. 1, p. 558, lines 34–39).

Mr. Howard testified,—

> "This Stanbon transaction was carrying out the contract which Plant had made with Stanbon and which the United Company had assumed" (R. Vol. 1, p. 79, lines 27–29).

Stanbon had three important patented machines. "The most valuable thing acquired by the United Company in this transaction was a channel cementing machine, constructed particularly for cementing the channels of the soles of McKay sewed shoes" and "not adapted for use on other kinds of shoes." This machine was patented (Howard, R. Vol. 1, p. 77, lines 38–41; p. 78, lines 36–37; R. Vol. 2, p. 2019, Int. 1304).

Stanbon also had "a very valuable folding machine" which was "of a radically new character." Patent applications were pending on this machine (Howard, R. Vol. 1, p. 78, lines 3–8; Defs.' Ex. 275, R. Vol. 5, p. 776).

Stanbon also had a perforating machine which "was really adapted for doing embossing work . . . ornamenting rather than perforating" (Howard, R. Vol. 1, p. 79, lines 6–8).

These Stanbon machines, which were all of General Department types, were all covered by patents or pending applications (R. Vol. 1, p. 79, lines 25–26; R. Vol. 2, p. 2022, Ints. 1318–1321).

The United Company had a channel cementer which was inferior to Stanbon's and unsatisfactory because the United Company could not use the patented improvements which were on Stanbon's machines, as will be explained later (R. Vol. 1, p. 78, lines 1–2, 38–45; p. 79, lines 1–2).

"The United Company had no folding machine of any description" (Howard, R. Vol. 1, p. 79, lines 15–16).

The United Company had the "Booth Perforating Machine" but "these two machines have distinct fields owing to radical differences in their organizations." The Booth machine "is far more accurate on curved work. . . . The Stanbon machine on the other hand is very much faster and is therefore much better adapted for substantially straight-edge work" and "has unlimited capacity as to spacing." In Defendants' Exhibit 100, a sample of work done on the Stanbon machine, the spacing is "more than double the maximum spacing permissible on the Booth perforator." Also as above explained the Stanbon machine was adapted for doing embossing work, while the United Company's machine was not (Howard, R. Vol. 1, p. 79, lines 6–10; R. Vol. 2, pp. 2020, 2021, Int. 1311).

By this transaction the United Company carried out the agreement with Plant as to his contract with Stanbon, quoted at the beginning of this discussion.

The United Company also extended its line by adding a folding machine, which enabled it for the first time to enter the folding machine field. It acquired a satisfactory channel cementing machine which it did not have before because it could not use Stanbon's patented improvements, and it acquired a perforating machine better adapted than its own for certain classes of work and capable of doing some work which its perforator could not do.

This acquisition also cleared up a serious patent complication.

> "Prior to the Stanbon acquisition, both the United Company and Stanbon had been developing an improved folding machine of a radically new character. Both machines incorporated substantially the same improvements."

and two interferences involving applications owned by the two parties had been declared.

> "The issues were so broad that the party that won the interference could undoubtedly prevent the other party from putting out any machine of this character" (Howard, Defs.' Ex. 275, R. Vol. 5, p. 776).

Also, Stanbon's channel cementer infringed a patent owned by the United Company while, on the other hand, the United Company could not use Stanbon's valuable improvements because—

> "The United Company had been in interference with Stanbon in the Patent Office and had lost before the Court of Appeals, the tribunal of last resort" (Howard, R. Vol. 1, p. 77, lines 43–45; Defs.' Ex. 275, R. Vol. 5, p. 776).

Several other instances of infringements and interferences are set forth in detail by Mr. Howard (Defs.' Ex. 275, R. Vol. 5, pp. 775, 777).

After the acquisition of the Stanbon business the United Company put out the Stanbon Channel Cementer "immediately" and "in large numbers," and it has put out the Stanbon Perforating Machine. Stanbon's folding machine was "only experimental, had not been put out, and was a long way from

a commercial machine when we took it." The United Company has "seldom worked more vigorously upon a machine than we have upon that one," and when Mr. Howard testified in January, 1914, he stated that the United Company "has put out in large numbers folding machines embodying the Stanbon inventions" (Howard, R. Vol. 1, p. 79, lines 4–5, 10–12, 16–18, 23–24; Defs.' Ex. 275, R. Vol. 5, p. 776).

APPENDIX II.

THE EVIDENCE RELATING TO ALLEGED UNFAIR, OPPRESSIVE OR MONOPOLISTIC ACTS OF THE DEFENDANTS, INCLUDING ALLEGED ARBITRARY ENFORCEMENT OF LEASE PROVISIONS.

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A. THE EVIDENCE RELATING TO THE CHARGES OF UNFAIR, OPPRESSIVE OR MONOPOLISTIC ACTS OF THE DEFENDANTS, INCLUDING ALLEGED ARBITRARY ENFORCEMENT OF LEASE PROVISIONS, SPECIFIED IN THE BILL OF PARTICULARS FILED BY THE UNITED STATES.

In Section VI of the petition (R. Vol. 1, p. 999) defendants are charged with having made various threats or committed various unfair and oppressive acts. No specific instances are set out in the petition, but a bill of particulars, setting forth the specific instances charged, was filed during the course of the trial (R. Vol. 1, p. 1075). The bill of particulars sets forth over fifty different alleged acts or threats, including a number of instances of alleged arbitrary enforcement of lease provisions which relate to the charges in Section V of the petition (R. Vol. 1, p. 997).

As to the majority of these instances, as will be shown, the United States introduced no evidence at all.

The evidence relating to these charges is set forth below. This summary will be followed by a discussion of the evidence relating to other alleged acts of similar character upon which the United States relies, but which were not specified in the bill of particulars (*infra*, pp. 791–804).

1. Peter Tessier & Company.

In the bill of particulars it is claimed that the United Company removed its leased machinery from the factory of Peter Tessier & Company of Haverhill, Mass., where a Duplessis turn sewing machine was being operated (R. Vol. 1, p. 1076(1)).

Peter Tessier, as a witness for the United States, said that he had been engaged in the shoe manufacturing business at Haverhill, that he used a Goodyear sewing machine for a time,

that he installed a Duplessis sewing machine, that Octave Paquette, the agent of the United Company in Haverhill, came to him and presented a letter signed by the United Company (R. Vol. 1, p. 281, lines 13–19). This letter read as follows (P.'s Ex. 158, R. Vol. 4, p. 1107):—

> "You are hereby notified that in the exercise of our rights in the premises we have elected to terminate all leases and licenses which have heretofore been granted to you covering machinery belonging to us, including herein specifically the following leases and licenses, viz:—
> Metallic Department lease and license, No. 803, dated April 6, 1901;
> Metallic Department lease and license, No. 803A, dated January 4, 1904;
> Goodyear Department lease and license, No. 5486, dated December 18, 1902;
> and to terminate all right and privilege to use any of the machines belonging to us which have heretofore been delivered into your possession.
>
> "The said leases and licenses and said rights and privileges are accordingly hereby terminated, revoked and annulled; and we hereby forbid you to use or to permit the use by any other person of said machines or any of them hereafter, or to further use any of the patented inventions embodied in said machines and which by said lease and licenses you are authorized to use.
>
> "And we do further hereby demand that you forthwith deliver to us at our factory in Boston, Massachusetts, in accordance with your undertaking and agreement, all of such machines, including therein specifically the machines designated by name and number as follows, viz:—

Grip Slugging Machine, ...	No. 777
Universal Slugging Machine, ...	2022
Knife Grinder, ...	5571
Goodyear Welt and Turn Shoe Machine, ...	417
Goodyear Turn Channelers	742–2125
Goodyear Moulding Machine, . . .	293"

Tessier testified that this comprised all the machines of the United Company in use in his factory at that time; that he had machines that took the place of them and could get from the Duplessis Company machines for performing similar work; that he could get all those machines from the Duplessis

Company that he had from the United Company for performing similar work (R. Vol. 1, p. 282, lines 20–30).

On cross-examination Tessier said that he had the Duplessis machines in his factory at the time the United machines were taken out (R. Vol. 1, p. 282, lines 32–33).

The United States agreed that these machines were taken out on a replevin writ brought by Mr. Brandeis' office (R. Vol. 1, p. 282, line 34).

Mr. Winslow, the president of the United Company, testified that he sent the notice set out above to Tessier because Tessier had abandoned the use of the company's welt and turn sewing machines and had put in their place Duplessis turn sewing machines. He sent the notice canceling his leases, but as a matter of fact it did not interfere with Tessier going on with his business in the slightest degree; Tessier simply was not using the United machines, and the United Company took them out (R. Vol. 1, p. 448, lines 11–18).

Elmer P. Howe testified: "Peter Tessier also put in some Duplessis machines and it was really violating our lease in the most flagrant way by using our machines to prepare or to finish the work that was done on the Duplessis machines. Furthermore, when his attention was called to the violation of the lease I think he gave up his Goodyear machines without the necessity of actually prosecuting a replevin suit against him"; he had already provided himself with others (R. Vol. 1, p. 668, lines 15–23).

The Court will observe that in the list of machines mentioned in the letter to Tessier, the Goodyear turn channelers and the Goodyear moulding machines were auxiliaries for which no royalty was paid, but which were limited to use with the principal machines, the welt and turn machines; that what Tessier had done was to use the Duplessis machine for the work of the Goodyear welt and turn machines and then finish the work on the Goodyear auxiliaries without paying for their use; and that this was a violation of the condition of Tessier's lease. There was no evidence whatever of any threat made by the United Company or any agent.

2. Ernest Bottomley & Company.

In the bill of particulars it is claimed that the United Company removed its leased machines from the factory of Ernest Bottomley & Company of Haverhill, Mass., where a Duplessis welt and turn machine was being operated (R. Vol. 1, p. 1076 (2)).

Ernest Bottomley testified: That he was a manufacturer of McKay shoes; that he was engaged in 1903 in the manufacture of turn shoes; that he had some machines from the United Company and some from the Duplessis Company. From the Duplessis Company he had the turn machine, the loose nailer, slugger, tacker and stitching machines. From the United Company, the only one he named was a sole rounder. He had had a Goodyear stitching machine. When he took the Duplessis machines he stopped using Goodyear machines. Colonel King, of the United Company, came to him and had a conversation with him the substance of which was that he would have to use either the United Company machines or the Duplessis machines, with the result that he continued to use the Duplessis machines, and the United Company took its machines away (R. Vol. 1, p. 284, lines 24–36).

On cross-examination he said that he had first installed Goodyear machines for doing turn work; he had taken one or more turn sewing machines and some of the auxiliaries that went with them; and that the royalty paid for the use of the turn sewing machines and the auxiliaries was kept track of by the indicator on the sewing machine, which was the principal machine. After he had had these for a while he took turn sewing machines from the Duplessis Company, and stopped using the turn sewing machines obtained from the Goodyear Company. He then notified the United Company that they —Bottomley & Company—would not pay any more royalties for shoes sewn on the Goodyear machines (R. Vol. 1, p. 285, lines 27–35; p. 286, lines 18–33).

Bottomley further testified: "I understood I should choose between the Goodyear and Duplessis machines, that I was free to choose whichever of those I liked. I considered it and made a free choice. As a business probability if I was run-

ning shoes through the Duplessis machines I wouldn't use the Goodyear machines" (R. Vol. 1, p. 287, lines 3–8).

Mr. Winslow testified: "Bottomley had served notice on us that he would not use our machines and would not pay any further royalty. He was using machines which he had also declined to sign the leases on. They had been leased previously to other parties" (R. Vol. 1, p. 448, lines 20–24).

There was no other evidence as to what machines were removed from the Bottomley factory.

Neither the Tessier nor the Bottomley case shows misrepresentation or threat, but simply the justifiable exercise of a plain right, which was resorted to, not to coerce a manufacturer but to protect the company's revenue.

3. The Cases of Mark J. Worthley, Thomas G. Plant Company, A. Garside & Sons, Joseph Caunt, A. E. Little Company.

The United States charged that the defendants or their agents threatened to remove under the terms of their leases their machines which were being operated by the above-named parties because said individuals and firms were operating in their factories machines obtained from the Standard Shoe Machinery Company (R. Vol. 1, p. 1076 (1)).

There was no evidence whatever in support of this allegation. Darrah was the only witness who made any reference to these matters and his testimony did not support the allegation (R. Vol. 1, pp. 334, 335). Since, however, the United States attaches some importance to Darrah's testimony in regard to the Standard Company's Woodward machines in the Worthley and Plant factories (R. Vol. 1, p. 334, line 44-p. 335, line 9), attention should be called to Darrah's admission on cross-examination that those machines infringed the United Company's patents, that infringement suits had been brought, and that the decisions in those suits were in favor of the United Company, holding the Woodward machine to be an infringement of the United Company's patents (R. Vol. 1, p. 337, line 38–p. 338, line 2). That situation affords ample explanation of any apprehension that Worthley or Plant may have expressed to Darrah.

Darrah produced a list of 60 shoe manufacturers who used the Standard Company's machines, which is Plaintiff's Exhibit 160 (R. Vol. 1, p. 338, lines 10–14; Vol. 4, p. 1116).

4. C. B. Lancaster Shoe Company.

The United States claimed: "In 1902 or shortly prior thereto C. B. Lancaster Shoe Company, of Keene, New Hampshire, installed on trial in its factory a tackless lasting machine manufactured by the Tackless Shoe Machinery Company, whereupon the defendant, the United Shoe Machinery Company, gave notice that if such machine was not returned forthwith, it would remove all of its machinery with which the factory of said Lancaster Shoe Company was almost entirely equipped, and as a result thereof said tackless lasting machine was returned and not purchased or leased" (R. Vol. 1, p. 1076 (2)).

There was no evidence whatever in support of this allegation.

5. Nutt & Pratt.

The United States charged that the United Company threatened to remove its leased machinery from the factory of Nutt & Pratt of Natick, Mass., because said Nutt & Pratt had installed a tackless lasting machine obtained from the Tackless Shoe Machinery Company (R. Vol. 1, p. 1076(3)).

No evidence whatever was offered in support of this allegation.

6. T. D. Barry Shoe Company.

The United States charged that "The defendants threatened to take back their machines under the terms of their leases and thereby force manufacturers to remove competing machines which had already been installed in the following instances (R. Vol. 1, p. 1076 (c)):—

"They so threatened T. D. Barry Shoe Company at Brockton, Massachusetts, in or about the spring or summer of 1900, and brought a proceeding to remove from said company's

factory welting, stitching, heeling, lasting, slugging, insole channeling, and other machines, and thus compelled said company to remove a system of machines of like character, except slugging and channeling machines which Barry & Company had obtained from the Standard Shoe Machinery Company" (R. Vol. 1, p. 1077 (1)).

In support of this charge the United States called William A. Hogan, who testified he was part owner and treasurer of the T. D. Barry Company and had been with them for twenty-five years; that the company thirteen or fourteen years ago had machines from the Standard Shoe Machinery Company. He was not sure whether this was before or after the United Company was formed, but at the time he was using United Company machines and Standard Shoe Machinery Company machines. They had from the Standard Company a laster, welter, stitcher, welt beater, and sole-layer, and machines performing similar work from the United Company; that a deputy sheriff served papers on him that they were going to take out some of the United Company's machines; that he stopped him by threatening to shoot him; that he got an injunction against the company; that the injunction was dissolved, and he then agreed to stop using the Standard machines, and the Standard machines were removed from the factory. Before the sheriff came he had no conversation with any representative of the United Company that he could remember. He could not say whether the United machines were actually removed or not (R. Vol. 1, p. 222).

On cross-examination he said that the T. D. Barry Company had leased some machines from the old Goodyear Company before the United Company was formed, including welting machines, stitching machines, and some auxiliary machines that he used with them. They had then introduced into the factory some Standard welting, stitching, and lasting machines, and did their welting and stitching on the Standard machines and used the Goodyear machines for the auxiliary work for those machines, so that they were getting Goodyear auxiliary machines for nothing and using them on shoes that were welted and stitched on the Standard machines. In that situation the United Company brought a replevin writ to get back its own property and that was the time that the

officer came. When Mr. Barry, who had been in Europe, came home, the whole affair was straightened out (R. Vol. 1, p. 223, lines 12–42).

Elmer P. Howe testified that T. D. Barry Company were using Goodyear auxiliary machines with regard to which the United Company had no opportunity to determine the extent of use, and therefore had no means of collecting royalty. That is, they were using Goodyear auxiliary machines to prepare and finish the work which was sewed and stitched on Standard welt and turn sewing machines and Standard stitching machines (R. Vol. 1, p. 667, line 44 *et seq.*).

This was another instance where because of the fact that the use of auxiliaries in the Goodyear department was paid for only through and by the royalty measured or recorded by the principal machines, the shoe manufacturer was unfairly treating the United Company by using its auxiliaries in connection with some other persons' principal machines, and therefore getting the use of the auxiliary machines for nothing.

7. Curtis & Jones.

The United States charged that the defendants likewise threatened Curtis & Jones, and caused them to remove from their factory a full or nearly full line of machines which they had leased from the Duplessis Shoe Machinery Company (R. Vol. 1, p. 1077 (2)).

In support of this allegation the United States called Thomas H. Shinn, who testified that he was superintendent of the Curtis & Jones factory; that that firm formerly had two factories, one at Hamburg and one at Reading (Pa.). In the Hamburg factory they used the Lincoln sewing machine made by the Campbell Company, but did not use at that factory any machinery of the United Company except loose nailers and possibly eyeletting machines; but later they combined the Hamburg and Reading factories in one building at Reading and moved the Hamburg plant to the new Reading plant. At the Reading plant before the removal they had had a full line of Goodyear machinery from the United Company for

making turned shoes; that about the time of removal they bought three Duplessis sewing machines and installed them together with the Lincoln machines in the Reading factory, which was built on a hollow square. When at the Hamburg plant they had had metallic machines of the United Company no objection was made by the United Company to the use of the Lincoln sewing machines, beyond calling attention to the merits of their own system and trying to persuade the company to dispose of the Lincoln machines and put in Goodyears.

After the removal to Reading, Mr. Clark, the Philadelphia district manager of the United Company, called upon the witness and stated that the company had broken its leases by starting Duplessis machines in connection with Goodyear machines. Colonel King called later but said nothing about the continued use of the United machines, if Curtis & Jones continued to use the independent machinery, but the local agent, Mr. Clark, said that the United Company would remove all their leased machines unless Curtis & Jones discontinued the use of the independent machines. An arrangement was then made that Curtis & Jones should turn over to the United Company the independent machines, for which they would pay the cost, and replace them with Goodyear machines (R. Vol. 1, pp. 363–366).

The witness said he could probably have duplicated any of these machines which they had from the United Company, except the loose nailing machines. This change to machinery of the United Company apparently increased the cost of doing work one-half a cent a pair (R. Vol. 1, p. 366, lines 13–34).

On cross-examination he testified that when the change was made from Hamburg to Reading they built an entirely new building, and abandoned the old Reading factory and moved both of the old factories to the new one, with the idea of centralizing their business in one factory, with one office and running it as one factory. The factory happened to be built on four sides of a square to get light, but there was no separation of one side from any other side; it was open right around the square.

At the Hamburg factory, where they were using the United Company's loose nailer, they were using any sewing machines

that they wanted to, without any interference of the United Company, on the same shoes. When they moved into the new factory they put all their sewing machines and stitching machines on one floor in the making-room, so that the Goodyear and Duplessis machines were practically side by side. The Lincoln machines were on the same floor, on the other side of the building, but still in the same making-room (R. Vol. 1, p. 367, lines 13–41).

Witness further testified, "Up to that time, I think, *whatever turn machinery we had we had from the old Goodyear Company and whatever agreements we had were agreements made with that company*" (italic ours) (R. Vol. 1, p. 368, lines 3–6).

The witness was then shown a lease dated June 3, 1892, from the Goodyear Shoe Machinery Company, and another lease dated 1897, also from the Goodyear Company, *covering the Goodyear turn machines both principal and auxiliary which Curtis & Jones had.*

To these leases was attached a rider reading as follows:—

> "The lessor hereby agrees that the rent and royalty to be paid by the lessee for children's turned shoes made after January 1, 1897, shall be one cent per pair instead of two cents per pair as provided in the schedule of section third of said lease, on condition, however, that the lessee while he retains possession of any machine leased to him by the lessor shall not without the consent in writing of the lessor use or allow to be used in his factory any sewing machine for uniting the soles of turned shoes to their uppers which is not leased to him by the lessor."

This was executed October 7, 1897, by the Goodyear Company and Curtis & Jones Company (R. Vol. 1, p. 368); the leases to which this rider was attached were Defendants' Exhibits 96 and 97 (R. Vol. 5, pp. 125, 131).

The witness said that the introduction of the Duplessis machines was in violation of this agreement, and that he could suggest no reason why they should not live up to their agreement (R. Vol. 1, p. 369, lines 16–24).

Prior to 1902 Curtis & Jones had held their loose nailer on terms by which they could use it with machinery of anybody else they wanted to. In 1901 they learned that the United

Company was offering its metallic machines on a different form of lease which had been agreed upon between it and the Shoe Manufacturers' Association. Curtis & Jones wanted to change over to that new form of lease, and on January 17, 1902, Curtis & Jones wrote asking to have their leases changed over to that new form (R. Vol. 1, p. 369, line 45 *et seq.*).

This change was made of their own volition; they had considered the advantages of the two situations and of their own accord wrote asking to have their leases changed (R. Vol. 1, p. 370, lines 17–45).

With reference to the change from the Lincoln and the Duplessis machines to the Goodyear, he said they had given attention to the arguments presented by the Goodyear people upon the advantages of their machinery; that they knew the Goodyear machines were doing good work; that they got no service in taking care of the Lincoln machines from anybody—they had to take care of them themselves, and had to send from Reading, Pa., to Haverhill, Mass., for parts, while the United Company had its depot in Philadelphia, fifty-eight miles from Reading, reached easily by telephone or telegraph; that this was pretty convenient and was a consideration with them; that frequently the United Company's men came down and looked at the machines and instructed operators and that was a great convenience; that the Duplessis Company didn't have any agents nearer than Boston, and to get parts they would have to send to Canada; that they made comparisons between the quality of the work produced on the Goodyear machines and on the other machines, and knew that the Goodyear machines were doing better work, and, in his opinion, the arrangement as to care, supplying of parts and promptness of service was very much on the side of the Goodyear (R. Vol. 1, p. 371, line 41 *et seq.*).

In his testimony on direct with reference to the increased cost of making shoes, he mentioned that the difference of one-half a cent was the difference in the royalty, but that was without giving consideration to the economies resulting from the use of the Goodyear machines, which amounted to considerable. In his opinion, the United Company machines would be the cheapest; considering the service, the trouble and the worry he would have with the other machines the United Com-

pany machines would be the cheapest (R. Vol. 1, p. 373, line 20–p. 374, line 17).

Although Shinn testified, "I don't think Mr. Curtis had anything to do with it" (R. Vol. 1, p. 373, lines 4–5), the United States called Frederick W. Curtis, of the Curtis & Jones Company, to testify regarding this matter. His testimony was substantially to the same effect as Shinn's. Like Shinn he testified on direct that discontinuing the use of the Duplessis and Lincoln machines increased the cost of making their shoes one-half a cent on each pair (R. Vol. 1, p. 381, lines 8–11), but on cross-examination he admitted that he meant only that the change added the royalty of half a cent a pair, but that he did not take into consideration resulting benefits and economies (R. Vol. 1, p. 382, lines 4–7). He explained that they did not get any service with the Duplessis machines and after pointing out the importance of prompt and effective service he concluded: "Taking all things on both sides, I think I agree with Mr. Shinn that the operation of the Goodyear machines was on the whole more economical than the operation of the Duplessis, and on the whole the Goodyear machines did better work than the Duplessis machines" (R. Vol. 1, p. 382, line 15–p. 383, line 5).

This does not support the charge made by the United States that the company threatened Curtis & Jones and caused them to remove the Duplessis machines by any unfair method. Curtis & Jones had obtained and were enjoying a special concession from the old Goodyear Company and were asked to live up to their agreement.

8. Hilliard & Tabor.

The United States claimed that Hilliard & Tabor, who had United Company machines, installed a turn sewing machine of the Haverhill Shoe Machinery Company, and that defendant Winslow, acting for the United Company, pointed out that this machine was being operated in violation of the United Company's leases and threatened to change the terms of said leases and to make them more onerous if such Haverhill machines were purchased and installed (R. Vol. 1, p. 1077 (d)).

In support of this claim the United States called Frank R. Hilliard, who testified that he manufactured women's welts, turns, and McKays, having an output of four thousand pairs a day. In 1899 he was using in his factory machines of the Goodyear Shoe Machinery Company and the National nailer. About a year and a half prior to the giving of his testimony (June, 1913), he attempted to install a turn sewing machine of the Haverhill Shoe Machinery Company. After he had been running it about four or five months he was on one occasion at the office of the United Company and Mr. Winslow stated that they were using that machine contrary to their lease and that they would either have to change the lease and the contract with the United Company or stop using the Haverhill machine. The Haverhill machine did satisfactory work. They had it on trial but had made no arrangement with the Haverhill Company at that time. It had been offered on royalty or on purchase. Mr. Winslow's objection partially caused them to return the Haverhill machine. The other reasons were that the machine was in on trial and they had not come to any absolute conclusion in regard to the matter (R. Vol. 1, p. 282, line 39 *et seq.*).

On cross-examination he said that he had had the Haverhill machine for making turn shoes four to six months before he talked with Winslow, without any protest or objection. He had occasion to go to the United Company's office and happened to meet Mr. Winslow. The witness had a lease of Goodyear machines on which he had paid no initial premium. He got the United Company turn machine and paid for it according to the extent to which he used it. He had auxiliary machines with it and was using the auxiliary machines with the Haverhill machine. The effect of what he was doing was this: He took the Haverhill machine on trial and used the Goodyear auxiliaries with it, for which use he did not pay a copper to the United Company. The lease provided that he should use the Goodyear auxiliaries only with the Goodyear principal machine. Winslow called his attention to this and the witness said it was true. Winslow said if he wanted to use the Haverhill machine he could change his lease and take another form, and he offered to give the witness that form of lease. The witness took the matter under consideration and

decided he would rather keep the form of lease he had than change over his lease and use the Haverhill machine. There was no threat or coercion. Everything was perfectly courteous and businesslike, and it was left for the witness to decide which he preferred. The election was his own choice and was satisfactory to him (R. Vol. 1, p. 283, line 28–p. 284, line 5).

The witness further testified: "The change which was to be made, provided we retained the Haverhill machine, was that we were to pay for the machines which we had. He did not say anything about paying an installation charge for the machine. . . . He did not fix the price for the machines; just said that he would have to change the leases" (R. Vol. 1, p. 284, lines 8–11, 18, 19).

Louis H. Harriman, treasurer of the Haverhill Shoe Machinery Company, testified: "Our machines were operated for a time and then removed from Hilliard & Tabor's factory, and were removed for the reason given by Mr. Hilliard" (R. Vol. 1, p. 317, line 45; p. 318, lines 1, 23–25). On cross-examination he said that Hilliard & Tabor "took our machines on trial for thirty days" (R. Vol. 1, p. 324, line 13).

Mr. Donham testified as to the number and variety of United Company's machines which Hilliard & Tabor were using at that time, including many machines on which the United Company did not receive proper compensation, if any, while the Haverhill turn sewing machine was being used instead of the United Company's turn sewing machine (R. Vol. 1, p. 829, lines 17–44; p. 830, lines 1–11).

Mr. Winslow testified: "Hilliard & Tabor, of Haverhill, were using the Fox turn machine and the Pettengill heeler [Haverhill Company machines] and were offered the right to keep any of our machines on the initial-payment plan" (R. Vol. 1, p. 450, lines 38–41).

9. Harsh-Edmonds Shoe Company.

The United States charged that in 1909 the Harsh-Edmonds Shoe Company desired to lease clicking machines, but, on account of the burdensome conditions of the leases of the United Company, made an effort to obtain them from other

parties. Shortly thereafter Mr. Harsh was sent for by the general manager of the United Company and warned and threatened by him with reference to making further effort to procure such machines elsewhere, and was caused thereby to take clicking machines from the United Company (R. Vol. 1, p. 1077 (e)).

In support of this charge the United States called George R. Harsh, who testified that he used clicking machines obtained from the United Company; that he bought one machine from the Richardson Shoe Machinery Company and had tried to have machines made in Milwaukee, but without success; that he had a conversation with Mr. Wilson, assistant general manager of the United Company, in 1908 or 1909; that subsequently he was in Boston. Wilson left word that he would like to see him. The witness called on him and Wilson said it would be better for him if he ceased his activity against the United Company and took things as they were. "He called my attention to the fact that there was a condition of a similar nature to the feature of the clicking machine lease I was objecting to in another lease of another machine, the metallic department lease as I remember it." The witness made no further attempts to get clicking machines elsewhere than of the United Company. He was a stockholder in the Boylston Shoe Machinery Company, to supply his own business with machinery (R. Vol. 1, p. 196, lines 4–34).

On cross-examination he said that he went into business in 1906; that he applied to the United Company for machines and took bottoming room machinery on the non-initial premium lease; machinery for other rooms he obtained elsewhere. He was not clear whether he had obtained the Richardson machine before or after he had talked with Wilson. He went to Wilson's office. Wilson's greeting was courteous. He was a man of exceedingly kindly and courteous personality. Something was said with reference to a clicking machine, and the conversation turned to the fact that the witness was looking for a clicking machine. Wilson told him the United Company manufactured one. Something was said which brought the conversation around to discussing the kind of leases which the witness had, and this presented the situation of the witness being a customer of the company. The witness said something

to the effect that he objected to taking the company's clicking machine lease, and Wilson pointed out that in the form of lease the witness had there was the same or a similar provision. The witness had not appreciated this fact before. Wilson presented this by way of argument to meet the witness' objection, and did it perfectly fairly and quietly. When he had done that he urged the witness to take the United Company's clicking machine. The United Company's clicking machine was the only commercial machine in the market. The witness was a general customer of the United Company and it was giving service with its machines. No other company that he knew of was giving service with reference to clicking machines. Mr. Wilson's advice to the witness seemed to be sound and the witness adopted it. He knew of no reason why as a practical business matter it was not sound. He said it certainly has proved to be sound.

The witness further testified: "We used the Richardson machine only a short time. It was not commercially practicable and that was why we gave it up" (R. Vol. 1, pp. 196–199).

This was all the evidence offered in support of this complaint.

10. Witherell & Dobbins.

The United States claimed that Witherell & Dobbins, manufacturers of turn shoes, contemplated the manufacture of welt shoes, and in the spring of 1911 were threatened by the United Company or its agents that if they continued to operate machines of competitors in making turn shoes the United Company would exact from Witherell & Dobbins installation charges on machines used in the manufacture of welt shoes which were exorbitant in comparison with those made to manufacturers not operating competing machines (R. Vol. 1, p. 1077 (f)).

There was no evidence to support this charge. On the contrary, the list of present users of machines of the Haverhill Company, which was introduced by Mr. Harriman, treasurer of that company, shows that when he testified in June, 1913, Witherell & Dobbins were still using Haverhill machines in-

stalled in 1910 and 1912 (R. Vol. 1, p. 325, line 44 *et seq.*; Vol. 4, pp. 1118, 1124).

11. George A. Learned.

The United States claimed that George A. Learned was engaged in the manufacture of turn shoes and contemplated entering upon the manufacture of welt shoes. "A threat of like character" was made by the defendant company or its agents (R. Vol. 1, p. 1078 (g)).

In support of this claim the United States called George A. Learned, who testified that he had been using United Company's turn sewing machines. In June, 1911, he installed a turn sewing machine of the Haverhill Shoe Machinery Company. He testified that in August, 1911, Mr. Winslow informed him that he was violating a clause of his lease which provided that he should pay three-quarters of a cent a pair royalty on every pair of shoes stitched, whether by the United Company's machine or the Haverhill machine, and that the United Company intended to collect the royalty and 6 per cent. interest; that Mr. Winslow said that he would either have to pay that or they would drive him out of business, and that the least they would do would be to take out all the United Company's machines (R. Vol. 1, pp. 313–314).

Learned was contradicted in this testimony by Mr. Winslow who specifically denied all the statements alleged to have been made to Learned by him with reference to driving Learned out of business or taking out the machines of the United Company (R. Vol. 1, pp. 515–517).

Edwin P. Brown, who was present at the time the conversation occurred, also contradicted Learned (R. Vol. 1, pp. 715–716).

Henry B. Endicott, who heard that Learned was making statements with reference to this alleged conversation, brought him to Mr. Winslow's office and testified that when Learned was there he admitted that he had been mistaken (R. Vol. 1, pp. 582–583).

Edwin P. Brown was also present at the second conversation and corroborated Mr. Endicott, stating that Mr. Learned

in the course of conversation admitted that he was mistaken, and that, as he remembered it, Learned then agreed to write a letter of apology to Mr. Winslow (R. Vol. 1, p. 717, lines 29–45).

Subsequent to the conversation, on August 28, 1911, Mr. Brown in accordance with Mr. Learned's request, submitted a list of machines with the terms upon which the United Company would furnish them for Learned's use in connection with the Haverhill machines (R. Vol. 1, p. 316, lines 13–18, and Defs.' Ex. 86, R. Vol. 5, p. 118). Several letters passed between Mr. Learned and Mr. Winslow on the subject (see Defs.' Exs. 77 to 89, inc., 254, R. Vol. 5, p. 110 *et seq.*, 699).

Mr. Winslow said: The United Company has never at any time taken any machines out of Learned's factory or done anything to interfere with his business or attempted to put him out of business. He has substantially all the machines of the United Company that he had when the correspondence and conversations took place, and is using the United Company's auxiliaries and some of its general department machines to make shoes in connection with the use of the Haverhill Company's machines without paying any royalty on the machines of the United Company (R. Vol. 1, p. 515, lines 42–44; p. 516, lines 24–32).

The fact was that Learned had the Goodyear department turn sewing machine and some auxiliary machines and was using the Goodyear auxiliaries in connection with the Haverhill Company turn sewing machine, so that he was using the United Company's auxiliaries and paying no royalty for their use (R. Vol. 1, p. 515, lines 17–18, 24–29). He was offered the independent form of lease for the United Company's machines if he desired to use the Haverhill machines (R. Vol. 1, p. 515, lines 33–35, 38–41).

12. Harry H. Wentworth.

The United States claimed that in June, 1911, Harry H. Wentworth determined to install heeling machines manufactured by the Haverhill Shoe Machinery Company, but was induced not to install said machines by representations upon

the part of the United Company or its agents that if he should do so the United Company would increase its installation charges upon future orders for machines (R. Vol. 1, p. 1078 (h)).

There was no evidence in support of this charge.

13. Alleged Threat to Enter Shoe Business.

The United States claimed that in certain conferences in St. Louis, in February, 1911, and in Boston, in May, 1911, between Mr. Winslow and Johnson, Florsheim, Rand and Selz, and others, Winslow threatened that the United Company would enter upon the shoe manufacturing business, this threat being made in connection with efforts being made by the manufacturers to secure a modification of the leases of the United Company (R. Vol. 1, p. 1078 (i)).

There was no evidence to support this allegation and it was denied by Florsheim, a witness for the United States (R. Vol. 1, p. 162, lines 9–14).

14. Alleged Threats by William Barbour.

Under the general head of "Threats to use financial resources and power of combination to ruin competitors," the United States claimed that William Barbour in conversation with James N. Darrah, an officer of the Standard Shoe Machinery Company, made certain threats as follows: "'Well, you are making a big mistake because we always try to be nice to people—we offer to buy them at first and then we crush. You can not do anything, because we control the banking influences both in New York and Boston, and you would not be able to get any money. You won't put in your machines because we have the shoe manufacturers in a state of terror. I own a million dollars of that stock, and we can't afford to have any competition. My investment is liable to be jeopardized and we can't afford to have any competition against the United Shoe Machinery Company. We have the field and we are going to retain that field.'" It was claimed that Barbour also said on another occasion to Darrah, when Darrah

suggested that he was going back into the shoe machinery business, "'You would make a big mistake because you would never get in. We will never let you in or anyone else. You will never have a chance to get in. You will never be able to place your machinery with shoe manufacturers. You can't find any customers'" (R. Vol. 1, p. 1078 (a)).

The United States called James N. Darrah in support of this claim, who testified that he met Mr. Barbour at the office of John R. Dos Passos in New York in April, 1900, who introduced him to Mr. Barbour. Barbour said he had a large investment in the stock of the United Company and did not propose to have it jeopardized (R. Vol. 1, p. 333, lines 9–12, 22, 33–35). Barbour said: "'I think you are making a big mistake if you don't sell. . . . We always try to buy out competitors and if we can't buy them out we force them out'" (R. Vol. 1, p. 334, lines 4–8). Barbour also said: "'Where are you going to get your money? You can't get any money to compete against the United Shoe Machinery Company. You can't get any banks to back you up. Our influence both in Boston and in New York is so great that you can't do anything'" (R. Vol. 1, p. 334, lines 20–24). Darrah said that he subsequently met Barbour in 1904 or 1905 and suggested that he thought of going into the shoe machinery business, and Barbour laughed and said it would be a big mistake (R. Vol. 1, p. 335, lines 35–39).

On cross-examination Darrah testified that he was in the real estate business; that he hadn't any office; that he was at the time of his testimony going through bankruptcy; that before he went into the real estate business he was in a stock-broking business; he was not a member of the stock exchange but dealt in unlisted securities; he did that for about three years; for two years he was out of business (R. Vol. 1, pp. 335–337).

Barbour testified with reference to Darrah: "I met the man, but I never made such a statement at all. There was no threat or intimidation at all by language used by me in my conversation with him. There was no suggestion that I regarded him as a competitor who would jeopardize our interests, or that if he did not sell out we would force him out" (R. Vol. 1, p. 860, lines 38–40).

The United States did not call Dos Passos as a witness at all. Upon this charge the District Court found:—

> "The only 'threats' which Barbour is charged with making are testified to by James N. Darrah, vice president in 1900 of the Standard Shoe Machinery Company. According to Darrah, Barbour, at a talk in New York in April of 1900, tried to get him to sell out stock in his company by telling him, in substance, that if competitors of the United Company could not be bought out they would be forced out. Barbour has denied that any such conversation took place. Darrah's evidence was not corroborated; and there is no proof that his concern, though it went out of business in 1901, was ever forced out or crushed by the defendants" (Dodge, J., R. Vol. 1, p. 1148).

15. Richard H. Long.

The United States charged that in 1908 Richard H. Long was engaged in the shoe machinery business in competition with the United Company; that he endeavored to arrange a line of credit with the Chapin National Bank, of Springfield, Mass., but was prevented from doing so by the United Company; that he was offered a credit with the New England National Bank but was refused through the same influence (R. Vol. 1, p. 1079 (b)).

There was no evidence whatever to support this charge. Long's testimony will be found R. Vol. 1, pp. 244–246.

16. J. S. Holt.

In the bill of particulars it is claimed that about 1908 one Bayley, an officer of high rank in the United Shoe Machinery Company, stated to J. S. Holt for the purpose of intimidating said Holt that R. H. Long would be ruined and driven from business by the United Company unless he ceased trying to compete, and that the same fate would befall any other who tried to enter the shoe machinery industry; that the said company would make every effort to ruin Long by destroying his credit and possessed such strong banking connections that it

would be able to prevent Long from obtaining capital to continue operations (R. Vol. 1, p. 1079 (c)).

There was no evidence whatever offered to support this charge. Holt's testimony will be found R. Vol. 1, pp. 280, 281.

17. Harry E. Cilley.

The United States claimed that Harry E. Cilley was told by E. P. Hurd of the United Company in 1901, that he could not do any business except by sufferance of the United Company; that the company did not care for the common law or the Sherman Law, and various other talk of a similar character (R. Vol. 1, p. 1079 (d)).

In support of this the United States called Harry E. Cilley, who testified that he had invented a leveling machine and that he called on Mr. Hurd, who asked him if he had a proposition to make; that Hurd said, "'Cilley, you are thick. If you were offered fifteen or twenty thousand dollars I think under the circumstances you ought to be very well satisfied.'" Cilley replied that this was outrageous. He testified that Hurd also said that the United Company was not an eleemosynary institution and that Cilley could not do business except on its sufferance (R. Vol. 1, p. 278, lines 18–19, 44; p. 279, line 30–p. 280).

On cross-examination Cilley said that he had been in litigation with the United Company since 1903 and had been preparing himself to testify in that case (R. Vol. 1, p. 280, lines 14–24). It was evident from the character of Cilley's examination that his testimony was not reliable.

On this charge the District Court found as follows (Dodge, J., R. Vol. 1, p. 1149):—

> "Mr. Hurd is charged, in the testimony of Harry E. Cilley, with having said to him in 1901, during a conference with respect to a possible sale of his business to the United Company: 'You can't do any business except on our sufferance, and you can't get a new dollar for an old one.' It appears that Cilley's business at the time consisted in building a sole-leveling machine; that he was not satisfied with an amount suggested by Mr. Hurd as a proper price for it, told Mr. Hurd he considered it 'out-

rageous,' and never renewed the negotiations. Neither the business of this witness nor the remarks testified to, if made, can fairly be regarded as of any serious importance, in view of all the circumstances shown.

18. Tower Brothers.

The United States charged that Tower Brothers, engaged in business in making shoe machinery, were greatly injured by their employees being taken away by the United Company and that the United Company threatened to drive Tower Brothers out of business (R. Vol. 1, p. 1080 (e)) .

There was no evidence whatever to support this charge, although John M. Tower of Tower Brothers appeared as a witness for the United States (R. Vol. 1, pp. 907–908).

19. Charles H. Morse.

The United States charged that Charles H. Morse in 1903 was endeavoring to market the Frechette pegging machine and a slugging machine which competed with United Company machines for doing similar work; that Morse called on Mr. Winslow and Mr. Winslow said to him, "You don't suppose we are going to let you continue placing that machine upon the market" (R. Vol. 1, p. 1080 (f)).

In support of this charge the United States called Charles H. Morse, who testified that he called upon Mr. Winslow somewhere about 1901 or 1902, he thought—he could not tell exactly—and talked with Mr. Winslow about a purchase of his business; that Mr. Winslow said, "You don't suppose we are going to allow you to put them on the market," meaning machines which Morse was manufacturing (R. Vol. 1, p. 338, lines 26–35).

It further appears from the testimony of Morse that he continued in business until 1906 when he sold out to Samuel H. Nichols of Brockton, Mass. (R. Vol. 1, p. 338, lines 38–39).

Winslow testified that he had no recollection whatever of making any such statement to Mr. Morse; that he had met Mr. Morse in the corridor of the Court House when Morse

testified, and went up and shook hands with him and asked him how many years it had been since they had met, and Morse placed the date back of 1899, and didn't remember having met Winslow since the formation of the United Company, so if he had ever had any conversation with Morse it must have been prior to the organization of the United Company (R. Vol. 1, p. 518, line 38 *et seq.*).

In respect to this charge the District Court found as follows:

> "Mr. Winslow is charged, in testimony by Charles H. Morse, with having said to him at some time in 1901 or 1902: 'You don't suppose we are going to allow you to put them on the market'—referring to certain pegging machines then being made by the Fifield Company, with which Morse was connected. Morse, on his own testimony, was then negotiating with Winslow about a sale of the Fifield Company business to the United Company, but they failed to agree as to price. Its business was sold in 1906, but not to the United Company. There is nothing to prove that the United Company ever interfered with the marketing of this machine" (Dodge, J., R. Vol. 1, p. 1148, lines 23–32).

20. George H. Clark.

The United States claimed that George H. Clark had invented a method of molding or lasting a shoe and stitching the same on the last, and that he endeavored to introduce this method into various shoe factories; that he visited the United Company and talked with Edward P. Hurd regarding the purchase, lease or rental of a Goodyear rapid lockstitch machine for use in a shoe factory; that Hurd told him: "'Our policy is to stick the knife in deep to the hilt in the case of anyone interfering with our system, and surely your method does interfere. We will never let you have a machine or have one used in any factory where you or your method may be found, for you to experiment with'" (R. Vol. 1, p. 1081 (g)).

In support of this charge the United States called George H. Clark, who testified that he was an inventor and had invented a method for molding or lasting shoes, and that he had put a machine for this purpose in the Richardson factory in Reading; that he called on Mr. Hurd to see if he could get a lock-

stitch machine to put in the Richardson factory; that Hurd replied: "You mean well, but it is against our policy to put a machine in whereby it is going to interfere with our welt system, and we have to put the knife and protect our interests. . . . I won't put any one of our rapid stitching machines into any factory where you are to experiment with" (R. Vol. 1, pp. 306–307).

On cross-examination Clark said that his machine was in the Richardson factory for experimental purposes—had been there perhaps four months—and that he went to Hurd to get a machine to use with his experimental machine, and that Hurd told him he wouldn't put one of his stitching machines in a factory for the witness to experiment with, and said: "'Clark, I will tell you what we must do; we have got to protect our own interests. We must protect ourselves on this method that you have of this flexible welt shoe of yours which jeopardizes our welt system. . . . I don't think it is wise for us to help you out and put a machine in where you are to experiment with'" (R. Vol. 1, pp. 307–308).

21. The Kimball & Hadley Case.

The United States claimed that Kimball & Hadley were manufacturing needles, awls, and drivers in competition with the United Company; that the United Company notified shoe manufacturers if they purchased needles and awls of Kimball & Hadley the United Company would withdraw its machines, and that Martin, an employee of the United Company, told Hadley the United Company would have his business sooner or later, and that Bayley, an employee of the United Company, told Hadley that if necessary the United Company would give its needles away in order to destroy their business; and in fear that their business would be destroyed Kimball & Hadley sold to the United Company (R. Vol. 1, p. 1081 (h)).

In support of this charge the United States called Irving A. Hadley, who testified that he was a lawyer and prior to 1904 engaged in making awls and Goodyear needles; that he called on Mr. Bayley, the agent of the defendants, who inquired of him the price at which he was selling needles. He said, "'We

can manufacture needles and sell them as cheap as the United Shoe Machinery Company.'" And Bayley said, "'Oh, no, you can't; we can give them away if necessary'" (R. Vol. 1, pp. 308–309).

On cross-examination Hadley admitted that he knew at the time of the alleged conversation with Bayley that the United Company did not manufacture any Goodyear needles (R. Vol. 1, p. 311, lines 3–10).

This was all the evidence offered in support of the charge. It appeared that Bayley was in a sanitarium and could not be called to contradict Hadley's testimony (R. Vol. 1, p. 309, lines 39–40). But Hadley also testified that in 1904 he had trouble in making sales of needles and awls to shoe manufacturers, and specified the factories of E. E. Taylor, T. D. Barry & Company, Churchill & Alden, and Rice & Hutchins, as places where he had called (R. Vol. 1, p. 308, lines 28–31). He testified that these manufacturers stated that the using of their needles and awls was in violation of the leases of the United Company, and if they took these awls and needles the United Company would take the machines from their factories (R. Vol. 1, p. 308, lines 31–33).

The defendants offered the evidence of John F. Belcher, who had charge of the purchasing at Churchill & Alden's in 1904. He testified that he talked with Hadley about using his awls and needles and never made any such statement as Hadley had described (R. Vol. 1, p. 746, lines 20–34).

On cross-examination the witness further stated: "During my conversation with Mr. Hadley nothing at all was said about the leases which we had with the United Company, I am positive that the United Company was not mentioned" (R. Vol. 1, page 746, lines 36–38).

Defendants also called Arlon S. Roberts, assistant superintendent of the E. E. Taylor Company, who had charge of the purchasing of supplies for that company in 1904. He knew Hadley and had talked with him about purchasing awls and needles. He denied that he had ever made any such statement as Hadley had testified to (R. Vol. 1, pp. 746–747).

Defendants also called William A. Hogan, who testified that he was connected with the T. D. Barry Company; that he knew Hadley and talked with him about awls and needles;

that he never made any statement to Hadley such as Hadley had testified (R. Vol. 1, pp. 747–748).

Defendants also called James J. Tierney, connected with E. E. Taylor & Company, and having charge of the purchase of awls and needles. He testified that he knew Hadley and positively contradicted Hadley's testimony (R. Vol. 1, p. 760).

Defendants called William O. Bryant, who testified that he was connected with the E. E. Taylor Company; that he knew Hadley, and that he had to do with the purchase of awls and needles. He also contradicted Hadley and testified that he had never made any such statement to him and that he had bought awls and needles of Hadley every time he came to him until he went out of business (R. Vol. 1, pp. 760–761).

Hadley further admitted under cross-examination: "We sold out in 1904. The United Company afterwards brought suit in equity for violating the terms of our agreement and entering into business again, which we had agreed not to do for a number of years, but had done in breach of our agreement. The Supreme Court of Massachusetts found that we had violated our agreement and granted an injunction against us" (R. Vol. 1, p. 311, lines 14–20).

In the case referred to by Hadley, *United Shoe Machinery Company* v. *Kimball*, 193 Mass. 551, the Supreme Court of Massachusetts approved findings of the trial justice (pp. 354, 355) that Kimball & Hadley made the sale to the United Company voluntarily and "that there were, in fact, no illegal threats or illegal intimidation."

In respect to this charge the District Court found as follows:—

> "Bayley, a department manager for the United Company, is charged, in testimony given by Irving A. Hadley, then representing Kimball & Hadley, manufacturers of awls and needles, with having said to him in January, 1904, in answer to a claim by him that Kimball & Hadley could sell needles as cheap as the United Company, that the United Company could give them away if necessary.
>
> "It does not seem possible to attach any serious importance, for any purpose, to the remark, if made, even if anything said at the interview can be supposed to have had reference to a possible purchase by the defendants of the Kimball & Hadley business. Bayley was in a sanitarium, unable to testify, at the trial. Further testi-

mony from Hadley, however, that certain factories had refused needles offered them by him for fear of controversy with the United Company was contradicted by the managers he mentioned. The business of Kimball & Hadley was one of those acquired by the United Company, but it was not acquired until the following June. It consisted in making Goodyear needles, which at the time of the acquisition the United Company was not making at all. An attempt by Kimball & Hadley, in litigation with the United Company some time afterward, to prove that threats and intimidation had been used in acquiring their business wholly failed (see *United Co.* v. *Kimball*, 193 Mass. 351)" (Dodge, J., R. Vol. 1, p. 1149).

22. Samuel A. Krewson.

The United States claimed that the defendants entered into negotiations with Samuel A. Krewson, an inventor of shoe machinery, with a view to purchasing his inventions; that Krewson had a talk with E. L. Hurd of the United Company, and that Hurd said that the United Company could make scouring wheels and put them out cheaper than Krewson, and said, "We do it to drive little fellows like you out of business," —and other statements to the same effect (R. Vol. 1, p. 1081 (i)).

No evidence whatever was offered in support of this charge.

23. Alleged Acquisition of Patents and Suppression of Inventions.

The United States charged that the United Company had systematically, for the purpose of preventing others from making practical use of various patented devices, acquired patents and suppressed or failed to make practical use thereof; also that by suits and threats of suits for alleged infringement they had prevented the manufacture of unpatented machines (R. Vol. 1, p. 1082 (a-b)).

No evidence whatever was offered in support of these charges and they are disproved by the testimony of defendants' witnesses. Mr. Winslow testified, "The United Company has

suppressed absolutely no machines, no inventions and no improvements" (R. Vol. 1, p. 433, lines 27–28).

Mr. Howe testified, "The United Shoe Machinery Company has never suppressed an invention that it thought could be worked out to make a commercial machine which would benefit the lessees. . . . I have never known of a single patent which had prospective value when embodied in machinery being laid on the shelf or suppressed" (R. Vol. 1, p. 671, lines 18–20, 23–25).

In respect to these charges the District Court found as follows:—

> "Nor has there been any evidence sufficient to show a practice followed by the defendants of buying up patented inventions to hold in disuse. This charge also is one not insisted upon in argument" (Dodge, J., R. Vol. 1, p. 1147, lines 8–10).

24. Charge as to Rebates upon Gem Flexible Insole Machines.

In the bill of particulars it is claimed that the defendants granted to exclusive users of their leased machinery rebates of amounts equal to the sums paid by them respectively as royalty on Gem flexible insole machines for the purpose of effecting exclusive use of defendants' machinery (R. Vol. 1, pp. 1082–3 (a)).

The vote by the directors of the United Shoe Machinery Company of January 29, 1900, was as follows:—

> "That a rebate be granted to exclusive users of the machines leased or controlled by this company and its subsidiary companies, and to such other manufacturers upon such special terms as the general manager may consider expedient; said rebate to be made by quarterly payments to the manufacturers of the amounts equal to the sums paid by them respectively as royalty on the Gem flexible insole machines during the quarter for which the rebate is made" (R. Vol. 1, p. 351, line 43 *et seq.*).

With reference to this matter Mr. Winslow testified as follows:—

> "It was almost immediately after the United Company was formed and after we had acquired possession of

the Gem Insole Company that we decided to turn back to the manufacturer the royalty on the Gem insole machine. As to why the Gem insole machine was not put in as an auxiliary machine rather than putting it out on a separate lease, I don't know unless it was because a lot of Gem insole machinery was put out on leases of the Gem Insole Company and it was simpler to keep up those old leases and return the royalty to the lessees" (R. Vol. 1, p. 682, lines 21–34).

Mr. Howe testified as follows:—

> "After the United Company was formed it acquired the Gem insole machines, which previously had been put out on a royalty, and after that paid back the royalty to all manufacturers who used the Goodyear principal machines entirely. So that in effect Gem insole machines were made auxiliary machines to build up the Goodyear welt system" (R. Vol. 1, p. 664, lines 31–35).

In respect to this charge the District Court found as follows:—

> "The vote of 1900 was that royalties on the Gem insole machines be rebated to exclusive users of the company's machines. It appears that having acquired the Gem Company, which had machines in use under lease at the time at a royalty of one-half cent per pair, the United Company added the machine to its Goodyear auxiliary set, and to users of such sets paid back the one-half cent per pair in order to leave the rate upon the entire auxiliary set the same as before it included the Gem machine" (Dodge, J., R. Vol. 1, p. 1147, lines 18–25).

The Court further found that this act on the part of the United Company cannot "be said to answer to the terms in which the charge of offering and granting rebates is made." That the act was inspired by the purpose of giving exclusive users of the company's machines an unfair advantage over those who did not, or that it had that effect, "can not be said to have been proved, and the charge is not believed to require further notice. It would seem to have been suggested by those cases relating to railroads wherein 'rebate' has acquired an obnoxious signification" (Dodge, J., R. Vol. 1, p. 1147, lines 33–41).

25. Charge as to Rebates upon Goodyear Machines.

In the bill of particulars it is claimed that defendants, for the purpose of effecting exclusive use of their machinery, granted a rebate of not less than 15% of the royalties received from leases of certain Goodyear machines (R. Vol. 1, p. 1083 (b)).

The circular letter of June 10, 1910, upon which this charge was based appears as Plaintiff's Exhibit 146 (R. Vol. 4, p. 1067). This letter first calls attention to the services rendered by the United Company to its lessees in the way of improved machines, reduction of installation charges, reductions in royalties, furnishing auxiliary machines, establishment of branch offices, etc. The plan complained of is then announced as follows:—

> "Benefits of a character similar to those enumerated have marked the course of the Company from the very beginning; but it has never been its purpose to confine within limits determined in advance, its ability to enhance the prosperity of the trade. Always recognizing that it has a common interest with its lessees and that its prosperity depends upon theirs, it has long had in contemplation the following plan, which, now that the elimination of initial charges has been effected, it is prepared to put into operation—a plan which is in conformity with its established policy and which it believes will result in the expansion of its own business through the increased business of its customers.
>
> "Beginning with January 1, 1910, the Company will create a fund by investing each year, for three years, in the common stock of the United Shoe Machinery Corporation a percentage, increasing each year, of the amounts received from its lessees for the use of its Goodyear Welting, Goodyear Stitching and Goodyear Turn Sewing Machines in the United States, and will add to that fund from time to time the dividends which shall have been paid in the meantime upon such stock, or shares of the common stock of the Corporation purchased with such dividends. At the end of three years from that date it will distribute the entire amount of stock held in the fund among those lessees who use the Goodyear Welting, Goodyear Stitching and Goodyear Turn Sewing Machines in the United States and who shall have faith-

fully observed the covenants of their leases; each lessee of these classes of machines to receive a share of the entire fund proportionate to the amounts paid by him for the use of such machines."

This offer did not require an exclusive use of the United Company's machines, but merely proposed to return a portion of the royalties received from lessees' machines who used Goodyear welting, stitching, or turn machinery if they observed the covenants of their leases, which, of course, they were legally required to do. It, therefore, amounted merely to a reduction in the royalties charged for this machinery, such reduction to be represented by stock of the United Company instead of by a cash reduction.

This proposal was called to the attention of the Department of Justice and prior to the distribution made to the manufacturers Mr. Choate, in behalf of the United Company, called the matter to the attention of the Attorney-General of the United States in the following letter:—

"CHOATE, HALL & STEWART,

BOSTON, MASS., Feb. 7, 1913.

Hon. GEORGE W. WICKERSHAM,
Attorney-General, Department of Justice, Washington, D.C.

MY DEAR MR. WICKERSHAM: In 1910 the United Shoe Machinery Company advised its lessees that it proposed to put in effect a plan by which a certain proportion of the royalties should be invested in stock of the corporation, and at the end of a fixed term be distributed to lessees of the Goodyear welting and stitching and turn-sewing machines, who had in all respects observed the obligations of their leases. The period covered by this plan expired December 31, 1912, and the company proposes to make a distribution on or about March 1st, as it is bound to do by its agreement with the customers. This plan was, I think, fully called to the attention of Mr. Gregg while he was here examining the affairs of the company and as I read the bill in equity filed by the United States against the company, it does not seem that any complaint is made upon this ground. Under these circumstances, the Company proposes to make the distribution provided for in that plan on the first day of March, or as soon as possible thereafter; and has desired

me to call the matter to your attention that the plan may not be carried out without the knowledge of your department.

I send you herewith a copy of the circular of June 10th, 1910, which describes the plan.

Very truly yours,

CHAS. F. CHOATE, Jr."

(R. Vol. 1, pp. 979, 980.)

In response to this letter, no acknowledgment, answer, or objection of any kind was received (R. Vol. 1, p. 980, lines 23–24).

In respect to this matter and the Gem insole rebates above discussed the District Court found as follows:—

> "Neither of these acts on the company's part can be said to answer to the terms in which the charge of offering and granting rebates is made. That either act was inspired by the purpose of giving exclusive users of the company's machines an unfair advantage over those who did not, or that either had that effect, cannot be said to have been proved, and the charge is not believed to require further notice. It would seem to have been suggested by those cases relating to railroads wherein 'rebate' has acquired an obnoxious signification" (Dodge, J., R. Vol. 1, p. 1147, lines 33–41).

26. Alleged Purchases of Competitors' Businesses at Exorbitant Prices.

The United States charged that the defendants had purchased the business of competitors and prospective competitors to eliminate competition, paying therefor, in many instances, exorbitant prices (R. Vol. 1, p. 1083 (a)).

It having been shown that no competitors in the proper sense of that term were purchased, this charge necessarily fails.

Furthermore the United States failed to introduce in respect to any of the acquisitions, any evidence as to the value of the property purchased. In most cases the price paid was small, and in no case was there the slightest evidence that it was exorbitant.

In respect to this charge the District Court found as follows:

> "An allegation in the petition that the business of many competitors was bought at exorbitant prices fails of support in the evidence relating to any specified instance of acquisition among those thus far considered [all except the Plant acquisition]. As to them, indeed, no claim of the kind seems to be seriously urged" (Dodge, J., R. Vol. 1, p. 1142, lines 1–5).

The Court then considered the acquisition of the Plant property and further held as follows:—

> "The charge that competitors have been bought out at 'exorbitant prices' is found not established in the case of the Plant acquisition, as has just been stated. Nor is evidence found sufficient to establish it in the case of any one of the numerous minor acquisitions specified in the petition. It has not been insisted on in argument that this charge is proved as to any one of them" (Dodge, J., R. Vol. 1, p. 1147, lines 1–7).

27. Alleged Attempt to Cause a Strike at Plant's Shoe Factory.

The United States claimed that Morrison, Ross, and Sochat were employed by Charles H. Willson, the assistant general manager of the United Company, to organize the employees and start a strike at the Thomas G. Plant factory in June, 1910 (R. Vol. 1, p. 1083 (1)).

Morrison testified that at the suggestion of one Johnson, he called on Willson with Ross and Sochat, that Mr. Willson's offer was that "if we would organize the place and get him all the information we could for so-and-so machine (*sic*) he would pay us two thousand dollars cash and our expenses, and he would see that we got a job" (R. Vol. 1, p. 346, lines 27–43).

Morrison further testified: "We tried to organize the Plant factory and got something like three hundred members" (R. Vol. 1, p. 346, lines 43, 44). "There was no attempt to strike, only to form an organization" (R. Vol. 1, p. 347, lines 12, 13).

Ross and Sochat told substantially the same story except that Sochat testified that Willson said he would pay one thousand dollars and expenses (R. Vol. 1, p. 350, lines 33, 34.)

Ross testified that they spent $1,500 in entertaining the em-

ployees and giving them a good time. That is $1,500 was contributed—$500 by Morrison, $600 by Ross, and $400 by Sochat (R. Vol. 1, p. 349, lines 11–18); that their pay averaged $15 per week and that his contribution of $600 represented the savings of eleven or twelve years (R. Vol. 1, p. 349, lines 11–41).

They had no papers or receipts or written evidence of any kind to support this story, claiming that they had destroyed all their papers, including receipts and the list of three hundred names (R. Vol. 1, p. 348, lines 14–18; p. 350, lines 5–20; p. 351, lines 29–32).

This story was flatly contradicted by the following witnesses called by the defendants:—

Albert Harrison (R. Vol. 1, p. 728 *et seq.*).
Cross Johnson (R. Vol. 1, pp. 761–762).
Benjamin Epstein (R. Vol. 1, pp. 762–763).
Arthur F. Crouch (R. Vol. 1, p. 763).
Charles F. Connor (R. Vol. 1, p. 764).
Samuel Pearlman (R. Vol. 1, pp. 764–765).
Joseph Beaudreau (R. Vol. 1, pp. 765–766).
Charles Weidman (R. Vol. 1, p. 766).
Harry Johnson (R. Vol. 1, p. 767).

These men testified that they worked with Morrison, Ross, and Sochat in the same room in the Plant factory, and knew them well, and were about with them in and out of the factory; that they had no knowledge of any Union being organized by the three witnesses for the United States, or of any strike being attempted. To their knowledge no money was spent among the employees for entertainments or for any other purpose, and that they never heard of the United Shoe Machinery Company making any attempt to stir up trouble in the Plant factory; that the whole story was simply this: that Mr. Plant had introduced some new lasting machines into his factory and that he increased the wages of the toe lasters. The operation of these machines was slower than the operation of the machines previously used, consequently the men earned less money. Mr. Plant increased the wages of the men operating these machines but did not increase the wages of the men who worked on the pulling-over operation connected

with the lasting; that these latter formed a committee consisting of Morrison, Harrison, Epstein, and Murphy, and went to Mr. Plant and asked for an increase of pay; that the increase was granted and there was no trouble whatsoever.

Mr. Winslow testified that some time in June, 1910, Willson told him that three Armenians had come to him and wanted the United Company to assist them to start a strike in the Plant factory, and he, Winslow, instructed Willson to have nothing to do with them, and to his knowledge the United Company never did anything to foment a strike at the Plant factory and Mr. Willson never did anything beyond the instructions that Mr. Winslow gave him (R. Vol. 1, p. 507, lines 30–44). Mr. Willson died before the trial of this case (R. Vol. 1, p. 261, lines 37–38; p. 262, line 1).

Upon this charge the District Court found as follows:—

> "The only evidence to show that Willson ever gave any such directions or assurances came from three witnesses, employees at the Plant factory in June and July, 1910, who gave their testimony in person before the court. No one else was present, according to their statements, at the various interviews they described between Willson and themselves during the two months just referred to. Willson having died in 1911, and before these charges were made, no direct contradiction was possible of their statements as to what was said by him to them.
>
> "He told them, according to their testimony, that if they would organize a strike at the factory and give him all the information they could about the Plant machines he would pay their expenses, get them jobs, and pay them also $2000 in cash (according to two of them)—$1000 (according to the other).
>
> "Willson never did pay them any money, as they all agreed. But their testimony was that they got about 300 men into an organization and spent about $1500 of their own money in doing so, mainly in entertaining the men who joined. According to their further statements, $600 was contributed by one of them, $500 by another, and $400 by a third; their wages at the time were $15 per week; these sums were the savings of eleven or twelve years; accounts, lists, and vouchers containing details of their doings and expenditures, were kept, but all of these were either surrendered to Willson or destroyed by them. No written evidence of any kind was offered in support of their story.

"It appeared that there was some prospect of trouble between Plant and the employees at the factory at the beginning of June, 1910, but after meeting a committee with regard to an increase of pay asked for, Plant granted it and no strike or other trouble ever occurred. There was no proof whatever that he ever employed detectives to watch the three witnesses in question, or that any attempt by them at organizing a strike ever came to his knowledge.

"The testimony of these three men was not corroborated by any others of the then employees at the factory. On the contrary, several of them, shown to have had ample opportunity for knowing the facts had there been any such organization attempted as testified to, denied any knowledge of such organization or of any such preparation for a strike.

"Winslow, president of the United Company, testified that Willson had told him, in June, 1910, that three Armenians had been to him asking that he furnish them with money to start a strike in the Plant factory, and that his instructions to Willson thereupon were to have nothing to do with them. No money of the United Company was ever paid out for any such purpose.

"Not only does the evidence of these three witnesses appear unworthy of belief in view of its improbability, its lack of corroboration, and the evidence tending to discredit it, but it is difficult to understand how the petitioner could seriously have expected the court to accept such testimony, or have considered itself justified in offering it" (Dodge, J., R. Vol. 1, p. 1151, line 30–p. 1152, line 34).

28. Solomon N. Cutter.

The United States also claimed that the United Company had employed one Solomon N. Cutter to enter the employ of the Standard Shoe Machinery Company and obtain information as to its condition (R. Vol. 1, p. 1084 (1)).

There was no evidence to support this charge. (Cutter's testimony will be found R. Vol. 1, p. 332.)

29. Harlow Shoe Finishing Machine Company.

The United States claimed that the Harlow Shoe Finishing Machine Company was engaged in manufacturing burnishing

machines in competition with the Xpedite Company, and that in 1911 George H. Harlow, the president of the Harlow Company, was taken into the employ of the United Company (R. Vol. 1, p. 1084 (2)).

There was no evidence to support this charge, although Edwin E. Bartlett of the Harlow Shoe Finishing Machine Company appeared as a witness for the United States (R. Vol. 1, p. 942).

30. Demonstration of Plant Lasting Machine.

The United States claimed that in 1910 agents of the United Company induced a former laster of the Plant Shoe Company to demonstrate a lasting machine invention operated in the Plant factory (R. Vol. 1, p. 1084 (3)).

This was not denied, but seemed to be a perfectly harmless performance.

31. Reece Buttonhole Machine Company.

The United States claimed that the Reece Buttonhole Company was engaged in the manufacture of buttonhole machinery; that the United Company in order to injure it induced two of its employees to enter the employ of the United Company (R. Vol. 1, p. 1084 (4)).

There was no evidence in support of this charge.

32. Charles P. Stanbon.

The United States charged that Charles P. Stanbon was engaged in making stock-fitting machinery in competition with the United Company, and that to force said Stanbon to sell out the United Company induced certain of his employees to leave Stanbon and enter the employ of the United Company (R. Vol. 1, p. 1085 (5)).

No evidence was offered in support of this charge.

33. Charles S. Johnson.

The United States claimed that one Charles S. Johnson was engaged in the manufacture of the Tripp Giant leveler; that Winslow, president of the defendant company, negotiated with said Johnson for the acquisition of his business; that a contract was prepared which differed from Johnson's proposition and Johnson refused to sign it; that thereupon Winslow said to Johnson: " 'Johnson, you had better sign that contract. We are going to have your business anyway' "; and that six months thereafter the United Company began to manufacture machines which were duplicates of the Tripp Giant Leveler (R. Vol. 1, p. 1085 (1)).

In support of this charge the United States called Charles S. Johnson, who testified that he was connected with the Tripp Giant Leveler Company which put out a machine for leveling the bottoms of shoes; that in 1902 or early in 1903 he had a conference with Mr. Winslow and they came to a verbal agreement as to the acquisition of the company's business by the United Company; that a contract was prepared which was not satisfactory to Johnson and that he refused to sign it, and as he was going out Mr. Winslow suggested that he had better sign it because he was going to have their business anyway, or words to that effect; Johnson said, "I wouldn't say those were the absolute words, but that was the gist of the remark he made to me"; that shortly after the United Company put a machine on the market substantially similar to the Tripp Giant leveler (R. Vol. 1, pp. 304–305). Johnson further testified that his company was absorbed by the Boylston Manufacturing Company in 1905 and that he has been connected with that company ever since (R. Vol. 1, p. 305, lines 14–20).

On cross-examination Johnson said that there was an effort made by those in control of the Tripp Company to have the United Company buy the Tripp Company; that witness himself talked with Winslow for the purpose of selling it; that some verbal understanding was arrived at; that a paper was prepared which the witness thought did not embody all the terms of the oral agreement; that the meeting with Winslow

was perfectly friendly and Winslow was courteous but business-like; that this was eleven years ago; that a Mr. Kelliher for the United States had been to see him about this matter and said in substance that he was employed by the United States to go around and see whom he could find who had complaints to make against the United Shoe Machinery Company, and inquired of the witness in substance whether he had any grievance; that he had a grievance against the United Company, and that he had written articles for trade papers hostile to it (R. Vol. 1, p. 305, lines 21–33; p. 306, lines 1–36).

Mr. Winslow testified that such a contract was drawn, but he did not tell Mr. Johnson that the United Company was going to get his business anyway. He used only such language as he would use with any one. Such language as he used "was not offensive or intended to be offensive in any way or to intimate to him that we would drive him out of business. We have competed with him right along; we have not interfered with his business" (R. Vol. 1, p. 518, lines 25–37).

Mr. Winslow further testified that the interview in question was not in 1902 or early in 1903, as stated by Mr. Johnson, but was later than that. "The interview in 1902 or 1903 was prior to the contract and he then wanted me to acquire their business, but I did not" (R. Vol. 1, p. 519, lines 12–17).

Upon this charge the District Court found as follows:—

> "Mr. Winslow is also charged, in testimony given by Charles S. Johnson, with having said to him during negotiations in 1902 or 1903, regarding a sale of the Tripp Giant leveler, in which he was interested, to the United Company: 'You had better sign that contract because we are going to have your business any way.' But the negotiations did not result in a sale, and the Tripp Company's business, though sold out in 1905, was not acquired by the United Company. Not long after, according to Johnson's testimony, the United Company put on the market machines considered by him to be substantially the same as the Tripp Giant leveler, but there is no other indication of any interference with the Tripp Company or its business by the defendants" (Dodge, J., R. Vol. 1, p. 1148, lines 33–34).

34. Frank L. Harmon.

The United States charged that Frank L. Harmon was an inventor of various shoe machines; that in 1905 Mr. Winslow was endeavoring to purchase some of Harmon's patents, and told Harmon he would see to it that Harmon didn't get any more money to work with; that he didn't have to buy Harmon's machine,—that he could have Harmon's machines if he cared for them and Harmon couldn't prevent it; that the United Company manufactured and leased machines infringing one of Harmon's patents without giving Harmon any compensation; that one H. A. Woodbury furnished Harmon money for experimenting, and negotiated with the United Company for the sale of another of Harmon's patents, that Woodbury assigned the patent to the company relying on representations that if the machine worked the company would pay a substantial sum; that the company tested the machine, which worked perfectly, but the company refused to pay any consideration for it (R. Vol. 1, p. 1086 (2)).

In support of this charge the United States called Frank L. Harmon, who testified that he was developing some machines; that the witness had no practical business ability and came to Mr. Winslow with the idea of getting information; that Winslow gave him some very good advice, to the effect that he was foolish to try to go into the machinery business with little capital; that all the companies were coming together to build their machinery on a large scale, and that he thought the witness would lose his time and money. Harmon said the substance of the conversation was that he could not compete with millions of dollars with a few thousands of dollars in the manufacture of machinery (R. Vol. 1, p. 276).

On cross-examination the witness said that this conversation occurred before the United Company came into existence (R. Vol. 1, p. 277, lines 10–11).

No evidence whatever was offered by the United States, other than this, in support of the Harmon allegation.

35. Euclid I. LaChapelle.

The United States charged that Euclid I. LaChapelle had invented an appliance for holding the uppers to soles during the sewing operation, and also an improvement on the pulling-over machine, and improvements on other machines; that the United Company took LaChapelle into its employ, representing that it would pay him a reasonable consideration for his inventions, that subsequently LaChapelle was discharged and the United Company had perfected his inventions and placed them in operation without any adequate consideration (R. Vol. 1, p. 1086 (3)).

No evidence whatever was offered in support of this charge.

36. Nathaniel Sparks.

The United States charged that Nathaniel Sparks invented a heel-compressing machine and assigned it to William J. Young; that the United Company induced Sparks to make an affidavit denying that he had ever invented such a machine (R. Vol. 1, p. 1087 (4)).

No evidence whatever was offered in support of this charge.

37. T. J. Edwards.

The United States charged that T. J. Edwards was engaged in the business of cutting stamps to be used in stamping shoes; that he was requested by the United Company to compile a catalogue of his stamp cuts; that he compiled such a catalogue but received no orders from the United Company, and that the United Company issued a catalogue which included those cuts furnished by Edwards, and that this catalogue ruined Edwards' business (R. Vol. 1, p. 1087 (5)).

No evidence was offered in support of this charge.

38. Fortuna Machine Company.

The United States charged that the Fortuna Machine Company made a skiving machine; that the United Com-

pany also made a skiving machine, closely resembling that of the Fortuna Company, which it represented to be a Fortuna machine, and discouraged manufacturers from using the Fortuna machine, pretending that it was inferior (R. Vol. 1, p. 1087 (6)).

No evidence was offered in support of this charge, although G. H. Diehl, Jr., president of the Fortuna Company since 1903, appeared as a witness for the United States (R. Vol. 1, pp. 910–911).

39. George E. Rollins.

The United States charged that George E. Rollins invented a certain machine, and that after it was demonstrated to be a success the United Company without any right put out a similar machine infringing Rollins' patent, and placed the same on the market in competition with Rollins' machine and destroyed the value thereof (R. Vol. 1, p. 1087 (7)).

No evidence was offered in support of this charge.

40. A. McDowell.

The United States claimed that A. McDowell invented a spring heel shaver and negotiated with the United Company for its sale; that thereafter the United Company notified him that it had a similar machine of its own, and that that machine was an infringement of McDowell's invention; that McDowell also invented and patented two other machines and that the United Company purposely produced machines embodying the patented features of the McDowell machines and therefore destroyed the value of the same (R. Vol. 1, p. 1087 (8)).

No evidence was offered in support of this charge, although V. H. McDowell, son of A. McDowell, appeared as a witness for the United States and testified that he was familiar with the machines put out by his father (R. Vol. 1, p. 909).

41. Charles L. Clifford.

The United States claimed that the defendants rendered a bill to Charles L. Clifford for royalties on shoes sewed on a Haverhill turn sewing machine (R. Vol. 1, p. 1088 (1)).

In support of this charge they offered the evidence of Charles L. Clifford, whose evidence was excluded by the court (R. Vol. 1, p. 362).

Mr. Winslow testified that the independent lease was offered to Clifford (R. Vol. 1, p. 451, lines 12–14).

42. Fred J. Thompson.

The United States claimed that in 1903 or 1904 Fred J. Thompson was using two stitching machines of the Duplessis Company; that he later installed machinery of the United Company and was obliged to pay royalties to the United Company for all shoes manufactured by the Duplessis machinery (R. Vol. 1, p. 1088 (2)).

No evidence was offered in support of this charge.

43. Alleged Wrongful Exaction of Return Charges.

The United States claimed that the defendants wrongfully exacted return charges from shoe manufacturers on leased machinery in instances where such charges did not properly apply (R. Vol. 1, p. 1088 (e)).

No evidence was offered in support of this charge.

44. Alleged Arbitrary Increase of Charges.

The United States claimed that the defendants had arbitrarily increased the installation, return, and other charges on machinery operated by shoe manufacturers who operated machinery of competitors (R. Vol. 1, p. 1088 (f)).

There was no evidence to support the charge.

45. N. D. Dodge Shoe Company.

The United States claimed that the N. D. Dodge Shoe Company were using Haverhill Shoe Machinery Company machines, but were forced to discontinue their use when they went to the United Company for welt machines; the United Company refused to put in welt machines unless Dodge paid what would be a fair price for the machines when installed, "and yet which gave them no equity in the machines, and they must then pay the same royalties as others who made no initial payment. The United Company required them not only to discontinue the use of the sewing machines, but the channeling machines also" (R. Vol. 1, p. 1088 (1)).

The only testimony which supported this charge was hearsay evidence of L. H. Harriman, treasurer of the Haverhill Shoe Machinery Company (R. Vol. 1, p. 317, line 45), who testified as follows: "We had two turn sewers and two channelers in the factory of N. D. Dodge & Son in 1911. Their use was discontinued because we could not supply a line of welt machinery which they wanted and the United Company would not do so as long as they used our machines" (R. Vol. 1, p. 320, lines 9–13).

William G. Dodge, as witness for the United States, testified as follows: "I got the Haverhill machines in October or November, 1911, but I have not got them now. . . . I discontinued the use of the Haverhill machines after three or four months because the United Company installed some machines that we felt were more efficient" (R. Vol. 1, p. 354, lines 43–44; p. 355, lines 2–5). Further on cross-examination the witness testified: "It was while we were waiting for the new Model G machine of the United Company that we tried some Haverhill machines . . . intending to use them merely until we could get the Model G. As soon as the Model G was ready we installed it and discontinued the use of the Haverhill machines" (R. Vol. 1, p. 355, lines 12–24).

46. Alleged Sales Below Cost.

The United States claimed that the defendants have offered or granted special terms and prices to shoe manufacturers on machinery, parts and supplies, at times below cost, to induce them to withdraw their business from competitors (R. Vol. 1, p. 1089 (g)).

There was no evidence to support this charge.

47. E. P. Reed Company.

The United States charged that in 1900 E. P. Reed Company were using machines of the Standard Shoe Machinery Company; that defendants offered to install their machines free of charge if the Reed Company would discontinue the use of Standard machines (R. Vol. 1, p. 1089 (1)).

No evidence was offered in support of this charge.

48. Alleged Refusal to Furnish Machinery, etc.

The United States charged that the defendants have refused or delayed unnecessarily in furnishing machinery, parts, or supplies to shoe manufacturers also operating machinery furnished by competitors or owned by said shoe manufacturers (R. Vol. 1, p. 1089 (h)).

No evidence was offered in support of this charge, except the evidence of Richard H. Long, which was shown to be unreliable and which was contradicted by the evidence of King, Mrs. Hewitt, and Batchelder (see *supra*, pp. 154–155).

49. Alleged Threats to Remove Machinery.

The United States charged that the defendants have threatened to remove their leased machinery from factories wherein supplies purchased from competitors have been used (R. Vol. 1, p. 1089 (i)).

There was no evidence to support this charge, unless it was in the testimony of Irving A. Hadley, which has already been

discussed, which testimony was contradicted by the testimony of Belcher, Roberts, Tierney, and others (*supra*, pp. 768–769).

50. Alleged Refusal to Furnish Individual Machines.

The United States charged that the defendants have refused to furnish individual machines to shoe manufacturers operating machinery of competitors, such refusals being either absolute or modified by demands for prohibitive installation charges (R. Vol. 1, p. 1089 (j)).

No evidence whatever was offered of any absolute refusal by the United Company to furnish machines under these conditions. Indeed, the testimony of Edwin A. Webster, a witness for the United States, showed that the United Company was constantly furnishing machines to be used in connection with machines of other manufacturers.

Webster, a director of the Haverhill Shoe Machinery Company, testified as follows: "Our machinery is being used side by side with the United machinery in thirty-eight factories, producing the same product. Sometimes a manufacturer will use our turn sewing machine and the United Company's heeling apparatus and sometimes he will use our heeling apparatus and the United Company's turn sewing machines, or will mix them up on some other plan" (R. Vol. 1, p. 299, lines 32–37). (See also P.'s Ex. 161, R. Vol. 4, p. 1118, showing machines of the Haverhill Shoe Machinery Company used in connection with machines of the United Shoe Machinery Company.)

The defendants have always been ready to supply machines of all kinds to be used in connection with machines of any other manufacturer upon the same installation charges which prevailed prior to the organization of the United Company (R. Vol. 1, p. 514, lines 11–43; Defs.' Ex. 40, R. Vol. 5, p. 40). Mr. Winslow named a large number of the manufacturers to whom the choice between the independent form of lease and the restricted form of lease had been offered from time to time (R. Vol. 1, p. 450, line 11; p. 451, line 16). Where a lessee desired an independent lease, the initial premium was always the same or a less sum than had been required before

the United Company was formed (R. Vol. 1, p. 433, lines 29–32).

51. Carleton & Hunt.

The United States charged that Carleton & Hunt were using machines of the Haverhill Shoe Machinery Company and desired to obtain welt machines of the defendants, and were informed by the defendants that they would have to discontinue the use of the Haverhill sewing machine before the defendants' machinery would be installed, or pay an installation charge which was prohibitive (R. Vol. 1, p. 1089 (1)).

The only evidence offered in support of this charge was the hearsay statement made by Louis H. Harriman (R. Vol. 1, p. 320, lines 1–6) to the effect that Mr. Hunt had told him that he had tried to get a set of machines for making welt shoes from the United Company, and that he could not get them unless he discontinued using the Haverhill turn sewing machine.

Mr. Donham's testimony showed that when Carleton & Hunt discontinued the use of the United Company's turn sewing machine and used instead the Haverhill turn sewing machine they continued to use in connection with that Haverhill machine a number of other United Company machines for the use of which the United Company was not receiving any compensation (R. Vol. 1, p. 828, lines 26–44; p. 829, lines 17–33; P.'s Ex. 161, R. Vol. 4, p. 1119).

52. Ira J. Webster.

The United States charged that in June, 1912, Ira J. Webster had been operating two Pettengill nailing machines, which he owned outright, and that he desired to obtain from the defendants a pulling-over machine and a toe-capping machine; that because he was operating independent machinery the defendants demanded excessive installation charges; that he was unable to make satisfactory arrangements with the defendants and the Pettengill machines had been removed from his factory (R. Vol. 1, p. 1089 (2)).

In support of this charge the United States called Ira J. Webster, who testified that he had Pettengill nailing machines; that he applied to the United Company for pulling-over and toe-capping machines; that no objection was made to furnishing him with them; that an installation price was to be paid if the machines were used with the Pettengill nailer that would cost more than if he used their entire machinery. He did not remember what this charge was (R. Vol. 1, p. 362).

On cross-examination he said that before he made his application he used some of the machinery of the United Company and also a Pettengill nailer from the Haverhill Company. Referring to agents of the United Company he further testified: "They offered me two alternatives; they said they would furnish me with the toe capper and puller-over if I would pay an installation charge and a royalty on them, or they would furnish me a full line of machinery at wholesale rates, cheap. That is all there is about that transaction. I don't remember what the installation charge was" (R. Vol. 1, p. 363, lines 4–13).

Mr. Winslow testified that the independent lease was offered to Webster (R. Vol. 1, p. 451, line 12).

B. THE EVIDENCE RELATING TO ALLEGED UNFAIR, OPPRESSIVE OR MONOPOLISTIC ACTS OF THE DEFENDANTS, INCLUDING INSTANCES OF ALLEGED ARBITRARY ENFORCEMENT OF LEASE PROVISIONS, NOT SPECIFIED IN THE BILL OF PARTICULARS FILED BY THE UNITED STATES.

The foregoing discussion of the evidence regarding the charges contained in the bill of particulars shows that as to the majority of those charges the United States did not introduce any evidence and that the record entirely fails to support those charges as to which evidence was introduced.

The United States also claims that the evidence proves other unfair or oppressive acts, which were not specified in the bill of particulars.

These charges are in the main centred about the efforts of rival shoe machinery manufacturers to displace machines of the United Company already in use in shoe factories by substituting their machines.

The shoe manufacturers whom these machinery manufacturers approached were already fully equipped with machines which they had leased from the United Company and had agreed to use so far as they had work for the machines. It would violate that agreement to let those machines stand idle and use machines of others instead. Also in certain instances they held the United Company's machines under restricted leases under which they were permitted and had agreed to use the machines only as a series. The competitor asked them to interject his machines into the series. For example, they held General Department machines which, instead of buying outright, as they could have done, they had elected to take under leases which restricted their use to certain of the United Company's royalty-earning, principal machines. If those principal machines were displaced by a competitor's machines and the shoe manufacturers did not purchase the General Department machines, but continued to hold them under those restricted leases, and used them with the competitor's machines, they would be using them without proper compensation to the United Company (*infra*, p. 796).

The shoe manufacturers who were solicited to install competing machines under these conditions recognized the equities of the situation. They did not want the machines and it was perfectly natural that they should take the easiest way to get rid of the solicitors and plead the United Company's leases as an excuse for refusing to listen to persistent solicitation.

(1) Testimony of Louis H. Harriman, Treasurer of the Haverhill Shoe Machinery Company.

In addition to his evidence regarding the charges in the bill of particulars as to Hilliard & Tabor, Carleton & Hunt, and N. D. Dodge Shoe Company (*supra*, pp. 754, 790, 787), Louis H. Harriman, treasurer of the Haverhill Shoe Machinery Company (R. Vol. 1, p. 317, line 45), testified about a number of attempts

of his company to install machines in shoe factories to displace machines leased from the United Company already in use in those factories.

(a) Frederick W. Herrick.

Harriman testified that Fred Herrick of the Herrick Shoe Company asked him to guarantee to refund to Herrick additional royalty which he would have to pay to the United Company if he operated machines of the Haverhill Company. The Haverhill Company was unwilling to do this and removed its machine because Herrick would not operate it without this guarantee. The Haverhill Company also had to remove its heeling machine "so Mr. Herrick could get the stock which was a rebate on his Goodyear sewing royalties" (R. Vol. 1, p. 318, lines 6–22).

Edwin A. Webster, a director of the Haverhill Shoe Machinery Company, testified that the reason why his company took out the heeling machine was because Herrick "found he would lose his rebate on his Gem insole machine if he kept it longer" (R. Vol. 1, p. 290, lines 30–31; p. 293, lines 1–11).

Frederick W. Herrick, as a witness for the United States, testified that his concern took the Haverhill turn sewing machine on trial and ran it a little less than a month. They used it for work previously done by the United Company's machine, which they kept idle or partly idle while trying the Haverhill machine. They then went back to the United Company's machine. The reason why they discontinued the Haverhill heeler was because they were making high-heeled shoes and the United Company had developed a new machine to attach high heels. Before that machine was developed there were no heeling machines for making high-heeled shoes right. "We got it because we wanted a machine to do that work right" (R. Vol. 1, p. 357, line 38–p. 358, line 21).

Herrick said that the Gem insole rebate was not discussed in connection with the Haverhill machines (R. Vol. 1, p. 357, lines 18–22) and nowhere in his testimony did he speak of the "rebate on his Goodyear sewing royalties" which Harriman

said was his reason for removing the heeling machine. It is plain from Herrick's testimony that he resumed using the United Company's machines because he considered them better for his work than the Haverhill machines.

(b) Lynch & Sherman.

Harriman testified: "We had a turn sewer in the Lynch & Sherman factory which had been operated but a short time when they telephoned us to take it out, as an agent of the United Company had informed them it violated their lease with that company" (R. Vol. 1, p. 318, lines 26–29). This hearsay evidence, which was duly objected to (R. Vol. 1, p. 318, lines 30–38; p. 319, lines 30–32), is all that the record contains in support of this claim.

Mr. Harriman's list of users of Haverhill Company machines (P.'s Ex. 161, R. Vol. 4, p. 1118) shows that Lynch & Sherman had a turn sewing machine from the United Company which of course they had agreed to use. The use of the Haverhill machine and the failure to use the United Company's machine which the lessee had agreed to use were doubtless the violation referred to.

(c) W. S. Chase & Company.

Harriman testified that W. S. Chase & Company had several machines of the Haverhill Company, but, about a year before the witness testified, Mr. Herbert Chase told them to remove the machines "because he had been sued for patent infringement on a heel-burnishing machine by the Xpedite Company, and he told me that one of the conditions of settling the suit was his discontinuing our machines. He also gave the reason that he was violating his leases" (R. Vol. 1, p. 319, lines 35–41). Harriman was testifying on June 11, 1913 (R. Vol. 1, p. 317, line 42), so that this took place after the suit was begun.

The evidence of Herbert E. Chase, offered by the United States, as to his discontinuing the use of the Haverhill machines

was excluded on the ground that "the whole transaction was subsequent to the filing of this bill" (R. Vol. 1, p. 354, lines 15–32).

Mr. Winslow testified:—

> "W. S. Chase & Son, Haverhill, were using the Fox turn machine and the Pettengill heeler [both Haverhill Company machines]. We offered to let them return our turn machines and our heeling machines and to keep the lasting and metallic machines on the independent leases, but they decided to keep our machines and gave up the use of the Fox and Pettengill machines" (R. Vol. 1, p. 450, lines 27–32).

That is, the United Company did not insist that the Chase concern should use its turn machine and heeling machine, which they had agreed to use, but offered to cancel their leases of those machines and also offered to put on independent leases the lasting and metallic machines which they were using, so that the Chase concern would be free to use the United Company's lasting and metallic machines with the turn machine and the heeling machine of the Haverhill Company.

The Real Situation in respect to the Concerns about which Mr. Harriman testified.

Mr. Harriman produced a list entitled "Past and Present Users of Machines of the Haverhill Shoe Mchy. Co.," which is Plaintiff's Exhibit 161 (R. Vol. 4, p. 1118). All of the six concerns which Mr. Harriman testified about, including three named in the bill of particulars (*supra*, p. 792), are comprised in Group 1 of that list (pp. 1118, 1119). The list purports to state the machines of the United Company with which the machines of the Haverhill Company were used. Mr. Donham, secretary of the United Company, pointed out that "in no instance does the list show the fact that the lessee had the United Company's Goodyear auxiliary machines, or does it show the fact that the lessee had the United Company's general department machines which the lessee had elected to take

upon the lease plan instead of buying outright" (R. Vol. 1, p. 829, lines 11–16).

Mr. Donham then pointed out that in each of these instances the lessee had Goodyear auxiliary machines and that when he used those auxiliary machines with the Haverhill turn sewing machine he was using the United Company's machinery without making any payment for its use. Also in each of these instances the lessee had some of the General Department machines which instead of purchasing he had elected to take on lease, restricted to use with the United Company's welt and turn sewing machine. By using those machines with the Haverhill turn machines he was using them without proper compensation to the United Company (R. Vol. 1, p. 829, lines 17–33). Mr. Donham illustrated by enumerating the different kinds of machines held by Hilliard & Tabor (R. Vol. 1, p. 830, lines 1–11).

In fact Mr. Harriman admitted: "In most of the above instances *I knew I was asking the manufacturers to displace the United Company machines and use ours. I pointed out to many of them that taking our machines would be in violation of their leases from the United Company*, but that I did not think the leases valid and we would contest any suit" (italics ours) (R. Vol. 1, p. 324, lines 20–25).

The insignificance of the occurrences cited by Mr. Harriman, as well as those testified to by Pike (*infra*, pp. 797–798), even taking their testimony at its face value, is shown by the testimony of Webster, of the Haverhill Company, that "our machinery is being used side by side with the United machinery in thirty-eight factories, producing the same product. Sometimes a manufacturer will use our turn sewing machine and the United Company's heeling apparatus and sometimes he will use our heeling apparatus and the United Company's turn sewing machines, or will mix them up on some other plan" (R. Vol. 1, p. 299, lines 32–37).

(2) Testimony of Ned Pike, an Employee of the Haverhill Shoe Machinery Company.

Ned Pike, who installed machinery and solicited business for the Haverhill Shoe Machinery Company, testified that he met with serious difficulty in installing machines. He testified to his experiences in attempting to install machines with Ashe, Noyes & Small, Auburn, Maine, Dunn & McCarthy, Auburn, New York, Krippendorf & Dittman, Cincinnati, Syracuse Shoe Company, and Irving Drew Shoe Company, Portsmouth, Ohio. The effect of Pike's testimony was that each of these concerns refused to install the Haverhill Company's machines on account of the United Company's leases (R. Vol. 1, p. 329, lines 15–42).

Pike admitted that in each case that he testified about he solicited the business of the concern without having been sent for and that he suggested they take Haverhill Company machines to do the work already being done by United Company machines (R. Vol. 1, p. 330, lines 2–8, 26–35). Accordingly, as we have shown above (*supra*, p. 792), Pike was asking these concerns to substitute Haverhill Company machines for United Company machines for which they paid only as they used them and which they had agreed to use. If they did plead the leases as a reason for not taking his company's machines, it was a natural and proper thing to do.

But Nathaniel C. Small and Willard A. Noyes, of the Ashe, Noyes & Small Company, the only witnesses representing any of the five concerns named by Pike who testified regarding his alleged efforts to install machines, denied that any such statement was made to Pike as he claimed.

Nathaniel C. Small testified that he was treasurer of the Ashe, Noyes & Small Company and that Pike came and solicited his company to put in machines and talked with him. Small testified that he never made any such statement to Pike as Pike had testified. Pike had said, "they told me that under the leases of the United Company it would be impossible for them to install our machinery, unless they laid themselves open to a great deal of trouble—conflict with the United Com-

pany" (R. Vol. 1, p. 329, lines 24–27). Small further testified, "I did not make any statement to Mr. Pike which was at all to the effect that I would not put in his machines because of the existing leases with the United Company" (R. Vol. 1, p. 804, lines 3–16, 43–45).

Willard A. Noyes testified that he was a director of the Ashe, Noyes & Small Company and that he and Mr. Small were the active men in the concern. He said that no such statement as Pike claimed was made to Pike with his knowledge. While Pike was talking with Small, Noyes passed through the room and Pike showed him a picture of a turn sewing machine. Noyes glanced at the picture and asked what advantage the machine had, and one of the replies was that it was a non-royalty machine. Noyes said that did not interest him in the least; that the saving of royalty would not offset the value of the United Company to his concern. On cross-examination Noyes said: "In my conversation with Mr. Pike nothing was said about the leases which we had with the United Company. They were not mentioned" (R. Vol. 1, p. 805, line 18–p. 806, line 1).

It is significant that neither Charles H. Krippendorf, of the Krippendorf-Dittman Company, nor William F. Fowler, superintendent of the Krippendorf-Dittman factory, both of whom testified as witnesses for the United States (R. Vol. 1, pp. 214, 924), referred in any way to these alleged efforts of Pike to install Haverhill Company machines, or even mentioned the Haverhill Company. The United States did not call any witnesses representing the other concerns named by Pike.

Pike admitted that his concern was not in a position to furnish proper service to concerns which he solicited and that that question "usually comes up when we are trying to place our machines" (R. Vol. 1, p. 331, lines 21–41). That testimony alone furnishes an adequate reason for refusal of manufacturers to take his company's machines.

(3) Evidence Regarding the Union Lockstitch Machine.

(a) Testimony of Frank W. Merrick.

Frank W. Merrick, president of the Union Lock Stitch Company (R. Vol. 1, p. 199, lines 8–9), testified: "We tried to sell our machines to Mr. Jones, to Roberts, Johnson & Rand, Harsh and Edmands, and Peters Shoe Company, and could not sell them. Not all these transactions were by letter. Mr. Jones said the conditions in his leases of his other machines would not admit of his use of the machine and that he couldn't afford to touch it, because his leases forbade him. Roberts, Johnson & Rand gave the same answer" (R. Vol. 1, p. 203, lines 6–13).

Jackson Johnson (R. Vol. 1, p. 170) and Frank C. Rand (R. Vol. 1, p. 178), with whose firm the Peters Shoe Company had combined to form the International Shoe Company (R. Vol. 1, p. 162, lines 26–28; p. 171, lines 28–31), Charles H. Jones (R. Vol. 1, pp. 105, 951; Vol. 2, p. 2164), and George R. Harsh (R. Vol. 1, p. 195), all testified as witnesses for the United States, but *not one of them said a word about the Union lockstitch machine*, except Harsh who had taken and used it.

Furthermore, Merrick said Roberts, Johnson & Rand and the Peters Shoe Company *now have Union lockstitch machines* (R. Vol. 1, p. 208, lines 2–3). He also said his company had between 350 and 400 straight needle lockstitch machines out, all over the United States (R. Vol. 1, p. 199, lines 28–33).

(b) The Case of John E. Williams.

The testimony of John E. Williams, which related entirely to events which took place *after this suit was begun*, was introduced subject to defendants' objections and exceptions.

Williams testified that he was using United Company machines and that in August, 1912 (after this suit was begun in December, 1911), he installed a Union lockstitch machine in one of his factories and contemplated installing additional

machines in a new factory. He said that he talked with Mr. King of the United Company in November, 1912, and that Mr. King told him that the United Company felt that he had broken the obligation of his leases and would ask him to discontinue using the Union machine. At his request Mr. King submitted a plan by which he could use Union machines. Williams produced a memorandum which had been submitted to him at the time showing the initial payments which would be required if he substituted the Union machines for the United Company machines. Those additional payments for machines of four departments aggregated $3,675, and Williams testified that he understood that the memorandum also called for extra royalties on the pulling-over machine, the heel compressor, and the clicker, a total extra royalty of one and one-eighth cents per pair (R. Vol. 1, pp. 216–218).

On cross-examination Williams testified that the memorandum of initial charges referred to equipment to be furnished by the United Company for the new factory on the assumption that Williams would use the Union lockstitch machines there (R. Vol. 1, p. 218, lines 29–36).

Williams also said that he talked with Mr. King about the Union lockstitch machine which was already in his factory. He had the Goodyear lockstitch machine on a restricted lease on which he had paid no initial payment and on which the company received income only according as the machine was used. Putting in the Union machine would leave the Goodyear machine idle. Mr. King's final reply was that that would be in contravention of the leases; he said that with the initial premium form of lease they could use their Union machine as much as they wanted to. Williams also said that there was either no royalty on the clicker when used with the Goodyear Welter and Stitcher or the royalty was absorbed in the royalty paid upon the Stitcher (R. Vol. 1, pp. 218–219). So far as he knew the United Company had never had occasion before to fix a royalty on the clicking machine for use in making mock welts.

Williams further testified that he did not make any complaint to Mr. King about any restriction on the use of the Union machine but wanted to use it if he had a right to do so under the leases. He had an interest in the Boylston Manu-

facturing Company amounting to about $5,000 or $6,000 (R. Vol. 1, p. 221, lines 20–26).

Frederick G. King, manager of the United Company's Goodyear Department, testified that Williams' concern had a number of United Company machines under the restricted form of lease and that Williams inquired whether it was a violation of those leases to use the Union lockstitch machine with such machines of the United Company. King told him that it would violate some of the provisions of the leases, but offered to give him unrestricted leases under which he could do it. Williams decided not to use the Union machine, which he said he had put in for experimental trial (R. Vol. 1, p. 697, line 10–p. 698, line 16).

King further testified that the initial premiums stated in the memorandum which Williams testified about were the same as always charged to others on the independent form of lease and that the pulling-over machine royalty, which covered the use of the complete pulling-over system, was the regular rate. As to the heel compressor there would be no extra royalty if Williams compressed the heels in the factory in which he was making the shoes; Williams wanted to compress them somewhere else and sell them to this factory (R. Vol. 1, p. 698, lines 35–44; p. 699, lines 1–4).

Frank W. Merrick, president of the Union Lock Stitch Company, testified in June, 1913, that the Excelsior Shoe Company, Williams' concern, still had the Union machine, although they had not yet purchased it (R. Vol. 1, p. 199, lines 6–9, 42–44).

This testimony about the machines in Williams' factory amounts to no more than showing that the United Company was ready in this instance as always to make equitable terms with a manufacturer contemplating the use of a competitor's bottoming machine with the other bottoming machines of the United Company.

(4) The Merrick-Luitweiler Controversy.

The United States claimed that Mr. Winslow made threats to Messrs. Merrick and Luitweiler, president and treasurer of the Union Lock Stitch Company which was manufacturing a lockstitch machine (R. Vol. 1, p. 199, line 8 *et seq.*; p. 208, lines 17–18).

Frank W. Merrick testified that in the summer of 1905 he had a conversation with Mr. Winslow at the Touraine Hotel with reference to a sale of the business of the Union Lock Stitch Company, at which Mr. Winslow stated in effect that he would not allow Merrick and Luitweiler to make any money and that eventually their business would come around to him and he would take it (R. Vol. 1, p. 199, line 9; p. 200, line 21 *et seq.*). Luitweiler testified to the same effect (R. Vol. 1, p. 208).

Merrick testified under cross-examination that upon this occasion he could make no objection to Mr. Winslow's treatment of him, but that it was a "business bluff" (R. Vol. 1, p. 205, lines 35–42). He commented upon it as follows:—

> "I was not bluffed by what he said. It didn't influence my conduct. It might have frightened me a little. Up to that time the straight needle machine was the only thing we had developed. We have not been interfered with in marketing it except by ordinary methods of competition" (R. Vol. 1, p. 206, lines 11–15).

Taken at its face value, the testimony of the witnesses for the United States would show only that Mr. Winslow made the statement referred to as a "business bluff"; that it was recognized as a bluff; that it did not influence the conduct of Merrick; and that it was not followed up by any interference with Merrick's business.

Mr. Winslow, however, specifically denied ever making any such statement to either Merrick or Luitweiler (R. Vol. 1, pp. 517, 518), and all the probabilities of the case support this denial. Merrick claimed that Sampson, who was employed by the United Company, arranged the conference with Mr. Winslow (R. Vol. 1, p. 200, lines 21, 25, 26). It appears, how-

ever, that before the conference Merrick had asked a mutual friend, Mr. Buck, to bring Sampson to him, had invited Sampson aboard his yacht and had taken him to the Hull Yacht Club as his guest. When Merrick had Sampson out on the yacht he talked with him about his (Merrick's) company and the enterprise in which he was engaged (R. Vol. 1, p. 204, lines 5–23). Merrick's machines were then in an experimental state, and Merrick testified: "We didn't get anywhere with Sampson. He didn't have anything to say" (R. Vol. 1, p. 204, lines 23–27).

Sampson testified that Mr. Buck called on him, showed him a sample of stitching and said it was done on a new machine which Merrick had brought out; that Merrick had several machines he would like to sell and would like to get employment with the United Company. Within a few days, Buck came and invited Sampson off on Merrick's yacht. Sampson declined to go and Buck came back a few days later and urged him to go. While on the yacht Luitweiler asked if he could meet Mr. Wilson, general manager of the company, and pursuant to this request the meeting with Mr. Winlsow came about (R. Vol. 1, pp. 615, 616).

Both Merrick and Luitweiler admitted that at a later interview Mr. Connor of the United Company stated positively that he would not consider buying their business on a competitive basis (R. Vol. 1, p. 210, lines 2–5). It seems quite obvious what sort of solicitation on the part of Merrick and Luitweiler would have called forth such a statement on the part of Connor.

Mr. Connor's attitude is shown by the testimony of Edwin P. Brown, then general manager of the United Company, who testified that he was present at an interview which Merrick and Luitweiler had with Mr. Connor and that Mr. Connor said to them, "'If you care to have me look into it, I should be glad to do so, but I want you to understand that we wouldn't consider it for a minute, otherwise than on its merits, only in so far as it is an improvement over anything that we have or is something that we can use advantageously for our lessees'" (R. Vol. 1, p. 718, lines 28–33).

In respect to this charge the District Court found as follows:—

"Mr. Winslow is also charged, in testimony given by Merrick and Luitweiler, president and treasurer of the Union Lock Stitch Company, then developing machines not yet put on the market, with having told them in 1905, while attempting to persuade them to sell out to the defendants, that they would not be allowed to make any money; that the United Company would build their machines; that their business would come round to it and be taken by it, and that it was cheaper to kill competitors than to acquire them. The alleged statements are denied by Winslow. The business referred to is one never acquired by the defendants, nor is any interference whatever with this business shown. This was admitted, and the testimony of the two witnesses named is that they have put out 350 to 400 of the machines in question" (Dodge, J., R. Vol. 1, p. 1149, lines 1–13).

C. FINDING OF THE DISTRICT COURT AS TO THE ALLEGED "THREATS AND INTIMIDATIONS" BY DEFENDANTS.

The District Court said (R. Vol. 1, pp. 1147–8):—

"It remains to consider how far the evidence proves the defendants to have used 'threats and intimidations' of the various kinds described in the petition. . As to far the greater part of the specified instances set forth in the bill of particulars, the charges of this kind have been allowed to go wholly without attempt at proof. Of those regarding which any such attempt was made, six only have been insisted upon in the petitioner's briefs or argument. No reason whatever to believe that any greater significance could be claimed for any others of the specified instances than for these appears from the evidence regarding them to be found in the record."

The Court then reviewed the evidence regarding the six alleged instances which were insisted upon in the District Court (R. Vol. 1, pp. 1148–9), and concluded (R. Vol. 1, p. 1150):—

"It thus seems clear that nothing proved as to the above instances of so-called 'threats and intimidations' is sufficient to justify such allegations as are made in paragraph VI of the petition about them. Even if anything said by a representative of the United Company on these occasions can properly be called a 'threat,' in view of all the surrounding circumstances shown, there is certainly no adequate reason established for believing that any competitor's customers have been induced to abandon them, or that anybody has been prevented from attempting competition by what was said. The instances relied on are widely separate in time and distinct as to circumstances and persons. They cannot reasonably be regarded as showing a concerted purpose to suppress competition through intimidation, such as paragraph VI purports to charge. In every instance the expressions said to have been used by a representative of the United Company were in interviews with persons interested in some concern or machine which the United Company was asked or might be asked to buy. As has appeared, propositions of this kind were constantly being made to its representatives, and many more of them were refused than were accepted."

D. FINDING OF THE DISTRICT COURT AS TO THE CHARGE THAT PROVISIONS OF THE LEASES HAVE BEEN ARBITRARILY ENFORCED.

The District Court said (R. Vol. 1, pp. 1150–1):—

"Not in paragraph VI, but in the preceding paragraph V of the petition, the charge is made that certain provisions of the leases, under which the United Company's machines have been operated by users, have been arbitrarily enforced, in pursuance of a general policy and practice to refuse machines for failure to comply with the terms and spirit of the leases 'and to otherwise injure' users so failing to comply.

"In the above bill of particulars filed, as has been said, on June 25, 1913, 'in amplification of Section VI of the petition,' the defendants are charged, in a number of specified instances, with threatening to remove or remov-

ing machines from the factories of users because competing machines or machines obtained from other concerns were also being there used or because such use of other machines was in contemplation. No proof whatever has been offered as to a considerable proportion of the instances thus specified.

"In the instances specified regarding which there is some proof nothing more is shown than that the United Company insisted, to a greater or less extent, upon observance by the lessee of provisions in his lease to which he had expressly agreed when he took the machine, and which he was purposely violating or proposing to violate to the detriment of the lessor, because such violation would tend to decrease the number of pairs of shoes operated on by the machine and thus the royalty to be paid for its use by the lessee.

"If the provisions referred to in the leases are contrary to law, it was unlawful to insist upon them. The question here involved is later considered. But unless the provisions were unlawful, the evidence regarding these specified instances in which their observance was insisted upon wholly fails to show that in any instance the defendants did or attempted anything whereof either the lessee of the machine or anyone else had any right to complain.

"It may be said generally that the instances in which machines were in fact removed from the factories of lessees under the provisions referred to have been so few in proportion to the total number of leases as to leave the general charge that such provisions have been arbitrarily or oppressively enforced destitute of any sufficient foundation. Only five such cases appear in the evidence. In each the lessee's conduct was in wilful disregard of the lease agreements and afforded a complete justification for the lessor's action, unless none is possible."

In concluding its discussion of the charges of alleged unfair and oppressive acts the District Court said (R. Vol. 1, pp. 1152–3):—

"The history of the proceedings in this case indicates that efforts which may fairly be described as extraordinary have been made to bring before the court, so far as possible, all sayings or doings of any of the numerous defendants or their representatives, during the period beginning with 1899 and ending with 1911, which might afford ground for charging them with oppressive, coer-

cive, or like unfair conduct toward competitors of the United Company or the public. In view of the long period and wide fields thus searched, the numerous abandoned attempts to prove something of the kind above indicated, and the insignificant result of the evidence actually offered and finally relied on, the conclusion seems fully justified that the policy and methods pursued by the defendants and by the United Company have been, in general, above reproach in any of these respects."

APPENDIX III.

TESTIMONY OF COMPETING SHOE MACHINERY MANUFACTURERS CALLED BY THE UNITED STATES AS TO CONCERNS COMPETING WITH THE UNITED COMPANY.

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THE TESTIMONY OF COMPETING SHOE MACHINERY MANUFACTURERS AND THEIR REPRESENTATIVES, CALLED BY THE UNITED STATES IN PRESENTING ITS DIRECT CASE, PROVES THAT THERE ARE MANY AND SUBSTANTIAL CONCERNS OTHER THAN THE UNITED COMPANY ACTUALLY FURNISHING SHOE MANUFACTURERS WITH MACHINES.

In addition to the evidence which the defendants introduced, including various exhibits, catalogues of shoe machinery manufacturers, etc., as well as the testimony of Mr. Winslow, the following testimony was given by witnesses for the United States establishing the fact that a large number of concerns in addition to the United Company are, in fact, in the market supplying shoe machinery to the trade.

Duplessis Shoe Machinery Company.

Hamel Shoe Machinery Company.

Chas. A. Hamel, vice-president of the Hamel Shoe Machinery Company, the successor of the Duplessis Shoe Machinery Company, testified that the Duplessis Company began business at Haverhill in 1903 and it and Hamel, as its successor, have carried on business since without interruption, having sold in the United States twenty or more types of machines used for bottoming shoes to the extent of between 400 and 450 separate machines, not counting the practically equal number sold abroad, and including 86 welt and turn machines, 41 stitchers, 70 insole channelers, 24 loose nailers, and 22 sluggers (R. Vol. 1, p. 326). Hamel named four shoe machinery concerns which the Hamel Company had taken over and stated that that company manufactured at Haverhill, in addition to the machines made at Lynn, ten different types of machines, including welt and turn sewing machines and outsole lock-

stitch machines and also leveling, molding, and various metallic fastening machines. He said that his concern employs "from sixty to sixty-five men at both our shops" (R. Vol. 1, p. 944, lines 44–45; p. 945, lines 1–42). Summing up, he said: "We have a complete set of machines for making turn shoes and a complete set of machines for making welt shoes"; also "a complete set of metallic fastening machines for either a welt or McKay shoe" (R. Vol. 1, p. 327, lines 15–19).

Hamel testified that Mr. Sullivan of the Singer Sewing Machine Company had become the treasurer of the Hamel Company (R. Vol. 1, p. 945, lines 34–40).

Thomas C. Rowen, the president of the Hamel Company, named a dozen types of machines, including buffing, breasting and scouring machines, manufactured at Lynn where he said "thirty-five or forty men" were employed and added that "our principal business is with shoe manufacturers. We do not do any business with shoe repair men" (R. Vol. 1, p. 946, lines 2–20).

Catalogues of both the Duplessis and Hamel Companies are contained in Defendants' Physical Exhibit 321 and either Mr. Hamel or Mr. Rowen testified to manufacturing each of the machines appearing in the Hamel catalog (R. Vol. 1, p. 946, lines 21–26).

Haverhill Shoe Machinery Company.

Edwin A. Webster, an inventor, and a director of the Haverhill Shoe Machinery Company, connected therewith since its formation in 1907, testified:—

> "The Haverhill Shoe Machinery Company manufactures turn channel machines for turn soles, welt innersole lip turner, welt groover and beveler, welt beaters, turn sewers and welters, heel-nailing machines, heel-attaching machines, heel-trimming machines, heel-seat keying machines, keyer or beader, and turned sole-molding machines" (R. Vol. 1, p. 291, lines 1–6);

also "heel breasting machines." "We handle but do not build the Webster leveler" (R. Vol. 1, p. 298, line 42; p. 299, lines 2–3). He testified further that his company were agents

for lasting machines, rapid outsole stitchers, loose nailers and sluggers—metallic fastening machines. "We handle the Hamel machine for slugging heels and one turn machine." Some lasting and slugging machines are obtained from Gimson & Company and the Standard Rotary Company, of England (R. Vol. 1, p. 298, lines 1–10, 44–45; p. 300, lines 40–45; p. 301, lines 1–3).

In discussing certain of these machines more in detail, Mr. Webster testified that the Haverhill Company had put on the market 25 heel nailing machines ("Pettingill" type—R. Vol. 1, p. 302, lines 1–2), 65 welt and turn machines, and 60 or 65 turn channeling machines with 12 to 15 in stock. He admitted that the turn molding machine, of which they had put out 40 or 50, is "a copy of the Goodyear machine" and that their turn channeling machine and welt innersole turner and welt beater correspond to machines put out by the United Company "for performing the same kind of work" (R. Vol. 1, pp. 291–292).

Summarizing, he said: "We have machines with fifty-eight manufacturers, of whom thirty-eight also use United machines" side by side with Haverhill machines (R. Vol. 1, p. 299, lines 5–7, 32–45).

> "We advertise that we furnish any manufacturer a full line of all kinds of shoe machinery, whether it is for welts or McKays, or turns or pegs or anything else. We are prepared to make good if our people that manufacture machines don't go back on us" (R. Vol. 1, p. 301, lines 5–9; see also p. 298, lines 13–15).

Mr. Louis H. Harriman, treasurer of the Haverhill Company and having "general oversight of its business" (R. Vol. 1, p. 317, line 45; p. 318, lines 2–3), furnished a long list comprising five different groups of "Past and Present Users of Machines of the Haverhill Shoe Mchy. Co." In connection with the machines sold to the Criterion Shoe Co., Beverly, Mass., the list contains this note: "A line of Welt machinery independent of U. S. M. Co. including Welter from Haverhill Co." (P.'s Ex. 161, R. Vol. 4, pp. 1118–1122).

R. H. Long Machinery Company.

Richard H. Long, treasurer of the R. H. Long Machinery Company (R. Vol. 2, p. 2135, Cr. Ints. 51–53), testified,—

> "We manufacture machines for lasting and welting and stitching—sole stitching—leveling, heeling, some metallic fastening machines, and a number of others" (R. Vol. 1, p. 232, lines 4–6),

comprising fifty types in all, for the manufacture of welt shoes (R. Vol. 1, p. 271, lines 10–15); Defs.' Physical Exs. 72, 73, *i.e.*, catalog of the Long Company). Among the machines which he had actually sold he named "sole welting, stitching, some metallic machines" bought by "Mr. Taylor, of the Taylor Shoe Company, of Lynn," who is using no machinery of the United Company (R. Vol. 1, p. 232, lines 23–31).

Long stated that he had sold fifty to one hundred welters, stitchers "and some other machines" "to shoe manufacturers," in addition to machines sold "to cobblers—shoe repairers" (R. Vol. 1, p. 233, lines 8–14). He stated further that he had on hand three or four hundred "rapid outsole lock-stitch machines," briefly referred to as stitchers, thirty or forty welting machines, twenty to twenty-five or more lasting machines and three or four heeling machines, not including metallic fastening machines being built and not including machines which he was actually using in his own factory (R. Vol. 1, p. 274, lines 36–45; p. 275, lines 1–5).

Long stated that since 1907, when he fitted up his own factory with machines procured from concerns other than the United Company, he had been making shoes entirely without United Company machines (R. Vol. 1, p. 231, lines 23–43; p. 232, lines 7–13), his daily capacity being "five or six thousand pairs . . . almost exclusively" welts (R. Vol. 1, p. 224, lines 39–44).

John J. Doidge, general manager of the Long Company, testifying a week later, confirmed generally the above statements of Mr. Long, but stated, "We have practically completed four hundred and fifty out-sole stitching machines"—

copied exactly, except for patented parts, from the old Goodyear machines (R. Vol. 1, p. 345, lines 6–14, 39–40). This is a larger number than that set by Long. Among the many other machines which Doidge named as being made by the Long Company were innersole and outersole machines, welt machines, sole laying and leveling machines, heeling and lasting machines. He said:

> "We do not make all the machines shown in our catalogue. We are getting ready to make about all. Some auxiliary machines we buy from others. We have had as many as seventy-five employees, at present about eighteen. There are three buildings to our factory" (R. Vol. 1, p. 346, lines 16–20).

And he summed up with the statement: "We are ready to supply a full line of machinery for welt and turn shoes and we so advertise" (R. Vol. 1, p. 345, lines 43–44; Defs.' Physical Exs. 72, 73).

Boylston Manufacturing Company.

George W. Maloy of Boston, who has for five or six years been "in charge of the sales department of the Boylston Manufacturing Company," testified:—

> "We make power treeing machines, hand treeing stand, Julian rounder, Union edge setter, Webster buffer, Webster cleaner, Globe heel scourer, heel-finishing machine of hot wax type, and heel-blacking machine. That is all. The heel-blacking machine and the heel-finishing machine have been put out recently. They are adapted to all kinds of shoes. They are sold outright, except the power treers which are put out on royalty. Many are sold to customers of the United Company all over the country, I suppose" (R. Vol. 1, p. 302, lines 16–25).
>
> "We have placed bottoming machines in the factories on trial but never tried to sell or lease any. We placed them in our own factory at Fair Haven and in a factory at Pepperell run by the Buffalo Shoe Company" (R. Vol. 1, p. 301, lines 29–32).

Mr. Maloy affirmed that "we are offering all of the machinery named in" the Boylston catalogue (R. Vol. 1, p. 302, lines 38–39; Defs.' Physical Ex. 76).

From his knowledge as to parties making shoe machinery in the United States, he further testified:—

> "Welting machines are put out by the Hamel Shoe Machinery Company, of Haverhill, the Haverhill Shoe Machinery Company, R. H. Long Company, of South Framingham, Champion Shoe Machinery Company, of St. Louis, and Victor Shoe Machinery Company, of Boston. I believe the two last confine their business to repairers and do not furnish machines to shoe makers. Outsole stitchers are made by R. H. Long & Company and Union Lockstitch Company of East Boston. . . . The Haverhill Shoe Machinery Company puts out the Pettingill heeler. . . . Long has a loose nailer" (R. Vol. 1, p. 301, lines 35–43; p. 302, lines 1–3).

John F. Cavanaugh of Ashland, Mass., "salesman of shoe machinery connected with the Boylston Manufacturing Company," which had taken over the Flagg Manufacturing Company in 1904, and called by the United States in rebuttal, testified that the Boylston Company had put out lasting, pulling-over, slugging and heel finishing or blacking machines, referring specifically to about forty heel-finishing machines which had been placed in five localities, east and west. He also mentioned a large number of foreign concerns in the shoe machinery business including several "good-sized concerns" some of which "manufacture complete lines of shoe machinery" and at least two of which, he stated, were "ready to do business in the United States" (R. Vol. 1, pp. 954–7).

Charles S. Johnson of Lynn, now connected with the Boylston Manufacturing Company, testified that it absorbed the Tripp Giant Leveler Company in 1905 and that the Tripp Company "made several types of levelers for leveling the bottoms of shoes of all kinds." "We had several machines; direct pressure leveler; rolling pressure leveler, called Giant leveler; and an improvement on it, the new Giant leveler. Our new Giant leveler sold for $350" (R. Vol. 1, p. 304, lines 29–33; p. 305, lines 6–9, 14–20).

F. A. Brackett, formerly employed by the Boylston Manufacturing Company at Fairhaven, testified: "They had two welting machines which were manufactured by the Boylston Manufacturing Company." "We had no machines obtained from the United Company. We got them all elsewhere, and we made welt shoes without any machines from the United Company" (R. Vol. 1, p. 951, lines 11–18, 29–32).

Harrie A. Ballard testified that he had gotten out a stitching machine and a welt machine which had been used in 1907 at Fairhaven (R. Vol. 1, p. 958, lines 3–4, 35–40).

Jackson Johnson, a member of the "Shoe Manufacturers' Alliance" and president of the International Shoe Company, which is financially interested in the Boylston Company, testified that the "Boylston Company contemplates making a full line of shoe machines" (R. Vol. 1, p. 170, lines 31–35; p. 171, lines 19–23).

Union Lock Stitch Company.

Frank W. Merrick of Boston, president of the Union Lock Stitch Company, testified:—

> "That company is located in East Boston and manufactures shoe machinery. We manufacture a straight needle lock-stitch machine for saddlery and shoe work and a curved-needle stitching machine for shoe work. We make a lock-stitch welt machine, a sole-fitting machine, lasting machines, and two metallic fastening machines, used in connection with lasting operations. I have been building shoe machinery for thirty-two years, mostly stitching machinery. I have built the Merrick stitching machine, used almost exclusively on upper fitting; the Puritan machine, used both on upper fitting and sole stitching and also harness and saddlery work; and a small chain-stitch machine, called the Rapid machine, for a similar class of work. After that I followed with the lock-stitch harness machine, which is a straight needle, waxed-thread stitching machine that can be used for certain kinds of sole stitching, and then with the curved-needle machine, designed expressly for stitching outsoles, both welted and McKay welt and McKay fair stitch shoes. It will do fair stitching on any type of shoe. At present we are putting the straight-needle lock-

stitch machine on the market. We have between three hundred and fifty and four hundred lock-stitch machines out. We first engaged in the manufacture of the lock-stitch machine in 1904. We sell those machines outright at seven hundred and fifty dollars, five off in thirty days. The machines are all over the United States. About seventy-five of the straight-needle machines are in shoe factories and the balance were placed among harness and saddlery people. We are attempting to market the curved-needle machines, of which three have been sold to shoe factories" (R. Vol. 1, p. 199, lines 9–37).

One other has been sold while three others have been completed and a dozen nearly assembled (R. Vol. 1, p. 199, lines 39–40; p. 207, lines 5–6).

"Our straight-needle machine was ready for the market about 1907, the curved-needle machine about 1909. . . .

"The United Company has a curved-needle machine for doing similar work to ours. The Campbell-Bosworth Company has a machine for doing work similar to our straight-needle machine" (R. Vol. 1, p. 201, lines 13–20).

Geo. R. Harsh of Milwaukee, a shoe manufacturer, testified: "We formerly used the Goodyear out-sole stitcher to stitch the two soles of a nailed shoe together before nailing them to the upper. We substituted the Union lock-stitch machine for that operation." "The Union lock-stitch machine is better and more rapid for that purpose" (R. Vol. 1, p. 195, lines 34–37; lines 23–34). Other shoe manufacturers referred to this machine (see R. Vol. 1, p. 160, lines 14–15; p. 216, lines 39–40).

Peerless Machinery Company.

Lorenze Muther of Newton testified that the Peerless Machinery Company—

"manufactures shoe machinery, principally what is called stitching-room machinery; *i.e.*, eyelet-setting machines, skiving machines, hook-setting machines, perforating machines, sanding machines, pasting machines, cementing machines, folding machines, button-sewing machines, and a tip press belonging to the finishing-room depart-

ment of the factory. We have both tip press and tip perforating machines. Similar machines are put out and sold outright by the general department of the United Company" (R. Vol. 1, p. 303, lines 1–12).

"Our machines relate to work on uppers of shoes, except the sanding machine which finishes or roughs the sole before it is put on the shoe. . . . We publish a catalogue" (R. Vol. 1, p. 303, lines 23–27).

He referred to different concerns making eyelets and particularly to the Atlas Tack Company which "makes various kinds of eyelets for shoes," stating:—

"We sell more Atlas than United eyelets, and our customers are altogether shoe manufacturers. . . . Our machines are sold to shoe manufacturers who use other machines obtained from the United Company. That company has machines for performing similar operations. Our machines and theirs are sometimes used side by side in the same factory" (R. Vol. 1, p. 303, lines 15–17; p. 304, lines 2–7, 10–13).

George Knight testified:—

"The Peerless Company is making and supplying the eyeletting machines, which we formerly made, in quite large quantities. They are used by shoe manufacturers" (R. Vol. 1, p. 903, lines 37–39).

Atlas Works.

Alex Stone of New York, formerly "export manager for the Atlas Works at Leipsic, Germany," testified:—

"My concern makes a complete line of shoe machinery, including welters and stitchers, heeling machines and lasting machines." "They are prepared to furnish a complete line of shoe machinery for welt, McKay, and turn shoes." "The Atlas factory employs three hundred men in Leipsic. It has a capacity of three of each of the principal machines a week, so that each week they could furnish three equipments" (R. Vol. 1, p. 339, lines 40–44; p. 340, lines 9–11; p. 342, lines 8–9; p. 343, lines 41–43).

"I first attempted to install machinery for the Atlas

Works in this country in December, 1910." "I offered to equip the Roberts, Johnson & Rand factory with a complete equipment for McKay, welt, and turn shoes, except a few minor machines" which could be bought from "other people." "I offered to equip the Hamilton-Brown Company with our full line. I offered to sell the machines outright" (R. Vol. 1, p. 340, lines 3–9; p. 342, lines 16–20, 43–44; p. 343, lines 1–2).

"I sold machines to nail wooden heels on shoes of the turn variety to Evans in Wakefield, and Guptil in Haverhill. Those were the only two machines I sold in the six weeks I was here" (R. Vol. 1, p. 341, lines 21–23).

An Atlas catalogue will be found as Defendants' Physical Exhibit 319.

Seelye Manufacturing Company.

Nelson H. Seelye of Winchester, Mass., testified that he manufactures—

"machines which, used in connection with dies, cut out material such as leather, cloth, rubber, etc. I have been in that business since 1889. The company was first called the Hawkins Machinery Company [later becoming the Seelye Manufacturing Company (Defs.' Ex. 336, R. Vol. 5, p. 891)] and made beam die presses or dinking machines for dieing out the soles of shoes, among other things. The machine for cutting the upper is the clicking machine. We were engaged in that business when the United Company was formed. We sold from fifty to one hundred per year to shoe manufacturers up to that time. We continued to place on the market our machines after the formation of the United Company" (R. Vol. 1, p. 327, lines 30–40).

"The United Company offered its machines for sale at the same price as ours, and it also offered them on an annual rental of fifteen dollars. We never tried to rent any of our machines, but adhered to our old plan of one basis, sale only" (R. Vol. 1, p. 328, lines 18–21).

THE TESTIMONY OF COMPETING SHOE MACHINERY MANUFACTURERS, CALLED BY THE UNITED STATES IN REBUTTAL, PROVES THAT THERE ARE IN THE FIELD MANY CONCERNS ACTUALLY BUILDING AND PUTTING OUT SHOE MACHINERY IN COMPETITION WITH THE UNITED COMPANY.

Among the large number of shoe machinery manufacturers and dealers who testified for the United States in rebuttal the testimony of the following will now be referred to briefly, and for convenience they will be taken up, as a rule, in the order in which their testimony appears in the record since they were called at about the same time and in reply to the testimony of William R. Sampson, witness for defendants, who produced, in addition to a number of loose catalogues (Defs.' Physical Exs. 312–320), two large portfolios, one of which (Defs.' Physical Ex. 321)—

> "comprises letters, catalogues, and advertisements of different machines that are offered for sale and advertised in this country by manufacturers of shoe machinery. There are 116 manufacturers represented. . . . All of these concerns are still engaged in business" (R. Vol. 1, p. 836, lines 33–42).

The other portfolio (Defs.' Physical Ex. 311) comprises additional catalogues of competing shoe machinery manufacturers (R. Vol. 1, p. 836, lines 43–44; p. 837, lines 1–3). All of these exhibits are indexed in Defs.' Ex. 336, R. Vol. 5, pp. 849–905. In the same connection, Mr. Sampson furnished a "list of machines offered by shoe machinery manufacturers and dealers other than United Shoe Machinery Company for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, dieing-out machines and clicking machines" (Defs.' Ex. 337, R. Vol. 5, pp. 906–935).

As we shall now proceed to point out in detail, practically

all of the machines of the manufacturers and dealers referred to below are in competition with similar machines of the United Company.

Edwin B. Stimpson & Son.

Edwin B. Stimpson of Brooklyn, a manufacturer of machinery for forty years, testified: "we can supply strip cutters" which can be used "to cut strips of welt" (R. Vol. 1, p. 882, line 38; p. 884, lines 3–12). Other witnesses testified that "by an adjustment of the knives" a strip cutter can "be converted into a machine for flexing, and it has been so used. It is sometimes known as an insole flexer" (R. Vol. 1, p. 885, lines 43–44; p. 886, line 1; p. 890, lines 23–25). Stimpson finally stated that the only machines "which I have placed with shoe manufacturers within the last five years are the pinking and perforating machines, which are used for ornamental perforations" (R. Vol. 1, p. 884, lines 15–19).

All of these machines are in direct competition with machines of the United Company (Defs.' Exs. 227, 232, R. Vol. 5, pp. 425, 426, 482, 483, 498).

Edward E. Spencer & Company.

Edward E. Spencer, Jr., of New York testified that the Spencer Company did a business in shoe machinery and accessories, building "channeling, rolling, splitting, impression stitch, buffing, and eyeletting machines"; also strip cutters (R. Vol. 1, p. 885, lines 1–6).

Mr. Spencer also testified that "John D. Randall & Company of Cincinnati put out machines for harness trade. The only machines put out by them which could be used in the shoe trade were strip cutters" (R. Vol. 1, p. 885, lines 17–19).

All of these machines are in direct competition with machines of the United Company (Defs.' Exs. 227, 228, 246, R. Vol. 5, pp. 425, 437, 684, 685, 689).

L. L. Barber & Company.

William L. Barber testified that his father had been in "business continuously" from 1859 to 1911, the name of the concern being L. L. Barber & Company.

> "The machines which we made which could be used in the manufacture of shoes were presses, dies for perforating toe caps, and perforating machines for perforating uppers, and some smaller attachments which were used upon Singer sewing machines for stitching uppers" (R. Vol. 1, p. 887, lines 7–26).

The United Company also puts out machines of these several classes with the exception of the attachment for the Singer machine (Defs.' Exs. 227, 232, 246, R. Vol. 5, pp. 427, 482, 483, 687).

Leslie L. Hartwell.

Leslie L. Hartwell of Revere, superintendent for A. G. Walton & Company, testified: "I have put out a few machines which can be used in manufacturing shoes. They were a grooving machine, a sanding machine, a heel-building machine, and a counter-dividing machine." "Each of my machines had something to do with the bottom before it was attached to the upper." "I made some of the heel-building machines for our own concern and then sold the rights to manufacture them to the Young Machinery Company." "The machine is used by heel manufacturers, and by shoe manufacturers who make their heels. It is the universal heel-building machine today" (R. Vol. 1, p. 887, lines 43–44; p. 888, lines 1–27).

All of the machines above mentioned are in direct competition with machines of the United Company (Defs.' Exs. 227, 228, 232, 246, R. Vol. 5, pp. 426, 434, 508, 685, 688).

J. S. Wheeler & Company.

Joshua S. Wheeler of Winthrop, "principal owner of the business of J. S. Wheeler & Company," testified that that

concern makes welt cutting, counter-dividing and other new machines. "We also rebuild shoe machinery" such as "vamp machines," "sole cutters," "National stitchers" and "Puritan stitchers" (R. Vol. 1, p. 889, lines 42–44; p. 890, lines 1–17).

All of these machines are in direct competition with machines of the United Company (Defs.' Exs. 227, 228, 232, R. Vol. 5, pp. 425, 426, 435, 526; also Vol. 2, p. 2244).

Puritan Manufacturing Company.

John H. Lingley of Brockton, manager of the Puritan Mfg. Company, after mentioning a half-dozen types of machines sold by his company, said:

> "Our welt-seaming machine attaches a McKay welt to the sole before it is laid. Our Puritan fair-stitching machine and our vamp-welt-seaming machine are used in the operation of attaching the sole to the upper. All the machines mentioned are sold to shoe manufacturers" (R. Vol. 1, p. 892, lines 4–9).
>
> "We sell a good many Puritan fair-stitch machines, and have probably sold around a thousand since we first went into business in 1892 or 1894" (R. Vol. 1, p. 891, lines 36–38).

The stitchers which the United Company puts out in the Goodyear Department compete with these machines of the Puritan Company in attaching soles to welts (Defs.' Exs. 228, 232, 235, R. Vol. 5, pp. 439, 505, 556).

Victor Shoe Machinery Company.

L. E. Johnson, of the Victor Company, testified that in four or five months they have delivered "thirty-two lock-stitch machines to small shoe manufacturers" (R. Vol. 1, p. 893, line 24).

> "We have been putting out a rough rounder and channeler longer than that. It is a machine intended to perform an operation on the sole of a shoe, for completing the work of attaching the sole to the upper" (R. Vol. 1, p. 894, lines 6–12).

He referred to five or six other machines put out by his company and some similar machines put out by the Champion Shoe Machinery Company or the Universal Shoe Machinery Company and the Specialty Shoe Machinery Company, all of Missouri. Some of these machines were intended for the "repair trade," but some were for the "shoe factory trade" and "could be used on a new shoe" (R. Vol. 1, pp. 893–895). Among the machines put out by these companies, he mentioned "a lock-stitch machine" and "a welt machine" (R. Vol. 1, p. 893, lines 40–42; see also p. 921, lines 17–22).

All of these machines are in direct competition with machines of the United Company (Defs.' Ex. 232, R. Vol. 5, pp. 512, 513, 515, 516).

George Knight & Company.

George Knight of Brockton stated that his concern had "put out a power gang eyeletting machine" and also makes—

> "tip-perforating presses (models E, F, & G), hand, foot, and power tip-punching machines, vamp creasers, feather edgers, lip turners, and K and K cementing machines. We do make all of these. We have made heel shaving, lining sticking, and heel building machines in the [about 29] years I have been in business" (R. Vol. 1, p. 902, lines 40–41; p. 903, lines 28–33).

The United Company puts out machines in direct competition with all of these Knight machines (Defs.' Exs. 227, 228, 232, 235, 246, R. Vol. 5, pp. 427, 431, 483, 494, 497, 498, 500, 503, 527, 634, 684).

Kimball Brothers & Sprague.

Fred S. Sprague, of Kimball Brothers & Sprague, Brockton, testified that they "make a welt laying machine" and "sell it to shoe manufacturers" (R. Vol. 1, p. 904, lines 1–7).

The United Company has two competing models of welt laying machine (Defs.' Ex. 232, R. Vol. 5, p. 507).

Thomas Bostock.

Thomas Bostock of Brockton named ten different machines which he was—

> "making right along," each performing "an operation which is either preparing or finishing the bottom of the shoe before or after it is attached to the upper, or getting the upper ready for attachment to the sole" (R. Vol. 1, p. 905).
>
> "We have put out as many as one hundred heel building machines a year," mostly to shoe manufacturers (R. Vol. 1, p. 904, lines 42–43; p. 905, lines 36–40).

• The machines which he named comprise, in addition to the heel building machine, a toe softener, a heel lift gouger, a cap (tap) cutter, a spring heel scarfer, a rand turner, a rand chopper, a welt slasher, a rand cutter, and a box toe press.

The United Company has machines which directly compete with practically all of these Bostock machines (Defs.' Ex. 232, R. Vol. 5, pp. 497, 498, 504–510).

Carlson Brothers.

Carl A. Carlson of Brockton testified: "We make a toe softening machine used for softening the box of the shoe before it is lasted. . . . They are used altogether by shoe manufacturers" (R. Vol. 1, p. 906, lines 1–7).

The United Company puts out a machine for the same purpose (Defs.' Ex. 232, R. Vol. 5, pp. 509, 510).

Albert G. Brewer.

Albert G. Brewer of Natick testified, "I make a McKay welt-slashing machine, which I sell to shoe manufacturers" (R. Vol. 1, p. 907, lines 13–16).

The United Company puts out a machine for the same purpose (Defs.' Ex. 232, R. Vol. 5, p. 506).

Tower Brothers.

John M. Tower of Tower Bros., Hudson, Mass., named eight machines made and put out by his concern which "all have to do with finishing the sole or the heel after it is attached to the upper" and also two more "for dieing out the sole."

The names of these ten machines as given by Mr. Tower follow: "high-speed buffer, beveling machine, edge trimmer, edge scourer, stamping machine, heel trimmer, rotary edge setter, power stripping machine," "vamp cutter," "dieing-out" machine (R. Vol. 1, p. 908, lines 10–17).

All of these machines are in direct competition with machines of the United Company (Defs.' Exs. 228, 232, R. Vol. 5, pp. 434, 480, 481, 496, 501, 521–526).

J. S. Holt Co. (Inc.).

John Bulmer of Boston, superintendent of the Holt Company, testified that his "company is engaged in the business of second-hand shoe machinery." He stated we "rebuild" McKay sewing machines (R. Vol. 1, p. 908, lines 19–41).

The United Company is one of the many concerns putting out McKay sewing machines (R. Vol. 1, p. 858, lines 35–45; p. 859, lines 1–21).

Union Special Machine Company.

Alonzo H. Hatch, New England manager for the Union Special Machine Company, stated that most of his company's machines were used "for performing operations for preparing the upper for the lasting operation," but that they had an "overedge machine" and a "butting machine" "used for preparing an imitation Gem insole" and that they had "fitted up one machine especially for making a corded welt" (R. Vol. 1, p. 909, lines 25–37; p. 910, lines 8–10).

While the United Company does not compete with the Union Special Company with respect to machines for sewing uppers, it does have various machines for preparing Gem insoles and for making welts (R. Vol. 2, pp. 2243, 2247).

Shawmut Machinery Company.

Frank P. Emerson of the Shawmut Machinery Company, of Boston, testified that his company made and put out to shoe manufacturers a McKay sewing machine of improved design, as well as a vamp and lining cementing machine, a power hammer, a tip scouring machine, and a seam rubber (R. Vol. 1, p. 910).

All of these machines are in direct competition with machines of the United Company (R. Vol. 1, p. 858, lines 35–45; p. 859, lines 1–21; Defs.' Ex. 232, R. Vol. 5, pp. 482, 483, 484, 490, 527).

Fortuna Machine Company.

George H. Diehl, Jr., of New York City, president of the Fortuna Machine Company organized in 1903, testified that they "manufacture skiving machines for skiving the uppers, vamps, and all parts of shoes" (R. Vol. 1, p. 910, lines 44–46; p. 911, lines 1–3).

The United Company puts out two similar machines in direct competition with the Fortuna machine (Defs.' Ex. 232, R. Vol. 5, pp. 481, 509).

Brockton Heel Company.

Wendell P. Bosworth, connected with the Brockton Heel Company, testified that they "supply shoe manufacturers with a heel-log building machine" and also a sanding machine (R. Vol. 1, p. 911, lines 21–34).

The United Company puts out heel building machines but not heel-log building machines. It also puts out sanding machines (Defs.' Ex. 246, R. Vol. 5, pp. 684, 688).

Stewart Brothers.

J. Hammond Stewart of Lynn, "connected with Stewart Brothers, who have been manufacturing counter machinery for approximately twenty years," which machinery "is used

for making and adjusting molded counters to the last," named and described five different machines which they build (R. Vol. 1, p. 912, lines 8–14, 33–34).

The United Company puts out several counter skiving machines which compete with Stewart machines (Defs.' Ex. 232, R. Vol. 5, p. 508), but does not have a complete line of counter machinery.

Keighley Company.

Leopold C. Tappey testified that during the year 1911, the Keighley Company, of New Jersey, "made a cleaning machine, a finishing machine, a polishing machine, and an inseam trimmer" (R. Vol. 1, p. 912, lines 38–43; p. 913, line 1).

All these machines are in direct competition with machines of the United Company or of the Xpedite Company (Defs.' Ex. 232, R. Vol. 5, pp. 513, 524–526).

C. S. Pierce Company.

Eben W. Thomas, treasurer of C. S. Pierce Company, testified that they market a machine used for skiving upper leather (R. Vol. 1, p. 913, lines 26–32).

The United Company puts out two machines of this character (Defs.' Ex. 232, R. Vol. 5, p. 481).

Beckman Machine Company.

Aaron Beckman of Lynn, connected with the Beckman Machine Company, testified that he had put out a heel finishing machine and a heel beading machine (R. Vol. 1, p. 926, lines 1–12).

The United Company, through the Xpedite Company, puts out one machine for performing both of these operations and also puts out directly two other heel beading machines (Defs.' Ex. 232, R. Vol. 5, p. 524).

Beckwith Box Toe Company.

Harry H. Beckwith of Boston testified that the Beckwith Company, which had been in business ten years, had put out during the past two years about two hundred machines used to soften the box toes in the lasting operation and that the United Company "has a machine for performing a similar operation" (R. Vol. 1, p. 926, lines 25–33).

The machine of the United Company referred to is put out in two models (Defs.' Ex. 232, R. Vol. 5, p. 510).

Boston Machine Works Company.

Harry I. Illingworth, manager of the Boston Machine Works Company, testified: "We manufacture shoe machinery, special machinery, and tools," specifying seventeen types of machines which they put upon the market as follows:—

> "We make the Monarch and the Boston beading machines for beading the tops of shoes, the Julian cementing machine, used for cementing the soles of shoes, and the New York fold cementing machine, used for cementing the edges of skived leather before folding. We have put out during the last ten years seven or eight hundred Julian cementing machines. They have gone to shoe manufacturers. We make folding machines, the Booth folding machine, used for folding the edges of the upper; the Boston machine, for similar work of a heavier character; a foot-power machine for small pieces, such as backstays; and a vamp machine, which is a special machine for folding the vamp. We make the Rochester lacing machine for lacing the upper to give the proper opening before being lasted, and marking machines for marking leather; a lining pricking machine; a snipping machine, used for snipping the edges of curves of the upper leather before folding; a tip scouring machine, and a flap-slashing machine, used for slashing the curves in the shank of the insole. We have put out perhaps fifty flap-slashing machines. They were principally sold in this country. The Julian cementing machines were nearly all—about 90%—sold in this country. We formerly made a hook-hole punching machine, but do very little on it now. It was used to prepare the upper for setting of the hooks. We handle the Union Seam rubbing machine, but do not

make it. We have the exclusive sale of it. It is used for pressing the seams of the uppers. . . . We make an insole pinking machine" (R. Vol. 1, p. 926, lines 39–44; p. 927).

He added: "We hold ourselves ready to supply all of the machines named" in our catalogue. "We employ 100 men, more or less, altogether" (R. Vol. 1, p. 927, lines 39–42; catalogue in Defs.' Physical Ex. 321).

The United Company puts out machines for performing nearly all of the operations which are performed by the various machines mentioned by Mr. Illingworth (Defs.' Ex. 232, R. Vol. 5, pp. 481, 490, 493, 496, 499–501, 504–407, 527).

Larsen Machine Company.

Charles G. Wirths, an officer of the Larsen Machine Company, of New York, testified: "We make a welt and outsole lockstitch machine. It is used principally by shoe repairers." "There is no reason why it could not be used for making new shoes except that it is not as fast as a Goodyear stitcher" (R. Vol. 1, p. 928, lines 2–15).

The Goodyear Outsole Rapid Lockstitch Machine of the United Company is put out for this character of work (Defs.' Ex. 232, R. Vol. 5, p. 516).

Matson-Hoyt Machine Company.

Carl A. Matson of Lynn testified that the Matson-Hoyt Company "make a heel-finishing machine" sold "directly to shoe manufacturers" of which "about a dozen" had been put out "within the last three years" (R. Vol. 1, p. 928, lines 29–38).

The United Company, through the Xpedite Company, puts out a machine of this character (Defs.' Ex. 232, R. Vol. 5, p. 524).

Quarmby & Hilliker.

Charles T. Hilliker of Lynn testified that Quarmby & Hilliker make more than half a dozen types of machines, including sole cutting and leather stripping machines, which go to shoe

manufacturers and "to persons making parts for shoe manufacturers, such as soles or linings or uppers." "We have made between one hundred and fifty and two hundred dinking machines." Referring to his catalogue and letter contained in Defendants' Physical Exhibit 321 (p. 10 and the reverse of p. 11), he said "We . . . could make any of the machines named if we were asked to" (R. Vol. 1, p. 928, lines 42–45; p. 929).

The United Company puts out substantially the same line of machines (R. Vol. 1, p. 929, lines 27–29; Defs.' Ex. 232, R. Vol. 5, pp. 480, 481, 496–498, 501, 502, 506).

Holmes Leather Working Machinery Company.

Frank A. Bradford, manager of the Holmes Machinery Company of Cambridgeport, testified that they make a sole-leather roller sometimes sold to shoe manufacturers (R. Vol. 1, p. 941, lines 29–33).

The United Company also puts out such rolling machines (Defs.' Exs. 227, 228, R. Vol. 5, pp. 427, 437).

Harlow Shoe Finishing Machinery Company.

Edwin E. Bartlett of Hyde Park, connected with the Harlow Shoe Finishing Machinery Company, testified that he had put out about one hundred and thirty-seven heel finishing machines to shoe manufacturers and also put out personally a heel-seat beading machine (R. Vol. 1, p. 942, lines 6–14).

The United Company, through the Xpedite Company, puts out one machine for performing both the heel finishing and heel beading operations. It also puts out directly two other heel-seat beading machines (Defs.' Ex. 232, R. Vol. 5, p. 524).

W. J. Young Machinery Company.

William J. Young of Peabody, treasurer of the W. J. Young Company, testified that they manufacture or put out "a heel building machine;"

> "a buffing machine for buffing counters and box toes; a wedge-strip beveling machine, which makes wedge lifts

for use in heels, and which goes to shoe manufacturers and heel manufacturers, probably more to the latter; a heel compressing machine, which is sold almost altogether to heel manufacturers at the present time; a wedge lift-cutting machine for dieing out the wedge lifts from the wedge strips in connection with the heel, which goes to both heel makers and shoe manufacturers; a counter end finishing machine which is used in connection with the counter; a heel-lift gouging machine, which goes to both heel makers and shoe manufacturers about equally; a counter molding machine; a box-toe skiving machine; a counter-skiving machine; a shank-piece skiving machine; and a spring-heel scarfing machine. We do not build a rand-splitting machine, though we may possibly have handled one or two secondhand, and have not as yet put out a treeing machine. We do put out a waxing and rolling machine for counters. We employ between forty and fifty men.

"We have been in business for twenty-four or twenty-five years. Our business has been growing. . . . We lease on a royalty rental our automatic lift-die machine, which has not yet been mentioned, and our counter-buffing machine, and one or two machines for molding the heel seat. The others we sell. . . . we are preparing to build a pneumatic treeing machine. . . . We make a rand trimming machine" (R. Vol. 1, p. 942, lines 34–45; p. 943, lines 1–16, 27–30).

He stated also that, during seven or eight years, he had "put out between two and three thousand heel building machines" in this country, largely to shoe manufacturers, and also "three or four hundred counter-molding machines, over three hundred heel-compressing machines, and one hundred and fifty to two hundred lift-gouging machines." "We advertise ourselves as manufacturers of the most complete line of counter and heel making machines, and we consider that to be true" (R. Vol. 1, p. 942, lines 28–33; p. 943, lines 16–24).

Practically all of these machines named by Young are in direct competition with machines of the United Company (R. Vol. 2, p. 2445; Defs.' Exs. 228, 232, 235, R. Vol. 5, pp. 431, 432, 435, 497, 498, 504–509, 526, 653, 654).

Donnelly Machine Company.

John F. Donnelly of Brockton testified that the Donnelly Machine Company "designs, manufactures, and rebuilds shoe machinery." He named eight or ten different machines all of which, except two, "operate on the bottom or the heel of the shoe" (R. Vol. 1, p. 943, lines 36–44; p. 944).

With hardly a single exception, all of these machines are in direct competition with machines of the United Company (Defs.' Ex. 232, R. Vol. 5, pp. 481–483, 519, 522–525; as to McKay sewers, see also R. Vol. 1, p. 858, lines 35–45; p. 859, lines 1–21).

American Worsted Machinery Company.

Bicknell Hall of Abington testified that for seven years, beginning about 1907, he had been connected with the American Worsted Machinery Company which had, ready to put out, more than a dozen types of machines and had facilities for making and were ready to make about a dozen others; he quoted specific prices therefor. They had made and put out twenty-five or thirty McKay channeling machines to shoe manufacturers and had also made and sold "between one hundred and twenty-five and one hundred and fifty eyeletting machines." They had also handled a McKay sewing machine and made parts for it (R. Vol. 1, pp. 953–954; p. 976, lines 25–28).

With hardly a single exception all of the machines named by Mr. Hall are in direct competition with the machines of the United Company (Defs.' Exs. 232, 235, R. Vol. 5, pp. 482, 483, 490–491, 494–495, 500, 503–505, 507, 517, 519, 525, 603; see also Vol. 2, p. 2246 and P.'s Ex. 190 (a physical exhibit)).

Atlas Tack Company.

William F. Donovan, president of the Atlas Tack Company, testified:—

> "Our output during the last year has been from forty to sixty million eyelets per month. Three or four years

ago, before my advent into the business, it was nearly twice as high. Practically all of the eyelets we make go into the shoe trade" (R. Vol. 1, p. 959, lines 7–10).

The "United Company owns or has an interest in" several competing eyelet concerns (R. Vol. 1, p. 477, lines 1–4).

ADDITIONAL SHOE MACHINERY MANUFACTURERS CALLED IN REBUTTAL.

We have omitted, in the foregoing, reference to the testimony of certain of the rebuttal witnesses, as for example Morris of the Singer Sewing Machine Company, Spaulding of the Willcox and Gibbs Company, and Heath of the Boston Last Company (R. Vol. 1, pp. 886, 890–891, 901), whose concerns admittedly supply shoe machinery to shoe manufacturers but do not supply machines for the operations as to which the United States charges a monopoly. We have likewise omitted reference to still other witnesses, such as Chamberlain of the Walpole Shoe Supply Company and Hammond of the Becket & Hammond Machine Company (R. Vol. 1, pp. 889, 925), whose concerns actually supply machines for such operations to shoe manufacturers *although the United Company does not supply machines competing therewith* (Defs'. Exs. 232, 235, R. Vol. 5, pp. 521, 622).

Supreme Court of the United States

OCTOBER TERM, 1917

No. 207

THE UNITED STATES,
Appellant,

v.

UNITED SHOE MACHINERY COMPANY,
OF NEW JERSEY, ET AL.,
Appellees.

REPLY TO BRIEF FOR THE UNITED STATES.

(REARGUMENT)

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1917

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REPLY TO BRIEF FOR THE UNITED STATES.

GENERAL CONSIDERATIONS APPLICABLE TO BRIEF FOR THE UNITED STATES.

The brief for the United States contains no specification of errors relied upon as required by the Supreme Court rules and pays little regard to the charge made by the petition or the issues which the United States presented in the court below, or the admissions made by the attorneys for the United States in the course of the trial in that court.

No reference is made in the brief to the fundamental question which lies at the threshold of the case, viz., whether there is any evidence to support the findings of the District Court upon disputed questions of fact, all of which were adverse to the United States. The brief in most instances does not even attempt to state the evidence which sustains the District Court's findings, but only the evidence on which

the United States relied in the District Court and which that court either did not accept as true or did not feel sustained the contentions of the United States in view of other evidence in the case. Many facts are stated in the brief as if they were undisputed or uncontradicted, when in truth they were absolutely disproved or found unsustained by the District Court, or abandoned by the attorneys for the United States who conducted the trial.

Furthermore, the brief for the United States in many instances seriously misstates and misconstrues the evidence to which it does refer. The result is that the argument of the United States is founded largely upon conclusions and assumptions which have no foundation in the record.

For example, the brief writer says of the testimony of one witness (p. 46), "he made no comparison between the Eppler and Goodyear *welter* further than to say that they ran side by side in the same factory" (italics theirs). As a matter of fact the witness said, "The Goodyear welter was the best" (R. Vol. 1, p. 938, line 2).

The brief asserts that Mr. Winslow testified that the McKay sewing machine could be obtained elsewhere, but that he was wholly unable to name any concerns other than the United Company which manufactured it (p. 133). The fact is that Mr. Winslow named 26 different concerns, some of which he stated were manufacturing it, and some of which were dealing in it (R. Vol. 1, pp. 858–859).

The brief asserts (p. 67) that "*the United Company acquired the shoe machinery business* and assets of fifty-six individuals, partnerships, and corporation . . ." (italics ours). As a matter of fact the majority of these concerns were not engaged in the shoe machinery business at all (see Main Brief, pp. 456–463).

The brief asserts (p. 42) that Whitman testified that the work done by the Eppler machine was satisfactory. Whitman made no such statement. He testified that the Goodyear "did better work on the shoe" (R. Vol. 1, p. 916, lines 15–16).

The brief asserts (p. 91) that the United Company acquired from Joseph W. Leary "his business of *manufacturing* and dealing in shoe machinery" (italics ours). The record shows that Leary was doing no manufacturing of any kind (*infra*, p. 167).

The brief not only cites figures taken from the Census of Manufactures, 1914 (foot-note, p. 8), which were not in evidence at all, and which differ from the situation which the evidence showed existed in 1911 (R. Vol. 1, p. 26, line 39), but it also incorrectly states the figures given by the Census of 1914, as a reference to the original document will show (*infra*, pp. 75–77).

The foregoing are only illustrations of numerous distortions of the testimony.

In respect to the leases the brief makes statements as to the various clauses and their effect which are wholly without justification.

We are able in this reply brief to deal with only a few of these misconstructions, omissions, and misstatements, but we believe we refer to enough to show that the brief gives an entirely erroneous view of the case.

We believe ourselves justified in saying that the brief writer, disregarding every canon of fair play, has sought by exaggerated and distorted statements and by vituperation to divert the Court's attention from the real issues in the case.

THE CASE WHICH THE UNITED STATES UNDERTOOK TO PROVE AND THE CASE AS NOW PRESENTED.

Before considering specifically the brief writer's contentions and arguments we wish to call the Court's attention to the difference between the case which the United States charged in the petition and undertook to prove and the case as now presented to this Court.

The case which the United States undertook to prove was as follows:—

The United States charged that the constituent companies in 1899 held patents under which they lawfully controlled practically all the business of the country in certain specified kinds of bottoming machines; that these patents were about to expire and thus the lawful monopoly those companies held would be lost. It charged that the defendants thereupon determined to continue the monopoly of the constituent companies by unlawful means after the expiration of the patents and to extend this unlawful monopoly to all other kinds of shoe machinery. It alleged that they carried out this purpose by combining the constituent companies, by undertaking to acquire all concerns engaged in manufacturing any and every kind of shoe machinery, that is, the kinds which were not manufactured by the constituent companies, by buying up all competitors who entered the business at exorbitant prices, by threats against and intimidation of competitors, by exacting unlawful covenants from all who were engaged in the business and all inventors whose business or inventions they acquired, by buying patents and not

using them, and finally, by discontinuing the sale of machines, by refusing to lease any essential machines unless the shoe manufacturer took from them practically all other machines of the kinds he needed, and by inserting in the leases covenants on the part of the lessee requiring him to use the United Company's machines of the kind leased, and of all other kinds exclusively for seventeen years, and that by these means the United Company acquired a complete monopoly of all shoe machinery.

This is the case the United States undertook to prove. It was a wholly fictitious case without any foundation or justification in fact. As the evidence was presented in the District Court the United States was gradually compelled to admit it could not prove, and therefore to abandon most of its various charges, and the remainder were completely disproved.

Thus it developed in the trial that the patents of the constituent companies were not about to expire in 1899 and that this was, therefore, not a motive for the formation of the United Company; that the defendants never attempted to acquire all concerns engaged in the shoe machinery industry; that they never attempted to acquire all competitors, although a large number of such competitors exist and although the principal competitors were offered to the United Company for sale; that, as a matter of fact, they did not acquire competing concerns at all, but that the acquisitions were made to enable them to obtain something new such as supplies which they were not then manufacturing, other types of machines which they did not have or inventions to assist them in developing new machines or to improve their existing machines; that these acquisitions were not made at exorbitant prices; that the United

Company did not acquire patents and hold them without making any use of them as alleged; that the covenants taken from inventors and vendors were only such as are lawful, usual, and normal in such transactions; that, in spite of every possible effort to prove the contrary, the United Company did not intimidate or threaten competitors or lessees, but that its conduct was in these respects above reproach; that the United Company did not discontinue the sale of machines, as the constituent companies had never sold them; that it did not refuse to lease machines unless the shoe manufacturer took practically all other machines from them; and that it did not insert in its leases covenants requiring the lessee to use its machines of the kind leased or of any other kinds exclusively, and that it did not acquire a monopoly of all shoe machinery.

In other words, the entire case which the United States undertook to prove was shown to be without any foundation and all of the charges on which it was based were either abandoned by counsel or found by the District Court to be unfounded.

The United States, therefore, attempted to make a new case, and it is this attempt to prove a new and different case which is before this Court. It now charges that there was competition between certain of the constituent companies. It was disproved that there was such competition in any practical or material sense, but even if the contentions of the United States were true, it is clear that the competition was so trivial that no reasonable person could believe that the United Company was formed to eliminate it or that its elimination was of any practical consequence in the trade. The United States, while abandoning the charge of an attempt to acquire all concerns engaged in the shoe machin-

ery industry, still charges that competitors were acquired, but the evidence in this respect, as the District Court found, is totally unconvincing. Its attempts to prove that the United Company used threats or intimidation or that it exacted unlawful covenants from vendors or inventors are equally unconvincing. The United States has abandoned all attempt to prove that the United Company's leases contain any covenants requiring the lessee to use all kinds of machinery exclusively, or that the United Company refuses to lease machinery of one type unless all other kinds are taken. It now merely insists that the leases do have the effect of requiring the lessee to take and use a certain number of bottoming machines forming only a very small portion of the total number and types of machines furnished by the United Company, and a still smaller proportion of the total number and types of machines which the shoe manufacturer requires. The United States disclaims any contention that the United Company has a monopoly of all shoe machinery, and has limited its charge to a monopoly of a comparatively few types of patented bottoming machines in which the United Company has specialized, and which either it or its constituent companies created under its patents.

In its attempt to prove this very different case the United States has in its brief completely disregarded the findings of the District Court, omitted reference to all testimony unfavorable to it, and distorted much of the testimony to which it does refer.

COMMENTS UPON THE PORTION OF THE BRIEF FOR THE UNITED STATES TREATING OF THE LEASES.

The brief for the United States asserts that, irrespective of whether the original formation of the United Company, or the subsequent acquisitions of that company, were lawful or unlawful, the defendants have adopted and are enforcing a system of leasing which is unlawful in itself (see Brief for the United States, p. 154).

This is not the charge made by the petition. The petition charges that the clauses in the leases objected to were adopted in pursuance of the unlawful plan specified in the petition and that they constituted only a step in carrying out such unlawful plan. That the leases were not adopted for the purpose of carrying out this plan and are clearly not adapted to carry out any such a plan is conclusively shown by the record (see our Main Brief, pp. 347–357).

Furthermore, the United States does not limit its criticism to clauses which the petition specifically charges are contained in the leases and are unlawful. The allegations of the petition in respect to the leases are (see our Main Brief, pp. 235–238) that the United Company discontinued selling machines and adopted arbitrary and oppressive leases which are stated to be unlawful in that they—

(1) Required the lessee to covenant to use the United Company's machines, both of the kind leased and of all other kinds exclusively;

(2) Permitted the United Company to cancel its leases of all machines if these covenants were broken; and

(3) Required the lessee to use the leased machinery for seventeen years.

The United States in its brief criticises the seventeen-year term contained in the leases. But there are no covenants in the leases requiring the lessee to use the United Company's machines of the kind leased exclusively or requiring the lessee to use other kinds of machines at all, and, of course, no clause permitting the United Company to cancel its leases if these covenants which are not contained in the leases are broken. While the United States attempts in its brief to show that such covenants appear in the leases indirectly, its contention wholly fails. Its argument, therefore, is mainly directed to a criticism of clauses which are not such as are specified in the petition as unlawful.

Furthermore, the argument of the United States is based upon a misconstruction of the clauses of the leases, upon unwarranted inferences and upon misleading illustrations. Its findings as to the effect of the leases, therefore, are entirely unwarranted.

There also runs through the entire argument the contention that the United Company cannot charge a lower rate for the use of a series of machines than is charged for the use of the various machines of the series when taken for use separately, a view so opposed to the interests of shoe manufacturers, who, if this were true, would be deprived of the right to share in the economies resulting from a wholesale use of a series of machines, and so opposed to the usual and normal business practice of charging a wholesale rate for the use or purchase of a number of articles, that we submit it has no justification.

We respectfully call the Court's careful attention to the following analysis of the contentions of the United States.

Contention of the United States in respect to the Exclusive Use Cancellation Clause.

The brief writer charges that the Exclusive Use Cancellation Clause compels a shoe manufacturer taking a lease of a machine to use machines of this same kind obtained from the United Company exclusively. This is not the fact.

The brief writer says (p. 173),—

> "The exclusive-use clause, for example, obviously limits the freedom of choice of every lessee as to all his future needs for machines of the kind leased and clearly restricts access to him, as a possible customer for any such machines, of all who seek to compete with defendants as to those machines."

See also Brief for the United States, pp. 175–176.

The Exclusive Use Cancellation Clause does not forbid the lessee to use other machines of the same kind. On the contrary, it expressly recognizes the lessee's right to take a competitor's machines of the same kind. It merely provides that if the lessee supplies himself with other machines of the same kind the United Company may withdraw its own machines of this kind (see our Main Brief, pp. 312–323).

If, therefore, a shoe manufacturer holding, for example, one of the United Company's lasting machines under lease desires to discard such machine and obtain a machine from a competitor to do his lasting, the Exclusive Use Cancellation Clause obviously does not prevent his doing so. This clause merely permits the United Company in such a case to withdraw its own machine. Since the shoe manufacturer in the case stated has given up the use of the United Company's lasting machine, such withdrawal is certainly fair and it cannot injure the shoe manufacturer.

The Full Capacity Clause, which requires the shoe manufacturer to use a machine which he leases to the extent that he has work for it on shoes on which he is authorized to use it, is the only clause in any lease which would interfere with such shoe manufacturer ceasing to use the United Company's machine and substituting for his work a competitor's machine.

If such shoe manufacturer holding a lasting machine under lease from the United Company does not wish to discard the machine but decides to double his output and to take an additional machine from a competitor, the Exclusive Use Cancellation Clause again does not prevent. Under the Exclusive Use Cancellation Clause the United Company's sole right is to withdraw its own lasting machine if it so desires. We have shown that this right is reserved in order to protect the United Company against an unfair or dishonest use of its machine and that it has never been enforced for any other purpose (see our Main Brief, pp. 318–319). But assuming that the United Company in the case just stated would enforce the clause by withdrawing its own machine, what would be the result? The fact that such shoe manufacturer takes his additional lasting machine from a competitor shows that he prefers such competitor's machines. Therefore, when the United Company withdraws its lasting machine the shoe manufacturer is free to use the competitor's machine which he prefers in place of the United Company's machine which he had leased and by the Full Capacity Clause had agreed to use.

The statement of the brief writer, therefore, that the Exclusive Use Clause cuts off the right of the shoe manufacturer to take a competitor's machines of the same kind either for present or future work is without foundation.

Such being the fact, the United States in its brief filed at the last hearing attempted to show that the Exclusive Use Cancellation Clause taken in connection with the Cancellation for Breach Clause has a more far-reaching effect than that stated above. Its contention was that the Exclusive Use Cancellation Clause was a "condition . . . expressed to be obligatory upon the lessee"; that a lessee who supplied himself with other machines of the same kind as those leased violated this condition which he had agreed to fulfil; and that, therefore, the United Company could cancel all its leases of the machines of all kinds held by the lessee under the Cancellation for Breach Clause. In other words, it contended that by the exercise of the Exclusive Use Cancellation Clause a lessee who took a lasting machine from a competitor might lose his welting, pulling-over, and other machines.

That this is absolutely untrue is proved by an examination of any of the leases. Take, for example, P.'s Ex. 21, R. Vol. 3, p. 182, referred to by the United States as a sample lease. This lease provides (p. 182),—

> "And the following are agreed to as conditions of this agreement, all of which the lessee covenants and agrees to keep and perform."

There follow seven numbered paragraphs providing for various matters, such as the payment of royalty, taxes, the use of the machine, etc. The lease then provides (p. 187),—

> "And that the following stipulations and provisions are agreed to."

There then follow certain provisions, including the Exclusive Use Cancellation Clause and the Cancellation for

Breach Clause. The Exclusive Use Cancellation Clause (par. eight, pp. 187–188) provides that if the lessee fails to use lasting machinery of the lessor for lasting all his shoes, the lessor may terminate his leases of lasting machinery. The Cancellation for Breach Clause (par. nine, p. 188) provides that if the lessee commits a "breach or default" in the observance of any "conditions" contained therein or in any other lease "expressed to be obligatory upon the lessee," the lessor may cancel all leases. It is obvious: (1) That the "conditions" referred to in the Cancellation for Breach Clause which authorize cancellation are only those expressly defined as such in the lease and contained in paragraphs one to seven inclusive. The Exclusive Use Cancellation Clause is not one of these conditions. (2) That the Exclusive Use Cancellation Clause is not obligatory upon the lessee, but a mere option reserved by the lessor, and, therefore, clearly not a condition "expressed to be obligatory upon the lessee" such as is referred to in the Cancellation for Breach Clause. No "breach or default" can be committed of this clause. It results that a shoe manufacturer by supplying himself with another machine of the same kind as one already leased does not violate any condition obligatory upon him, and does not give the United Company any right to cancel its leases of all machines under the Cancellation for Breach Clause. This is the plain meaning of the language used and the interpretation which has always been placed upon the clauses.

This being the case, the United States in its present brief does not flatly state that the use of other machines gives the United Company a right to cancel all leases, but the brief writer implies that such is the case (Brief for the United States, pp. 175–176). The writer states that the

fear that this right may exist deters a shoe manufacturer from obtaining other machines of the kind leased. There is not the slightest evidence that any shoe manufacturer ever supposed that the Exclusive Use Cancellation Clause gave this right, or that the United Company ever asserted that it did. In a footnote (p. 176) our statement that the Exclusive Use Cancellation Clause is not a condition obligatory upon the lessee is called a "quibble." It is not a quibble; it is a simple statement of fact which completely refutes the contention of the United States as to the effect of the Exclusive Use Cancellation Clause on which a considerable portion of its argument in respect to the leases is founded.

Contention as to the Cumulative Effect of the Full Capacity Clause and the Cancellation for Breach Clause.

At page 173 of the brief for the United States the writer admits that certain clauses considered by themselves, such as the Full Capacity Clause, may be "unexceptionable," but he contends that the "combined and cumulative effect" of such clause with other clauses constitutes a clearly illegal restraint of trade.

He states that if it be assumed that the Full Capacity Clause standing alone is lawful, nevertheless, taken in connection with the Cancellation for Breach Clause it has a far wider and unlawful effect.

The Full Capacity Clause requires the shoe manufacturer to use the leased machine to full capacity on shoes of the kind on which he is permitted to use it so far as he has such work for it to perform. The result, of course, is that the

shoe manufacturer, having taken this machine and agreed to use it, cannot, provided he has such work for it to perform, discard the machine and use another machine without violating his agreement (p. 174). For any additional work he may have or for any work which he is not authorized to do on the leased machine he is free to use other machines. If he violates the Full Capacity Clause by discarding the United Company's machine and substituting another machine, all his leases may be cancelled if the United Company exercises its option under the Cancellation for Breach Clause.

The United States contends that in this way the Cancellation for Breach Clause gives the Full Capacity Clause an additional or cumulative effect. But this is entirely untrue, except that the Cancellation for Breach Clause gives a remedy in case of a violation of the Full Capacity Clause just as it gives a remedy in case of a violation of the agreement to pay taxes or royalties. So long as the lessee fulfils his lawful agreement contained in the Full Capacity Clause, the Cancellation for Breach Clause has no effect whatsoever, as it cannot be exercised.

Would the brief writer contend that the right to cancel the leases for a default by the lessee to comply with his agreements to pay taxes as agreed makes the agreement to pay taxes unlawful? If not, the right to cancel for failure to abide by the Full Capacity Clause cannot make that clause unlawful.

The contention of the United States is that, though the United Company may lawfully require a lessee to agree to use his leased machine to capacity so far as he has work for it to perform, it cannot provide a remedy in case the lessee decides he does not wish to abide by his agreement. In

other words, it contends that, though the lessee may be lawfully asked to covenant to use the leased machine, the United Company is not entitled to protection if he fails to do so. The mere statement of this proposition is sufficient refutation.

The fact that shoe manufacturers taking machines which they have agreed to use are not free to discard these machines and substitute a competitor's machine is not due to the cumulative effect of these two clauses, but is due solely to the effect of the Full Capacity Clause.

Alleged Cumulative Effect of the Full Capacity Clause and the Restricted Use Clause.

The Restricted Use Clause is a mere restriction on the use of the United Company's leased machine. It does not require the lessee to use the leased machine or any other machine. It merely provides that the United Company's machine shall not be used under certain conditions (see our Main Brief, pp. 331–332).

The contention of the United States in respect to the leases is that a lessee taking one machine is unlawfully required or compelled to use other machines.

At the previous hearing in this Court and in the District Court the contention of the United States was that the initial payments charged for unrestricted leases were so excessive that a shoe manufacturer desiring to take one kind of machine from the United Company was compelled to take a restricted lease of the machine, and that owing to the restrictions in such lease he was compelled to take certain other machines which he would otherwise have taken from competitors in order to use the machines which

he did desire to take from the United Company. While the machines which, according to this contention, he was thus indirectly induced to take were limited in number, the United States practically rested its contention on this argument.

In the present brief the writer advances for the first time a new contention, namely, that by the combined effect of the Full Capacity Clause and the Restricted Use Clause, the lessee is made to agree to take other machines than those leased, and further, that the combined effect of these two clauses may compel him to do business with the United Company forever.

The contention is ingenious but entirely fallacious, being based upon a complete misconstruction of the Full Capacity Clause. The actual fact is that the combined effect of the Full Capacity Clause and the Restricted Use Clause is to limit the scope of the Full Capacity Clause, not to enlarge its scope.

The argument of the brief writer is as follows (Brief for the United States, pp. 180–181):—

A lessee takes a lease of lasting machines in 1910. In 1926 he takes a restricted lease of metallic machines. In 1927 his lease of lasting machines expires. His lease of metallic machines, however, runs for sixteen years longer. He has agreed by the Full Capacity Clause in the metallic lease to use the metallic machines to capacity, and on account of the Restricted Use Clause contained in that form of lease he can only use the metallic machines in connection with the United Company's lasting machines. To fulfil his agreement to use the metallic machines the brief writer alleges he must, therefore, take another lease of lasting machines. It is alleged he is thus required by the Full

Capacity Clause and the Restricted Use Clause in the metallic lease to use other types of machines, that is, lasting machines, and to take a new lease of such lasting machines when his existing lease expires. Thus, it is alleged, as his leases expire he must renew them.

This illustration, according to the brief writer, shows (p. 181),—

> . . . "the hollowness of the defendants' contention that the prohibitive clause is a mere restriction of the right to use the machine leased under it and not an obligation of the lessee that he will not use other machines."

So it would if his statement of the case were true.

But this ingenious contention is based entirely on a misstatement as to the wording and scope of the Full Capacity Clause.

Take the Full Capacity Clause contained in P.'s Ex. 30 (R. Vol. 3, p. 278), which is the restricted form of metallic lease. This provides as follows (par. three, p. 281):—

> "The lessee shall use the said machinery to its full capacity so far as the number and kind of boots and shoes made in his factory will permit, except that the lessee agrees that the said machinery shall not be used in the manufacture of any boots or shoes which are lasted on machines other than those leased from the lessor. . . ."

The clause clearly provides that the lessee shall use the metallic machines to capacity only if and to the extent that he has shoes which are lasted on the United Company's machines. The lessee is not required by the metallic lease to have any shoes so lasted, and if he has no such shoes he not only is not required to use the United Company's metallic machines to capacity on other kinds of shoes, but he is forbidden to do so.

The actual result in the instance cited by the brief writer is, therefore, the exact reverse of what he alleges. When the shoe manufacturer's lease of lasting machines expires in 1927 he remains under an obligation to use the United Company's metallic machine only if he has shoes lasted on the United Company's lasting machines. He is absolutely free to return the United Company's lasting machines and to obtain his lasting machines from a competitor. If he does so, he will have no shoes lasted by the United Company's machines and, therefore, will be freed from any obligation to use the United Company's metallic machines either to capacity or at all. In fact he will be forbidden to use them on the shoes he is then making unless he changes his restricted lease of the metallic machines for an unrestricted lease.

Instead, therefore, of compelling the shoe manufacturer to take a new lease of lasting machines, the Restricted Use Clause in the metallic lease enables the lessee by using a competitor's lasting machines to free himself from his obligation under the Full Capacity Clause to use the metallic machines if he so desires, although his lease of those machines runs for an additional sixteen years.

The conclusion of the brief writer (p. 180),—

> "It results that a manufacturer once within the toils of the tying clauses never can escape,"—

is entirely false, as is also his conclusion (p. 181) that

> "in agreeing to a lease containing both the full capacity and the prohibitive clause the shoe manufacturer does agree that he will not use machines"

of other kinds supplied by competitors.

It may be noted in passing that in order to make the foregoing argument it has been necessary for the brief writer to omit in quoting an example of the Full Capacity Clause a controlling limitation contained in the very sentence which he purports to quote (see Brief for the United States, p. 165). The clause as there quoted begins,—

> "The lessor shall use the leased machinery to its full capacity. . . . "

The sentence as contained in the lease begins,—

> "Subject to the foregoing limitations, the lessee shall use the leased machinery to its full capacity . . ."

The words "subject to the foregoing limitations" are omitted in the quotation of the Full Capacity Clause at page 165 of the brief. The limitations referred to provide that the machine shall not be used on shoes on which certain operations are not performed by the United Company's machines.

Specific Example Cited by the United States to Illustrate the Effect of the Leases.

Beginning with the last paragraph on page 176 of the brief for the United States a "specific case" is taken to show the effect of the various clauses in the leases and the extent to which they restrain competition.

It is of the utmost importance to analyze this example carefully, because it is an example carefully chosen by the United States itself to illustrate the effect of the leases which, according to the United States, makes

> "competition with them [*i.e.*, the United Company] either as to the existing or the future needs for machinery of existing or future shoe manufacturers . . . entirely impossible" (p. 181).

In introducing this specific instance the brief writer says (Brief for the United States, pp. 176–177):—

> "What is important here is the fact that a shoe manufacturer about to enter the field who finds, as he will find, that he is compelled by business necessity to take one important machine from the defendants under a lease which contains a 'prohibitive clause' [that is, a Restricted Use Clause] is thereby removed as a possible customer for competitors of the defendants not only as to machines of the particular type leased, but also as to all machines of other important types used in the bottoming of shoes. This can, perhaps, best be made clear by stating a specific case, based on the facts as they were at the filing of the petition."

A summary of the "specific case" cited by the brief writer and the argument of the brief writer in reference thereto is as follows:—

1. A shoe manufacturer desiring an equipment of machines finds he must obtain lasting machines from the United Company, because the R. H. Long Company is the only other concern "professing to put them out" and it furnishes no machines for lasting standard screw, loose-nailed, McKay sewed, or turn shoes (p. 177).

2. The above reason for taking lasting machines is reinforced by the fact that if the shoe manufacturer used other lasting machines his payments for pulling-over machines, if he took them from the United Company, would be nearly tripled, and his payments for clicking machines

if he also took them from the United Company, would be increased one-half a cent per pair of shoes (p. 178).

3. He, therefore, goes to the United Company for his lasting machines and decides to use the No. 5 lasting machine. Any lease he can obtain of this machine contains the Exclusive Use Cancellation Clause. By reason of this clause, according to the allegation of the brief writer, the shoe manufacturer is "committed" to the United Company "for all of his present and future demands for any kind of lasting machine" (p. 178). In other words, according to this contention, no competitor can thereafter furnish him with a lasting machine.

4. He also decides to take a restricted lease of the No. 5 lasting machine, because he finds that the unrestricted lease is "commercially impossible" (p. 179).

5. The Restricted Use Clause in the lease of the No. 5 lasting machine restricts it to use with the United Company's welter and stitcher, pulling-over and metallic machines. On account of this clause the lessee, already obliged by the Exclusive Use Cancellation Clause to use the United Company's lasting machines exclusively, is also prevented, according to the brief writer, from obtaining from competitors any welters and stitchers, pulling-over or metallic machines to satisfy any "future needs" (p. 179).

6. Since, according to the brief writer's contention, the Full Capacity Clause and the Restricted Use Clause taken together require the lessee upon the expiration of a lease of machines to use with which other machines are restricted to renew such lease, it follows, according to this contention, that as the leases of the welter and stitcher, pulling-over and metallic machines expire, the shoe manufacturer is obliged to renew them if he at the time holds a lease of

lasting machines, and thus he may be obliged to continue to deal with the United Company forever (p. 181).

7. The conclusion of the brief writer is that by these leases, the effect of which is as above shown, "the defendants have brought about a situation in which competition with them either as to the existing or the future needs for machinery of existing or future shoe manufacturers has become entirely impossible" (p. 181), with the result that

> ". . . The United Company is not merely 'a formidable competitor.' It is absolute monarch of the industry. No competitor can exist unless for its own pleasure or policy it withholds its destroying hand."

With two unimportant exceptions not a single statement or inference in the foregoing argument is correct. The conclusion arrived at, therefore, is without any foundation whatsoever.

We shall now consider these statements on which the brief writer's conclusion is based in detail. We call the Court's attention especially to this analysis of the contention of the United States in respect to the practical working of the leases, because if we are correct in our statement that these contentions of the United States are wholly unwarranted, the entire case of the United States in respect to the leases is shown to be without foundation.

1. It is first asserted by the brief writer that the shoe manufacturer whom he takes as an example, wishing to obtain an equipment of shoe machines, must go to the United Company for lasting machines, because the R. H. Long Company is the only other concern professing to put them out and it does not appear that this company is able to supply any lasting machines for standard screw shoes,

loose-nailed shoes, McKay sewed shoes, or turn shoes (p. 177).

Even if this were true it would not deter the shoe manufacturer desiring to make welt shoes from obtaining his lasting machines from the Long Company. But according to the testimony of witnesses for the United States, it is not true that the shoe manufacturer would be obliged to go to the United Company for his lasting machines. Thus a representative of the Haverhill Shoe Machinery Company testified that his company furnished

> "a full line of all kinds of shoe machinery, whether it is for welts or McKays or turns or pegs or anything else. We undertake to fill the requirements of a manufacturer whatever they are. . . . We are prepared to make good if our people that manufacture machines don't go back on us" (R. Vol. 1, p. 301, lines 3–9).

The manager of the Long Company testified that his company was ready to supply "a full line of machinery for welt and turn shoes" (R. Vol. 1, p. 345, lines 41–44). In spite of this testimony, the brief writer asserts that the Long Company makes no lasting machines for turn shoes (Brief for the United States, p. 177). Hamel testified that his company had a "complete set of machines for making turn shoes and a complete set of machines for making welt shoes" (R. Vol. 1, p. 327, lines 15–16). In addition there are foreign manufacturers of lasting machines whose machines could be imported (see our Main Brief, p. 612; also Defs.' Ex. 337, R. Vol. 5, p. 906, at p. 917). And any machine shop, if so requested, could manufacture lasting machines of the types in use a comparatively few years ago on which the patents have expired.

It thus appears that the unfortunate shoe manufacturer in question can obtain lasting machines from other sources if he so desires. If he insists upon going to the United Company and thus getting within its "toils," it is obviously because the United Company furnishes the best machines.

2. The brief writer next alleges that another reason why the shoe manufacturer would take the United Company's lasting machines is that, if he does not do so, his payments for pulling-over machines, if he takes them from the United Company, would be nearly tripled and his payments for clicking machines taken from the United Company would be increased one-half cent per pair (p. 178).

This statement as to the payments required for pulling-over machines is entirely incorrect. It is considered below (*infra*, p. 48-49). It is true that where the United Company's clicking machine is used with its lasting machine a lower royalty is charged for the use of these machines as a series. This, however, is fully justified as a wholesale rate (see Main Brief, pp. 424–426). This whole matter, however, is not of material consequence, because the shoe manufacturer can, if he obtains his lasting machines from a competitor, also obtain his pulling-over or clicking machines from a competitor, if they are on the market, or, like many other manufacturers, not use them at all. And if, as the brief writer asserts, he desires all three machines, and must obtain his lasting, his pulling-over, and his clicking machines from the United Company because no one else manufactures them, then, even on the brief writer's assertion, he is not affected by the fact that a higher or retail price is charged if he only takes one of the machines.

3. The shoe manufacturer, having determined to take the United Company's lasting machine, now determines

to take the No. 5 machine. Both forms of lease of this machine contain the Exclusive Use Cancellation Clause. According to the contention of the brief writer, the shoe manufacturer is obliged by this clause, both for the present and for the future, to use the United Company's lasting machines of all kinds exclusively (Brief, p. 178). We have shown above that this statement is entirely untrue (*supra*, p. 10). The Exclusive Use Cancellation Clause has no such effect. So far as this clause is concerned, the shoe manufacturer can obtain lasting machines from a competitor for both his present and future needs. The only right of the United Company in such case is to withdraw its own machine. If the shoe manufacturer should find that he prefers to use some other lasting machine, the fact that the United Company may in such case remove its own lasting machine will surely not deter him.

The only result so far reached is that the shoe manufacturer has a lease of a lasting machine or machines from the United Company and that by the Full Capacity Clause contained in the lease he has agreed to use these particular machines. He is, however, under no obligation to use the United Company's lasting machines exclusively, but can obtain any additional machines he may require from others. If the Full Capacity Clause, requiring him to use the particular machine or machines leased is lawful, it is obvious that no unlawful restraint so far exists.

4. The shoe manufacturer in taking a lease of the No. 5 machine is permitted to choose between a restricted form and an unrestricted form. According to the brief writer, he chooses the restricted form.

This is the beginning of his troubles. It is the Restricted Use Clauses in this form of lease which bring him "within

the toils of the Tying Clauses" from which he "never can escape" (p. 180).

He chooses this restricted form of lease, according to the brief writer, because of "certain conditions attached" to the unrestricted lease "which make the choice" of the unrestricted lease "commercially impossible" (p. 179).

What, then, are these conditions which make it impossible for him to choose the unrestricted lease and thus avoid the tyranny of the United Company? The conditions are that he is required to pay under an unrestricted lease $300 for each lasting machine he takes. His royalty will be the same as under the restricted lease. Let us assume he makes 250 pairs of shoes a day. Considerably over one-third of the shoe manufacturers dealing with the United Company make less than this number (R. Vol. 1, pp. 454–455). The No. 5 laster has a smaller daily capacity than any other machine put out, nevertheless two No. 5 lasting machines are sufficient to last 250 pairs per day (Defs.' Ex. 230, R. Vol. 5, p. 442). In other words, to obtain unrestricted leases which will enable him to obtain all his other machines from competitors and to use them with the United Company's lasting machines and thus escape from the toils of the Restricted Use Clauses will cost the shoe manufacturer $600. On the other hand, since, according to the United States, the United Company charges excessive prices for its machines, it would appear, if this contention is true, that the shoe manufacturer, by being enabled to take all his other machines from competitors, will make a considerable saving either in the cost of such other machines or in royalties. Under the circumstances it is ridiculous to say that it is "impossible" for him to take the unrestricted lease. He takes the restricted lease because

he prefers to take a series of the United Company's machines. To talk of his being coerced is absurd.

5. However, according to the brief writer, the shoe manufacturer does take the restricted lease which restricts his two lasting machines to use with the United Company's welter, stitcher, metallic and pulling-over machines. If he makes a McKay shoe, which is the class of shoe most largely made in the country, and, therefore, does not use a welter and stitcher, and if he does not use pulling-over machines, as many manufacturers do not, the only restriction which will concern him is the restriction to metallic machines. We will assume, however, that he is to make welt shoes and prefers to use a pulling-over machine. In such case, having chosen a restricted lease of lasting machines, he will take leases of the welter and stitcher, and pulling-over and metallic machines from the United Company to use with his lasting machines. He can take initial payment or non-initial payment leases. If he takes non-initial payment leases of these machines, and also of the United Company's heeling machine, the machines so taken will not be restricted to use with any except those he takes. The brief writer contends that when he takes leases of those machines he must use these kinds of machines so obtained from the United Company exclusively. The reason given is that because of the Exclusive Use Cancellation Clause he cannot have in his factory a lasting machine not obtained from the United Company and, therefore, must use these other types of machines obtained from the United Company exclusively, since his lasting machines can be used only with machines so obtained.

The conclusion arrived at is absolutely unsound. In the first place, the Exclusive Use Cancellation Clause has no

such effect. The shoe manufacturer can at any time he pleases obtain a competitor's lasting machine, as we have shown above (*supra*, p. 10). In the second place, the shoe manufacturer can at any time exchange his restricted lease of lasting machines for an unrestricted lease. The United States contends that he has no "right" to make this exchange, but the United Company has always been willing to permit lessees to do so and there is no ground whatsoever for contending that it will not continue to do so in the future.

The Full Capacity Clause is the only clause which requires the lessee to use these leased machines and that clause only requires him to use the particular machines leased, provided he has shoes on which he is permitted to use the machines. Unless this Full Capacity Clause prevents, the shoe manufacturer is free at any time to stop using all these machines so leased and to substitute other machines. Even though the Full Capacity Clause does require him to use these particular machines, if he increases his output beyond the capacity of these machines at any time, he may take additional machines from competitors to perform the work on such additional output. The only right the United Company would have in such a case would be to withdraw its own machines of the same kind as those used.

It, therefore, appears clearly that the brief writer's contention that the shoe manufacturer is, by reason of the Restricted Use Clause and the Exclusive Use Cancellation Clause, cut off from obtaining any welters and stitchers, pulling-over, metallic and lasting machines from competitors to satisfy all future needs is untrue.

6. The lease of lasting machines, as we have stated,

contains a Restricted Use Clause and a Full Capacity Clause. According to the brief writer, these clauses taken together have a cumulative effect, and compel the use not only of the lasting machines leased, but of other machines to use with which they are restricted (p. 180). Therefore, if a lease of metallic machines, for example, expires while a lease of lasting machines is still in force, the lessee is required to renew his lease of metallic machines so that he can fulfil his obligations under the lasting machine lease. Thus, the brief writer concludes, the lessee must continue indefinitely to use the United Company's machines. We have shown above (*supra*, pp. 17–20) that not only is this contention of the United States untrue, but that the exact reverse of the contention is true. The Full Capacity Clause in the lasting machine lease, as in all other leases, requires the lessee to use the leased machines only on shoes on which he is permitted by his lease to use them. He is not permitted to use them on shoes which are not operated on by the United Company's metallic machines. He is not required, however, by his lasting machine lease, to use the United Company's metallic machines. Therefore, if he does not renew his lease of metallic machines (and he is not obliged to do so), he is free from any obligation to use his lasting machines. If he does desire to continue using his lasting machines and does not wish to renew his lease of metallic machines, he may change his restricted lease of lasting machines for an unrestricted lease and thus use the lasting machines with a competitor's metallic machines.

The contention of the brief writer is, therefore, wholly untrue.

7. The conclusion of the brief writer from the above is that the shoe manufacturer, being obliged by the Exclusive

Use Cancellation Clause to use the United Company's lasting machines exclusively, and, through the effect of the Restricted Use Clauses, to use the United Company's welter and stitcher, pulling-over and metallic machines exclusively, a situation is brought about in which competitors are excluded from dealing with this shoe manufacturer, and the United Company thereby becomes "absolute monarch of the industry" (p. 181).

We have shown above that it is entirely untrue that the shoe manufacturer, even if he has taken a restricted lease of lasting machines, and even if he has also taken leases, whether restricted or unrestricted, of his welter and stitcher, pulling-over and metallic machines, is required to use machines of these kinds exclusively.

But assuming this statement of the brief writer is true, would it be true that competitors would be excluded from doing business with the shoe manufacturer? If the shoe manufacturer in question takes all the machines he needs, of the classes above named, from the United Company, he will take only a very small portion of the total machines which he will require. For example, he will need only one welter, one stitcher, one pulling-over machine, one slugger, one loose nailer, and, if he takes a restricted lease of pulling-over machines, which are restricted to use with heeling machines, one heeler. In other words, he will take a total of 6 machines (Defs.' Ex. 230, R. Vol. 5, p. 442). All his other machines he can obtain from competitors, including his welt auxiliary machines, General Department machines, of which there are over 170 different kinds, McKay sewing machines (if he makes McKay shoes), lacing machines, eyeletting machines, treeing machines, buttonhole machines, machines for sewing uppers, and various other

miscellaneous machines for use in the 100-odd operations performed by machines in the manufacture of shoes (Defs.' Ex. 235, R. Vol. 5, p. 531).

It is open to competitors to supply him with all or any of these machines, which in variety of type and number far exceed the number he must, according to the brief writer, take from the United Company.

In view of these facts, is it quite fair for the brief writer, even if we assume that all his conclusions up to this point are true, to contend that the shoe manufacturer we have been considering is completely cut off from obtaining machines from competitors?

Summary of Specific Case Used by United States to Illustrate the Effect of the Leases.

The following is a summary of the situation in respect to the "specific case" used by the United States to illustrate the effect of the clauses in the leases:—

1. The writer says that a shoe manufacturer desiring an equipment of machines must take his lasting machines from the United Company because he cannot obtain them elsewhere. *This is untrue.* The writer says the shoe manufacturer must also take lasting machines because the payments for his pulling-over machine taken from the United Company will be nearly tripled if he uses other lasting machines. *This is untrue.* The writer says that his lease of lasting machines will contain an Exclusive Use Cancellation Clause which will require him to use the United Company's lasting machines exclusively. *This is untrue.* The writer says he must take a restricted lease of lasting machines because the unrestricted lease is commercially impossible. *This is untrue.* If he takes the No. 5 lasting machine on a restricted lease it will be restricted to use with the welter, stitcher, pulling-over and metallic machines. *This is true.* The writer says he will thereby be required to use not only lasting machines, but these other classes of machines exclusively. *This is untrue.* The writer says that on account of the effect of the Full Capacity Clause and the Restricted Use Clause he will, if his leases expire at different times, be required to renew them and thus remain indefinitely in the toils of the United

Company. *This is untrue.* By thus being obliged to use lasting machines, welters and stitchers, pulling-over and metallic machines taken from the United Company exclusively the writer says that the access of competitors to him will be cut off practically completely. *This is untrue.* Even if it were true that he had to use machines of these classes obtained from the United Company exclusively, which is not the case, he would still be able to obtain from competitors most of the machines in number and type that he requires in his factory.

Other Specific Cases.

The brief writer has naturally chosen a case which he thinks best illustrates the effect of what he alleges to be the Tying Clauses in the leases. We do not criticise him for this, but he has taken an unusual case. The ordinary shoe manufacturer, if he went to the United Company at all, would wish to obtain from it more than one kind of machine out of the many it makes. Normally he would take an entire series of bottoming machines, since they are especially constructed and adapted for use together. In such case the Restricted Use Clauses would not interfere with him at all. Even if he wished only a few kinds of machines from the United Company, it is very probable that they would not interfere with his taking such machines on restricted leases, and obtaining such other kinds of machines as he desired from competitors. The United States having stated a "specific case," it is only fair that we should state a few "specific cases."

If the shoe manufacturer wishes to make McKay shoes and wishes to take his lasting and metallic machines from

the United Company, he can take the hand method McKay laster, which is restricted to use only with metallic machines, and the metallic machines, which are restricted to use only with the lasting machines, and obtain all his other machines from competitors. The Restricted Use Clauses will not bother him at all. Take Jonathan Brown's factory as an illustration (Defs.' Ex. 236, R. Vol. 5, p. 671). He would take from the United Company 24 lasting machines and 18 metallic machines out of a total of 424 machines which the exhibit shows he has, and would take the remaining 382 machines he requires from competitors.

If the shoe manufacturer wished to obtain a welter and stitcher from the United Company, and to obtain all his other machines from competitors, he could take a non-initial payment lease of the welters and stitchers and obtain all his other machines from competitors. If he wished to add to these machines Goodyear auxiliaries, he could do so on the non-initial payment lease and still take all other machines from competitors. If he wished to add lasting machines, he could take the hand method welt laster on a restricted lease, restricted to use only with the welter and stitcher, and take all his other machines from competitors. If he wished to add the United Company's metallic machines, he could take them on a restricted lease, restricted to use with the welter and stitcher and lasting machine, and still obtain all other machines from competitors. If he wished also to take heeling machines from the United Company, he could take them on a restricted lease, restricted to use with the welter and stitcher, lasting and metallic machines, and still obtain all his other machines from competitors. If he wished to add General Department machines, he could, prior to the time the United Company stopped

leasing them at all, take them on restricted leases, restricted to use with the welter and stitcher, lasting and metallic machines, and still obtain all his other machines from competitors. If he wished in addition to take eyeletting machines from the United Company, he could take them on a restricted lease, restricted to use with the welter and stitcher, lasting, metallic, and heeling machines, and still take all his other machines from competitors.

If he wished to take various other combinations of machines on the restricted leases, he would be hindered little, if at all, by the Restricted Use Clauses.

We believe that the foregoing illustrates conclusively that the charge of the United States, that a shoe manufacturer desiring to take one or a few types of machines from the United Company is obliged, on account of the leases, to take practically all his other machines from the United Company, is without any foundation whatsoever.

For purpose of illustration some of the many combinations in which machines of the kinds which the United States sets forth in its petition as the "principal essential machines" may be taken from the United Company and from competitors for use in the manufacture of welted and of other kinds of shoes are set forth in an appendix to this brief, marked Appendix IV (*infra*, pp. 185–191).

Contentions of the United States as to the Independent Leases.

The brief writer states (p. 191),—

> "The defendants grant these leases [that is, unrestricted leases] only upon terms which, as a practical matter, prohibit their acceptance and coerce the manufacturer into taking the restricted form."

We believe the finding of the District Court that the charges for unrestricted leases are not shown to be excessive, the fact that many such leases are taken by shoe manufacturers, and the further fact that the amounts charged for the unrestricted leases are, on the whole, more favorable than those which were previously charged by the constituent companies for leases of much less efficient machines furnished without adequate service is sufficient answer to this contention (see Summary, pp. 118-122, Main Brief, pp. 359–360).

The brief writer says (p. 191) that the manufacturer to obtain any advantage from the unrestricted leases must take all his leased machines on such leases. This is entirely untrue (see our Main Brief, pp. 367–375).

We have shown that under many combinations the restricted leases would not interfere at all with the shoe manufacturer taking such other machines as he pleases from competitors, *supra*, pp. 34–36. Furthermore, it must be remembered that if the shoe manufacturer desires to use a competitor's machines of certain kinds, he would, of course, not take such machines from the United Company, and would, therefore, not make initial payments for them to the United Company. For example, if he only wishes to use the United Company's lasting machines, which is the "specific case" used by the brief writer to illustrate the effect of the leases, he will only take lasting machines from the United Company, and, therefore, only make the initial payments charged for lasting machines and obviously not the initial payments charged for other machines which he does not take from the company.

This fallacy that the shoe manufacturer must take all

the machines which the United Company puts out on unrestricted initial payment leases in order to use any machines obtained from a competitor underlies the entire argument of the brief writer. The figures he gives as to the amounts which a shoe manufacturer would be required to pay to use a competitor's machines are based on this fallacy.

The brief writer (pp. 191–192) begins with an example of a shoe manufacturer who takes restricted leases of the No. 5 lasting machine and of heeling machines, and an independent lease of metallic machines. The brief writer states that the manufacturer desires to use competing metallic machines and that his unrestricted lease of metallic machines does not assist him in doing this because his lasting and heeling machines are restricted to the metallic machines. Of course, the answer is that if he wished to use a competitor's metallic machines he would not take these machines from the United Company at all, and instead of taking restricted leases of lasting and heeling machines he would take those machines on unrestricted leases and would then be able to take all other machines from competitors.

At page 193 a general statement by Mr. Winslow is distorted to prove the contention that a shoe manufacturer wishing to substitute a competitor's heeling machines is required to place all his other machines on independent leases. Mr. Winslow said that such a manufacturer

> "could return our heeling machines, place his machines in the other departments upon the independent forms of leases, and continue to use the heeling machines of others" (R. Vol. 1, p. 443, lines 2–8).

What Mr. Winslow obviously meant was that he could take unrestricted or independent leases of any machines which were restricted to use with the heeling machines. Only a very few classes of machines are so restricted. The Goodyear, the metallic, the lasting, and the McKay sewing and General Department machines and others are not so restricted, so that he would not have to change leases of any of these machines constituting most of the machines manufactured by the United Company. This general statement of Mr. Winslow's is deliberately used to give a mistaken impression. The brief writer says of Mr. Winslow's statement (p. 194),—

> "And the statement seems to be in complete harmony with what the record shows of defendants' actual practice."

This is entirely untrue.

At pages 194–195 the brief writer proceeds deliberately to misconstrue and misapply the testimony of Mr. Winslow on pages 432–433 of the record in an endeavor to show that it would cost a shoe manufacturer making 1,000 pairs of welt shoes per day $8,833 to obtain unrestricted leases of machines and thus inferentially to use any machines of a competitor.

Mr. Winslow in his testimony was comparing not the cost of taking unrestricted or restricted leases, but the saving in installation charges to the shoe manufacturer in 1911 over what he was required to pay in 1899 for obtaining an equipment for the manufacture of Goodyear welt shoes (R. Vol. 1, p. 432, lines 18–22, 44–45; and p. 433, lines 1–12). His statement affords no foundation whatsoever for a comparison of prices charged for restricted and

unrestricted leases. This is shown by the fact that the greater part of the difference in cost between 1899 and 1911 came from the elimination of initial payments on Goodyear machines. As Goodyear machines are not restricted to use with machines of any other department, the shoe manufacturer desiring to use them and to take any or all his other machines from competitors is not required to take them on an initial payment lease.

At page 196 the brief writer says

> "... even if the shoe manufacturer did take the independent lease he would gain but little freedom, because every lease of the principal bottoming machines, except the McKay sewing machine, contains the 'Exclusive Use' clause, or its equivalent and all have the 'right to terminate all leases' clause."

This is a sample of the kind of argument made by the brief writer. Suppose a shoe manufacturer wishes to take lasting machines from the United Company and take all other machines from a competitor. His unrestricted lasting machine leases have the Exclusive Use Cancellation Clause and Cancellation for Breach Clause. The Exclusive Use Cancellation Clause merely provides that if he supplies himself with other lasting machines the United Company may cancel its leases of lasting machines. How can this possibly affect the shoe manufacturer's right to use other kinds of machines obtained from competitors? And the Cancellation for Breach Clause obviously has nothing to do with his use of competitor's machines of other kinds, as we do not think even the brief writer would contend that such a use of other kinds of machines gave the United Company a right to cancel its lease of lasting machines.

To a reader of the brief, however, unacquainted with the leases, the above quoted statement sounds plausible. An examination of the situation, however, shows that the statement is entirely fallacious and has been deliberately made by the brief writer to confuse and mislead the reader.

At page 198 the brief writer says,—

> "Assuming for convenience that these cumulative disadvantages to the manufacturer who tried the 'independent' lease amounted only to 4 cents a pair . . ."

it would mean a large annual sum, which the brief writer undertakes to estimate.

But the brief writer has no right to assume any such figure "for convenience."

The cumulative disadvantages consist only in the initial payments charged for the independent or unrestricted leases, and in the further fact that while no initial payment is charged for the clicking machine, though used entirely in connection with a competitor's machines, an increased payment is charged if used with a welter and stitcher and lasting machine not obtained from the United Company; in other words, in the case of the clicking machine a reduced price is charged when used as part of a series. To assume that a shoe manufacturer wishing to take any machines from a competitor would be obliged to pay 4 cents per pair additional to the United Company is without the slightest justification. In the "specific case" stated by the brief writer to illustrate the effect of the leases, the shoe manufacturer desired to take lasting machines only from the United Company. An unrestricted lease would cost him, not 4 cents a pair additional, but the sum of

$600 for his two machines. Such shoe manufacturer, having a total production of 250 pairs a day, could make approximately 75,000 pairs a year. The additional charge per pair of shoes for the first year would be only a fraction of a cent, and distributed over seventeen years would be almost infinitesimal.

The brief writer says (p. 198),—

> "The difference in the clicking machine royalties is alone sufficient 'as a matter of dollars and cents' to compel the choice of the restricted leases."

A reduced rate is allowed in the clicking machine lease when the machine is used with the United Company's welter and stitcher and lasting machine, that is, three machines out of the scores of machines which he needs in his factory. In other words, if he wants a clicking machine, and also takes these three other machines from the United Company, he gets the reduced rate. Even if the shoe manufacturer insisted on using the clicking machine (many manufacturers do not use it; for example Jonathan Brown, Defs.' Ex. 236, R. Vol. 5, p. 671), and even if he felt that he must obtain it at the reduced price, he would only be induced to take three additional kinds of machines from the United Company out of the large number he would require in his factory; and the welter and stitcher are not restricted to use with any other machine and he could take the lasting machine on an unrestricted lease if he so chose. He would, therefore, in such case not take a single restricted lease. And yet the brief writer asserts that the clicking machine royalty alone is sufficient "to compel the choice of the restricted leases."

Other Alleged Oppressive Provisions of the United Company's Leases.

At pages 187–190 of the brief of the United States the writer refers to "other oppressive provisions" of the leases. These are not alleged to be unlawful, but they are apparently referred to to show the power of the United Company in that it can compel lessees to accept leases with such provisions. The writer first objects to the clause providing that a lessee cannot, without permission from the lessor, remove a machine from his factory or, as the writer states it, from one of his factories to another. The United Company owns the machine and is paid according to its use. It obviously must know at all times where the machine is situated so that it can determine, if necessary, whether it is being properly cared for and to what extent it is used. Naturally the lease provides that the machine shall not be removed without the lessor's consent.

The next clause considered by the writer is the clause permitting the lessor to have access at all times to the machinery (p. 187),—

> " 'for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use.' "

Obviously the United Company must have a right to look at the machinery in order to see if it is properly cared for and to see to what extent it is used so that it may be sure that it is paid the royalties due.

The brief writer construes this necessary right into an intention on the part of the United Company to

"enter the factory of the lessee at any time they please, and put themselves in a position to learn any manufacturing secret the lessee may have."

The brief then proceeds to say (p. 188),—

"Further, he [the lessee] is required 'at his own expense' to keep the machinery 'in good and efficient working order' although the machinery belongs to the lessor and the lessee is bound to pay for its use."

Could any argument be more absurd? The petition seriously charges that a clause requiring a lessee of machinery to keep it in efficient working order is an "oppressive" burden. Furthermore, the writer, of course, omits to state that this repair work is actually done by the United Company, except for the cost of new parts, and that the clause is not enforced (see Main Brief, p. 427).

He also objects (p. 188) to the clause requiring the lessee to pay a certain sum in case the machine is destroyed by fire; in other words, to insure it.

The attempt to show that these clauses are "oppressive" shows the attitude of counsel for the United States.

Attempt of the United States to Prove that Exorbitant Royalties are Charged.

At pages 188–190 of the brief the writer attempts to prove that exorbitant and excessive royalties are charged by the United Company.

There is no evidence in the record as to the market value of the machines which the United Company leases and

does not sell, nor could there well be, as they are patented machines which are unique and which have never been sold in the market.

The writer of the brief, however, finds that under Plaintiff's Exhibit No. 21, a lease of a No. 5 lasting machine, the lessee is required to pay the lessor $225 if the machine is destroyed by fire. From this he assumes that the machine is worth only $225. Even if $225 would compensate the United Company for the loss of the physical materials in the machine, which does not appear, this would be no test whatsoever of the value of the machine, the value of which consists almost entirely in the patented inventions which it incorporates.

For example, each new Model K welter probably saves $800 a year over the previous model (see our Main Brief, p. 545). To assume, as the writer of the brief does, that the value of such a machine is $225, being the cost of the physical materials in the machine, is absurd on its face. The pulling-over machine cost $1,000,000 to develop before it was made a commercial success (see Main Brief, p. 622). If the United Company sold the pulling-over machine, it would have to in some way add this amount to the selling price of the machine before it even received back its investment.

If the brief writer's contention were correct, a process patent which involves no physical materials, such as the Goodyear process patent, in *Rubber Co.* v. *Goodyear*, 9 Wall. 788, would have no value whatsoever.

In spite of this, however, the brief writer assumes that the value of the lasting machine is $225, and, therefore, that the value of all other machines is doubtless $225 apiece (p. 190). He then undertakes to show that royalties at

6 cents per pair would give a return of 120 per cent. per year on the value of these machines. He adds,—

> "No self-respecting business man would enter into stipulations so offensive and destructive of his liberty unless he was coerced by the circumstances surrounding him."

The conclusion may be true if the facts are true. We respectfully submit, however, that the reason new manufacturers who are under no obligation to the United Company take these machines in preference to others and agree to pay the royalties provided for is because the United Company's machines are so much more efficient than any other machines and such valuable service is rendered with them that they are worth more than the amount paid for them. Mr. Hazzard testified that the service rendered by the United Company was alone worth more than the royalties paid (R. Vol. 1, p. 644).

Certain Other Contentions in Respect to the Leases.

Contention as to Use of Additional Machinery Clause.

At pages 161–162 the brief writer under the title "Additional Machines Clause" quotes a clause from Plaintiff's Exhibit 30, a lease of Metallic Department machines. He calls this clause an Additional Machinery Clause and states that the clause appears in a current lease of metallic machines in spite of the statement by the defendants that the Additional Machinery Clause was abandoned in 1907 (see Main Brief, p. 324). The Additional Machinery Clause referred to by the defendants was a clause obligating the

lessee to take additional machines for any additional work (see Main Brief, p. 323). The clause quoted does not so obligate the lessee. It provides that he shall

> "either take from the lessor . . . additional machinery to perform the work, *or* in case the lessee does not thus lease additional Metallic machinery . . . , then the lessor may, if it so elects, cancel forthwith this lease and any other lease of Metallic machinery . . ." (italics ours) (R. Vol. 3, p. 281).

In other words, the clause provides that the lessee has the option of taking additional machinery or giving the United Company the right to take back its metallic machines. There is no obligation on him to take additional machines. For practical purposes the clause has much the same effect as the Exclusive Use Cancellation Clause, which provides that if the lessee supplies himself with other machines the United Company may withdraw its own machines of this kind. The clause quoted is used only in certain metallic leases.

Factory Output Clause.

At pages 167–168 the brief writer comments on the Factory Output Clause in the Goodyear lease. He charges that it requires the lessee to pay royalties on the shoes made on the United Company's machines and also on shoes made on competing machines. It is, in fact, only a charge for the United Company's machines based on the amount of work which they can perform (see Main Brief, p. 424). If the lessee wishes to obtain a lease without this provision, he can do so by paying an initial payment. The reasons for the adoption of this clause are given in our Main Brief (p. 424).

Contention as to Pulling-over Machine Lease.

At pages 177–178 the brief writer says that if a shoe manufacturer should do any of his lasting on machines supplied by any concern other than the United Company,—

> "his payments for pulling-over machines . . . would be nearly tripled" (P.'s Ex. 38, R. Vol. 3, p. 350, par. six).

If the lessee did not propose to use the United Company's lasting machines, he would take an unrestricted lease of pulling-over machines and his royalty would be ½ cent net per pair of shoes, for the use of both the principal pulling-over machine and the auxiliaries (P.'s Ex. 39, R. Vol. 3, pp. 363, 367).

The royalty under the restricted lease is comparatively simple to one acquainted with the industry, but complicated to explain to one unacquainted with the industry. There is first a provision that 2 8 of a cent net shall be paid for all shoes pulled over by machinery in the factory. There is a further provision that ⅛ cent net shall be paid for each auxiliary machine used. If a shoe manufacturer used two auxiliaries on a shoe, and he would seldom use more than two or three, his royalty thus estimated would be ½ cent net or ⅝ cent net. There is then a further provision that where all his shoes are lasted by the United Company's lasting machines, the total pulling-over royalty on all his shoes shall not exceed a maximum of ⅜ of a cent net. In other words, where the United Company gets the lasting machine royalty on all shoes made, the pulling-over royalty is not to exceed ⅜ of a cent over and above the lasting royalty. The result is that in figuring the maximum amount less may be charged for pulling-over where

the lessor also receives the lasting royalty on all his shoes. This is a mere case of a wholesale rate. If the lessee only used one auxiliary machine, or if he lasted part of his shoes by hand, he would not obtain any advantage under this maximum clause, but, on the contrary, the maximum so provided for might exceed the royalty he would otherwise pay (P.'s Ex. 38, R. Vol. 3, p. 350).

It clearly appears that in no case would a shoe manufacturer taking an unrestricted lease of pulling-over machines be called upon to pay triple the amount he would otherwise have to pay for his pulling-over machines, or anything like it. If he took the unrestricted lease of pulling-over machines, he would pay ½ a cent royalty, while the lowest possible rate he could pay under the restricted lease, if he used the United Company's lasting machines exclusively, and used one pulling-over auxiliary machine, would be ⅜ of a cent. He might under the restricted lease pay more than ½ a cent.

Brief Writer's Reference to Metallic Leases.

At page 166 the brief writer quotes a provision in the metallic leases requiring the lessee to purchase fastening material used in the machine from the lessor. At page 294 the brief writer states that in the Motion Picture case, 243 U. S. 502, it was held that such restriction was not a valid patent restriction.

Of course the brief writer must realize that this has nothing whatsoever to do with the present case which charges a monopoly of machinery, not of fastening material. An agreement that one of the United Company's machines shall be used only with fastening material obtained from the

United Company might conceivably give it a monopoly of fastening material, but could not possibly give it a monopoly of the machine. In fact, the restriction that certain material only should be used on the machine would tend to make it easier for competitors to furnish their own machines without this restriction.

The obvious purpose of referring to this provision is to prejudice the Court by attempting to point out that unlawful intent was expressed in this provision to obtain control of materials used in the machine. We respectfully submit that no such unlawful intent is shown.

In the first place, the United Company, in employing this provision, used a provision which, as stated in *Henry* v. *Dick*, 224 U. S. 1, had come to be regarded as a rule of property. Even if it has now been held that it is not a valid patent restriction, its use certainly showed no unlawful intent, but an intent to comply with what was then recognized to be lawful.

In the second place, the provision in the present case was not held to be unlawful in the Motion Picture case. That case merely held that the provision in that case was not a valid patent restriction, but left open the question of whether an agreement to this effect could validly be made with either a purchaser of the machine or a lessee.

The whole matter is outside of the issues in this case, but in view of the brief writer's reference to the clause we feel entitled to make the following brief explanation of the reasons for its use:—

The clause was employed by the McKay Company in its leases of metallic machines (P.'s Ex. 12, R. Vol. 3, p. 103). Lessees of metallic machines were asked to agree to use the lessor's fastening material for two reasons: The first

reason is, that such material must be of the proper size and character for use in the machines, or otherwise it may seriously injure them or cause poor work. As the machines belong to the lessor, it is of the utmost importance that proper material should be used. The clause in question thus protects the machine from injury. In the second place, under the lease system the lessee is so far as possible charged only for the amount of work he does on the machine. In the case of a metallic fastening machine the machine may be used for inserting only two or three slugs or fastenings in a shoe, or it may be used for inserting many score of slugs or fastenings. In other words, the number of shoes on which the machine is used does not show the actual amount the machine is used. If a definite sum were charged for each pair of shoes, a manufacturer who inserted two slugs would be charged too much and a manufacturer who inserted fifty slugs would be charged too little. The lessor, therefore, requires the lessee to obtain his fastening material from him and charges a price for such material which will give him a profit which is taken as royalty for the machine. This profit is directly proportionate to the amount of use which the lessee makes of the machine, and thus enables the shoe manufacturer to pay royalty only according to its use. The profit so obtained from the purchase of fastening material is the only royalty charged for the use of the machine.

It may further be noted that this fastening material is merely wire of a size and shape adapted to the machines. The total amount of such wire used in shoes is infinitesimal as compared with the total amount of such wire annually consumed in the country. It cannot possibly be contended that the United Company obtains any monopoly or has

any noticeable effect upon the trade in wire by this provision.

Alleged Punitive Action Against Disobedient Lessees.

Under the heading of "Punitive Action Against Disobedient Lessees" the brief writer (pp. 205–216) cites various instances in an attempt to show that the United Company has arbitrarily compelled shoe manufacturers to throw out competing machines. Some thirty instances are briefly referred to.

We submit that the statements of the brief writer are an attempt to impose upon the Court by distorting the testimony and by stating facts as though admittedly true, although they were denied or disproved by other witnesses.

An examination of the evidence relating to these instances as it appears in Appendix II of our Main Brief shows the unreliability of the statements in the brief for the United States.

In this reply brief we can only refer to a few of the instances mentioned. It may be pointed out, however, that in no case does the brief writer refer to the evidence contradicting his statement, and that in nearly half the instances the testimony to which he refers is the testimony of competitors who merely repeated hearsay statements made to them by shoe manufacturers whom they were trying to induce to use their machines, and that in some of these instances the shoe manufacturers themselves contradicted the testimony and in other instances, though called by the United States, they were not questioned as to the facts alleged.

The brief writer (pp. 215–216) makes the following statement:—

> "Kimball & Hadley of Lynn, Mass., were making needles and awls. Beginning about January, 1904, they found that they could not sell Universal Slugging Machine awls. Five firms told Hadley personally that the reason they would not purchase was that the use of their needles and awls was in violation of the lease of the United Company (Ptr.'s Ex. 24, par. 'Two,' III, 214, 216); and if they continued to use their needles and awls, the United Company would take its machines away from them (Hadley, I, 308, l, 11)."

It is true that Hadley did testify substantially as above stated. The record, however, shows that his statement was false.

In the first place, representatives of the concerns which he said made the alleged statements to him were called as witnesses and absolutely denied making any such statements (see our Main Brief, Appendix II, pp. 768–769).

In the second place, all the leases of the United Company have been introduced in evidence and there is not a single lease which requires the lessee to purchase awls and needles from the United Company. The lease referred to by the brief writer (P.'s Ex. 24, par. two) provides that the lessee shall obtain from the lessor

> "... all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery nor interfere with the proper operation of the same."

It is perfectly obvious that this clause refers only to such devices and parts as form a permanent portion of the

machine and that it does not refer to needles AND AWLS which are constantly used and replaced. The clause has never been so construed. The testimony of the shoe manufacturers that they did not say they must obtain needles AND AWLS from the United Company is undoubtedly true, and if they had made this statement, Hadley, who was acquainted with the shoe trade, would not have credited it.

Finally, it appears from the record that Hadley had sold out his business to the United Company, had later broken his agreements with them, and, in a suit brought by the United Company, was enjoined, and his contention that he was coerced into making the sale to the United Company being held untrue. (*United Shoe Machinery Co.* v. *Hadley*, 193 Mass. 351.) It was evident that he had acted dishonestly toward the United Company and was a prejudiced and biassed witness, determined to injure the company if he could, and that his statements were wholly unreliable. For further statement, see Appendix II to Main Brief, pp. 767–770.

At page 208 the brief writer states that W. S. Chase & Co. had installed two channeling machines and turn sewing machines and a heeling machine of the Haverhill Company, which were operated very satisfactorily, but that a year before the witness testified the Haverhill Company was told by Chase & Co. to remove all its machines because they were violating the conditions of their leases.

Chase's whole testimony was excluded on the ground that the transaction was subsequent to the filing of the bill. Mr. Winslow, however, testified that Chase & Co. were using the Haverhill Company's turn machine and heeler; that the United Company offered to let them return its turn machines and heeling machines and to keep

its lasting and metallic machines on the unrestricted leases, but they decided to keep the United Company's machines, and, therefore, gave up the use of the Haverhill turn and heeling machines (see our Main Brief, Appendix II, pp. 794–795).

The situation was that the United Company's turn and heeling machines, installed without initial payment and which the lessee had agreed to use to capacity, were not being used. The United Company, instead of insisting that they should be used, as it had a right to do, offered to take them back and thus enable the lessee lawfully to use the Haverhill machines, and, further, to change the restricted leases of lasting and metallic machines to unrestricted leases so that the lessee could use them with the Haverhill machines.

In other words, instead of forcing Chase & Co. to give up the use of the Haverhill machines, although such use did violate the Full Capacity Clauses, the United Company offered to waive this violation and arrange its leases of lasting and metallic machines so that Chase & Co. could use the Haverhill machines if they wished to do so.

At page 209 the brief writer says that Ned Pike, representing the Haverhill Company, detailed certain difficulties which he encountered in installing that company's machines. The brief writer says,—

> "He attempted to install a machine in the factory of Ashe, Noyes & Small, Auburn, Me., but they said that under their existing leases with the United Company it would be impossible to take the machinery without laying themselves open to a great deal of trouble with that Company."

Both Small and Noyes of this company, who dealt with Mr. Pike, testified in the case. Small testified,—

> "I did not make any statement to Mr. Pike which was at all to the effect that I would not put in his machines because of the existing leases with the United Company (R. Vol. 1, p. 804, lines 43–45).

Noyes testified:—

> "In my conversation with Mr. Pike nothing was said about the leases which we had with the United Company. They were not mentioned" (R. Vol. 1, p. 805, line 43).

We leave it to the Court to determine whether the brief writer has any justification for stating as a fact that these statements were made without referring to the fact that the persons alleged to have made the statements denied having done so.

We cannot in this reply brief take up all the instances of alleged "punitive action." The foregoing will illustrate the unreliability of the statements made in the brief for the United States. The evidence relating to these various instances is treated in Appendix II of our Main Brief.*

*Hilliard & Tabor	U. S.	Brief,	p. 206	Our	Main	Brief	754–756
Herrick, Frederick W.	"	"	p. 207	"	"	"	793–794
Lynch & Sherman	"	"	p. 207–208	"	"	"	794
Chase & Company, W. S.	"	"	p. 208	"	"	"	794
Carleton & Hunt	"	"	p. 208	"	"	"	790
N. D. Dodge Shoe Company	"	"	p. 208	"	"	"	787
Pike, Ned	"	"	p. 209	"	"	"	797–798
Learned, George A.	"	"	p. 210	"	"	"	759–760
Merrick, Frank W.	"	"	p. 210–211	"	"	"	799
Williams, John E.	"	"	p. 211	"	"	"	799–801
Reed Company, E. P.	"	"	p. 211	"	"	"	788
Worthley, Mark J.	"	"	p. 211–212	"	"	"	747–748
Plant, Thomas G.	"	"	p. 212	"	"	"	747–748
Barry Shoe Company, T. D.	"	"	p. 212	"	"	"	748–750
Curtis & Jones	"	"	p. 212–214	"	"	"	750–754
Tessier & Company, Peter	"	"	p. 214	"	"	"	743–745
Bottomley & Company, Ernest	"	"	p. 214–215	"	"	"	746–747
Harsh-Edmonds Shoe Company	"	"	p. 215	"	"	"	756–758
Clark, George H.	"	"	p. 215	"	"	"	766–767
Kimball & Hadley	"	"	p. 215–216	"	"	"	767–770

Appendices A, C, D, and E to the Brief for the United States.

Appendix A to the brief is a chart which purports to be "illustrative of the practical effect of exclusive use and tying provisions in restrictive lease and license agreements."

If used for this purpose it gives a wholly erroneous impression, especially to one not acquainted with the details concerned in the manufacture of shoes. For example, it would look as though a manufacturer taking heeling machines would be obliged to use the United Company's pegging machines, lasting machines, metallic machines, and Goodyear Department machines, because the ties in the chart run from heeling machines to these other departments. If he was a manufacturer of McKay shoes, the kind of shoes most largely made, he would not use pegging machines or Goodyear Department machines. If he took his heeling machines from the United Company, he would most probably wish to take his lasting and metallic machines because all three are adapted for use together. In any event the tie would run only to two other kinds of machines with which he is concerned in the manufacture of McKay shoes. If he wished to make turn shoes he would not use pegging machines, nor would he use the Goodyear stitcher, nor would he probably use lasting machines. The tie does not run to the Goodyear auxiliary machines or insole machines as appears to be the case according to the chart. It would thus run only to the Goodyear welter and not to any of the 43 Goodyear auxiliary machines or to any of the insole machines.

Again the chart naturally omits omission of the unrestricted leases. For example, if the manufacturer only

wished to obtain the eyeletting machines from the United Company he could by paying $100 get an unrestricted lease and then there would be no restricted clauses at all. This would entirely change the "practical effect" of the chart.

Again, certain statements in the chart are not correct. For instance, under heeling machines it is stated,—

> "Must use exclusively lessor's machines for all work for which machines in schedule are designed."

Presumably the brief writer refers to the Exclusive Use Cancellation Clause. We have shown above that the Exclusive Use Cancellation Clause has no such effect and this statement is entirely unjustified.

For further consideration of this chart see Appendix II to this reply brief (*infra*, pp. 176–179).

Appendix C purports to be a synopsis of lease forms showing the restricted clauses contained in each.

Appendix D purports to be a résumé of leases in which the objectionable clauses appear. It is inaccurate in various particulars. For example, it would appear from Section (11), p. 367, that the Full Capacity Clause applies to Goodyear auxiliary machines. While it is contained in the lease of the full set of Goodyear machines, it is expressly made to apply only to the welter and stitcher, which are the recording machines, and not to the auxiliary machines.

Appendix E to the brief for the United States is a table purporting to give the paragraphs in which the tying clauses appear in the leases. This also gives an erroneous impression. For example, it states that 10 leases contain the Additional Machinery Clause. It does not point out

that five of these leases are forms that have not been put out since 1907 or prior thereto, the Additional Machinery Clause having been eliminated and the remaining five leases referred to as containing this clause, all leases of metallic machinery, do not contain a clause requiring the use of additional machines, but merely contain a clause permitting the United Company to take back its machines if other machines of the same kind are used, which clause is erroneously referred to by the United States as an Additional Machinery Clause (*supra*, pp. 46–47). Appendices C, D and E are considered more in detail in Appendix III to this reply brief (*infra*, pp. 180–184).

THE CONTENTIONS OF THE UNITED STATES AS TO MONOPOLY AND AS TO THE NUMBER OF MACHINES PUT OUT BY SHOE MACHINERY MANUFACTURERS OTHER THAN THE UNITED COMPANY.

The United States contends that the United Company furnishes practically all of certain types of machines used in bottoming shoes.

But the United States nowhere in its brief contends that the United Company's machines are not patented or that they are not the best machines made. Nor does it anywhere contend that any other shoe machinery manufacturer furnishes service of the character furnished by the United Company.

There is not the slightest evidence that shoe manufacturers desire to obtain machines of these types as to which a monopoly is claimed from other shoe machinery manufacturers who are offering better machines and are prevented from doing so by the United Company.

There is therefore not the slightest evidence to dispute the following finding of the District Court:—

> "That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the *superior efficiency* it has developed in its *patented machines* for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded *as shown beyond question.* It is not disputed that, when the petition was filed, its machines represented, in number and amount, *the highest*

> *development ever reached in the art* to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason" (R. Vol. 1, p. 1137) (italics ours).

It, therefore, seems immaterial whether the United Company furnishes all or only a small portion of the types of machines in which it specializes.

Furthermore, the United States itself contends that the constituent companies which composed the United Company did at least as large a business in the kinds of machines which they manufactured as the United Company does to-day. It is admitted, therefore, that the United Company has not acquired a monopoly in these machines, except by taking over the business of the constituent companies, which, since they were essentially non-competing, the United Company was entitled to do as held in *United States* v. *Winslow*, 227 U. S. 202.

As to the other machines put out by the United Company since its formation, such as the pulling-over machines, clicking machines, eyeletting machines, and various new Goodyear auxiliary machines, it is not denied that they are nearly all machines which were created and developed by the United Company under patents, and that these machines have been in existence only a very short time. Whatever business the United Company has in these machines is presumably due to the fact that the United Company has created these machines and no one else has invented machines equally good. We submit that there is nothing in the evidence to refute this presumption that the business done by the United Company in these machines has been acquired lawfully.

While, therefore, the comparative amount of business

done by the United Company and its competitors would seem to be immaterial, nevertheless, the statements made by the brief writer in attempting to prove its contention that the United Company has

"pre-empted by combination and acquisition" (p. 151)

the field of bottoming machines and obtained practically a complete monopoly are so unjustified and its conclusions in certain respects so erroneous that we wish to call the Court's attention to certain of them.

In Appendix B, Part I, of the brief for the United States the writer purports to show the number of "principal bottoming machines together with clicking machines" which the United Company had out on March 1, 1911, and the number "which all competing concerns had out at that time"; that is, the Appendix purports to give the total number of these various machines in use in the United States on March 1, 1911. The reason this date is chosen is because Defendants' Exhibit 228 (R. Vol. 5, p. 430) gives the number of machines of various kinds which the United Company had out under lease on that date. A summarization of the Appendix is given at page 150 of the brief, reading as follows:—

Machines.	*By defendants.*	*By all others.*
Clicking machine	3,655	None
Pulling-over machine	1,632	None
Lasting machine	7,496	7
Standard screw machine	409	None
Pegging machine	146	None
Tacking machine	3,488	6
Welt sewing machine	2,527	142
Outsole stitching machine	2,676	758
Loose-nailing machine	1,835	24
Heeling machine	2,019	17
Slugging machine	1,876	23
McKay sewing machine	898	8

It is illuminating to note, in the first place, that this table refers to only 12 machines. The United Company manufactures approximately 300 different machines. In other words, the table represents only about 4 per cent. of the different types of machines which the United Company manufactures. An examination of the Appendix shows that the table has been made up as follows: The number of machines of the United Company outstanding has, with one or two exceptions, been taken from the Defendants' Exhibit 228 and is approximately correct. The number of machines of competitors is taken from statements of a few shoe machinery manufacturers who testified in the case as to the number of machines they had put out. In the first place, the brief writer himself admits that the shoe machinery manufacturers who testified only included a portion of the shoe machinery manufacturers in the country. For instance, in the Appendix under the heading "McKay Sewing Machine" (pp. 315–316) the names of nine manufacturers are given and it is stated that no representative of six of them testified. They are put down as having put out no machines. No reference is made to other manufacturers of or dealers in McKay machines at all. See also tacking machine, page 312, clicking machine, page 317. In the second place, practically none of the manufacturers who testified were asked what machines they had out on March 1, 1911. Furthermore, many of them did not testify at all as to the number of machines they had furnished and in such case they are put down in the Appendix as having furnished no machines. A glaring case of this appears in respect to eyeletting machines (p. 317). It is there stated in respect to the Peerless Manufacturing Company:

"Output not stated, but we may assume that if it was large enough to be significant it would have been stated by the defendants."

The writer of the brief, therefore, assumes that no eyeletting machines were put out by the Peerless Manufacturing Company, and makes up the list of the number of eyeletting machines out on this basis. As a matter of fact, Muther of the Peerless Company testified as follows:—

"We sell our eyeletting machines outright or loan them without charge to people who buy eyelets from us. . . . Our eyeletting machine is the Peerless rapid eyelet machine. It will insert any kind of eyelets in shoes. They are put out on loan leases and we ask customers to buy all their eyelets from us—but they don't. . . . We supply six or eight different kinds of eyelets, mostly japanned, which we buy and resell. We buy our japanned eyelets from the United Company and the Atlas Tack Company. . . . We can buy and sell all we want—all our customers require. . . . We sell more Atlas than United eyelets and our customers are altogether shoe manufacturers. . . . Our machines are sold to shoe manufacturers who use other machines obtained from the United Company. . . . Our machines and theirs are sometimes used side by side in the same factory. Manufacturers use either they want—or both" (R. Vol. 1, pp. 303–304).

The output of eyeletting machines thus described is designated by the United States as "None."

Furthermore, two of the witnesses, C. H. Jones and R. P. Hazzard, specifically cited by the United States to support its allegation of actual monopoly, use Peerless eyeletting machines. Hazzard, who picked out the United machines as generally the best on the market (R. Vol. 1, p. 653, lines 3–4) has five Peerless machines and only two United

machines (R. Vol. 1, p. 651, lines 5–9; Defs.' Ex. 262, R. Vol. 5, p. 707). Jones has five United eyeletters and ten or more Peerless eyeletters (P.'s Ex. 279, R. Vol. 4, p. 1559).

The Court will appreciate that a table purporting to show the number of machines out which is made up in this manner is absolutely and entirely unreliable and cannot possibly give a correct picture of the situation. That this is so is strikingly shown by the results in respect to McKay sewing machines.

The McKay sewing machine is one of the most important bottoming machines made. It was used in bottoming over 37 per cent. of the shoes made in 1910, while the welter and stitcher were used in welting and stitching only 30 per cent. of the shoes made in that year (R. Vol. 1, p. 424). Mr. Winslow gave a list of 17 American and 10 foreign dealers in and manufacturers of this machine (R. Vol. 1, pp. 858–859). Appendix B of the brief for the United States refers to the testimony of representatives of only 3 of these concerns. Emerson, of the Shawmut Company, testified that, a year before, his company had started to make a McKay sewing machine and had three machines out; "we are making . . . an improved machine of recent design" (R. Vol. 1, p. 910, lines 24–26, 33–35). Spencer testified that his concern had manufactured various machines and dealt in others. He did not include McKay sewing machines in the list of machines he manufactured and was not asked if he dealt in them (R. Vol. 1, pp. 884–885). Hall, of the American Worsted Machinery Company, testified that in the period from 1907 on the company did not manufacture McKay sewing machines, but that "we handled and made parts for that machine" (R. Vol. 1, p. 953, lines 21–22). He was not asked and did not state how many he had dealt

in. His company also quoted a price of $250 for a McKay sewing machine and was ready to make it for anybody (R. Vol. 1, p. 953, line 43; p. 954, lines 1–2).

The brief writer assumes that none of the other concerns named as dealing in or manufacturing McKay machines had put any out, and accordingly in Appendix B (p. 315) of his brief puts down 8 McKay sewing machines as the total output of all concerns other than the United Company, and in the table (p. 150) quoted above it is stated as a fact that a total of 906 McKay sewing machines were in use on March 1, 1911, of which the United Company furnished 898, and competitors only 8. Just why the brief writer chose 8 instead of 3, the number which Mr. Emerson testified he had put out, is not clear.

If the above were all the evidence in respect to McKay sewing machines, the unjustifiable method employed by the brief writer in making up the table would be made sufficiently clear. But it is not. It affirmatively appears in the record that in the Lynn district in 1909 there were 59 McKay machines supplied by the United Company and 367 supplied by others. In the principal shoe districts of the country 1,180 McKay machines out of a total of 1,488 McKay machines, or practically 80 per cent., were supplied by others than the United Company (R. Vol. 1, p. 977, lines 16–31).

John Bulmer, a witness for the United States, testified:—

> "McKay sewing machines are to be had from about all the shoe manufacturers. They pass through our hands more or less frequently, and we rebuild or repair them and furnish them to others. We have no difficulty in getting them at any time" (R. Vol. 1, p. 908, lines 38–41).

Mr. Jonathan Brown, a large shoe manufacturer, testified that there was no difficulty in buying all the McKay machines he wanted at any time (R. Vol. 1, p. 730, lines 18–22). He had 13 McKay sewing machines, only 3 of which he had obtained from the United Company (R. Vol. 1, p. 730, lines 23–25). The United Company never in any way interfered with his buying McKay sewing machines elsewhere (R. Vol. 1, p. 730, lines 26–30).

And yet, in spite of this evidence and in spite of the fact that this error was pointed out in our briefs filed at the first hearing in this Court, the United States in its present brief again states in this table that other manufacturers than the United Company had out only 8 McKay sewing machines in 1911. Brown alone had 10 of such machines obtained from others.

The Court can thus see what reliance can and should be placed upon the brief writer's statements.

We also call the Court's attention to the following comments on the machines, as to which, according to this table, the United Company has a monopoly.

The number of machines which it is stated in the table the United Company has out comprises all the machines of these kinds it or its constituent companies prior to its formation ever put out, which were still in the hands of shoe manufacturers on March 1, 1911. As the constituent companies at the time of the formation of the United Company furnished practically all machines of these kinds which were then in use, in discussing the amount of competition which now exists, the real question is how many machines have been put out by the United Company and by competitors during the last few years, and not what is the total number of machines put out by the United Company

and its constituent companies during the period in which the United States admits that the United Company or its constituent companies had a lawful monopoly of the business.

Considering separately each of the twelve machines enumerated in the table (p. 150):—

Standard Screw Machine. The United Company in 1900 had out 826 standard screw machines and in 1911 only 440. In 1913 this number was reduced to 379 (Defs.' Ex. 226, R. Vol. 5, p. 424). In other words, the United Company, instead of forcing other standard screw machines out of the market and substituting its own machines, had actually received back from lessees nearly half the number of machines which were outstanding in 1900. This was due to the fact that the manufacture of standard screw shoes has declined.

Pegging Machine. The United Company in 1911 had out only 146 pegging machines. It does not appear in the record how many were outstanding at an earlier period, but undoubtedly in 1899 many more were outstanding, since the manufacture of pegged shoes has rapidly decreased since that date and the number now manufactured is almost negligible (R. Vol. 1, p. 424).

Hamel makes a pegging machine and has put out one machine in the United States and three abroad (R. Vol. 1, p. 326, line 50). It is not surprising that he has not put out more machines during this period in which shoe manufacturers have been discarding their pegging machines instead of taking more; nor is it surprising that other shoe machinery manufacturers have not gone to the expense of developing these machines, when the total number desired in the country has been at most a few hundred,

when the supply of machines already constructed has been larger than the demand and when the United Company has been taking back machines instead of furnishing additional machines.

Tacking Machine. The table purports to show that the United Company had out 3,488 tacking machines and competitors 6. In 1900 the United Company had out 3,752 tacking machines and in 1911 only 3,065 of this same kind of machine (Defs.' Ex. 226). In the figure given in the table, of 3,488 there are included a number of hand tackers (Defs.' Ex. 228). But even accepting the brief writer's figure of 3,488 it shows that the United Company instead of increasing the number of its tackers outstanding in the last eleven years has actually reduced the number. There has, therefore, been no reason why competitors should do an extensive business in this field, since the supply of tackers already constructed has exceeded the demand, and certainly it cannot be claimed that the United Company has monopolized the business of others.

Clicking Machine. The clicking machine was invented by the United Company and put out in 1908. This machine cuts out the uppers from the side of leather. There are other machines and tools used for cutting out uppers (R. Vol. 1, p. 592, lines 41–45, p. 593, lines 1–6). This was the first machine invented to do the work in the particular way in which this machine performs it. The machine is protected by thirteen different patents, giving the United Company the exclusive right to make, vend, and use this particular type of machine (R. Vol. 2, pp. 2588–2598). No other clicking machine has ever been acquired, and no machine is restricted to use with the clicking machine, so that it cannot be contended that any shoe manufac-

turer is induced to take it by reason of the Restricted Use Clauses. The entire business of furnishing this particular type of machine has been created by the United Company since 1908 and the fact that no one else had furnished machines of this particular type in 1911 is if true, therefore, not surprising and yet this is one of the machines which the United States asserts has been unlawfully monopolized.

Pulling-over Machine. The pulling-over machine was invented by the United Company and was first put out in 1903. It is protected by nineteen patents (R. Vol. 2, pp. 2542 *et seq.*). When invented the machine performed work which had previously been done by hand and which is still done by hand in many shoe factories. The United Company spent in the development of this machine approximately $1,000,000 (see our Main Brief, p. 622). The United Company acquired one patent relating to this machine in 1900, when it was attempting to develop it, but it has never acquired a competing machine or the business of any manufacturer. There are no machines restricted to use with the pulling-over machine except the No. 5 lasting machine, a machine first developed in 1908 by the United Company. The work done by this machine can be done by other lasting machines. It is obvious that the business done by the United Company in pulling-over machines is due to the fact that it created the machine and the market for them, and no one else has developed an equally efficient machine.

Welt Sewing Machine. The table shows that the United Company has out 2,527 welt sewing machines and competitors only 142. In 1900 the United Company had out 1,338 welt sewing machines (Defs.' Ex. 226). It has, therefore, increased the number of machines out in eleven

years by only a little over 100 machines a year, although the number of welt shoes made in the country increased from 22,700,000 in 1898 to 86,231,000 in 1910 (see our Main Brief, p. 198). When the United Company was formed there was no competition. Competitors have been putting out the machine only for a comparatively short period, but have succeeded, according to the brief writer himself, in putting out 142 machines.

Outsole Stitching Machine. The United Company in 1900 had 1,193 outsole stitchers in use. In 1911 it had 2,676. In 1900 there were practically no competitors' machines out. There are now, according to the brief writer, 758 competitors' machines outstanding. In other words, although the United Company had practically the only machine of the kind in 1900, which was strongly protected by patents, and although its machine has ever since been admittedly the best machine made, competitors have in the last few years put out nearly 50 per cent. as many machines as the United Company has put out since its formation.

Slugging Machine. The United Company in 1900 had out 1,723 slugging machines which were increased to 1,878 in 1911, an average of only 14 machines per year. In 1910 to 1913 there was an actual falling off in the number of machines out (Defs.' Ex. 226). Hamel alone had since 1903 sold 22 slugging machines in the United States and 13 abroad (R. Vol. 1, p. 326).

Loose Nailing Machine. The United Company, in 1900, had out 860 nailing machines (Defs.' Ex. 226). In 1911 it had out 1,835. In other words, it had put out only an average of 100 machines per year during these eleven years.

Heeling Machine. The United Company had out, in 1900, 1,382 heeling machines. It had increased this in 1911

to 2,019, an increase of 637, or an average of 58 a year. Its heeling machine was admittedly the best, and it is the only concern whose heeling machines were being taken in 1899.

McKay Sewing Machine. The United Company had 898 McKay sewing machines in use in 1911. As we have shown, a considerably larger number of these machines had been furnished by others, although the table with gross error states that only 8 had been put out by others (*supra*, pp. 66–67).

Lasting Machine. The United Company had out in 1900 4,207 lasting machines. In 1911 it had out 7,496 lasting machines. The increase in these machines was due to the fact that when the United Company was formed about half the shoes made were lasted by hand. 2,080 of the machines outstanding in 1911 were of its new type of No. 5 lasting machine first developed by it in 1908. It is undoubtedly true that a comparatively small number of lasting machines had been put out by others. This was because the United Company's machines were vastly superior and the United Company had no larger proportion in 1911 than it had in 1899. It was, however, possible to obtain lasting machines from others, if any shoe manufacturer desired to do so (*supra*, pp. 24–25).

Other Statements in Respect to Amount of Business Done by United Company.

The brief writer lays great stress on the testimony of Warren F. McElroy, in which he undertakes to show his difficulties in equipping a factory to manufacture 600 to 1,000 pairs of welt shoes a day from sources independent of the United Company. In considering this testimony

it must be remembered that McElroy was attempting to manufacture only a particular type of shoe, viz., the welt shoe. Machines for manufacturing shoes constructed in this particular manner were invented by the Goodyear Company, and the United Company had specialized in this particular type of machinery. McElroy did not undertake to state that he could not readily obtain machinery for manufacturing other types of shoes which are the types most generally made in the country. For example, he testified:—

> "I did not look into the question whether a factory could be equipped for making McKay shoes without taking machines from the United Company.
>
> "More McKay shoes are made than any one kind. . . I did not consider whether McKay shoes or pegged shoes could be made without using United Shoe Machinery Company machines. I found that a factory could be equipped without using United Shoe Machinery Company machines for making metallic fastened shoes with heavy outsoles. Such shoes could not be made if light outsoles were used. . . . I did not consider whether a factory could be equipped for making turn shoes without the United Company's machines" (R. Vol. 1, pp. 193–194).

In other words, McElroy only attempted to get machines which imitated the work of the peculiar type of patented machines manufactured by the United Company.

Furthermore, it is important to note that McElroy did succeed in equipping a good-sized factory for making this peculiar type of shoe without obtaining machines from the United Company, and that he considered the shoe he made with these machines "a better shoe than the Goodyear welt" (R. Vol. 1, p. 194, lines 16–17).

In respect to the testimony of Long and Jones referred to at page 134 of the brief, to show that no other company

in the country "offer such a full line of machines," reference to the record will show that Long was testifying as to conditions in or prior to 1907 (R. Vol. 1, p. 231, lines 14–20) and that Jones testified merely that no "single concern, in this country to-day," except the United Company, could furnish a full line of machines for the manufacture of welt and turn shoes, the particular types of shoes in which the United Company specialized (R. Vol. 1, p. 115, lines 31–39). Further, he did not attempt to testify that machines for this purpose could not be obtained from two or more different concerns.

It is not true, as alleged in the brief for the United States (p. 152), that Mr. Winslow was unable to state "whether any one of the concerns which had been offered to the United Company and rejected by it was in existence on December 12, 1911, and was doing a substantial business in competition with the United Company." On the contrary, he had just named a large number of such concerns, and he said that he would have to examine the list in order to specify *all* that were then competing. Among those which he had previously described were many which, as shown throughout the record, are still doing a substantial competing business, such as the Boylston Manufacturing Company, the Champion Shoe Machinery Company, the Haverhill Shoe Machinery Company, the R. H. Long Machinery Company, and the Union Lock Stitch Company (R. Vol. 1, pp. 472–476; p. 572, lines 3–25; see also Appendix III of our Main Brief, pp. 808–834).

Again, Mr. Winslow did not admit, as alleged by the United States, "that the entire increase in welt machines and in lasting machines was in machines put out" by the

United Company (p. 154). What he did say was that the increase shown by Defendants' Exhibits 215 and 226 (R. Vol. 1, p. 424; Vol. 5, p. 424) was based only on the machines of the United Company, because, as Mr. Winslow distinctly stated, he had no reliable figures as to the number of competitors' machines (R. Vol. 1, p. 569, lines 37–44; p. 570, lines 20–40). Obviously, however, the fact that 86 welt and turn machines were put out by the Hamel Shoe Machinery Company, which started business in the United States in 1903 (R. Vol. 1, p. 326, lines 9–10; 37), and 65 (not *56* as given by the United States) welt and turn machines were put out by the Haverhill Company during the last two or three years (R. Vol. 1, p. 291, lines 42–44; p. 292, lines 7–10) proves that a considerable proportion of the increase in the number of welt and turn machines out was made by competitors of the United Company.

Misuse of Census Figures.

At the very beginning of the brief (p. 8) the writer attempts by a misuse of the census figures to create the impression that the United Company furnishes machines to practically all shoe manufacturers. Thus he says that the defendants leased machines to at least 1,033 shoe manufacturers, and in a footnote says,—

> "The latest figures of the census of manufactures (1914) show 1,090 firms, individuals, and corporations reported as engaged in the manufacture of 'footwear' operating 1,355 establishments."

The record shows that the United Company had 1,033 lessees in 1911 operating 1,150 different factories (R. Vol.

1, p. 454, lines 45–46; p. 455; p. 26, lines 38–40). The Census of 1914 was, of course, not in evidence and not compiled at the time the case was tried. Furthermore, it is, of course, unfair to compare the figures of the Census of 1914 with the number of lessees in 1911.

But further than this the brief writer himself misquotes the Census of 1914. It does not state that there were "1,090 firms, individuals, and corporations reported as engaged in the manufacture of 'footwear'" as alleged. On the contrary, it shows that the number of establishments was 1,355 and the number of "proprietors and firm members" 1,090. By the term "proprietors and firm members" the census report means individuals either singly or as members of partnerships owning or operating such establishments. This figure does not include corporations. Thus it does not purport to be a statement of the number of different concerns. We pointed this out in our reply memorandum filed at the first hearing in this Court, and as the census was not in evidence and the whole matter was outside the record we also stated in that reply memorandum that the census office, in answer to our inquiry, stated that the expression "proprietors and firm members" did not include or refer to 686 establishments operated by corporations or their employees. The present brief, in repeating the same error, deliberately misrepresents the situation.

We further pointed out that the term "establishment" as used in the census reports means usually a separate factory, but that where two or more factories are operated under a common ownership in one city they are counted as a single establishment (see Census of Manufactures: General Totals for the United States by Geographic Divi-

sions, States and Industries, p. 2). Thus the Census for 1914 would impliedly show that there were more than 1,355 factories making shoes.

In the footnote on page 8 the brief writer further says it should be remembered that makers of moccasins, infants' shoes, etc., are classed as making footwear, and that these do not need to use the essential bottoming machines which the United Company supplies. The record does not sustain any such statement.

The record shows that in 1911 the United Company did business with 1,033 shoe manufacturers operating 1,150 different factories. It further shows that the only evidence as to the total number of shoe manufacturers in the country in 1911, or at any other time, was Mr. Donham's testimony that he should say there were in 1911 between 1,300 and 1,500 and that the Census for 1910 showed in the neighborhood of 1,300, as he recalled it (R. Vol. 1, pp. 26–27, lines 41–42). At page 139 of the brief the writer refers to these figures and says,—

> "Census figures appear to include not only shoe manufacturers but producers of 'cut stock and findings.'"

This is not so. Producers of cut stock and findings are listed separately.

The result is that the record shows that there were 1,033 lessees in 1911 with whom the United Company did business and furnished one or more machines, and if it is fair to compare the census figures of 1910 with the number of manufacturers in 1911, there were at least 267 shoe manufacturers with whom the United Company did no business at all. As the census figures only list such manufacturers as make reports, it is probable that there were a larger number.

Conclusion

The brief writer does not attempt to deny that in a shoe factory only from 30 to 50 per cent. of the total number of machines used are of the kinds manufactured by the United Company (see Main Brief, pp. 603–604). As to a large proportion of these machines which the United Company does furnish no monopoly is claimed by the United States.

It further appears that a very considerable number of shoe manufacturers do not obtain their machinery from the United Company at all.

It finally appears that of the 12 machines (p. 150) on which the brief writer apparently finally depends to prove monopoly, several are machines very recently invented by the United Company, several others are machines the use of which has decreased so that the United Company has received back machines since its formation instead of putting out additional machines, and the few remaining machines (except the McKay sewing machine as to which it is clear the United Company has no monopoly) are machines invented by the constituent companies which formed the United Company as to which it is admitted these companies had practically a complete lawful patent monopoly in 1899, which have been vastly improved by the United Company under recent patents, and which are mainly of a type in which the United Company has specialized. Taken together the entire 12 machines constitute only approximately 4 per cent. of the total types of machines manufactured by the United Company, and a smaller percentage of the total types used in shoe manufacturing.

COMMENTS ON ALLEGED LASTING MACHINE COMPETITION.

1. PRELIMINARY STATEMENT.

The Court will find nothing in the brief for the United States which will raise any question as to the soundness of the findings of the facts bearing on this issue by the District Court, which heard in open court all the testimony discussed by the United States and whose findings show that they were made after thorough consideration of that testimony. Even if it be assumed that the facts were as stated in the brief for the United States, they fully justify the District Court's finding that there was no lasting machine competition in any practical sense between the Goodyear Company and the Consolidated Company. The United States does not deny that, as pointed out in our Main Brief (p. 114), there were only 248 of the Goodyear Company's Ideal machines out when the United Company was formed, as compared with a total number of between 4,200 and 4,300 lasting machines out, and on its own showing only 18 Ideal machines at the most were used on men's welt shoes. Nor does the United States deny that, as pointed out in our Main Brief (p. 122), there were only a few hand method welt lasting machines out in February, 1899, and that at that time the machine was only experimental and was unsuccessful. The alleged competition was so

trivial and so utterly unimportant that it is of no practical significance.

Accordingly we should not burden the Court with any further discussion of this issue than is contained in our Main Brief, pages 94–132, were it not for the fact that the brief for the United States does not, in our opinion, present its case fairly. It contains many inaccurate and misleading statements which to the reader of its brief only would give an entirely wrong impression of the evidence.

In the following pages we shall point out some of the misleading and inaccurate statements contained in the brief for the United States and we shall also call attention to some of the evidence to which the United States has neglected to refer and which disproves its contentions.

2. THE CONTENTION THAT THE EXPERIMENTAL HAND METHOD WELT MACHINE OF THE CONSOLIDATED COMPANY COMPETED WITH THE IDEAL MACHINE OF THE GOODYEAR COMPANY IN LASTING WOMEN'S WELT SHOES.

The brief for the United States contends (p. 23) that the problem of adapting the hand method lasting machine for the lasting of welt shoes was "in the way of solution in the fall of 1898"; and that in December, 1898, the Consolidated Company was "offering to the trade the hand method machine as a satisfactory machine for the lasting of welt shoes."

The United States relies upon Mr. Winslow's testimony that, as it is stated by the United States (p. 23), "some machines were already in shoe factories," that it was the intention of the Consolidated Company "to perfect the machine so as to make it an efficient welt lasting machine," that it became successful *in 1900*, and that *now* women's welt shoes are lasted very largely upon this machine.

It is upon these statements by Mr. Winslow that the United States bases its assertion (p. 23) that the Consolidated Company "was putting out lasting machines which covered the entire ground." But the United States ignores Mr. Winslow's testimony that, just before the United Company was formed,—

> ". . . while it is true that we had machines out it is true that *they were not being accepted by the manufacturers* and they were being sent out and coming back. We were trying all the time to keep them going. . . . We were trying to hold them in the field, but *we knew that they were not commercially successful*" (italics ours) (R. Vol. 1, p. 978, lines 2–5, 11–13).

Mr. Winslow also testified that "at the date of the formation of the United Company *it was not a successful welt lasting machine. It would not last the toes of the welt shoes properly*" (italics ours) (R. Vol. 1, p. 524, lines 9–11).

Mr. Winslow's testimony was emphatically corroborated by Mr. Howard (R. Vol. 1, p. 969, lines 4–6).

The practical reasons why the experimental hand method welt lasting machine was not successful until a new invention was incorporated in it in 1900 are fully explained in our Main Brief (pp. 119–121).

The United States relies on the testimony of Selz, Welch, and Strootman (pp. 33–35). But none of these witnesses

testified to any use of the hand method welt lasting machine on *women's welt shoes* prior to 1899.

Selz's testimony does not bear on the issue. In the summary of his testimony in the brief for the United States (pp. 33–34) women's *welt* shoes are not even mentioned.

Welch's testimony does not bear upon the issue of lasting machine competition in 1899, despite the attempt of the United States (p. 34) to give the impression that it does. Welch did not manufacture welt shoes until "along *in 1906*" (italics ours), *seven years after the United Company was formed*, and prior to that time had manufactured McKay shoes exclusively (R. Vol. 1, p. 711, lines 19–20, 34).

Immediately following its summary of the testimony of Selz and Welch the brief for the United States says (p. 34) that "the foregoing testimony shows" that the hand method machine was *in competition* with the Ideal "in the lasting of women's shoes *at the time the combination was formed*" (italics ours).

Strootman did not testify and the brief for the United States does not claim (p. 34) either that he was making women's welt shoes prior to 1899 or that he used the Consolidated hand method lasting machine prior to 1899. Accordingly his testimony is irrelevant to this issue.

The earliest date fixed by any of these witnesses as to use of the hand method welt lasting machine on women's welt shoes was 1906, after patented mechanisms had been added to the machine which made it successful.

The United States, therefore, has not called attention to any testimony whatever which could lead this Court to doubt the correctness of the finding of the District Court; on the contrary, it appears that all the testimony was

consistent with the finding that the hand method welt lasting machine "had not been made an article of commerce in any practical sense" when the United Company was formed (R. Vol. 1, p. 1130).

3. THE CONTENTION THAT THE IDEAL MACHINE OF THE GOODYEAR COMPANY COMPETED WITH THE HAND METHOD McKAY MACHINE OF THE CONSOLIDATED COMPANY IN LASTING McKAY SHOES.

The United States repeats the contention (p. 24), which it made for the first time at the former hearing in this Court, that the Ideal machine was used in the field of the hand method McKay machine in lasting McKay shoes.

The United States introduced no evidence in support of this contention and it now relies upon the testimony of only one witness, Mr. Howe. But the United States does not correctly state Mr. Howe's testimony. It says (p. 24) that Mr. Howe testified that "it would frequently happen that McKay shoes would be lasted upon the Ideal machine." What Mr. Howe actually said was:—

> "It would happen *sometimes* in a shoe factory whose principal work was the manufacture of women's welts that the concern might be making a few McKay sewed shoes, but not enough to have an appropriate lasting machine for them. In that case frequently *they would strain a point* and last their McKay shoes on an Ideal laster, *for which it really was not adapted*" (italics ours) (R. Vol. 1, p. 627, lines 25–31).

4. THE CONTENTION THAT THE IDEAL MACHINE OF THE GOODYEAR COMPANY WAS COMPETING WITH THE CHASE MACHINE OF THE CONSOLIDATED COMPANY IN LASTING MEN'S WELT SHOES.

A. Much of the Evidence Relied upon by the United States to show Use of the Ideal Machine on Men's Welt Shoes does not Relate to Use of the Ideal at all but Relates to the Copeland Rapid Laster, a Radically Different Machine which was Practically Obsolete in 1899.

The United States, after saying (p. 21) that "there can be no serious dispute with reference to the various kinds of lasting machines which were *being produced at the time the United Company was formed*" (italics ours), states that "at that time *there were on the market*" (italics ours), among other lasting machines, the Ideal and the Copeland Rapid, both owned by the Goodyear Company. That statement is contradicted by the testimony of Mr. Winslow which is cited as authority for it. Mr. Winslow said (R. Vol. 1, p. 521, lines 39–40): "The Copeland rapid laster *preceded* the Ideal, the Ideal being an improvement on it" (italics ours). Mr. Winslow also said (R. Vol. 1, p. 526, line 45) that the Ideal was developed from the Copeland Rapid laster and that (line 46) "in 1899 the Goodyear Company was *putting out the Ideal machine . . .*" (italics ours).

Mr. Winslow's testimony was confirmed by Mr. Howe, who said that the Ideal machine was developed from the Copeland Rapid machine and that after the Ideal machine was produced the Goodyear Company *put out the Ideal machine* (R. Vol. 1, p. 626, lines 36–43). The Ideal lasting machine was first put out in May, 1895 (R. Vol. 2, p. 2387). Worsencroft, a witness for the United States, said that the Copeland Rapid machine "was *succeeded* by the Ideal lasting machine" (italics ours) (R. Vol. 1, p. 914, line 1).

In a foot-note on the page following that on which it makes the misstatement above noted, the United States (p. 22) makes a tardy admission that the record does not show that the Goodyear Company continued to manufacture the Copeland Rapid machine after it produced the Ideal machine (see our Main Brief, pp. 106–108).

In order to justify its reliance upon testimony relating only to the Copeland machine the United States first undertakes to show that the Copeland and Ideal machines were substantially identical (pp. 21–22, 25). It characterizes the Copeland machine as "the same machine as the Ideal machine except that it was operated by the foot of the workman rather than by power" (p. 25).

On the contrary, it is shown conclusively by the testimony of both witnesses for the United States and defendants' witnesses (see our Main Brief, pp. 106–108), which the United States ignores, that the Copeland machine was *radically different* from the Ideal and was *practically obsolete* in 1899.

Accordingly the testimony of Florsheim and McElroy (Brief for the United States, pp. 25–26), which relates only to the Copeland Rapid Laster and does not mention the Ideal machine, is irrelevant.

Likewise, so much of the testimony of Worsencroft (p. 28) and Jordan (p. 31) as relates to the Copeland Rapid machine should be disregarded.

B. Evidence as to Use of the Ideal Machine on Men's Welt Shoes after 1899, largely relied upon in the Brief for the United States, is not Relevant to this Issue.

The United States fails to distinguish between use of the Ideal machine *before 1899* and use *after 1899*, as it in effect admits in the foot-note on page 25. As is shown in our Main Brief (pp. 110–113), the slightly increased use of the Ideal machine on men's welt shoes *after 1899* was due to the introduction of a new shape of last and to inventions which made it practicable for the Ideal machine to last men's welt shoes made on that last (and see *infra*, pp. 88–91).

It cannot be assumed that defendants in February, 1899, could anticipate either that change in the styles of shoes or the making of those inventions.

Accordingly, a considerable amount of the testimony which is relied upon in the brief for the United States is irrelevant. For example, Snow (pp. 26–27) testified *entirely* to conditions *after 1899*, in fact after "the spring of 1901" (R. Vol. 1, p. 896, lines 21–23). The testimony of O'Keefe (pp. 31–32) in regard to use of the Ideal machine related only to conditions *after 1899*. The testimony of Jordan referred to by the United States (p. 31) regarding use of the Ideal in the Douglas and Keith factories related only to conditions *after 1899*. The record does not show whether Murphy was testifying about conditions before

or after 1899, so that his testimony (p. 31) has no probative value. The greater part of the testimony of Heffernan (pp. 29–30) related to use of the Ideal machine *after 1899;* so did much of the testimony of Fletcher (p. 32).

Selz did not testify to any *use* of the Ideal machine. The testimony relied upon by the United States (pp. 33–34) was a mere expression of opinion and the value of that opinion may be judged from the fact that Selz made the ridiculous statement that the machines which he had mentioned—and he had included the *McKay-Copeland* machine, admittedly used only on heavy, nailed shoes such as brogans—could *all* be used in lasting *women's shoes* (R. Vol. 1, p. 142, lines 10–18).

In the foot-note on page 25 the brief for the United States says that it is immaterial whether the use of the Ideal machine on men's shoes was before or after the formation of the United Company, "the issue being whether such use *was possible*" (italics ours). That is of course *not* the issue, it being admitted that such use was *possible* (see our Main Brief, pp. 103–104). The issue is whether at the time the United Company was formed the Ideal machine as then constructed—not as later improved by inventions then unforeseen—was adapted for use on men's shoes under conditions then existing,—whether, in the words of the District Court, it could be "relied on to work well with the heavier leather whereof men's shoes are made" (R. Vol. 1, p. 1130). Evidence reviewed in our Main Brief (pp. 104–106) shows conclusively, and the District Court found (see our Main Brief, p. 117), that the Ideal machine was not adapted for successful commercial use on men's shoes when the United Company was formed.

C. The Attempt of the United States to Minimize the Importance of the Improvements which were Made in the Ideal Machine after 1899.

In pages 110–113 of our Main Brief, testimony is reviewed which shows that important improvements were made *after* 1899 which improved the mode of operation of the Ideal machine, making it more successful on men's shoes. These inventions were made by Stephen Snow, who testified as a witness for the United States. The brief for the United States endeavors to minimize the value of those improvements.

In its extended summary of Snow's testimony (pp. 26–27) the United States does not state his testimony fairly. For example, it says (p. 27): "Snow claimed that the Ideal machine would not last men's 'heavy' shoes 'successfully' without his inventions, but that they made it successful on those shoes." As authority it cites the record, Vol. 1, p. 898, lines 32–37, but at those lines Snow testified, *without qualification*, that the Ideal machine without his two improvements would not last men's shoes successfully.

The impression which the United States endeavors to give (p. 27) that Snow's testimony was only to the effect that without his improvements the Ideal machine was successful on all men's shoes except heavy shoes, such as brogans, etc., is not supported by his testimony. On the contrary, he said that before he made his inventions the Ideal would not successfully last *even patent leather shoes* (R. Vol. 1, p. 899, lines 38–42).

That the statement of Snow's testimony by the United States is inadequate and misleading is further shown by

the quotations from his testimony on pages 105–106, 111, 113 of our Main Brief. Snow testified that it was the two improvements which he made "that changed the machine from an unsuccessful machine into a successful one," and that without those improvements the Ideal *would not last men's shoes successfully* even if the operation were repeated two or three times (R. Vol. 1, p. 898, lines 35–40; p. 899, lines 38–42; p. 900, lines 12–13).

We do not see that any less weight should be given to the testimony of Snow, a witness for the United States, because it was in answer to "leading questions by counsel for the defendants" (Brief for United States, p. 27) *on cross-examination.*

But it is not necessary to rely upon Snow's testimony alone as to the value of his inventions. See the discussion in our Main Brief (pp. 106, 111–113) of the testimony of Fletcher, Whitman, and Heffernan, all witnesses for the United States, and the testimony of George E. Keith, the shoe manufacturer in whose factory the improvements were first used.

As to the statement in the brief for the United States (p. 27) that Snow "admitted that Ideal machines had been used by both Keith and Douglas in the practical manufacture of their men's shoes without the device," it should be noted, first, that Snow's testimony related only to conditions beginning with the spring of 1901 and that he expressly disclaimed any knowledge of conditions before 1901 (R. Vol. 1, p. 896, line 23; p. 899, lines 12–20) and, second, that while he was in Keith's factory from the spring of 1901 to the spring of 1902 he put holddowns on *all* of Keith's machines and he said that after he went to the Douglas factory, "I put them on as quickly as I could get

them on" (R. Vol. 1, p. 896, line 23; p. 897, lines 11–13; p. 900, lines 3–4).

In its summary of the testimony of Fletcher, a witness for the United States (p. 28), the brief for the United States ignores Fletcher's testimony, in the same paragraph as that to which it refers, that before the holddown, one of Snow's improvements was put on the Ideal machine, the machine did not operate properly, it was frequently necessary to repeat the operation and the shoes were likely to be injured (R. Vol. 1, p. 939, lines 1–9).

Jordan's testimony that the holddowns were used at Douglas's only a short time and were then taken off (Brief for United States, p. 31) is discredited by his testimony that when he worked on the Ideal machine at Keith's "they did not have the holddown on the machine," although he testified that he was operating an Ideal machine at Keith's at the time when the record shows conclusively that the holddowns were on Keith's Ideal machines (R. Vol. 1, p. 933, lines 18–22) (see our Main Brief, p. 111). Jordan's testimony is also contradicted by Fletcher, a witness for the United States, who testified that he worked for Douglas from 1902 to 1910 and that he knew that Stephen Snow "put holddowns on the Ideal machines in Douglas's factory" (R. Vol. 1, p. 937, lines 38–39; p. 939, lines 1–2).

In its discussion of the testimony of Heffernan (pp. 29–30) the United States endeavors to give the impression that Heffernan lasted men's welt shoes successfully for twelve years upon the Ideal machine without any holddown appliance, but testimony of Heffernan to which the United States does not refer, but which is reviewed on page 112 of our Main Brief, shows that before the holddown was

applied the work of the machine was not satisfactory and that his use of it could not be regarded as successful use. The United States also ignores the testimony of Heffernan that for over twelve years they had had the other improvement made by Snow on the machines in the factory where he was employed.

D. The Use of the Ideal Machine in the Field of the Chase before 1899, on the Showing Made by the United States, was Absolutely Trivial and Insignificant.

The contention of the United States that the Ideal machine of the Goodyear Company was used on men's welt shoes *before* 1899 in competition with the Chase machine of the Consolidated Company is supported by the testimony of only five witnesses, testifying to such use in only three factories. These witnesses were Worsencroft (p. 28), Whitman (p. 29), Heffernan (pp. 29–30), Jordan (p. 31), and Fletcher (p. 32), and the testimony of Whitman, Heffernan, and Jordan, so far as they testified to use before 1899, related to one factory only, the Whitman & Keith factory. The aggregate number of machines, to the use of which these witnesses testified, is eighteen at the most. The brief for the United States would give the impression (p. 32) that Fletcher said that Cushman had twelve machines before 1899, but he did not so testify (R. Vol. 1, p. 938, lines 28–29, 32–33). Cushman in fact had only six before 1899 (R. Vol. 1, p. 972, line 12).

It is shown by evidence referred to on page 114 of our Main Brief that the total number of lasting machines of

all kinds out on January 1, 1899, was between 4,200 and 4,300. The Goodyear Company had put out only 248 Ideal lasting machines altogether, and of that number eighteen at the most, on the United States' own showing, were doing work which could be done by any machine which the Consolidated Company was putting out. That is certainly a meager showing in support of the contention of the United States that there existed "vigorous competition" (p. 301) between the Goodyear Company and the Consolidated Company, particularly in view of the fact that the Goodyear Company had been putting out the Ideal machine for nearly four years. Clearly this trivial overlapping use of the Ideal machine was entirely insignificant and of no importance.

That the Ideal machine also did not offer any potential competition to the Chase machine is proved by the testimony reviewed in our Main Brief (pp. 104–106), where it is shown that the Ideal machine was structurally not adapted for lasting men's shoes.

5. THE CONTENTION THAT THE CHASE MACHINE OF THE CONSOLIDATED COMPANY COMPETED WITH THE IDEAL MACHINE OF THE GOODYEAR COMPANY IN LASTING WOMEN'S WELT SHOES.

The United States contends that the Chase machine was used in the field of the Ideal for lasting women's welt shoes. But none of the four witnesses relied upon by the United States, O'Keefe (pp. 31–32), Lemay (p. 33), Springer (p. 33), and Selz (pp. 33–34) testified to any such use, and only

two of them, Lemay and Springer, went so far as to express an opinion that the Chase machine could be so used, as is shown on pages 100–101 of our Main Brief.

The United States says (p. 22): "The Chase laster, according to Mr. Winslow, was used *chiefly* for lasting men's welt shoes" (italics ours). The implication contained in that statement is not justified. There was no qualification in Mr. Winslow's statements. He testified that "*the Chase was adapted for lasting men's welts and would not last women's welts*" and that "*it wasn't used on women's welts*" (italics ours) (R. Vol. 1, p. 399, lines 14–15; p. 525, line 15).

The United States relies (p. 38) upon an advertisement of the Chase machine "advertising that machine for the purpose of lasting women's shoes" (R. Vol. 1, p. 960, lines 28–31). But it should be noted that the advertisement did not purport to offer the Chase machine for lasting women's *welt* shoes. Presumably the advertisement had reference to women's McKay shoes on which the record shows a slight use of the Chase machine (see our Main Brief, p. 101). That use, however, was in the field of the hand method McKay machine of the Consolidated Company, not in the field of the Ideal, and evidence regarding it is not relevant to any issue in this case. Nevertheless the United States contends (pp. 38–39) that *these advertisements* show that the Chase machine "certainly" was "adapted to the lasting of *women's* welt shoes" (italics theirs) and therefore competed with the Ideal machine.

But not only does the record fail to show that the Chase machine was ever used in competition with the Ideal, in lasting women's welt shoes, but evidence entirely uncontradicted proves, first, that *it was never used in lasting*

women's welt shoes and, second, that *it was structurally not adapted for such use.* This evidence is reviewed in our Main Brief (pp. 100–103).

6. THE UNITED STATES HAS CALLED ATTENTION TO NO EVIDENCE WHICH IS INCONSISTENT WITH THE FINDING OF THE DISTRICT COURT AS TO THE ALLEGED COMPETITION BETWEEN THE IDEAL AND CHASE MACHINES.

The District Court, whose discussion of the evidence on this issue is quoted in our Main Brief (p. 117), held, after summarizing the evidence,—

> "I am unable to consider it established that competition in any practical sense was destroyed when the United Company became owner of both machines" (Dodge, J., R. Vol. 1, p. 1130).

So far from establishing that the finding by the District Court is manifestly wrong, the United States has not shown the facts to be otherwise in any respect than was found by the District Court.

It is perfectly evident that the purpose in combining the Consolidated Company and the Goodyear Company was not to eliminate competition, but to combine the welt machines of the Goodyear Company with the lasting machines of the Consolidated Company.

COMMENTS ON THE ALLEGED COMPETITION BETWEEN THE EPPLER COMPANY AND THE GOODYEAR COMPANY.

The United States has eliminated from its brief a number of the inaccurate, unfair, and erroneous statements which were contained in its brief at the former hearing and which were criticised in our reply brief filed at that time. However the brief still contains many statements of the evidence which are open to criticism. Besides persistently ignoring testimony of both defendants' witnesses and its own witnesses which is unfavorable to its contentions, the United States frequently makes statements which are not supported by the record and occasionally statements which are directly contradicted by the record.

Illustrations of the statements which we believe are open to such criticism, as we shall later explain more in detail on the pages indicated, are as follows:—

(1) The United States says in effect (p. 40) that the only reason why Eppler machines could not produce "Goodyear welt" shoes was "because 'Goodyear welt' was a trade-mark name for shoes produced on Goodyear machines." On the contrary, the record shows that it was because of the construction of the Eppler machines that they could not make Goodyear welt shoes (see our Main Brief, p. 139) (*infra*, pp. 96–98).

(2) The United States says (p. 42) that Whitman testified that the work done by the Eppler machine was satisfactory. In fact, Whitman made no such statement. The United States ignores his testimony that the Goodyear "did better work on the shoe" (R. Vol. 1, p. 916, lines 15–16) (*infra*, p. 100).

(3) The United States says (p. 45) that Cunningham testified "that the *welter* was satisfactory to him, but the outsole stitcher was not" (italics theirs). It ignores Cunningham's statement that "everything about the Goodyear was better" (R. Vol. 1, p. 289, line 19) (*infra*, p. 101).

(4) The United States says (p. 46) that Fletcher "made no comparison between the Eppler and Goodyear *welter* further than to say that they ran side by side in the same factory" (italics theirs). On the contrary, Fletcher testified that "the Goodyear welter was the best" (R. Vol. 1, p. 938, lines 2–3) (*infra*, p. 101).

THE CONTENTION THAT THE EPPLER COMPANY WAS AN ABLE AND A PROSPECTIVELY VERY DANGEROUS COMPETITOR.

1. The Record disproves the Claim of the United States that the Difference between the Eppler Welt Shoe and the Goodyear Welt Shoe was a Difference only in Name, and Shows that there was a very Limited Field for the Eppler Welt Machines.

While it is admitted by the United States—as all of the witnesses on both sides testified—that the Eppler

machines could not make a Goodyear welt shoe, yet the brief for the United States states (p. 40), as the *only* reason, the fact that "'Goodyear welt' was a trade-mark name."

On the contrary, as set forth upon pages 133, 139–140 of our Main Brief, the absolutely uncontradicted evidence shows that the difference between the Eppler welt shoe and the Goodyear welt shoe was not in *name* merely but rather in the actual *structure* of the shoe. As Mr. Howe explained, the Goodyear welt shoe

> "was the hand-sewed shoe, sewed by machinery. The Eppler welt shoe was a shoe made in a different way, different from what a hand workman would make it" (R. Vol. 1, p. 678, lines 25–28).

In the Eppler shoe, the bulky double thread of the inseam lay in a channel in the insole beneath the foot, while in the Goodyear shoe it is laid on the welt outside the surface on which the foot rests.

This bulky double thread in the insole of the Eppler shoe under the bearing surface of the foot had a tendency to raise a ridge on the insole which would cause discomfort to the wearer, but which, being inside the bottom of the shoe out of sight, might escape discovery by the ordinary purchaser until he wore the shoe. This defect in the Eppler shoe, most serious in thinner soles, made it impossible to use the Eppler welt machine for women's welt shoes or for turn shoes. For the same reason the Eppler machines could not be used to make shoes with reinforced insoles, either men's or women's; and about forty per cent. of all welt shoes are made with reinforced insoles (R. Vol. 1, p. 415, lines 41–43; Vol. 2, p. 2494).

On this evidence, entirely ignored in the brief for the United States, it was found by the District Court that

> "The Eppler machines were adapted to produce men's thick-soled welt shoes only" (Dodge, J., R. Vol. 1, p. 1131).

Accordingly the statement in the brief for the United States (p. 40) "that there was open to the Eppler Company *a wide field* of possible competition" (italics ours) is contrary to the record. It follows that the statement that the Eppler Company "was successfully entering that field" (p. 40) is also not supported by the record.

We shall later show (*infra*, p. 104) that the Eppler Company was not successful in the limited field which it was attempting to enter (see also our Main Brief, pp. 139–140).

The Court should not be misled by the statement by the United States (p. 40) that "Manufacturers using both kinds of machines packed the shoes made upon them together indiscriminately in the same case and sold them all as welt shoes." It is true that one witness (p. 46) testified as to a single factory that the shoes were all sold "as welt shoes," but he did *not* testify that they were packed "in the same case" (R. Vol. 1, p. 938, lines 7–10). That the shoes in that factory were all sold "as welt shoes" is wholly immaterial; of course the shoes were all "welt shoes," and as the seam made by the Eppler welter was entirely concealed in the finished shoe the purchaser would not become aware of the difference until he suffered discomfort in wearing the Eppler shoe (*supra*, p. 97).

2. Testimony of Shoe Manufacturers Relied on by the United States.

On pages 41–46 the United States summarizes the testimony of twelve manufacturers or shoemakers. Before pointing out specifically some of the misleading and inaccurate statements in those summaries of the testimony we call attention to the fact that on the face of those summaries the testimony of five of those witnesses, Jones (p. 41), Selz (p. 41), Smith (p. 42), Long (pp. 44–45), and Cunningham (p. 45) to the effect that the machines of the Goodyear and Eppler Companies were used for the "same work" or the "same purposes" means no more than that both machines were used to make welt shoes. For example, "the same purpose" was defined by Jones in regard to the welting machines as "for the sewing together of the welt, the upper and the insole of a welted shoe," and in regard to the stitching machines as "attaching the outer sole to the welt" (R. Vol. 1, p. 110, lines 38–46; p. 111, lines 11–18).

On the other hand, as fully explained in our Main Brief (pp. 145–146), seven of these twelve witnesses, all witnesses for the United States, testified that the work done by the Goodyear welter was superior to that done by the Eppler welter. These were Selz, Smith, Whitman, Strong, Keith, Cunningham, and Fletcher.

In its summary of the testimony of Smith, a witness for the United States (p. 42), the United States ignores his testimony that the Goodyear welter was superior to the Eppler welter because the bulky chain-stitch which the Eppler machine laid in the channel of the insole was

likely to form a ridge on the inside of the shoe, which would come against the foot and cause discomfort to the wearer (R. Vol. 1, p. 353, lines 4–20).

As to the testimony of Whitman, a witness for the United States, the brief for the United States says (p. 42) that he testified that the work done by the Eppler welt machine was satisfactory. Mr. Whitman made no such statement. He did say,—

> "I consider the Goodyear welt system the best system; it did better work on the shoe" (R. Vol. 1, p. 916, lines 15–16).

He also testified that his company never had more than one Eppler machine (R. Vol. 1, p. 916, lines 11–18).

As to the testimony of Field, a witness for the United States, the brief for the United States says (p. 42) that Field testified that his company "put in the Eppler machines because they regarded them as the better of the two." But Field, who did not install the machines until *1902*, also testified,—

> "The Eppler machine sewed a somewhat *looser and weaker seam* than the Goodyear" (italics ours) (R. Vol. 1, p. 931, lines 16–17).

Elsewhere in the record it is clearly shown that a *tight* seam "is indispensable in the inseam of a welt shoe" (see our Main Brief, p. 137). The United States also says (p. 43) that Field testified that it was his judgment "that the Eppler machine sewed a flatter seam than the old Goodyear." But this opinion was wrong, as is shown by abundant evidence and specifically by the testimony of Strong,

a witness for the United States, that "you get a flatter seam on the Goodyear welter" (R. Vol. 1, p. 932, line 25).

Strong, a witness for the United States, testified, according to the brief for the United States (p. 43), that he "got along" with the Eppler stitcher very well. The United States omits any reference to his testimony that

> "I think the Goodyear machines do better work than the Eppler machines. Of course, I think the Goodyear welter is better than the Eppler welter was" (R. Vol. 1, p. 932, lines 21–24).

As to the testimony of Cunningham, a witness for the United States, the brief for the United States says (p. 45) that he testified that the Eppler welter was satisfactory, but the outsole stitcher was not, ignoring his statement that he thought "*everything about the Goodyear was better*" (italics ours) (R. Vol. 1, p. 289, line 19).

As to the testimony of Fletcher, a witness for the United States, the brief for the United States says (p. 46) that Fletcher "made no comparison between the Eppler and Goodyear *welter* further than to say that they ran side by side in the same factory" (italics theirs). On the contrary Fletcher testified that:—

> "The Goodyear welter was the best" (R. Vol. 1, p. 938, lines 2–3).

He added that the Goodyear machines were substituted in the Douglas factory

> "because with the Eppler machine there was trouble with the loose seam. When you beat out the shoe there would be more or less looseness, which caused a weak seam. *It would make a bad shoe*" (italics ours) (R. Vol. 1, p. 939, lines 16–19).

The United States says (p. 42) that McElroy, a witness for the United States, testified that the Eppler welter "could have been used on women's shoes" (Brief for the United States, p. 42).

But the context shows that he meant no more than that as a mechanical operation it was possible to sew a woman's shoe on the Eppler machine, and that he did not mean to express any opinion as to the quality or salability of the shoe operated upon. He never used an Eppler machine and merely examined it once (R. Vol. 1, p. 187, lines 33–34; p. 188, lines 2–22). Moreover, McElroy had previously testified:—

> "*Q.* Do you know whether or not it could be used on women's shoes?
> "*A.* I do not" (R. Vol. 1, p. 188, lines 2–4).

No other witness even went so far as to express an opinion that the Eppler machine could be used on women's shoes, and for the reasons we have already stated (*supra*, p. 97) it never was used on women's shoes.

Little weight should be given to Long's testimony. His cross-examination (R. Vol. 1, pp. 246–276), including testimony regarding Eppler machines, shows that he was not a credible witness. Reference is made to some of his misstatements on pages 154–155 of our Main Brief.

3. The Contention that the Eppler Company had a Substantially Complete Line of Auxiliary Machines.

The brief for the United States says (p. 44) that Mr. Keith, formerly president of the Eppler Company, testified that the Eppler Company "had *a line* of machines for making welt shoes, *except* a rough rounder, and were trying to perfect that" (italics ours). It is plain that the United States intends to give the impression that the Eppler Company had a substantially complete line of auxiliaries, except a rough rounder. Accordingly this statement is absolutely unfair and misleading. Mr. Keith testified that the Eppler Company did *not* have "a full set" and named *only two auxiliaries*, the stitch separator and the rough rounder, stating that the rough rounder was not satisfactory and had never been perfected, and that the stitch separator was not satisfactory (see our Main Brief, p. 143).

On the other hand, uncontradicted evidence shows that the Goodyear Company had thirteen important auxiliary machines for welt work in 1899, including a successful rounding and channeling machine ("rough rounder"). Mr. Warren testified,—

> "The invention of the rounding and channeling machine revolutionized the method of attaching the outer sole" (R. Vol. 1, p. 793, lines 23–24).

4. The Contention that the Eppler Company was Successful and Threatened Serious Competition.

The United States claims (p. 41) that the Eppler Company was "an able and a prospectively very dangerous competitor." It asserts (p. 46) that the Eppler Company had been in business "some seven years before the consolidation," that it was "pressing its business and was advertising its product up to the moment of its acquisition by the United Company."

But the record shows that the Eppler Company was not successful. The fact that, despite the long time that the Eppler Company had been in business and the efforts it had been making to put its machines into factories, it had succeeded in installing only between thirty and forty welters —of which one-third were in the factory of the president of the company and others in the factories of the directors of the company—and a less number of stitchers (R. Vol. 1, p. 288, lines 31 *et seq.;* p. 388, lines 35–39; p. 389, lines 8–11; p. 931, lines 43 *et seq.:* Vol. 4, p. 1202) is certainly strong evidence both that the machines were unsatisfactory and that the company's business was not successful. Keith, the president of the company, testified that the Eppler Company had not been financially successful (R. Vol. 1, p. 392, lines 9–12).

This evidence also completely answers the arguments of the United States that the Eppler Company offered potential competition (pp. 40, 52). Disregarding the bearing upon possible future competition of the facts that all the Eppler machines infringed the Goodyear Company's patents and that eight infringement suits had been brought (see

our Main Brief, pp. 136–138), the evidence that the company after seven years of strenuous efforts had not succeeded in doing more than an insignificant amount of business and had not made any money proves that it did not offer even potential competition. For surely there had been ample time for the development of all the possibilities of competition that existed.

The United States tries to make it appear (pp. 54–55) that Mr. Howe considered the Eppler machines as among "the most efficient types of shoe machinery." To this end the United States purports to quote Mr. Howe's testimony, but it omits so much that the garbled extract is unfair and misleading.

Mr. Howe testified:—

> "We had acquired the Eppler Welt Machine Company, and we had acquired the directors' stock of the McKay Shoe Machinery Company and expected to acquire a large majority of their stock. Therefore we then had the most efficient types of shoe machinery—perhaps I should have said protected by patents—*in that* we had the *Goodyear* welt and turn sewing machines and a long line of auxiliaries, which were the only system or set of machines which would make the *Goodyear welts*, the *best* and most suitable shoe for any gentleman or lady to wear that was then known; we had the best heeling machines, best metallic fastening machines, all protected by patents; we had the best lasting machines. *If any manufacturer wanted to make Eppler welts*, we had the only system that would make them. Therefore that seemed to my mind at that time—the United Shoe Machinery Company did—to represent the control in one corporation of the most efficient types of shoe machinery" (italics ours) (R. Vol. 1, p. 630, lines 21–37).

We are unable to see that there is any foundation in the testimony above quoted and in the other testimony of

Mr. Howe quoted on page 55 of the brief for the United States for its statement (p. 55) that this testimony "demonstrates that the Eppler Company was an important actual and even more important potential competitor of the Goodyear Company."

The conclusion is certainly justified that the United States has not shown any ground for questioning the finding of the District Court as to competition, existing or threatened, which was offered by the Eppler Company. That finding was as follows:—

> "The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition as rendered it unlawful" (Dodge, J., R. Vol. 1, p. 1131).

THE EFFORT OF THE UNITED STATES TO MINIMIZE THE IMPORTANCE OF THE PATENT LITIGATION.

Referring to the large number of infringement suits which had been brought by the Goodyear Company against the Eppler Company the United States says (p. 50), "But it is to be observed that in only one of them was the essential mechanism of a principal machine directly involved."

On the contrary, *three* suits against the Eppler stitcher related to its shuttle mechanism, one of the most essential features of any lockstitch machine, while the suit on the welter involved much more than a "mechanism," since it

related to the fundamental mode of operation of the entire machine. We have pointed out the seriousness of this welter infringement in our Main Brief (p. 137).

The statement in the brief for the United States (p. 50) that this patent litigation was "abandoned in 1899 after lying dormant for years before that date" is contrary to the record. In nearly all of the suits testimony was being taken (R. Vol. 1, p. 674, lines 4–8). Seven of them had been started within about two years (R. Vol. 1, pp. 471, 674).

The United States offered no testimony to controvert defendants' proof of the above infringements.

THE CONTENTION THAT THE EPPLER COMPANY CHARGED A LOWER ROYALTY AND THAT A HIGHER ROYALTY WAS DEMANDED BY THE UNITED COMPANY AFTER THE ACQUISITION.

The brief for the United States says (p. 52) that while the royalty for the Goodyear machines was four cents a pair for men's shoes, "its competitor, the Eppler Company, charged only three cents." On the contrary, of the three executed leases of the Eppler machines which are in evidence, two (P.'s Ex. 59, R. Vol. 3, pp. 507, 509, 510 and Defs.' Ex. 269, R. Vol. 5, pp. 716, 718, 719) provided for a royalty of *four cents* per pair for men's shoes, while the third lease (Defs.' Ex. 44, R. Vol. 5, p. 54, a lease to the R. H. Long Manufacturing Company), as printed, provided (pp. 56–57) for a royalty of four cents, and a pro-

vision for a discount was written into the lease in red ink (R. Vol. 1, p. 250, lines 30–35). In the face of this documentary evidence it certainly cannot be successfully contended that the Eppler royalty was lower than the Goodyear royalty. And the testimony is to the same effect.

Mr. Winslow testified:—

> "There were *sporadic instances* of special rebates given by the Eppler Company, *but their regular rate was the same as the Goodyear*" (italics ours) (R. Vol. 1, p. 417, lines 33–35).

Mr. Howe confirmed this (R. Vol. 1, p. 470, lines 24–29).

That the United Company not only did not suppress the Eppler machines, but rather continued to put them out at the regular Eppler royalty of four cents per pair, so long as there was any demand at all for them, is shown by testimony referred to by the United States (pp. 43, 53; see also our Main Brief, pp. 154–156).

CONCLUSION.

The record wholly fails to show that the Eppler machines offered or were capable of offering real competition to the Goodyear Company or to throw any doubt upon the testimony of defendants that the real reason for the acquisition of the Eppler Company was to enable the United Company to start free from litigation.

COMMENTS ON THE ACQUISITIONS.

Under this heading on pages 67–104 the brief for the United States discusses thirty-six of the fifty-eight so-called "acquisitions." In respect to but few, if any, of these thirty-six transactions does the United States make an adequate statement of the facts established by the record. Specifically, it either ignores much important testimony favorable to the defendants or, when any reference is made to that testimony, the United States either omits any mention of testimony unfavorable to its contentions or fails to state it fairly. Its statements regarding these thirty-six acquisitions also contain many erroneous statements of the facts as shown by the record.

In Appendix I (*infra*, pp. 139–175), we have pointed out the erroneous or misleading statements by the United States and have called attention to important testimony which it has ignored.

Illustrations of the assertions by the United States which we criticise are the following:—

(1) It states (p. 91) that the United Company acquired from Joseph W. Leary "his business of *manufacturing* and dealing in shoe machinery" (italics ours). The record shows that Leary was doing *no manufacturing of any kind* (*infra*, p. 167).

(2) It further states (p. 92) that Leary "agreed to convey to the United Company all improvements which he should make within 10 years. . . ." In fact, Leary

made *no covenant whatever to assign any future improvements* (*infra*, p. 167).

(3) It states (p. 82) that the United Company acqtuired *the business* of Joseph P. Curtis, and (p. 92) that the United Company acquired *the business* of Zachary Taylor French. The record shows that neither of these parties was engaged in business and that the United Company *did not acquire any property from French and acquired only certain patent rights from Curtis* (*infra*, pp. 157, 167).

(4) It states (p. 88) that the United Company acquired the *business* of John Ritchie, and John Ritchie Company *relating to the manufacture* of metallic machines. The record shows that the Ritchie Company was engaged in the manufacture of *boots and shoes* and was *not* engaged in manufacturing machines (*infra*, p. 163).

(5) It states (p. 96) that Beaudry agreed to disclose "*all inventions* which he should thereafter make." The covenant was in fact *limited* to "heel finishing machinery, methods or devices," the subject-matter of the transaction (*infra*, p. 170).

(6) It states (p. 85), in respect to the first Booth Brothers transaction, that "Howard testified that the United Company was engaged in putting out a *perforating* machine which could be used for the same operation as the Booth machines, although he claimed that it was not *intended* for the same operation" (italics theirs). In fact Mr. Howard testified that the United Company's machine could *not* be used to do the work done by the Booth machine (*infra*, p. 159).

(7) It states (pp. 85–86), in respect to the second Booth Brothers transaction, that Howard testified that the United Company acquired "a fudge edge-making machine, a

wheeling machine, a stitch burnishing machine, an upper-shaping machine, and a *beating* machine" (italics theirs) and that he also testified that the United Company then had a wheeling machine and an upper-beating [beading] machine. Here the United States gives a wrong impression by telling only a part of the story. Mr. Howard testified that the United Company's wheeling machine was adapted only for a kind of work entirely distinct from the kind of work on which the Booth machine was used. He also testified that the United Company's upper beading machine was not satisfactory for light or medium work and that the Booth Brothers machine "was a much better machine for light work" (R. Vol. 1, p. 69, lines 12–13). The United States further ignores entirely the evidence that the United Company had no machines whatever for doing the work of the other two Booth machines (*infra*, p. 160).

At the start the United States misrepresents the general character of these transactions. It states that "the United Company acquired the *shoe machinery business* and assets of fifty-six individuals, partnerships, and corporations . . ." (italics ours) and that "The result of these acquisitions was to remove certain remains of competition. . . ." (Brief for the United States, pp. 67–68).

Both of these statements are contrary to the record.

As has been shown in our Main Brief (pp. 456–462), by nine of the transactions the United Company did not acquire any tangible property or any business of any kind, and by fifteen other transactions the United Company acquired nothing more than supplies of various kinds which are used by shoe manufacturers; so that by twenty-four transactions it did not acquire any shoe machinery at all.

And further, eight other concerns, from whom shoe machinery was acquired, were doing no business whatever; their machines were only experimental and were far from being adapted for commercial use.

The fact is, then, that instead of acquiring the "shoe machinery business" of fifty-six concerns the United Company did not acquire *any shoe machinery business from thirty-two of those concerns.*

As to the statement by the United States (p. 68) that "covenants were exacted from the vendors," where they were inventors, which "required assignment to the United Company of all inventions made during a period of years" and which were "designed to prevent future competition with the United Company," the District Court found that the covenants actually taken were no broader than necessary (R. Vol. 1, p. 1141). The necessity for covenants of the character actually used is pointed out on pages 491–495 of our Main Brief and the decisions holding that such covenants are normal and lawful are discussed on pages 495–500.

Following its belated admission (p. 68) that "in some cases what was purchased was patent rights and inventions and not machines," the United States says (p. 69), "A prospective competitor is none the less such because he has only proceeded to the point of acquiring a valid patent under which to pursue competition at the time he is removed from the field by acquisition."

Of course the assumption that the inventor of an improvement on a shoe machine, who may be and often is a shoe operative or mechanic, is a "prospective competitor" is entirely unwarranted. He is no more a "prospective competitor" than many thousands of his fellow-workers.

On pages 69–104 the United States discusses specifically thirty-six of the "acquisitions."

Throughout its discussion of these transactions the United States persistently ignores evidence unfavorable to its contentions, which shows that every one of the transactions was a normal and reasonable step in the development of the United Company's business. Particularly in cases where the United Company had a machine of the same name as an acquired machine the United States fails to make any reference to testimony showing (1) that the acquired machine was adapted to do a kind of work which no machine of the United Company could do, or (2) that the United Company's machine was only experimental and needed the acquired inventions in order to make it commercially successful, or (3) that the acquired concern had patents which the United Company infringed or which barred the way to needed improvements in its machines. All such testimony is of course essential to a fair presentation of the facts regarding these acquisitions.

In Appendix I (*infra*, pp. 139–175) will be found comments on the specific statements which the United States has made regarding these thirty-six transactions. Those comments show that the statements by the United States give a wholly erroneous impression. By ignoring testimony unfavorable to its contentions, by stating half-truths or by making positive misstatements the United States has entirely misrepresented the character of these transactions.

In considering these transactions it should be kept in mind that, as pointed out in our Main Brief (pp. 187–190, 217–228), throughout the entire period, during which from time to time these acquisitions were being made, the

United Company was engaged in a remarkable development of the art of shoe machinery. It has improved practically all its machines by embodying new inventions in them. It is now putting out 172 different General Department machines which it has either developed or acquired since its formation in 1899. It has developed 150 entirely new machines, including 39 machines which perform work previously done by hand or not at all. Nearly all of these machines embody more than one patent; many embody a dozen or more patents on different parts of the machine. The inventions of 421 patents are embodied in the 150 entirely new machines which the United Company has developed.

The patents and machines acquired by the acquisitions were used in building up and perfecting this great number of new and improved machines and in improving patented machines which the United Company already had. Many of the so-called acquisitions involved only the purchase of a single patented invention to be used with a number of other patented inventions produced by the United Company in perfecting some one machine. The acquired machines and patents were of insignificant importance compared with the machines developed and the inventions made by the United Company itself. On page 443 of our Main Brief will be found specific illustrations showing how the inventions of acquired patents have been combined with the patented inventions which have been developed by the United Company.

COMMENTS ON THE PLANT ACQUISITION.

In its discussion of the Plant purchase (pp. 104–133) the United States fails to show the facts to be otherwise than as found by the District Court. Throughout this discussion, however, the United States has quoted or referred only to the testimony favorable to its contentions and has in the main ignored testimony which is unfavorable to its contentions. It has also made incorrect and misleading statements and has drawn unwarranted conclusions. It is important that these instances be called to the attention of the Court.

The Contention that Plant had a Complete Line of Shoe Machinery.

It is alleged in the brief for the United States (p. 104) that Plant had "developed a complete line of shoe machinery for manufacturing welt, turn, and McKay shoes."

McElroy, whose testimony is referred to by the United States in support of this allegation, does not mention turn shoes in connection with the Plant machinery. There is no testimony which shows that Plant had developed any machinery for making turn shoes, or that turn shoes were made by the Thomas G. Plant Company, the shoe manufacturing concern.

Moreover, in McElroy's testimony, quoted on page 112 of the brief for the United States, his statement that Plant's machinery was "a full line" is qualified by the statement "consisting of lasting, welting, stitching and leveling machines." He further admits in effect that he examined only "the essential bottoming room machinery."

And further, McElroy's testimony is discredited by Plant's own statement to McGaffee that

> "he didn't have any rough rounding machine" (R. Vol. 1, p. 781, lines 2–3).

Warren testified,—

> "The invention of the rounding and channeling machine [rough rounder] revolutionized the method of attaching the outer sole" (R. Vol. 1, p. 793, lines 23–24);

and that

> "Every manufacturer that I know of is using . . . the rounding and channeling machine" (R. Vol. 1, p. 793, lines 30–31).

And again, Plant had produced no pulling-over machine (R. Vol. 1, p. 792, lines 10–11), another of the "machines for preparing and attaching the bottoms to the uppers of shoes," the class of machines to which the United States has limited its charge of monopoly.

Eight other Plant machines, including important machines such as the heel seat dinker, stitch separator, and side laster, were either unfinished or regarded by Plant himself as experimental and the Plant shoe company was getting along in one way or another as best it could without these machines (R. Vol. 1, p. 791, lines 34–45; p. 792, lines 1–33; p. 814, lines 1–7. See also our Main Brief, pp. 517–519).

The Contention that Plant was Successfully Operating his Machines.

It is alleged in the Brief for the United States (p. 104) that Plant "was successfully operating his machines in the factory of Thomas G. Plant Company."

This allegation is entirely unsupported by the record. On the contrary, as shown in our Main Brief (pp. 520–524), the record establishes beyond a doubt that the Plant machines were not successfully operating in the Plant shoe factory.

The testimony reviewed on pages 520–524 of our Main Brief is also a complete answer to the argument made in the brief for the United States (p. 110) with reference to the use of the Plant machines in the Plant shoe factory.

The Contention that Plant had Contracts with Factories where his Machines could be Made in Large Quantities.

It is alleged in the brief for the United States (p. 104) that "Plant also had contracts with factories where such machines could be made in large quantities," and an allegation to the same effect is made on page 109.

The evidence fails to show that Plant had contracts with any factory for building any complete machine. He had merely made arrangements with a number of scattered machine shops for making the parts of the machines which he had constructed and installed in the Plant shoe factory.

As stated by Mr. McGaffee,—

"The parts were built in about every city where there was a machine shop, because *Plant did not have any factory big enough to build his own parts . . .*" (italics ours) (R. Vol. 1, p. 773, lines 25–27).

The Contention that Plant was Offering to Equip Other Manufacturers.

It is alleged in the brief for the United States (p. 111) that Plant had offered to install his machines in the factories of the Commonwealth Shoe & Leather Company and the Endicott-Johnson Company and "was prepared to furnish his machines to shoe manufacturers generally."

As shown in our Main Brief (pp. 514–515), Plant's offer to install his machines in those factories was made with the ulterior motive of forcing the United Company to buy him out, and it was so found by the District Court (R. Vol. 1, p. 1142).

Plant would not even permit Hazzard, a large shoe manufacturer, to look at his machines (see our Main Brief, p. 515).

The Contention of the United States that the Plant Machines were "Efficient Competitors of the United Machines in the Opinion of Experts."

In support of its allegation (p. 111) that in the opinion of experts the Plant machines were "efficient competitors of the United machines" the United States relies first upon the testimony of McElroy, Florsheim, Selz, and Jones, and then upon an inadequate and misleading statement of the testimony of Warren and Howe.

But the testimony of McElroy, quoted by the United States (p. 112), and its summary of Florsheim's testimony show that both of those witnesses testified as to the quality of the *shoes* operated upon by Plant's machines and that neither of them testified that the *machines* were efficient.

The brief for the United States says (p. 113) that Selz expressed the opinion "that the machines were capable of being used in the manufacture of men's welt shoes" and that Jones testified that Plant's machines were adapted for the manufacture of men's shoes as well as women's.

But on cross-examination Selz testified that he *questioned the strength of the Plant machines for making men's shoes* and that he had never seen them used for men's shoes (R. Vol. 1, p. 155, lines 33–45; p. 156, lines 1–3). And McElroy on cross-examination testified:—

> "To the best of my information those machines had never made any men's shoes for the market. *I questioned the strength of those machines for making men's shoes.* . . . If his machines had been used commercially on men's shoes the frames should have been stronger" (italics ours) (R. Vol. 1, p. 193, lines 16–18, 22–24).

But Jones is not a practical shoe manufacturer (see our Main Brief, p. 529), and his testimony is discredited by the testimony of Reed, the treasurer of Jones' Company, who had charge of the manufacturing of the shoes. Reed testified that he thoroughly examined the Plant machines in 1910, considered the question of equipping his factories with the machines and decided not to take them. He said,—

> "We thought that it would be too much of a risk, and that we should have to lower our standard of shoemaking" (R. Vol. 1, p. 720, lines 12–13).

Furthermore, Florsheim was a member of the Shoe Manufacturers' Alliance, and Selz and Jones were both stockholders and directors of the Boylston Company, a competing shoe machinery concern. Testimony showing in detail their prejudices is reviewed in our Main Brief (pp. 528–530, 40–41).

The United States quotes (p. 114) the testimony of Mr. Warren and Mr. Howe in support of this contention that the Plant machines were "efficient competitors of the United machines."

But the testimony of these experts which the United States quotes, so far as it is relevant at all to this issue, related on its face to the value of the Plant *inventions, not the Plant machines.* Warren's testimony as to the machines does not support the contention of the United States. For example, he testified:—

> "Generally speaking they were of such construction that *they would break and get out of order*" (italics ours) (R. Vol. 1, p. 794, lines 17–18).
>
> "And in looking over all these Plant machines we found by a careful examination that they were *faulty in construction, light in weight in places, and badly designed*" (italics ours) (R. Vol. 1, p. 790, lines 28–31).
>
> "These machines of Mr. Plant's, built as they were, in my opinion *would not have been commercially successful* to do work under the varying conditions under which machines have to be supplied to shoe manufacturers" (italics ours) (R. Vol. 1, p. 790, lines 15–18).

Mr. Howe testified that the Plant machines were

> "too light to stand commercial use for making men's work . . . were not strong enough for continuous use, in my judgment, on his own manufacture, women's welts" (R. Vol. 1, p. 688, line 44; p. 689, lines 8–9).

The conclusion is certainly justified that the United States has not shown any ground for questioning the finding of the District Court as to the character and capacity of the Plant machines. That finding also specifically answers the allegation of the United States (p. 252) that

> "the record clearly shows that the Plant machines were right indeed at the threshhold of extended competition with the United Company's machines."

The Court found that the machines were not commercially successful; that they were not adapted to produce men's shoes and were not satisfactory in making women's shoes; that they frequently broke down; that the cost of making shoes on them was distinctly greater and that they were not capable of profitable use, concluding,—

> "*Nothing is found in the evidence which affords reasonable support for the petitioner's contention that they were 'right at the threshhold of extensive competition with the United Company'*" (italics ours) (R. Vol. 1, p. 1143).

The Contention that the Defects in Plant's Machines could have been Easily Remedied.

It is alleged by the United States (p. 115) that "There is, however, nothing in the record to indicate that the defects [in the Plant machinery] were of such character as not to be easily remedied by the alterations and adjustments common in the practical working out of a project like Plant's."

There is no evidence in this record to support this assertion, but, on the contrary, there is a great deal of evidence, which is reviewed in our Main Brief (pp. 531–534), which

shows what a tremendous undertaking it is to transform experimental machines into successful, commercial machines. The United States points to the evidence that "Plant and his assistants were possessed of a very high grade of inventive genius" (p. 115), but it is common knowledge that inventive genius is frequently unaccompanied by mechanical genius and that many a successful inventor is not even able to construct experimental devices embodying his inventions,—much less produce successful commercial machines.

The Contention that the Subject of Negotiation was Plant's Entire Line of Machinery rather than his Inventions.

In the brief for the United States it is alleged (p. 115) that "during the entire negotiations nothing was talked of but the buying of Plant's *entire* line of machinery" (italics theirs), as distinguished from the particular inventions.

As we have shown in our Main Brief (p. 513), Plant had no machines to sell; but assuming that he had, there is no evidence in the record in support of this assertion, and it is specifically contradicted by Mr. Winslow, who testified,

> "During these negotiations nothing except Plant's *inventions and patents* was the subject of discussion" (italics ours) (R. Vol. 1, p. 481, lines 12–13).

If the United States is endeavoring on page 115 of its brief to argue that the United Company should have bought only the inventions which it knew would be of value, it should be borne in mind, first, that particular

improvements could not have been singled out *during the negotiations* for the reason stated by Mr. Winslow:—

> "As to whether anything was said in our negotiations with reference to the purchase of those particular improvements, I didn't know what his improvements consisted of, as I have already stated. *I didn't know what he had or the value of his inventions* until I went up and examined them in September and had my experts examine them" (italics ours) (R. Vol. 1, p. 559, lines 28–33);

and, second, that the United States loses sight of the fact that the *United Company could only buy what Plant wished to sell.* It is quite obvious that Plant wished to sell all, and not a part only, of his inventions (R. Vol. 1, p. 486, lines 2–6; p. 487, lines 11–16).

The Contention that Negotiations with Plant were Affected by Western Manufacturers.

The United States alleges (p. 119) that "it is fair to conclude that Winslow and his associates were well aware that negotiations were going on between Plant and the shoe manufacturers, and that unless the United people were prompt in closing the bargain the shoe manufacturers would obtain the Plant machines and establish a vigorous rival of the United Company."

The United States asserts (p. 118) that Endicott knew "as far back as June, 1910," that the Western manufacturers were coming to examine the Plant machines and that as "a leading figure in the defendants' negotiations, [he] must have informed Mr. Winslow" (p. 119). This evidence merely shows that Endicott knew in June, 1910,

that these Western manufacturers proposed to or might examine the Plant machines. It does not show that there were any negotiations pending between the Western manufacturers and Plant for the purchase of his patents and, as a matter of fact, no such negotiations were pending. It shows at most that Plant had arranged or hoped to arrange to have these shoe manufacturers look at his machines, whether for the purpose of inducing them to use some or all of them, as he had suggested that Endicott should do, or for the purpose of selling them his patents, or for the purpose of getting their advice or criticism does not appear.

The evidence further shows that no attention was paid to the Western manufacturers, because the unquestioned evidence shows that after "Endicott knew" that they might examine the machines, Mr. Winslow, on four separate occasions, broke off negotiations which had been initiated by Plant, viz.: on June 23rd (R. Vol. 1, p. 577, lines 12–14), on June 27th (R. Vol. 1, p. 483, lines 11–12), on July 5th (R. Vol. 1, p. 484, lines 16–21), and on September 16th (R. Vol. 1, p. 486, lines 1–44).

Mr. Winslow testified:—

> "Mr. Plant had told me, I think on the evening of the 20th, that he was expecting the Western people in Boston. . . . I did not pay much attention to it because it did not affect me one way or the other" (R. Vol. 1, p. 488, lines 18–23).

This was the evening on which the Plant purchase was practically agreed upon. So far as appears this was the first information Mr. Winslow had that the Western manufacturers intended to examine the Plant machines. There is not the slightest intimation, however, that Plant then

told Winslow that any negotiations were pending for a sale to the Western manufacturers, and as a matter of fact none were pending. Plant had not made any offer to them so far as appears. His first proposition to sell to them was made after he had agreed to sell to the United Company, when he made them a proposition which he knew they could not accept. If they came to Boston with a view to purchasing the Plant patents, it was for the purpose of examining the machines, and opening negotiations, not for the purpose of closing any pending negotiations.

The United States has not shown any ground for questioning the finding of the District Court that the Western Manufacturers had no effect upon the negotiations (R. Vol. 1, p. 1144).

The Claim that Other Capitalists Contemplated Purchasing Plant's Patents.

The United States attaches much importance (p. 121) to the testimony of Mr. Herrick, one of the counsel for the United Company, in regard to an interview which he had with Mr. Wallace, president of the Central Trust Company of New York, at the request of Mr. Wallace. The United States presents this insignificant and unimportant incident in a wholly different light from that which is given by Mr. Herrick's testimony. The effect of that testimony is merely that Mr. Wallace was trying to see whether he could get the United Company to make an offer with a view, in case it did, of trying to buy Plant's patents at a lower figure and make something on the turnover. "They had

no idea of putting any money out" (R. Vol. 1, p. 613, lines 44–45).

The utter insignificance of this incident is shown by the following testimony of Mr. Herrick:—

> "Mr. Wallace said that he and this large international banking concern, which had an immense amount of influence, were seriously considering acquiring an interest in the Plant factory. *I did not believe him.* My reasons for thinking that Mr. Wallace did not mean what he said were, first, I knew Mr. Wallace; then he spoke in a perfectly easy, comfortable way about how he was going to do these things. I was convinced he did not know what he was talking about and that *all he had in mind was to see if he couldn't make a turn by getting a bid from the United Company and then dealing with Plant. He almost said so*" (italics ours) (R. Vol. 1, p. 614, lines 31–40).

The Attempt to Discredit Endicott's Testimony.

Under the heading "Endicott's Story" (p. 121) counsel for the United States discusses the participation of Mr. Endicott in the negotiations of Plant with the United Company and asserts (p. 124) "Endicott's maneuvers are difficult to understand. His story excites lively curiosity."

That the United Company was much pleased to welcome to its board of directors a man whose ability had created the greatest shoe manufacturing business in the world was perfectly natural. We are glad to note that here, as in other parts of its brief, the United States has modified somewhat the statements in its brief at the first hearing in this Court in which, for example, it said, "*His story excites curiosity and suspicion*" (italics ours) (First Brief

for the United States, p. 124). But the insinuations which even now the United States makes against a man of Mr. Endicott's standing are not creditable to the United States. They need no answer, but they are answered by Mr. Endicott's testimony, which is clear and straightforward throughout, and which is fully corroborated by Mr. Winslow (R. Vol. 1, pp. 479–487), Mr. Herrick (R. Vol. 1, pp. 602–615), and by Mr. Howe (R. Vol. 1, p. 683, lines 9 *et seq.*; p. 686, lines 34 *et seq.*).

The Contention that Defendants Showed Anxiety to Secure the Plant Machines.

The United States alleges (p. 120) that "The whole history of the transaction shows that the defendants were keenly alive to the importance of removing from their path so dangerous a competitor and were exceedingly anxious" to secure Plant's machines.

The record proves the contrary to be the fact. The evidence clearly shows that throughout the negotiations Mr. Winslow never made any offer to Plant, but that the negotiations were begun by Plant and renewed by him several times after Winslow had definitely broken them off (R. Vol. 1, p. 559, lines 16–18). The negotiations are reviewed in our Main Brief (pp. 564–574).

All the evidence as to the negotiations proves conclusively, not that Winslow was exceedingly anxious to get Plant's machines, but that Plant was exceedingly anxious to have Mr. Winslow get them.

The United States alleges (p. 121) that "defendants hastened to give Mr. Plant a check for $500,000," and finds significance in the fact that at the time the check was

delivered "not a document had been drawn." The evidence shows that, as Mr. Winslow testified:—

> "It was a part of the arrangement with Mr. Plant that if we accepted his proposition he was to be paid $500,000 and then the papers would be drawn" (R. Vol. 1, p. 488, lines 2–4).

Mr. Herrick testified,—

> "This payment was made because Mr. Plant insisted that there ought to be something paid on account, and Mr. Carr [Plant's attorney], as I remember it, named the figure" (R. Vol. 1, p. 607, lines 8–10).

The Contention that the Plant Improvements were of Little Use to the United Company.

The United States alleges (pp. 125–126) that "defendants' own witnesses show that however valuable the Plant improvements were to him as a present and prospective competitor of the defendants, they were of little use to the United Company."

There is absolutely no testimony of defendants' witnesses or any witnesses to the effect that the Plant improvements were of little use to the United Company. The evidence is all to the contrary. For example, Mr. Warren testified,—

> "I later told Mr. Winslow that the improvements on the welter and stitcher were worth all he gave for the entire property, and that was my opinion" (R. Vol. 1, p. 788, lines 8–10; p. 813, lines 6–9).

Our Main Brief (pp. 541–550) contains a full statement of the evidence of practical shoemakers as to the value of the stitcher and welter improvements. It is there

shown conclusively that these improvements resulted in machines which operate faster, turn out more work, do work of better quality, are more economical for the shoe manufacturer, and enable the operator to earn higher wages.

The United States quotes (p. 126) Mr. Howard's testimony with reference to the stopping mechanism of the Plant stitcher as follows:—

> " . . . *five* different inventors employed by the United Company were put to work upon the *problem* of providing a *commercially satisfactory stopping* mechanism . . . " (italics theirs).

What Mr. Howard really said is this:—

> " . . . five different inventors employed by the United Company were put to work upon the problem of providing a commercially satisfactory stopping mechanism which *could be incorporated* in the organization of the model K out-sole stitcher, which was then the standard commercial machine of the United Company" (italics ours) (R. Vol. II, p. 2297).

The United States also urges that the fact that the United Company changed and so much improved the mechanical constructions in which Plant had embodied his valuable welter inventions in adapting those improvements to its machine proves that those inventions, in themselves, were of little use to the United Company. But the United Company's welter in which the Plant improvements were embodied *was of different design* from the Plant machine, so that "the mechanical construction had to be entirely changed in order to apply it to our machine" (R. Vol. 1, p. 811, lines 40–43; Vol. 2, p. 2260). That in reorganizing these Plant mechanical structures to fit its machine the

United Company's inventors should make still further improvements was to be expected and was consistent with the constant improvement of its machines which the United Company is always making. But these improved mechanical structures in which the Plant improvements were embodied in the United Company's new welter *all contained the Plant inventions and were all covered by the Plant patents.* Typical broad claims of the Plant patents which cover the United Company's machine are quoted in the record (R. Vol. 2, pp. 2262–5). These Plant inventions are the heart and core of the welt holding, the welt cutting, the welt measuring, and the stopping and loop cast-off mechanisms of the Model K Welter by which the tremendous savings have been effected (Main Brief, pp. 544–545).

The extended use which the United Company has made of the Plant inventions and their great value to the United Company are shown by the evidence reviewed in our Main Brief (pp. 535–550).

As to this contention of the United States it may be of interest to refer to its claim (pp. 117–118) that the Western manufacturers were willing to pay $1,600,000 for only a *half interest* in Plant's patents and inventions, *not* including any interest in the Shoe Company. If the record supports that contention, the Western manufacturers were setting a value of $3,200,000 on the patents and inventions alone, and the United States cannot consistently claim that they were not worth the $2,500,000 which the United Company paid for them.

The United States has not called attention to any evidence which should lead the Court to question the finding of the District Court as to the value of the Plant inventions when combined with the United Company's patents (R. Vol. 1, p. 1145).

The Argument that the Shoe Machinery Art would have been Advanced by the Sale of Plant's Machinery to a Group of Manufacturers.

The United States contends (p. 125) that all that was necessary in order that the shoe machinery art might be benefited by the Plant improvements was "to permit the shoe manufacturers who were ready and anxious to purchase an interest in Plant's machinery to carry through their design."

There is uncontradicted evidence that there were 708 distinct cases of infringement of the United Company's patents of 37 Plant machines (Defs.' Ex. 273, R. Vol. 5, p. 733).

The sale of an interest to the shoe manufacturers mentioned would have in no way avoided such infringements. Furthermore it would not have permitted the combination of the United Company's patents with the Plant patents, and the consequent great advance in the art of shoe machinery which was the object and the result of the acquisition (see our Main Brief, pp. 576–577).

The Contention that the Avoidance of Litigation was not a Motive in the Plant Purchase.

In the brief for the United States it is alleged (p. 128) "that the avoidance of litigation was in fact an actuating factor in the transaction does not appear. In no part of the negotiations was it suggested that the defendants should buy out Plant in order to avoid litigation."

On the contrary, that both parties had in mind the

avoidance of litigation and that it was a factor in the negotiations is shown by the fact that *formal releases were exacted by both parties.* On September 23, 1910, the United Company agreed to deliver to Plant releases "providing for the dismissal or discontinuance . . . without costs . . . of the suit now pending in the Supreme Judicial Court of Massachusetts . . . and suits now pending in the United States Circuit Court against said Plant . . . and . . . general releases including any and all claims . . ." (P.'s Ex. 132, R. Vol. 4, p. 935).

On the other hand, on September 30, 1910, Plant executed a formal release to the United Company of all claims, referring specifically to "certain suits" which he had planned to bring against the United Company (P.'s Ex. 137, R. Vol. 4, p. 1037).

The allegations of the United States are directly contradicted by the testimony of Mr. Howe and Mr. Winslow (see our Main Brief, pp. 559–561).

The United States finds it significant that (p. 125) "Defendants' witnesses talk of counter infringements by their machines. *But no litigation was begun by Plant*" (italics theirs).

It cannot be doubted that if Plant had kept on he would have enforced his rights under his patents and would have brought suits on account of infringement by the United Company's machines; indeed, as we have just stated, his intention to bring suits is asserted over his signature in a release signed by Plant on September 30, 1910:—

> "I . . . have made certain claims against the United Shoe Machinery Company . . . and have planned to bring certain suits against said United Shoe Machinery Company" (P.'s Ex. 137, R. Vol. 4, p. 1037).

Mr. Winslow and Mr. Howe fully expected that Plant would bring suits against the infringing machines of the United Company (R. Vol. 1, p. 862, lines 25–26; p. 877, lines 27–30; p. 878, lines 1–2).

Another important fact is that Plant had already defeated the United Company in six interferences. Twenty-three interferences had been declared in the Patent Office between patent applications owned by Plant and applications owned by the United Company. In six of these Plant had secured favorable decisions (R. Vol. 1, p. 846, lines 14–17; Defs.' Ex. 272, R. Vol. 5, p. 730).

The United States alleges (p. 128) with reference to infringement suits against Plant that "it does not appear that if any or all of them had been sustained it would have been fatal to the line of machinery owned by him."

A complete answer to this allegation is the evidence showing 708 distinct instances of infringement of United Company patents by 37 Plant machines, as set forth in Defs.' Ex. 273 (R. Vol. 5, p. 733). No testimony was introduced by the United States to refute these instances of infringement (see our Main Brief, pp. 541–542, 547, 551–553).

That these infringements were serious is apparent from evidence that it was the *general organization* of at least six Plant machines which infringed the patents of the United Company (Defs.' Ex. 273), and from Mr. Howard's testimony in respect to two other machines:—

> "The patents infringed by the Plant Heeler and the Plant Heel Attacher on Wood Lasts covered both these machines so thoroughly that by no possibility could they have been changed to avoid infringement. Plant's only course would have been to junk the machines and begin over again" (R. Vol. 5, p. 746, lines 27–31).

The conclusion is certainly justified that the United States has not shown any ground for questioning the finding of the District Court that the purchase of Plant's patents resulted in relieving the United Company of a burden of litigation threatening interminable controversy (R. Vol. 1, p. 1145).

The Contention that the Plant Stock was of Comparatively Little Value in the Transaction.

The United States asserts (pp. 130–131) that "The evidence does not show that the stock of the Plant Company was worth any such figure" as $3,500,000.

The evidence shows that the earnings of the Plant Company for the four years preceding its acquisition had averaged $738,000 annually. Plant owned and sold sixty per cent. interest in the stock of the company. It is shown in our Main Brief (p. 562) that 60 per cent. of the average earnings for the past four years amounted to $442,800 annually and that capitalized at 10 per cent. this would show a value of $4,428,000 for the stock which was acquired.

The United States asserts (p. 130) that "the statement furnished the company by Plant showed that the Plant Company had a net investment at that time of only $2,500,000 . . . 60 per cent. of which was $1,500,000." On the contrary, that statement (P.'s Ex. 132, R. Vol. 4, pp. 1014–1015) shows that the total net assets of the company were $4,358,955.51, of which 60 per cent. amounts to $2,615,373.30. As to the value of one of its assets, the trade-mark "Queen Quality" (R. Vol. 1, p. 603, lines 40–43), see *Thomas G. Plant Company* v. *May Company* (C. C. A. Sixth Circuit, December 4, 1900), 105 Fed. Rep. 375.

The District Court held (Dodge, J., R. Vol. 1, p. 1144):—

> "That it was of great value is shown beyond question by the dividends then and afterward paid on the stock acquired by the United Company."

The Contention that by the Plant Acquisition Control of Welters and Stitchers was Secured.

The United States alleges (p. 131) that by the Plant acquisition the United Company "again acquired substantial control of welters and stitchers."

The evidence relied upon in support of this contention of the United States proves that on the contrary a number of other concerns were actually engaged in putting out welters and stitchers, all of which were in business in 1910. These concerns are named in our Main Brief (pp. 611–612).

The Contention that the United Company Secured Control of the McKay Sewing Machine by this Transaction.

The United States asserts (p. 133) that by acquiring, as a part of the Plant acquisition, "the Stanley Company, which was putting out the original McKay machine" the United Company obtained "*complete control of that machine*" (italics ours). It asserts further (p. 133) that "Possibly second-hand machines can be obtained from dealers, but when that supply is exhausted *it will be necessary for every manufacturer to equip his factory with McKay machines held by the United Company*" (italics ours). This statement is

not supported by the record. In the first place Mr. Howe testified that the patents on the original McKay machine expired long ago and added that "anybody could manufacture them" (R. Vol. 1, p. 680, lines 23, 34–35). Mr. Winslow named twenty-six concerns from whom McKay sewing machines could be obtained, some of whom were manufacturing and supplying McKay sewing machines and some of whom were dealers. Representatives of only three of these concerns testified, being called by the United States. One of them, Spencer, testified that his concern went into bankruptcy in August, 1912 (R. Vol. 1, p. 884, lines 40–42); the other two testified that they were offering to supply new McKay sewing machines. Frank P. Emerson, treasurer of the Shawmut Machinery Company, testified that his company "began a year ago last July to manufacture McKay sewing machines, and put the first one out last June" (R. Vol. 1, p. 910, lines 15–17, 23–25). Emerson also testified:—

> "The McKay machine which we are making is an *improved machine of recent design*. We call it the most up-to-date McKay machine on the market. Formerly Walter Pearson was making it for us" (italics ours) (R. Vol. 1, p. 910, lines 33–36).

Bicknell Hall, another witness for the United States, president of the American Worsted Machinery Company until January, 1914, testified that that company had facilities for making the McKay sewing machine and that "we were ready to make that for anybody" (R. Vol. 1, p. 953, lines 1–6, 31–36; p. 954, lines 1–2). There are plenty of McKay machines on the market, and a number of concerns prepared to furnish new machines (*supra*, pp. 65–67).

CERTAIN CASES REFERRED TO IN THE BRIEF.

At page 255 the brief says,—

> "In *United Shoe Machinery Co.* v. *La Chapelle* (212 Mass. 467) the Supreme Judicial Court of Massachusetts applied the law to the facts of the case at bar."

At page 289 it says,—

> "The precise question of law involved in the present case was considered by the Supreme Judicial Court of Massachusetts in *United Shoe Machinery Company* v. *La Chapelle*, 212 Mass. 467."

The impression may be given by these statements that in the case referred to the Court found that the contentions made in this case by the brief writer were true. This is not the fact. In the La Chapelle case the defendant in the lower court offered to prove that the United Company was an unlawful monopoly in that it was an unlawful combination and in various ways had monopolized. The lower court ruled that such evidence was immaterial and declined to admit it. The sole question in the case was whether the facts alleged by La Chapelle in his answer to exist, which it is shown by the present case were not true, did show an unlawful monopoly and should have been admitted.

U. S. v. *United Shoe Machinery Co.*, 227 Fed. Rep. 507, was a decision on a motion for a preliminary injunction in a suit under the Clayton Act. *U. S.* v. *United Shoe Machinery Co.*, 234 Fed. Rep. 127, was a decision on motion to dismiss in the same case. In both decisions the Court

accepted the allegations of the petition as to the United Company's leases and their effect.

The brief at page 263 quotes certain statements in respect to the United Company's leases made by the Judiciary Committee of the House of Representatives in a report on the Clayton bill. The statements made in the report which he quotes are conclusively shown by the record in the present case to be entirely incorrect. They were made without hearing the United Company or examining its leases. The straits in which the brief writer finds himself to support his statements as to the leases are well illustrated by his resort to an *ex parte* report of a committee of Congress, not in the record at all, in an attempt to prove facts which are disproved by the evidence in the case.

Respectfully submitted,

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APPENDIX I.

COMMENTS ON STATEMENTS BY UNITED STATES AS TO THE VARIOUS ACQUISITIONS.

(NOTE.—The record references for the statements made in the following discussions, where not given, will be found in the statements in our Main Brief, Appendix I, to which reference is made in connection with each discussion.)

Goddu Sons Metal Fastening Company (Brief for the United States, pp. 62–65).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 657.)

The brief for the United States says (p. 69) that "The Goddu Company was engaged in *perfecting and manufacturing* nailing machines, slugging machines, tacking machines and standard screw machines—all important metallic fastening machines" (italics ours). This statement is not supported by the record. There is no testimony even suggesting that the Goddu Company was either "perfecting" or "manufacturing" any machines whatsoever.

The United States further says (p. 69) that the United Company "was putting out machines for doing the work for which the Goddu machines were *adapted*" (italics ours); and in support of the statement Mr. Howard's testimony is cited (R. Vol. 1, p. 42, line 1). What Mr. Howard actually said was:—

> "The United Company was putting out *commercial machines* for doing the work for which the Goddu Company machines were *intended*" (italics ours) (R. Vol. 1, p. 42, lines 1–3).

The record clearly shows that the Goddu machines were in fact not practically *adapted* for doing any work.

After quoting (inaccurately) a portion of the finding of the District Court, the brief for the United States (p. 70) makes the statement: "In any event, it appeared that the very thing the Goddus were doing was the perfection, by all necessary reconstruction, of their machines."

There is not the slightest evidence that the Goddu Company was making any effort whatever to perfect or to reconstruct its machines.

The brief for the United States says (p. 69) that "the Goddu machines, according to Winslow, were not yet in a condition to be placed in the hands of manufacturers for continuous operation, '*but* they were in a state of development where some of them could have been, without extensive changes, made operative'" (italics ours).

The record affords no authority for the "but" which we have italicized in the above quotation. What Mr. Winslow said was:—

> "Their machines were in a state of development and none of them, to the best of my judgment, was in condition to be placed in the hands of manufacturers for continuous operation. As I knew the situation, they were in a state of development where some of them could have been, without extensive changes, made operative" (R. Vol. 1, p. 436, lines 28–33).

By interjecting the word "but" between its paraphrase of Mr. Winslow's first sentence and the quotation from his second sentence the United States has given to the quotation a color which the record does not justify.

It will be observed that in the above paragraph the word "none" occurs at the beginning of the second line, while the word "some" occurs in a similar connection in the fifth line. The matter quoted was copied verbatim from the District Court record, and in the light of the first sentence it seems to us obvious that in the second sentence at the end of the fifth line the reporter substituted "*some*" for "none," the word which Mr. Winslow used in the preceding sentence. We hasten to add that we do not offer this suggestion by way of criticism and that of course the United States was entitled to rely upon the record.

The brief for the United States entirely ignores the uncontroverted testimony of defendants' patent expert, Mr Howard, who qualified also as a practical expert (R. Vol. 2, pp. 2239–2241) and who spent a week in 1898 in examining the machines of the Goddu Company, to the effect that the Goddu machines were "entirely impracticable." Mr. Howard stated in detail the reasons for his conclusions, and testified that remedying the defects

> "would have involved *entire reconstruction* of the machines, and *the machines so reconstructed would have been entirely different* from the machines as actually built by the Goddu Company" (italics ours) (R. Vol. 2, p. 2099).

It is submitted that the District Court was entirely justified in the finding, characterized in the brief for the United States (p. 69) as "the *contention* of one of the judges below" (italics ours), which was as follows:—

> "nor is the evidence sufficient for a belief that without reconstruction, radical in character, anyone could have used them as competing machines" (Dodge, J., R. Vol. 1, p. 1140).

The District Court's finding is quoted in full, *infra*, p. 144.

The brief for the United States says (p. 70) that the reason given by Mr. Winslow for this acquisition "was the disposal of patent litigation to which the United Company had succeeded as *plaintiffs*" (italics theirs). The United States ignores the testimony (Main Brief, Appendix I, pp. 658–659) showing that some time before the United Company was formed a suit had been brought by the McKay Company on Louis Goddu's contracts against Louis Goddu, his sons, and Albert Van Wagenen to compel a transfer of the Goddu Sons' patents to the McKay Company.

Louis Goddu, father of the "Goddu sons," had been employed as an inventor for many years by predecessors of the McKay Shoe Machinery Company; he had invented practically all of the metallic machines of that company and had been paid continuously for his exclusive services as inventor. Several years before the United Company was formed Louis

Goddu, all his sons, and Albert Van Wagenen all left the employ of the McKay Company and started the Goddu Sons enterprise, and the pending suit charged that they conspired to have Louis Goddu invent metallic machines, communicate such inventions to his sons, permit them to apply for patents and transfer those patents to the Goddu Sons Company. That suit had been vigorously contested and the claims of the McKay Company had been developed and substantiated before the acquisition. The brief for the United States ignores this litigation and refers only to the infringement litigation. It asserts (p. 70): "The disposal of such litigation could hardly be worth $150,000 to the defendants. The removal of an able competitor might well have been worth that amount." In view, however, of the great amount of litigation, both existing and prospective, and the very large expense which would undoubtedly have been involved as well as the great amount of time which would have been required of Mr. Winslow and his associates during the period when the United Company was just getting started, it is submitted that the consideration, for the objects stated, was not unreasonable. Winslow testified that he appreciated the time which would be required and the difficulties which would be encountered in establishing by the pending suit that the Goddu Sons' patents belonged to the United Company. He said he "had had considerable experience in that sort of litigation" and that

> "That arrangement was entered into on my part because of the fact that I very much desired to start the United Company free from all serious litigation" (R. Vol. 1, p. 435, lines 39–41; p. 437, lines 3–7).

The United States lays great stress (pp. 70–71) upon the testimony of Mrs. Converse, daughter of Albert Van Wagenen (R. Vol. 1, p. 311, lines 32–40; p. 312, lines 1–13), who was associated with Louis Goddu and his sons in the Goddu Sons enterprise and who was one of the defendants in the pending suit which charged a conspiracy, as above explained (*supra*, p. 141).

It should be noted, however, that in the statement which

Mrs. Converse testified that Mr. Winslow made he said that the Goddu Company

> "had no business and no machines . . . they couldn't raise money to go on with the business, and no manufacturers to take them" (Brief for the United States, p. 71).

Mrs. Converse also testified:—

> "He said to me that they hadn't anything, they weren't doing any business, they weren't a factor at all" (R. Vol. 1, p. 312, lines 40–42).

Obviously inconsistent with these statements is Mrs. Converse's testimony that Mr. Winslow said that he bought the Goddu Company to get rid of competition. And Mr. Winslow in his testimony specifically denied that he made the purchase to get rid of any competition, and also expressly denied that he made such a statement to Mrs. Converse. He testified:—

> "*Q.* Did you acquire the Goddu Sons Company for the sake of getting rid of any competition?
> "*A.* I did not.
> "I never stated to Mrs. Converse that we acquired the Goddu Sons Company for the sake of getting rid of competition" (R. Vol. 1, p. 437, lines 8–12).

With reference to the statement by the United States that Mrs. Converse's testimony was "supported by a copy of a contemporaneous memorandum" (p. 71), she testified that the memorandum was made "*about 1900 or 1901, I think*" (italics ours), and she also testified:—

> "I made memoranda of my conversation with Mr. Winslow while he was out of the room, *which I afterwards destroyed*" (italics ours) (R. Vol. 1, p. 312, lines 30–32; p. 313, lines 13–14).

It is submitted that in the light of Mrs. Converse's complete testimony her statement that Mr. Winslow said his purpose was to eliminate competition is entitled to no weight.

As above pointed out, Mr. Winslow emphatically denied both that he made any such statement and that he had any such purpose.

The statements in the brief for the United States (p. 71) that "The Goddu Company ceased to do business" and that "by this initial acquisition the prospective opportunity of shoe manufacturers to obtain metallic machines elsewhere than from the defendants was removed" are not supported or justified by the record. The Goddu Company did not *cease* to do business because they were not doing any and never had done any. "The prospective opportunity of shoe manufacturers to obtain metallic machines elsewhere than from the defendants" was not removed because there was no such prospective opportunity. The uncontroverted evidence which we have reviewed and which is set forth in more detail in our Main Brief, Appendix I (p. 657), shows conclusively that the Goddu machines were entirely unfit for commercial use and that to have adapted them for commercial use would have required entire reconstruction, so radical that if it had been effected the machines would have been entirely different.

We respectfully submit, therefore, that no reason has been shown why this Court should not accept as conclusive the finding of the District Court that

> "the metallic fastening machines acquired by purchase of a controlling interest in the company were none of them in the hands of users; their then state of development does not appear to have been such as made them capable of commercial use, whatever the merit of the inventive ideas they sought to embody; nor is the evidence sufficient for a belief that without reconstruction, radical in character, anyone could have used them as competing machines" (Dodge, J., R. Vol. 1, p. 1140).

Winkley and Phillips (Brief for the United States, p. 65).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 675.)

The brief for the United States says (p. 72) that the United Company acquired from Winkley and Phillips "their inven-

tions and improvements relating to 'sole leveling machines,' " and further says that defendants' witness Howard "testified that at the time of acquiring the above inventions or improvements the United Company was engaged in putting out sole-leveling machines, but that they were not of the same type as those covered by the inventions and improvements acquired."

The United States obviously aims to give the impression that the only difference between a machine embodying the acquired inventions and the machine which the United Company had before was that they were "*not of the same type*" (italics ours); that, however, they could be used for the same work; and that accordingly the United Company by this transaction acquired a potentially competing machine. With this purpose it has distorted Mr. Howard's testimony.

What Mr. Howard actually said was:—

> "Prior to the acquisition of these patents from Winkley and Phillips the United Company *was not engaged in putting out sole leveling machines for McKay work. It was putting out leveling machines for Goodyear shoes*, known among the trade as the Goodyear automatic sole leveling machine" (italics ours) (R. Vol. 1, p. 48, lines 9–13).

The United States also ignores the testimony which explains the practical reasons why McKay shoes and Goodyear shoes require entirely different kinds of leveling machines, as set forth in our Main Brief, Appendix I (p. 675).

The foregoing, in connection with other facts set forth in our Main Brief, Appendix I (p. 675), shows that by this transaction the United Company was acquiring, *not a competing machine*, but patented inventions relating to a machine for performing work which *could not be performed by the machine which the United Company had.*

Swain-Fuller Manufacturing Company (Brief for the United States, p. 73).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 684.)

The brief for the United States says (p. 73) that Mr. Howard testified that the Star leveling machine acquired in this transaction was "used *practically* exclusively on turn shoes" (italics ours) and that "the United Company was manufacturing and putting out a leveling machine, but *he claimed* that the United Company's machine was not adapted for leveling turn shoes" (italics ours). The United States apparently desires to give the impression that the Star leveling machine could be used on other work than turn shoes and also that Mr. Howard merely made a claim that the United Company's machine was not adapted for doing the work of the acquired machine.

What Mr. Howard said was that the Swain-Fuller Company was putting out "the Star leveling machine for turn shoes"; that

> "the Star machine *could not be used* with success or with commercial profit on other work" (italics ours) (R. Vol. 1, p. 53, lines 14–16, 21–23),

and that

> "At this time the United Company was not putting out turn leveling machines, and *it would be impossible to use any machine that the United Company then had on turn shoes*" (italics ours) (R. Vol. 1, p. 53, lines 19–21).

The United States ignores other testimony to the same effect, for example:—

> "The Star machine was a very light machine and was *adapted and used only for leveling turn shoes*, which, owing to the fact that they have but one sole, require and will stand a less degree of pressure than other types of shoes" (italics ours) (Howard, R. Vol. 2, p. 2063, Int. 1533).

Again, the United States refers (p. 73) to Mr. Winslow's testimony that by this transaction the United Company also acquired a "Single sole-molding" machine, but it does not refer to Mr. Winslow's statement in the next paragraph and on the same page of the record that

> "Neither of these machines was in competition with any machines then being made by the United Company" (Defs.' Ex. 231, R. Vol. 5, p. 455).

Carver Cotton Gin Company (Brief for the United States, pp. 73–74).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 725.)

The United States says (p. 74) that "Howard testified that among the machines obtained from the Carver Cotton Gin Company were the Acme leveling machine, a vamp skiving machine, and a machine known as the Davis leather-board skiver," and that at the same time "the United Company was putting out the Goodyear automatic leveler and the Emerson skiving machines, but that the acquired machine did not do the work *in the same way*. Even though this be admitted *the result accomplished was the same*" (italics ours).

The United States clearly intends to have it understood that at the time of this acquisition the United Company had machines which, while they did not do the work in the same way, would accomplish the same results.

This is entirely contrary to the facts. Mr. Howard testified that *the United Company had no machines for performing the operations performed by any of these Carver machines.*

Accordingly, instead of acquiring competing machines which would accomplish the same results although not in the same way, as alleged by the United States, by this acquisition the United Company was merely extending its line by adding machines which performed operations for which it previously had no machines.

At the end of its discussion of the acquisition of the Carver Cotton Gin Company the United States says (p. 74):—

> "By these three acquisitions the defendants acquired control of a machine needed in manufacturing all kinds of shoes. The leveling machine used in welt shoes is *now* put out only as an auxiliary machine (Dfts.' Ex. 231, V, 457). It can not be obtained for use with welt machinery supplied by any competitor of the defendants (I, 468, l. 34; 544, l. 10)" (italics ours).

The obvious purpose of the United States is to have it understood that by these three acquisitions the defendants acquired control of all the leveling machines and that as a result of these acquisitions the United Company is "now" following the practice of putting out its leveling machine for welt shoes "only as an auxiliary machine."

This is entirely unfair. The leveling machines acquired by these three transactions are all put out by the United Company through its General Department (Main Brief, Appendix I, pp. 676, 685, 728) and, therefore, have at all times been sold outright, although until recently they could also be taken on lease if the manufacturer desired; and the leveling machine for welt shoes has always been put out by the United Company in the same manner that it was always put out by the Goodyear Company, except that the United Company discontinued the initial payments. It should further be noted that the dates of these transactions were, respectively, March 16, 1900, February 2, 1901, and April 30, 1908.

That the United Company did not acquire any monopoly of leveling machines by these three transactions is shown by the lists of machines of competitors furnished for leveling McKay, welt, and turn shoes, which will be found in Defendants' Exhibit 235 (R. Vol. 5, pp. 587, 625, 664).

Seaver Process Lasting Company (Brief for the United States, p. 75).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 673.)

The United States alleges (p. 75) that the Seaver Process Lasting Company was "engaged in manufacturing *lasting* machines and *pulling-over* machines" (italics theirs), and that the Seaver Company was then insolvent. The United States further alleges that "The Seaver Company was the only company putting out lasting machines in 1899, except the Goodyear and Consolidated Companies," that "It has also a pulling-over machine; as had the United Company," and that no other pulling-over machine except the United Company's pulling-over machine is now offered by any American manufacturer.

The United States concludes (p. 75): "The result of this acquisition, then, was to remove the final vestige of competition in lasting machines, and to shake off the possibility of competition in pulling-over machines."

The United States ignores uncontradicted testimony showing that the Seaver Company's pulling-over machine was experimental and unsuccessful, but that it embodied inventions which are indispensable to a successful pulling-over machine and which have always since been embodied in the United Company's pulling-over machines; that the United Company's machine was then only experimental and did not become commercially successful for over two years after this transaction; that the Seaver patents barred the way to further development of the United Company's experimental pulling-over machine upon which hundreds of thousands of dollars had already been spent; and that that was the reason for the purchase.

The Seaver Company's lasting machine infringed two of the United Company's patents, and suits were pending. It was "unable to continue its business or to pay its debts" (P.'s Ex. 75, R. Vol. 3, p. 591). In another connection the brief for the United States admits (p. 22) that "The Seaver

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Company had no plant and only one witness testified to any use of the Seaver machine." In all respects the Seaver machine was inferior to the United Company's lasting machines. Obviously, any competition which the Seaver lasting machine offered or promised was entirely negligible.

The only important fact is that the United Company acquired the valuable inventions which prevented further development of its experimental pulling-over machine.

Corrugated Wire Fastening Company (Brief for the United States, pp. 75–76).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 663.)

The United States alleges (pp. 75–76) that the United Company acquired a majority of the capital stock of the Corrugated Wire Fastening Company "*engaged in the manufacture and sale* of a tacking machine and corrugated wire" (italics ours). It further states that "Howard testified that the United Company had a machine for performing the *same* character of work as the one obtained from the Corrugated Company," but that "the machine was 'out of date'" (italics theirs). The United States says that this is discredited by Howard's further statement that the United Company continued to supply wire and parts for those machines and have parts in stock to-day. In other words, the United States aims to give the impression that the Corrugated Company was competing with the United Company.

But the United States does not fairly state the evidence. Mr. Howard testified that the Corrugated Company had formerly put out a tacking machine, but

> "*had not put out any of the machines for some years because it was completely out of date*" (italics ours),

and that

> "there was no longer any demand for the machines, so that no business was done and no business could be done with that machine";

and further that

> "the only business that was left when the Corrugated Company was acquired was the supplying of wire and spare parts for the machine" (R. Vol. 1, p. 42, lines 15–16, 28–33).

The fact that the United Company was still keeping in stock parts for that old machine was simply due to their practice of keeping spare parts on hand for old machines so long as there is one of them in use anywhere.

The business of the Corrugated Company was characterized by the District Court as "making wire and spare parts for use in an obsolete metallic-fastening machine" (Dodge, J., R. Vol. 1, p. 1138).

Globe Sewing Machine Company (Brief for the United States, pp. 76–77).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 685.)

The United States says (pp. 76–77) that Howard testified that the Globe Company was manufacturing a welting machine, an outsole stitching machine and an experimental rough rounding machine, and that "By this acquisition a possible competitor in welt method machines was removed." The United States also refers to the fact that the absence of a rough rounder is claimed by defendants to have been a weakness in Plant's line of machines.

The facts were that the Globe Company's machines were not successful; that they all infringed United Company's patents; that infringement suits were pending and that the Globe Company was in debt to an amount over $90,000. The United States omits to mention any of these facts.

The United States also ignores the evidence that the purposes of this transaction were to acquire control of patents which prevented development of one of the United Company's machines, to settle the existing patent litigation and to avoid further patent litigation.

Also the statement by the United States that Mr. Howard testified that the Globe Company was *manufacturing* its machines, the record shows that that company was not doing any manufacturing and that such machines as they had put out had been built by others under contract. It is entirely clear from the record that the business of the Globe Company was negligible and that its unsuccessful machines did not offer even potential competition.

Ross-Moyer Manufacturing Company (Brief for the United States, pp. 77–78).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 680.)

The United States aims to give the impression (p. 77) that the United Company was putting out machines for performing the same operations as the machines of the Ross-Moyer Company and that the Ross-Moyer Company was a competitor.

The fact is that with a single exception the United Company had no machines for doing the same work as the nineteen machines acquired from the Ross-Moyer Company.

The United States omits any reference to evidence showing that the nineteen machines acquired from the Ross-Moyer Company were the foundation of the United Company's General Department and enabled the United Company for the first time to put out machines for performing the work done by the Ross-Moyer machines.

The United States also omits any reference to the evidence showing that an important reason for this transaction was the desire of the United Company, in extending its service and establishing its own agencies, to do the fair thing by the Ross-Moyer Company which had formerly been agent for the United Company and its predecessor companies in Cincinnati and Chicago. Instead of taking that business away from the Ross-Moyer Company the United Company acquired that company and established its agencies in the Ross-Moyer offices.

The record also shows that an additional reason for this acquisition was to secure for the United Company the services of Mr. Ross to represent its interests in the middle West. After the acquisition Mr. Ross became the company's general agent in the West.

Edwin Theophilus Freeman (Brief for the United States, pp. 78–79).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 667.)

The United States obviously desires to have it understood that Freeman was engaged in the business of manufacturing and putting out nailing machines, in competition with the United Company.

The facts are that Freeman had constructed an *experimental* machine known as a "slugging machine" which "was intended to insert the slugs or ornamental fastenings which are driven around the edge of a top lift of a heel for ornamental and wear resisting purposes" (R. Vol. 1, p. 44, lines 26–29); that Freeman *had not put out any machines, had no factory and was doing no business.*

One of the United Company's machines infringed one of Freeman's patents, and there was an interference in the Patent office between applications owned by the respective parties, while, on the other hand, the Freeman machine infringed the United Company's patents.

The purpose of the acquisition was to clear up these serious patent complications and to enable the United Company to improve its machines without infringing Freeman's patents. Freeman's inventions have since been embodied in three different machines put out by the United Company.

Albert G. Brewer (Brief for the United States, p. 79).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 669.)

While in its statement about this transaction the United

States sets forth that Brewer's machine was only experimental, that the United Company had an experimental machine which was not commercial, and that Brewer's inventions were subsequently embodied in the United Company's machine, it omits to mention the evidence that the United Company's experimental machine was not successful until after the Brewer invention had been embodied in it and that the Brewer mechanism was much superior to that which the United Company was using before.

That no potential competition was offered by the Brewer machine is shown by the fact that Brewer's experimental machine infringed fourteen claims of a broad patent owned by the United Company.

American Sole Laying Machine Company (Brief for the United States, pp. 80–81).

(The facts of this transaction are set forth in our Main Brief, Appendix I, p. 694.)

This transaction took place after that with the Boot & Shoe Sole Laying Company, although the United States discusses it first.

The United States sets forth (pp. 80–81) that the American Company was engaged in putting out sole laying machines and that Howard testified that "the United Company was engaged in manufacturing and putting out machines for laying the soles of boots and shoes, although he claims that the United Company's machines were inferior to those of the American Sole Laying Company."

The United States evidently wishes it to be understood that the object of this transaction was to remove competition.

The United States omits any reference to the evidence that the United Company was then putting out a sole laying machine which operated upon only one shoe at a time, while the American machine was a double form machine which operated upon two shoes, rights and lefts, at the same time, and that the American Company had patent rights which prevented the United Company from making a double machine which would be twice as fast as the machine it then had.

The United States also ignores the uncontradicted evidence that the American Company's patents also prevented the United Company from adopting a satisfactory pad for its sole laying machine and further prevented necessary development of the Atlas leveling machine.

Nor does the United States explain that immediately after this acquisition the United Company combined its sole laying machine and the American machine, making a better machine than either, which operates twice as fast as its old machine.

Boot & Shoe Sole Laying Company (Brief for the United States, p. 81).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 662.)

This transaction preceded the American Company transaction last discussed and it took place in June, 1899, not in May, 1901, as stated by the United States.

The United States sets forth (p. 81) that the Boot & Shoe Sole Laying Company was engaged in manufacturing and putting out a sole laying machine and says that Howard testified that "the United Company was then engaged in putting out a machine for doing *similar* work, although he claims that the United's machine was inferior to the machine acquired" (italics theirs). Apparently the United States would give the impression that there was competition between the sole laying machines of these companies and that the object of this transaction was to remove that competition.

The facts are that the United Company's machine, which was of a different type, was very unsatisfactory because it was continually breaking down and because it was only adapted for large factories. It was discarded after this acquisition, and the machine of the Boot & Shoe Sole Laying Company was thereafter put out by the United Company as its standard commercial machine.

A further reason for this acquisition was that the United Company wished to use a pressing form which it had produced, but that form infringed a patent owned by the Boot & Shoe

Sole Laying Company. After the acquisition it used that form in connection with the acquired machine.

The record further shows that the business of the Boot & Shoe Sole Laying Company was very small, and that such machines as it put out were manufactured for it by others.

Accordingly it is clear that the United Company made this acquisition to obtain a machine for performing an operation for which it did not have a satisfactory machine and to enable it to use an improved mechanism without infringement,—and for no other purpose.

J. K. Krieg & Company (Brief for the United States, pp. 81–82).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 702.)

The United States says (p. 82) that "Howard testified that the Krieg Company was engaged in putting out a heel-seat rounding machine, a Louis heel-scarfing machine, and two or three types of embossing machines; that the United Company at that time was putting out a heel-seat rounder and a scarfing machine *of different types;* that the United Company was also engaged in putting out embossing machines" (italics ours). The United States adds that Winslow testified "that the Krieg Company had also been agent for some of the old companies that became a part of the United."

This statement by the United States is misleading in its plain implication that the principal business of the Krieg Company was putting out the three machines named and in its characterization of the United Company's machines as merely "of different types."

The facts are that J. K. Krieg & Company had been local agents for parts and supplies for the United Company's machines except the Goodyear machines, having previously been agents for the Consolidated and the McKay Companies, and their business in the two or three machines of General Department types which they had was very small and merely incidental to their business as agents for the United Company.

The important reason for this transaction was that in fol-

lowing its policy of greatly improving its service the United Company desired to establish its own agency in New York and in so doing to treat the Krieg Company fairly. This is explained in the discussion of the Ross-Moyer Company (*supra*, p. 152) and more fully in our Main Brief, Appendix I (pp. 681–682).

As to the heel seat rounder and scarfing machine "of different types," which the United States says the United Company was putting out, the heel seat rounder was merely an edge trimmer with a larger cutter, which wasted leather. The Krieg machine, specially designed for heel seat rounding, saved the pieces of leather which it removed and thus effected a considerable economy. The United Company "had no machine of that kind before" (R. Vol. 1, p. 93, lines 7–8).

The Louis heel scarfing machine of the Krieg Company and the spring-heel scarfing machine of the United Company were specially constructed for entirely different uses, and *neither could possibly be used for the work of the other* (R. Vol. 1, p. 60, lines 35–41; p. 93, lines 11–21).

The Krieg embossing machines were simple machines for ornamenting upper stock or stamping the inside of the upper of a shoe. They were of no importance, and the real effect of this transaction, as regards the merely incidental acquisition of machines, was clearly the acquiring of machines for doing work for which the United Company had no machines.

Joseph P. Curtis (Brief for the United States, pp. 82–83).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 704.)

The United States sets forth that by this transaction the United Company *acquired the business* of Curtis relating to cementing machines and says that Howard testified that the United Company was putting out a cementing machine, but for performing an entirely different operation.

The facts are that Curtis was *not engaged in business*, and that the United Company acquired from him nothing but certain patent rights relating to a machine for cementing a piece

of fabric to an upper. The United Company had no machine which could be used for that work, nor could the Curtis machine be used for the same work as that performed by any machine of the United Company.

The George A. Smith Machinery Company (Brief for the United States, p. 83).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 697.)

The United States says (p. 83) that "Howard testified that the Smith Company at the time of its acquisition was putting out a spring-heel scarfing machine, and that at the time the United Company was not putting out a machine for doing similar work. He further testified that the Smith Company had also been acting as agent prior to 1899 for certain of the companies that made up the United Company."

This statement alone shows that this transaction was perfectly normal and lawful, but even at that the statement does not give a correct picture of the transaction. The Smith Company had a store in Philadelphia; it employed one man repairing second-hand machinery; and the one machine which it put out, the Boss spring-heel scarfing machine, was manufactured for it in outside machine shops. The United Company had no machine for doing the work which that machine of the Smith Company would do.

Also Smith, like the Ross-Moyer and Krieg Companies, had formerly been agent for the United Company, and the real purpose of the transaction was to make a fair arrangement with him in connection with extending the United Company's service and establishing its own agency in Philadelphia, as is fully explained in our Main Brief, Appendix I (pp. 698–699). The acquisition of the one machine was merely incidental to that arrangement.

Arnold Machine & Supply Company (William B. Arnold) (Brief for the United States, p. 84).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 711.)

The United States sets forth (p. 84) that the Arnold Company was manufacturing and putting out cementing machines and says that Howard testified that "the United Company was engaged in putting out *cementing* machines, but he claimed that they were not adapted for work similar to that of the Arnold machine" (italics theirs). This statement is inadequate and is obviously intended to give a wrong impression. Mr. Howard testified that the Arnold machine was useful only for a particular kind of work, that it had to be specially constructed for that particular use and that it was not useful for any other operation, while the United Company had no machine which could possibly be used for performing the operation of the Arnold machine (R. Vol. 1, p. 64, lines 43–46; p. 65, lines 7–14).

By this transaction, accordingly, the United Company was merely entering a new field.

Booth Brothers (Brief for the United States, pp. 84–86).

(The facts of these transactions with references to the record are set forth in our Main Brief, Appendix I, pp. 713, 720.)

The United States has discussed under this heading two separate transactions which are set forth in the petition (R. Vol. 1, pp. 1015, 1016) as separate transactions.

(1) The United States says (p. 84) that in October, 1904, the United Company acquired the business of Booth Brothers relating to perforating machines. (The consideration is stated (p. 84) as $24,000 and a royalty; in fact, it was $2,400 and a royalty.)

The United States further states (p. 85) that "Howard testified that the United Company was engaged in putting out a *perforating* machine which could be used for the same operation as the Booth machines, although he claimed that it was

not *intended* for the same operation" (italics theirs). This is a distorted statement of Mr. Howard's testimony. He said that the United Company's machine was a gang machine adapted for perforating tips and that it could *not* be used to do the work done by the Booth machine, which was a single-tool, step-by-step machine, adapted and used for perforating the edges of vamps (R. Vol. 1, p. 65, lines 26–42).

It cannot be questioned that by this transaction the United Company was merely entering an entirely new field by acquiring a machine for performing an operation for which it had no machine before.

(2) The United States sets forth that in November, 1907, the United Company acquired the entire remaining business of Booth Brothers and says (pp. 85–86) that Howard testified that the United Company then acquired "a fudge edge-making machine, a *wheeling* machine, a stitch burnishing machine, an upper-shaping machine, and a *beating* machine" (italics theirs), and that "He further testified that the United Company at that time had a *wheeling* machine and an upper-*beating* [beading] machine" (italics theirs).

This statement is obviously intended to convey the impression that the United Company was competing with Booth Brothers in respect to two of the four machines acquired, namely, wheeling machine and upper beading machine. But the United States has told only a part of the story. Mr. Howard testified that the Booth wheeling machine was used on Goodyear work and that the United Company's machine was adapted only for use on McKay sewed shoes with a mock welt (R. Vol. 1, p. 84, lines 24–29). Mr. Howard further testified that the United Company's upper beading machine "was satisfactory on heavy work, but not for the light or medium work," and that the Booth Brothers machine "was a much better machine for light work" (R. Vol. 1, p. 69, lines 12–13; p. 84, lines 42–44). Mr. Howard also testified that the United Company had no machines for doing the work of the other two Booth machines (R. Vol. 1, p. 69, lines 13–14).

Accordingly by this transaction the United Company merely entered a new field by acquiring machines for performing operations for which it previously had no machines.

Fred H. Perry (Brief for the United States, p. 86).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 705.)

The United States sets forth (p. 86) that Perry made an agreement by which he "agreed to convey to that company all inventions which he should make relating to shoe machinery for a period of five years from the termination of his employment by the United Company."

The United States fails to explain that Perry had previously been employed by the United Company as a machinist, that at his own request he was given the opportunity to enter the inventive department of the company, and that the agreement made with him was merely an employment contract with an inventor.

That covenants to assign future inventions in contracts employing inventors are normal and legal is established by the decisions discussed on pages 497–500 of our Main Brief.

Boston Shoe Tool Company (Brief for the United States, pp. 86–87).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 666.)

The United States alleges (p. 86) that the United Company acquired the business of Timothy A. Bresnahan, "engaged in manufacturing and putting out machines, tools, and appliances used in the manufacture of shoes, together with the entire capital stock of the Boston Shoe Tool Company."

The failure of the United States to indicate the nature of the business in which the Boston Shoe Tool Company was engaged is significant. It was, in fact, manufacturing and selling an edge trimming machine and an edge setter, both machines of General Department type, and it was making and selling cutters for use on the edge trimming machine and edge setting irons for use on the edge setter. At this time the United Company was not manufacturing any edge cutters or any edge setting

irons, and it had no machines for doing the work of either machine acquired from the Boston Shoe Tool Company.

It is plain that by this acquisition the United Company was merely enlarging its field.

Globe Shoe Tool Company (Brief for the United States, pp. 87–88).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 671.)

The United States sets forth (p. 87) that the Globe Company was "engaged in manufacturing and putting out edge cutters and irons used in the manufacture of shoes."

It is true, as stated by the United States, that the Boston Shoe Tool Company, previously acquired, was also putting out "edge cutters and irons."

But the United States does not refer to other important testimony regarding this transaction. The record shows that this concern was acquired at the earnest solicitation of the partners and because the United Company desired to obtain the services of one of the partners, Mr. Loomer, as the head of its department for manufacturing such tools. Plaintiff's Exhibit 72 (R. Vol. 3, p. 581) recites that employment by Loomer had been agreed upon "as an inducement to the United Company to take over said business and to purchase the property and assets of said partnership."

Also, the Globe Company was infringing two of the United Company's patents.

It is further important to note that after this acquisition very large reductions were made by the United Company in the prices of tools such as the Globe Company was making. Details are stated on pages 671–672 of our Main Brief, Appendix I.

In respect to the covenants in the agreements with Loomer and Perkins which the United States sets forth, it is important to note that *both* Loomer and Perkins entered the United Company's employ, and that *no covenants* were taken from the other three partners, who did not enter the employ of the United Company (P.'s Ex. 71, R. Vol. 3, p. 577).

John Ritchie, and John Ritchie Company (Brief for the United States, pp. 88–89).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 672.)

The United States alleges (p. 88) that the United Company acquired "all the *business* of John Ritchie, and John Ritchie Company, a corporation, *relating to the manufacture* of standard screw machines, slugging machines, tacking machines," etc. (italics ours).

It is obviously the intention of the United States to give the impression that John Ritchie and John Ritchie Company were engaged in the *manufacture* of metallic fastening machines. That is not the fact.

The facts shown by the record are: The Ritchie Company was not engaged in *manufacturing machines* but was engaged in the manufacture of *boots and shoes.* It had one machine for the manufacture of *wire.* The metallic fastening machines which are referred to in the agreement relating to this transaction were being *used* by the Ritchie Company, and they were immediately leased back to them by the United Company (R. Vol. 1, p. 46, lines 15–30; P.'s Ex. 74, Vol. 3, pp. 586, 587, 589, 590; Defs.' Ex. 231, Vol. 5, p. 475).

Again, the United States alleges (pp. 88–89) that "The purpose of defendants to force shoe manufacturers to deal exclusively with the United Company" is well illustrated by Mr. Winslow in Defendants' Exhibit 231 (R. Vol. 5, p. 475) where it states that the reason for this transaction "was to prevent manufacturers who held Metallic Machinery under lease from the United Company (and who had agreed to purchase their metallic fastening material from the United Company), violating their leases and contracts by purchasing material from Ritchie."

The United States does not refer to the evidence that the John Ritchie Company had one machine for making standard screw wire and that they were selling wire to lessees of the United Company's metallic machines who had agreed

to buy fastening material from the United Company in payment of royalty for the use of the machines; that in such cases of course the United Company got no return for the use of its machine; and that the purpose of the transaction was to remove that dishonest situation.

It should further be noted that the United States has not raised any question in this suit as to the propriety or legality of the provisions of the metallic leases providing for payment for use of the machines through purchase of fastening material.

Stanley Manufacturing Company (Brief for the United States, pp. 89–90).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 676.)

On the face of the statement by the United States (p. 89), the United Company simply acquired certain machines, parts and supplies which the Stanley Company, engaged in business at Lawrence, Massachusetts, had on hand at Frankfurt, Germany.

The United States omits any reference to testimony showing that the United Company had no machines for doing the work of any one of the miscellaneous General Department machines which the Stanley Company was putting out and that the agreement amounted simply to an agency contract.

The United States quotes at length the covenant made by the Stanley Company not to compete in foreign countries, but it omits to refer to the covenants in the same agreement (P.'s Ex. 78, R. Vol. 3, pp. 621–622) which provided:—

(1) "that the said United Company shall use its best endeavors to sell in foreign countries, machines made by the said Stanley Company . . .;"

(2) that in case the United Company should discontinue the purchase from the Stanley Company and sale

> "of any of the machines, parts or supplies made by the said Stanley Company . . . the said Stanley Company may then and thereafter sell such machines, parts or

supplies thus discontinued to any and all persons without respect to the country to which they are to be sent;"

and

(3) "That the said Stanley Company may advertise and create and maintain in all proper business ways a demand for its machines in any and all countries in the world."

The United States (p. 90) characterizes as "A somewhat similar transaction" the agreement with W. J. Young. This transaction was similar only in the respect that it related solely to business in foreign countries. The facts of the Young transaction are set forth in full on pages 696–697 of our Main Brief, Appendix I.

Bay State International Shoe Machinery Company (Brief for the United States, p. 90).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 683.)

The United States sets forth (p. 90) that the United Company acquired for its French and German companies "the property and good will for the Continent of Europe of the Bay State International Shoe Machinery Company" for $25,000 in preferred stock of the United Company. It further states that Howard testified that the Bay State Company "'had a welter and stitcher and I think *a rough rounder*' but that he did not know whether it 'was shipping machinery from the United States to foreign countries'" (italics theirs).

The United States omits to state that after further investigation Mr. Howard testified that the machines of the Bay State Company were manufactured in Montreal, Canada; none whatever in this country. Other important facts shown by the record, which the United States does not mention, are that the machines of the Bay State Company were very different in construction from and distinctly inferior to the United Company's machines; that it had done business only in England and had put out only ten sets of its machines in England; that its machines infringed the United Company's

English patents; and that the purchase was made at the earnest solicitation of the people interested in the company, who were also customers of the United Company, as the cheapest way to dispose of the litigation.

George W. Emerson & Company (Brief for the United States, pp. 90–91).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 699.)

The United States says (p. 91) that Howard testified that the United Company acquired from the Emerson Company a power spring-heel scarfer and a heel burnishing machine and that at that time the United Company was "putting out a heel-burnishing machine but of a different type from that put out by the Emerson Company, and that the United Company was also putting out a spring-heel scarfing machine to be operated by hand."

The United States omits to make any reference to the following important facts:—

The principal business of the Emerson Company was manufacturing and supplying lasts and forms to be used for sole leveling machines of the "Giant" type, and the United Company was developing a leveling machine on which lasts and forms were used.

The Emerson Company had a tip scourer used in repairing the tips of patent leather shoes. The United Company had no tip scourer (R. Vol. 1, p. 58, lines 24–25; p. 95, lines 1–3).

The Emerson heel burnishing machine was of a different type and performed its operation in an entirely different way from the United Company's machine. Some manufacturers insisted upon one type of machine and others upon the other type. The Emerson Company's machine infringed numerous important claims in two patents controlled by the United Company.

An important object of the transaction was to obtain the services of William R. Sampson, the active man in the Emerson concern.

Another object was to settle the pending litigation.

Joseph W. Leary (Brief for the United States, pp. 91–92).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 705.)

The United States sets forth (p. 91) that the United Company acquired from Joseph W. Leary, of Lynn, Massachusetts, "his business of manufacturing and dealing in shoe machinery."

This statement is very misleading. Leary was doing *no manufacturing of any kind.* He employed no men and had no factory. He was principally engaged in retailing cements and blackings, and he also dealt in a very small way in second-hand sewing machines for sewing together the parts of shoe uppers.

Leary was also local agent for the United Company's Amazeen skiving machine. He was extremely capable and successful as salesman, and the United Company desired to obtain his services in a wider field. He stated that he would enter its employ if the company would buy his stock of cement and second-hand machinery, and he was paid $3,052 for the small stock that he had.

The United States alleges (p. 92) that Leary "agreed to convey to the United Company all improvements which he should make within 10 years from the date of the termination of his employment with the United Company."

In fact, Leary made no covenant whatever to assign any future improvements. On the contrary, the Leary agreement (P.'s Ex. 108, R. Vol. 4, p. 768) specifically provided that Leary should "not be required to disclose his secret formulæ for making cements, blackings or stains."

Zachary Taylor French (Brief for the United States, pp. 92–93).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 709.)

The United States alleges (p. 92) that the United Company "acquired the business of Zachary Taylor French, Boston, Mass., engaged in the development of machines designed and used in the manufacture of boots and shoes."

The testimony to which the United States then refers shows that the United Company did not acquire any "*business*" from French and that French was not engaged in business, but that the transaction was merely an agreement commuting obligations to pay royalties which would become due under various existing contracts.

The United States omits to explain that these contracts had all been made with the Goodyear Company prior to 1899 and that the agreement was made because French desired to have his royalty contracts placed upon a definite basis of annual payment.

Kimball & Hadley (Brief for the United States, pp. 93–95).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 710.)

The United States sets forth that Kimball & Hadley were "engaged in manufacturing and marketing *awls, needles*, drivers, supplies, etc." (italics theirs) and states (p. 93) that Howard testified that "the United Company was engaged in manufacturing and putting out *awls and needles*, except curved needles for the Goodyear sewing machine, and that the United Company was making awls for the use of its own machines" (italics theirs).

This statement by the United States is inaccurate and misleading. Howard did not testify that the United Company was putting out needles. He explained that the awls that it was making were for its metallic machines and were "straight awls, which make a straight hole for a nail, and bear no resemblance to the curved awl used in a welter or stitcher" (R. Vol. 1, p. 64, lines 18–20).

The United States further alleges that Kimball & Hadley were forced to sell out by reason of the United Company's leasing system and that its lessees were obliged by the terms of their leases to take needles from the United Company. Neither of these statements is supported by the record.

(1) In the suit brought by the United Company to enforce the covenants made by Kimball & Hadley not to engage in similar business within fifteen years the Supreme Court of

Massachusetts approved the finding of the lower court "that they made the sale voluntarily" (*United Shoe Machinery Co.* v. *Kimball et al.*, 193 Mass. 351, 354, 357).

(2) Lessees of the United Company's Goodyear machines are *not* required by the terms of their leases to take the needles from the United Company. Needles are not machine parts. Representatives of several manufacturers testified that they bought awls and needles wherever they wished and that they had bought them from Kimball & Hadley (Roberts, R. Vol. 1, p. 747, lines 10–21; Hogan, p. 747, lines 35–36; Tierney, p. 760, lines 22–24; Bryant, p. 761, lines 4–6). Both Roberts and Hogan stated the reasons why they stopped buying from Kimball & Hadley and both specifically said that it was not on account of the United Company's leases. Roberts testified: "The United Company has never required us to buy needles and awls from any particular source" (R. Vol. 1, p. 747, lines 11–17; 42–43).

Hadley's testimony as to statements made to him by shoe manufacturers that they could not buy his needles because if they did the United Company would take out its machines was specifically denied by all the manufacturers or employees in the factories which Hadley named who had anything to do with buying needles, as is fully set forth in our Main Brief, Appendix I, pp. 767–769.

In its statement (p. 95) that Kimball & Hadley again engaged in the awl and needle business and that "the United Company brought suit to enjoin them, upon the ground that they were violating their agreement of June 11, 1904," the United States neglects to state that the Supreme Court of Massachusetts held that the covenant was reasonable and valid and approved the granting of an injunction enforcing it (*United Shoe Machinery Co.* v. *Kimball et al.*, supra).

Leopold J. Courteau (Brief for the United States, pp. 95–96).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 712.)

On the face of it the statement by the United States (p. 95) that the United Company acquired from Courteau "all his

inventions and devices, including letters patent, relating to machines and mechanisms for holding the linings of shoes during the process of pasting the outer leather to the lining" shows that this transaction is of no importance in this suit.

It should, however, be pointed out, first, that the statement is erroneous in saying that the United Company acquired "devices." The United Company did not acquire any devices; it acquired merely an invention. Second, the United States omits to refer to the testimony showing that the United Company had no machine for performing this operation.

Brockton Supply Company (Brief for the United States, p. 96).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 714.)

In its statement regarding the tack pulling machine which was acquired from this concern the United States says (p. 96) that "Howard testified that at the time of acquiring the business of the Brockton Supply Company the United Company was engaged in developing a machine for pulling lasting tacks, but that none had been put out."

The United States omits to refer to testimony showing that the United Company's experimental machine infringed a patent of the Brockton Supply Company and that the Brockton Company's machine infringed the United Company's patent applications.

Zotique Beaudry (Brief for the United States, pp. 96–97).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 719.)

The United States sets forth (pp. 96–97) that the United Company acquired from Beaudry his inventions and improvements relating to machines for burnishing and finishing the heels of shoes and that Howard testified that at this time "the United Company *had* a heel burnishing machine" (italics theirs).

The United States omits to refer to testimony showing that Beaudry's business was not acquired and that all the United Company did acquire was his experimental heel burnishing machine and the patents on that machine; that the acquisition was made because it was believed that the Beaudry inventions, which embodied an entirely new idea, would greatly improve the United Company's machines; and that Beaudry's machine infringed many claims of one of the United Company's patents.

The statement by the United States (p. 96) that Beaudry made a covenant "that all inventions which he should thereafter make should be disclosed" is not supported by the record. That covenant was specifically limited to "heel finishing machinery, methods or devices," the subject-matter of the transaction (P.'s Ex. 120, R. Vol. 4, pp. 850, 853, 854).

Richardson Shoe Machinery Company (Brief for the United States, pp. 97–98).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 722.)

The United States sets forth that the Richardson Company was manufacturing and putting out McKay sewing machines and clicking machines and it says that Howard testified that the United Company was then manufacturing and putting out McKay sewing machines.

The United States omits to refer to testimony showing that a very important feature of the United Company's McKay sewing machine infringed one of the Richardson Company's patents; that the Richardson machine was a great deal better than the United Company's; that it was believed, and it eventually proved, that a better machine than either could be constructed by using inventions owned by both companies; that improvements broadly claimed in two Richardson patents are embodied in the United Company's new Model M outsole stitcher; and that the improvement of one of those patents is embodied in the United Company's new Model K welter.

The record shows that the Richardson Company was not manufacturing and putting out clicking machines as alleged by the United States (see our Main Brief, Appendix I, pp. 724–725).

Harry L. Rice and Fred LaChapelle (Brief for the United States, pp. 98–99).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 728.)

The United States omits to refer to any testimony showing that the Rice and LaChapelle welting machine, embodying the patented inventions which were acquired, was only experimental and far from being commercial, and that it was believed that these improvements would not only strengthen the inseam of a welt shoe, but would effect substantial economies.

In the statement by the United States of the covenant not to compete, which was made by Rice and LaChapelle, the United States omits to state that the covenant was limited to a period of ten years.

The Wentworth Company (Brief for the United States, pp. 99–100).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 730.)

The United States sets forth that by this transaction the United Company acquired a machine for beating heel seats and a shank sticking machine. It says (p. 100) that Howard testified "that the United Company at that time was manufacturing a machine for beating heel seats, and that the United was experimenting with the shank sticking machine."

The United States omits to refer to testimony showing that the United Company's machine for beating heel seats was similar to the Wentworth machine only in name, that the two machines operated in entirely different ways; that the United Company's machine was discarded after this acquisition; that

the patent on the Wentworth shank sticking machine prevented the United Company from developing a machine; and that the Wentworth shank sticking machine infringed one of the United Company's patents.

That the Wentworth heel seat beating machine could not possibly offer any competition is shown by the fact that it infringed many claims of two of the United Company's patents; that suits had been brought and those claims had been held to be valid and infringed; and that they covered indispensable features of the Wentworth machine so that the Wentworth Company could no longer put out the machine.

Adam H. Prenzel (Brief for the United States, pp. 100–101).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 733.)

The United States sets forth (p. 100) that the United Company acquired from Prenzel his inventions and patents "relating to certain machines used in the manufacture of turn shoes."

Important facts to which the United States fails to refer are that Prenzel, who was a shoe manufacturer, had made valuable patented inventions relating to a new type of spring heel shoe and a new type of infants' shoe and special machines for making them and that the United Company had no such machines; that accordingly the United Company was by this transaction entering a new field; and also that this acquisition enabled the United Company to use three of the Prenzel patents in one of its important machines.

M. V. Bresnahan & Company (Brief for the United States, pp. 101–102).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 734.)

The United States says that the testimony shows that by this purchase the United Company acquired an experimental lasting machine and a heel burnishing machine and

that the United Company was then putting out lasting machines and heel burnishing machines.

The United States does not refer to testimony showing that the United Company's machines would not accomplish the same results as the Bresnahan machines because they did not have the Bresnahan patented inventions, and that there was a great amount of pending litigation, largely infringement suits, between Bresnahan and the United Company in some of which Bresnahan was defendant and in others the United Company. The agreement for purchase specifically discharged the United Company from all claims and demands covered by the suits which had been brought against it (P.'s Ex. 144, R. Vol. 4, p. 1058).

With reference to the statement by the United States (p. 102) that the schedule attached to the agreement "gives a list of many different machines together with supplies acquired from the Bresnahan Company," it should be noted that the machines are nearly all machine-shop machines and that the few shoe machines named, one or two of a kind, are obviously second-hand machines such as dealers in shoe machinery usually have on hand.

Charles P. Stanbon & Company (Brief for the United States p. 102).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 736.)

The United States says (p. 102) that Howard testified that the United Company acquired from Stanbon "a channel-cementing machine, a folding machine, perforating machine, and a channel-opening machine, and that the United Company at that time *was* putting out an inferior channel-cementing machine and a perforating machine" (italics theirs).

The United States omits to refer to testimony showing that the United Company's channel cementing machine was inferior *because* the United Company had been obliged to take off improvements which infringed Stanbon's patents; that the United Company's perforating machine and the

Stanbon machine are used in distinct and different fields, and that the Stanbon machine would do work which the United Company's machine could not do; that there were pending interferences in the Patent Office involving applications owned by the two parties in which the issues were so broad that the party winning the interference would be able to prevent the other party from putting out any machine of the kind; and that by this transaction the United Company was enabled for the first time to put out a folding machine.

APPENDIX II.

THE CHART ANNEXED TO THE BRIEF FOR THE UNITED STATES AS "APPENDIX A" IS GROSSLY MISLEADING AND GROSSLY DISTORTS THE FACTS.

There is attached to the brief for the United States an Appendix "A" which the brief writer has headed "Chart Illustrative of the Practical Effect of Exclusive Use and Tying Provisions in Restrictive Lease and License Agreements for the use of Shoe Machinery Owned and Controlled by Defendants." In this chart the brief writer by an arrangement of groups of machines and by a labyrinth of connecting lines has endeavored to draw a picture showing the utmost of confusion. There is no justification for the chart or for the picture which it purports to draw, and its presence in the brief can be accounted for only as an effort to create upon the mind of the brief reader who examines the chart, a false impression of the inter-relation of the various groups of machines and of the extent and effect of the clauses contained in various of the leases.

A similar chart was attached as "Exhibit 23" to the original petition filed in this case, but was abandoned by counsel for the United States, who agreed that it should be disregarded when the defendants at the trial offered a witness to point out its misleading character and its misstatements and inaccuracies. Yet the brief writer has the temerity to say (Brief for the United States, pp 179–180):—

> "A chart illustrative of the practical effect of the tying clauses in these restrictive leases is submitted herewith as Appendix A. This chart has been criticised by the defendants, but all the criticisms are trivial and none of them is based upon fact."

Only the persistence of counsel for the United States in the employment of such a means and the fact that to one not familiar with shoe manufacturing a graphic of this character might not be understood and might be taken to in some degree represent the facts require any discussion of this chart in this reply brief. We shall not take the time of the Court to discuss in detail the many misstatements and inaccuracies, but shall simply point out some respects in which it is fundamentally misleading.

1. The very heading of the chart is an affront to the intelligence of one at all conversant with the actual situation. The heading uses the phrase "Practical Effect," and purports to set forth a practical condition, yet it entirely omits to indicate the fundamental fact that entirely different machines and groupings of machines are used in the manufacture of each of the various kinds of shoes. On the contrary, it runs together in the same table machines used in the manufacture of McKay sewed shoes, welt shoes, turn shoes, pegged shoes, standard screw shoes, nailed shoes and shoes of other kinds. It is obvious that such a confusion of machinery has enabled the chart draftsman to picture a multiplicity of connecting lines which have the effect and can have been intended only to have the effect of picturing a condition which is anything but "practical." It is obvious that if a graphic of this sort were to be undertaken the only fair method would have been to set forth the machines and groups of machines used for each class of shoes separately, but this obviously would not have resulted in the desired picture of confusion and was not adopted.

2. Even upon the chart as it has been prepared arrangement of the groups of machinery has obviously been made by the draftsman not with an idea to any consecutive or logical order but with a view to creating a maximum of confusion; *i.e.*, the chart begins (Table 1) with pulling-over machines, jumps (Table 2) to heeling machines, goes back (Table 3) to eyeletting machines, then to General Department machines (Table 4). From General Department machines it goes to pegging machines—the sole-attaching machines for pegged shoes (Table 5), then back to the lasting

machines (Table 6), then to metallic machines (Table 7), and finally (Table 8) to the Goodyear Department machines. The sole-attaching machines for McKay shoes are set forth in Table 4, the sole-attaching machines for pegged shoes in Table 5, the sole-attaching machines for standard screw and loose nailed shoes in Table 7, and the sole-attaching machines for Goodyear welt and Goodyear turn shoes in Table 8.

3. By the arrangement and grouping of machines adopted by the draftsman he has undertaken to justify himself in showing connecting lines between various of his groups which, to a casual observer who did not study the chart in detail or who was not familiar with the actual conditions, might leave the impression that a tie existed generally between the machines of the groups so purporting to be connected. For illustration, connection is shown from various of the tables, *e.g.*, Tables 1, 2, 3, and 4 to Table 8 (Goodyear machines). Among the machines referred to in Table 8 are the various auxiliary machines of the Goodyear Department to which there is no tie under any form of lease from any machine of any department. A connection is shown from Table 6 (lasting machines) to Table 2 (heeling machines), whereas of all the machines set forth in Table 6 only two unimportant machines, namely, an obsolete type of lasting machine and a machine which is not a lasting machine at all, but a tacking device, have ever been put out upon any form of lease which in any way restricted their use to any of the machines of the Heeling Department. A connection is shown from Table 4 (General Department) to Tables 5, 6, 7, and 8. Among the machines included in Table 4 is a McKay sewing machine which has never been put out by the defendants upon any form of lease which restricted the use of the machine in any way to any of the machines of Tables 5, 7, or 8. Illustrations might be multiplied.

4. By the arrangement and grouping of machines and the enumerations contained in the chart, the draftsman has undertaken to magnify the tying in a way that is anything but "practical," by enumerating (without note) in various of the tables various machines for performing the same or similar operation only one of which would be used in any

one particular case on any one particular type of shoe, and in showing in the same table different forms of lease. For example, in Table 6 there is the enumeration of several different types of lasting machine; in Table 2 the list includes several forms of heel attaching machines and several forms of heel trimmers; in Table 3 there are two kinds of eyeletting machines listed; in Table 4 there are different forms of lease for the same machines of the General Department; in Table 7 there are enumerated several types or models of machines for performing the same character of work; for example, a double head taper nail tacker and a single head taper nail tacker, a rapid standard screw machine and an old style standard screw machine; in Table 8 there are different forms of lease for the same Goodyear machines. The arrows in the chart would appear to indicate, without careful study and analysis, that all the machines in one group are tied to all of the machines in another group, whereas the tie would actually exist, as a "practical" matter, if it existed at all, only between certain selected machines of one group and certain selected machines of the other group.

5. The chart upon its face purports to cover only what counsel for the United States are pleased to call the restricted forms of lease. It therefore admittedly undertakes to set forth only a part of the whole story, and this part it sets forth in a manner bound to confuse and mislead.

6. The chart at one or more points in each of the tables with the exception of Table 3 contains a statement to the effect that the lessee "must use exclusively" the lessor's machines of certain kinds or for certain work. This statement is absolutely without justification in any instance.

There is not a table contained in the chart concerning which specific criticism might not be made if it were necessary. We believe, however, in the above general comment we have indicated to the Court that the chart is grossly misleading and utterly unworthy of acceptance for any purpose. It is difficult to conceive how the brief writer could have justified himself in placing such a graphic before this Court.

APPENDIX III.

COMMENT UPON APPENDICES C, D, AND E ANNEXED TO THE BRIEF FOR THE UNITED STATES.

The brief for the United States says at page 172:—

> "Appendix C is a brief statement of the clauses contained in each lease of the defendants. It has been carefully compared with the record and is believed to be entirely accurate. Appendix D shows, as to each of the various clauses set out, the leases in which it is to be found. Appendix E is a tabular statement of the same material."

The writer of the brief for the United States has not refrained, even in these purported tabular statements, from misleading arrangement and statement and from the same dexterous use of ambiguities and half-truths which he has employed throughout the other portion of the brief. There are many inaccuracies and misstatements of fact (some of which were noted in our brief upon prior hearing in reply to the prior brief for the United States), but for the present purposes it will be sufficient to point out a few striking instances only in which, by order of arrangement, by misstatement of facts, and by omission to state necessary qualifying and explanatory facts, a misleading picture is presented.

For example, as to the very first machine, the leases of which are discussed in Appendix C, viz., the leases for Consolidated hand method lasting machines, the brief writer fails to make clear the important fact that there are two distinct types of this machine,—the one adapted for lasting McKay sewed and metallic fastened shoes, and the other adapted for lasting welt shoes.

The first exhibit discussed (Exhibit 16) is a form of lease without initial payment for the McKay lasting machine, and

is not designed or adapted, as the evidence clearly showed, to use upon welted or turned footwear. The brief writer, however, carefully ignoring this fact, states the prohibitive clause in this lease, without explanation or qualification, as "applying to welting, stitching" and "turn sewing" machines; that is, to machines used in kinds of footwear to which, as the record clearly shows, the lasting machine covered by this lease has no application. He makes no note of this fact, although in his discussion which follows of Exhibit 15 he notes that there the prohibitive clause does not "extend to metallic fastening machines" and explains (the omission from his point of view apparently requiring explanation) that "this form of lease is used for the hand method type of machine when adapted to lasting welt shoes."

Again, at page 355 of Appendix C, in discussing a lease for auxiliary machines of the Goodyear Department, the brief writer states,—

> "*Exclusive Use* clause applying to welting, turn sewing and outsole stitching machines," (italics theirs).

Without explanation a reader might take this to be a statement that there was some requirement of exclusive use—which is not the fact—or that there was some provision requiring use or exclusive use of these auxiliary machines, whereas, as a matter of fact, there is no requirement, under any form of lease, that any of these auxiliary machines shall be used exclusively or shall be used at all or any limitation of any machines to use with them.

Also under the same heading the brief writer states,—

"*Annual Rental*, amounting to about $184 per annum," (italics theirs).

It is to be noted that the lease there under discussion (Exhibit 25) contains a schedule of machines setting forth some twenty-four different kinds of machines which may be taken under that form of lease. Opposite each machine is set forth an amount to be paid as annual rental for such machine, these amounts running all the way from one dollar per year up to (in one instance) thirty-five dollars per year.

In the case of fifteen machines this annual rental is five dollars or less per year, and in the case of only two machines does it exceed fifteen dollars per year. A lessee under this form of lease might have one machine only or might have several machines. In no case would he have all such machines. Some machines are adapted for one kind of work, some for another. There are auxiliary machines for use in welt work and others for use in turn work. The rental under any given lease upon this form would depend upon the particular machine or machines covered thereby, yet the brief writer has added together the annual rentals set forth in respect to all of these twenty-four machines and has made the statement:—"*Annual rental*, amounting to about $184 per annum," (italics theirs) which amount would be the aggregate annual rental only in a case (which would never exist) of a lessee taking upon one lease of this form one machine of each and every of all these twenty-four kinds.

Perhaps the most flagrant instance of misstatement in these summaries is that contained at page 356 where the brief writer baldly states, "In order to obtain either the welt sewing or the stitching or any of the auxiliary machines, the lessee must agree that he will not use at any time in his factory any welt sewing or outsole stitching machine made by any competitor of the defendants." This is such an absolute misstatement of the fact and is so obviously without foundation or justification that it is not necessary even to discuss it here.

Another instance of the utmost perversion of the facts is in what the brief writer has stated in this portion of his brief with reference to the leases for pulling-over machinery, with the extraordinary conclusion, based upon a series of preceding misstatements (Brief for the United States, p. 362) that

> "The net result is for lasting and pulling over under Exhibit 39, the so-called independent lease, the lessee has to pay ½c. a pair, while under Exhibit 38 he pays only ⅜c. a pair."

By what possible process of misstatement or misunderstanding the brief writer could have reached the conclusion

that under any form of lease the royalty "*for lasting and pulling-over*" (italics ours) is either ½ cent a pair or ⅜ cent a pair is beyond comprehension in view of the facts that the royalty for the lasting operation alone as set forth in the lasting machine leases themselves which the brief writer had just been examining is in itself one-half cent or more; that Exhibit 39 makes no reference to lasting machine royalty, but provides its own royalty for the use of pulling-over machines; and that Exhibit 38 simply provides a royalty for the machines of the pulling-over system with a proviso (and this proviso has no reference whatever to lasting machine royalty) that under certain conditions the royalty *for the pulling-over machines and auxiliaries* shall not exceed a maximum of ⅜ cent per pair (net) measured by the total number of shoes lasted (*i.e.*, the total made) in the factory.

In the Appendix C attached to the previous brief herein addressed to this Court filed by the United States upon the original argument this same statement was made, with the exception that the contrast was made greater by the statement of 1 cent a pair with respect to Exhibit 39 in place of ½ cent as here. The falsity of the entire discussion was pointed out, with the result that the brief writer has cut his statement of royalty under Exhibit 39 in two (now ½ cent), but has otherwise permitted it to stand.

The simple fact is that the United Company, after bringing out its pulling-over system of machines and finding that there was a tendency on the part of some manufacturers of shoes to use the machine for a small part of their work only or for work of a particular kind only, endeavored to make it an object for such manufacturers to use the pulling-over machines upon a greater portion of their work by providing a reduction of ⅛ cent (from ½ to ⅜) in case the manufacturer should use the machines upon such a proportion of his work that it would be cheaper for him to pay ⅜ cent measured by his factory output (*i.e.*, measured by all shoes lasted in his factory) than to pay ½ cent in respect only to a limited number of shoes operated upon by the machines. Under both forms of lease the royalty is independent of and in addition to any royalty for lasting machines. The varia-

tion in the royalty and in the method of computation was simply a business inducement to encourage a more extended use of the pulling-over machines.

Not to detail the many other inaccuracies and misstatements of these summaries it is perhaps sufficient to point out that in general the summaries fail to distinguish between old forms and current forms of leases and between current and obsolete forms of machines; that they make persistent misstatement with reference to the various clauses, including what they call the "exclusive use clause," the "prohibitive clause," and the "additional machinery clause." For example, in Appendix E (pages 375–376) an "additional machinery clause" is noted as appearing in ten different leases, of which one is a heeling machine lease, two pulling-over leases, and seven metallic leases. It is not noted that various of these leases are of obsolete form, and that in the case of others the clause is not in the form of an undertaking by the lessee to take additional machinery from the lessor, but merely a reservation to the lessor of a right to terminate its own leases of certain kinds of machines. The evidence clearly shows that the additional machinery clause was never adopted by the United Company for any general use, and that it was discontinued long before the bringing of this suit.

Other points purporting to be dealt with in these summaries have already been discussed in our own brief. Sufficient here, we think, has been shown to demonstrate that the several appendices attached to the brief for the United States are thoroughly unreliable, are unsafe to be used as guides for any material purpose, and that a true understanding of the actual facts can be obtained only by reference to the leases themselves and to the evidence concerning them.

APPENDIX IV.

VARIOUS COMBINATIONS IN WHICH MACHINES OF THE UNITED COMPANY AND MACHINES OF COMPETITORS MAY BE TAKEN AND USED FOR PERFORMING THE OPERATIONS OF LASTING, SOLE-ATTACHING, METALLIC FASTENING AND HEELING IN THE MANUFACTURE OF VARIOUS KINDS OF SHOES—SHOWING IN THE CASE OF THE UNITED COMPANY'S MACHINES THE FORMS OF LEASES WHICH THE LESSEE AT HIS OPTION MAY CHOOSE FOR SUCH OF THE UNITED COMPANY'S MACHINES AS ARE INCLUDED IN EACH OF THE SEVERAL COMBINATIONS.

A. The letter "*A*" opposite the designation of the United Company's machines in the following combinations denotes that form of lease used by the United Company by which it furnished its machines for use in groups without requiring the payment of any initial license fee upon the installation of the machines, but with the use of the machines (excepting Goodyear machines) leased under this form of lease limited to use with certain other machines of the United Company of other departments for performing certain other specified operations.

The Goodyear principal machines are not, under any form of lease, limited to use with Goodyear auxiliary machines or with any other machines of any other department. No machines of any other department are under any form of lease limited to use with the United Company's Goodyear auxiliary machines, and Goodyear auxiliary machines are not, under any form of lease, limited to use with the United Company's machines of any other department.

B. The letter "*B*" opposite the designation of the United Company's machines in the following combinations denotes that form of lease used by the United Company under which an initial license fee is paid by the lessee upon the installation of each machine, but the use of the machines leased is not limited to use with any other machines of the United Company in any other department.

C. The letter "*C*" opposite the designation of the United Company's machines in the following combinations denotes that form of lease used by the United Company for machines of its Metallic Department under which the use of the machines leased is not limited to use with any other machines of the United Company in any other department, nor is any initial license fee required to be paid, but in lieu thereof there is provision that the lessor may charge 10 per cent. more for fastening material supplied for use in the metallic machines held under this form of lease than is charged for use of the metallic machines when held as part of a group of machines under the limited form of lease.

1

A or B —U. Co. W. & S.
A or B —U. Co. Last.
A or B or C—U. Co. Metal.
A or B —U. Co. Heel.

2

A or B —U. Co. W. & S.
A or B —U. Co. Last.
A or B or C—U. Co. Metal.
—Comp. Heel.

3

A or B —U. Co. W. & S.
A or B —U. Co. Last. Cons.
—Comp. Metal.
B —U. Co. Heel.

4

A or B —U. Co. W. & S.
B —U. Co. Last. #5
—Comp. Metal.
B —U. Co. Heel.

5

A or B —U. Co. W. & S.
—Comp. Last.
B or C—U. Co. Metal.
B —U. Co. Heel.

6

—Comp. W. & S.
B —U. Co. Last.
B or C—U. Co. Metal.
B —U. Co. Heel.

7

A or B —U. Co. W. & S.
—Comp. Last.
—Comp. Metal.
—Comp. Heel.

8

—Comp. W. & S.
B —U. Co. Last.
—Comp. Metal.
—Comp. Heel.

9

—Comp. W. & S.
—Comp. Last.
B or C—U. Co. Metal.
—Comp. Heel.

10

—Comp. W. & S.
—Comp. Last.
—Comp. Metal.
B —U. Co. Heel.

11

A or B —U. Co. W. & S.
A or B —U. Co. Last. Cons.
—Comp. Metal.
—Comp. Heel.

12

A or B —U. Co. W. & S.
B —U. Co. Last. #5
—Comp. Metal.
—Comp. Heel.

13

A or B —U. Co. W. & S.
—Comp. Last.
B or C—U. Co. Metal.
—Comp. Heel.

14

A or B —U. Co. W. & S.
—Comp. Last.
—Comp. Metal.
B —U. Co. Heel.

15

—Comp. W. & S.
B —U. Co. Last.
B or C—U. Co. Metal.
—Comp. Heel.

16

—Comp. W. & S.
B —U. Co. Last.
—Comp. Metal.
B —U. Co. Heel.

17

—Comp. W. & S.
—Comp. Last.
B or C—U. Co. Metal.
B —U. Co. Heel.

18

—Comp. W. & S.
—Comp. Last.
—Comp. Metal.
—Comp. Heel.

19

A or B —U. Co. Turn
A or B —U. Co. Last.
A or B or C—U. Co. Metal.
A or B —U. Co. Heel.

20

A or B —U. Co. Turn
—Comp. Last.
B or C—U. Co. Metal.
B —U. Co. Heel.

21

A or B —U. Co. Turn
—Hand Last.
A or B or C—U. Co. Metal.
A or B —U. Co. Heel.

22

A or B —U. Co. Turn
A or B —U. Co. Last.
A or B or C—U. Co. Metal.
—Comp. Heel.

23

A or B —U. Co. Turn
—Comp. Last.
B or C—U. Co. Metal.
—Comp. Heel.

24

A or B —U. Co. Turn
—Hand Last.
A or B or C—U. Co. Metal.
—Comp. Heel.

25

A or B —U. Co. Turn
A or B —U. Co. Last.
—Comp. Metal.
B —U. Co. Heel.

26

A or B —U. Co. Turn
—Comp. Last.
—Comp. Metal.
B —U. Co. Heel.

27

A or B —U. Co. Turn
—Hand Last.
—Comp. Metal.
B —U. Co. Heel.

28

— Comp. Turn
B —U. Co. Last.
B or C—U. Co. Metal.
B —U. Co. Heel.

29

—Comp. Turn
—Comp. Last.
B or C—U. Co. Metal.
B —U. Co. Heel.

30

—Comp. Turn
—Hand Last.
B or C—U. Co. Metal.
B —U. Co. Heel.

31

A or B —U. Co. Turn
A or B —U. Co. Last.
—Comp. Metal.
—Comp. Heel.

32

A or B —U. Co. Turn
—Comp. Last.
—Comp. Metal.
—Comp. Heel.

33

A or B —U. Co. Turn
—Hand Last.
—Comp. Metal.
—Comp. Heel.

34

—Comp. Turn
B —U. Co. Last.
B or C—U. Co. Metal.
—Comp. Heel.

35

—Comp. Turn
—Comp. Last.
B or C—U. Co. Metal.
—Comp. Heel.

36

—Comp. Turn
—Hand Last.
B or C—U. Co. Metal.
—Comp. Heel.

37

—Comp. Turn
B —U. Co. Last.
—Comp. Metal.
B —U. Co. Heel.

38

—Comp. Turn
—Comp. Last.
—Comp. Metal.
B —U. Co. Heel.

39

—Comp. Turn
—Hand Last.
—Comp. Metal.
B —U. Co. Heel.

40

—Comp. Turn
B —U. Co. Last.
—Comp. Metal.
—Comp. Heel.

41

—Comp. Turn
—Comp. Last.
—Comp. Metal.
—Comp. Heel.

42

—Comp. Turn
—Hand Last.
—Comp. Metal.
—Comp. Heel.

43

—U. Co. McKay (Leased)
A or B —U. Co. Last.
A or B or C—U. Co. Metal.
A or B —U. Co. Heel.

44

—U. Co. McKay (Purchased)
A or B —U. Co. Last.
A or B or C—U. Co. Metal.
A or B —U. Co. Heel.

45

—Comp. McKay
A or B —U. Co. Last.
A or B or C—U. Co. Metal.
A or B —U. Co. Heel.

46

—U. Co. McKay (Leased)
A or B —U. Co. Last
A or B or C—U. Co. Metal.
—Comp. Heel.

47

—U. Co. McKay (Purchased)
A or B —U. Co. Last.
A or B or C—U. Co. Metal.
—Comp. Heel.

48

—Comp. McKay
A or B —U. Co. Last.
A or B or C—U. Co. Metal.
—Comp. Heel.

49

—U. Co. McKay (Leased)
B —U. Co. Last.
—Comp. Metal.
B —U. Co. Heel.

50

—U. Co. McKay (Purchased)
B —U. Co. Last.
—Comp. Metal.
B —U. Co. Heel.

51

—Comp. McKay
B —U. Co. Last.
—Comp. Metal.
B —U. Co. Heel.

52

—U. Co. McKay (Leased)
B —U. Co. Last.
—Comp. Metal.
—Comp. Heel.

53

—U. Co. McKay (Purchased
B —U. Co. Last.
—Comp. Metal.
—Comp. Heel.

54

—Comp. McKay
B —U. Co. Last.
—Comp. Metal.
—Comp. Heel.

55

—U. Co. McKay (Purchased)
—Comp. Last.
B or C—U. Co. Metal.
B —U. Co. Heel.

56

—U. Co. McKay (Purchased)
—Comp. Last.
B or C—U. Co. Metal.
—Comp. Heel.

57

—U. Co. McKay (Purchased)
—Comp. Last.
—Comp. Metal.
B —U. Co. Heel.

58

—U. Co. McKay (Purchased)
—Comp. Last.
—Comp. Metal.
—Comp. Heel.

59

—Comp. McKay
—Comp. Last.
B or C—U. Co. Metal.
B —U. Co. Heel.

60

—Comp. McKay
—Comp. Last.
B or C—U. Co. Metal.
—Comp. Heel.

61

—Comp. McKay
—Comp. Last.
—Comp. Metal.
B —U. Co. Heel.

62

—Comp. McKay
—Comp. Last.
—Comp. Metal.
—Comp. Heel.

NOTE 1. A large part of the turn shoes made are lasted by hand.

NOTE 2. In each of the foregoing combinations in which the United Company's welter and stitcher are used in the manufacture of welted footwear, or in which the United Company's turn sewing machine is used in the manufacture of turned footwear, regardless of the form of lease, the lessee may use the United Company's Goodyear auxiliary machines on either form of auxiliary machine lease or may use auxiliary machines obtained from others, or may use some such auxiliaries obtained from the United Company and some obtained from others in any combination he may see fit.

NOTE 3. The machines covered by the above combinations are the machines which the petition filed in this case defines as the "principal essential machines used in the manufacture of boots or shoes" (Petition, R. Vol. 1, p. 991), namely, "lasting machines," "welt sewing machines and outsole

stitching machines," "heeling machines," and "metallic fastening machines" (R. Vol. 1, p. 991). In addition, the combinations deal with the McKay sewing machine.

The foregoing combinations are illuminating in connection with the charge of the petition (R. Vol. 1, p. 994) that the defendants

> "conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery, and then to refuse to sell or lease any of the *essential machines* to the manufacture of shoes except on condition that he buy or lease of them practically all other machinery or whatever kind necessary or useful to such manufacturer of shoes . . ." (italics ours.

NOTE 4. The foregoing combinations show clearly the fallacy of the contention on behalf of the United States that a manufacturer in order to obtain machines of one or more kinds from the United Company would be under the necessity, as a "practical" matter or in any other manner, either of taking all other machines from the United Company or, under any combination, of taking all his machines upon the initial license fee or upon an unrestricted form of lease. Obviously he is under no such necessity as to machines which he does not take from the United Company and, as clearly shown by the above, the necessity does not exist even as to the United Company's machines excepting in a very limited way and as to a limited number of machines differing according to the different combinations in which the machines are to be used.

Of the 62 combinations of machines above set forth, there are 22 combinations in which the lessee either takes none of the United Company's lasting, welt sewing and outsole stitching, heeling or metallic fastening machines under lease, or may take all of such machines taken thereunder under lease from the United Company, upon either the restricted or the unrestricted or non-initial payment forms of lease, as he may elect. He is under no necessity, in order to use the machines in the combinations indicated, to take them or any of them under the unrestricted or initial payment forms. There are 23 other combinations out of the 62 in which, of the machines of the United Company taken under lease thereunder, one

class only need be taken if the lessee desires to use them in the combinations indicated, upon the unrestricted or initial payment form of lease. There are fifteen combinations in which two of the classes are to be leased, if the lessee desires to lease them from the United Company for use in such combinations, upon the unrestricted or initial payment form, and there are only two of the combinations in which this applies to more than two of the classes.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1917.

No. 207.

UNITED STATES OF AMERICA, *Appellant,*

vs.

UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, *et al., Appellees.*

MEMORANDUM SUBMITTED BY APPELLEES.

The Defendants respectfully submit the following memorandum in further reply to the brief of the United States. The matters herein referred to were not incorporated in our briefs previously filed, because we did not receive a copy of the brief for the United States until December 22d; we then received but one copy and did not receive additional copies until December 26th, so that the time for an examination of and reply to the brief was extremely lim-

ited and shorter than the period contemplated by the Rules.

In this memorandum we desire to point out that the issues raised by the assignment of errors, the issues raised by the pleadings and the issues argued in the District Court differ in certain important respects from the issues which the brief for the United States now undertakes to present as the issues to be decided.

The brief for the United States contains no specification of errors relied upon as required by Rule 21. It may be that this was intentionally omitted, because from an examination of the brief it appears that the United States has presented as issues and argued matters not covered by its assignment of errors (for assignment of errors see Record, Vol. 1, p. 1189).

We have no desire to be technical. On the other hand, the petition presented certain definite issues and it was these issues which the Defendants sought to disprove in the District Court and submits they did disprove. Had the petition presented the issues now presented by the brief for the United States the Defendants would have had an opportunity to meet and refute these issues as they refuted the issues actually raised.

At this stage of the case the United States is bound by the issues presented by the petition, argued in the District Court and raised by the assignment of errors.

For a general statement of the difference between the case presented by the petition and the case now

sought to be presented by the brief of the United States, we respectfully refer the Court to our reply brief, pp. 4 to 7.

In this memorandum we shall refer to three specific issues as to which the case now sought to be presented by the brief for the United States to this Court is materially different from the case presented by the petition and in argument in the District Court, viz.:

(1) The unlawful project charged.
(2) The provisions criticized in the leases.
(3) The monopoly claimed.

Issue as to the Unlawful Project.

The petition charges that the Defendants, in 1899, realized that the patents of the constituent companies were about to expire and devised the following unlawful project, namely (see Record, Vol. 1, p. 994):

(1) To acquire ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery; and

(2) Having done so to refuse to sell or lease any of the essential machines (defined as welt sewing and stitching, lasting, metallic fastening and heeling machines) to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery of whatever kind necessary or useful to him.

The petition alleges that all of the transactions specified in the petition were only steps in carrying

out this unlawful project (Record, Vol. 1, p. 994). *Under the allegations of the petition they are therefore material only in so far as they are shown to have been undertaken in pursuance of this unlawful project and only in so far as they assisted in carrying it out.*

The foregoing was the basic charge which the United States presented in the District Court. Unless it proved this charge, its case failed.

After the Defendants had introduced all their direct evidence counsel for the United States presented an amendment to their petition designed to make it conform to the case which they then contended they had proved (Record, Vol. 1, p. 881, p. 1101). While this amendment was not allowed, it shows the issue which counsel for the United States at the end of the trial declared to be the issue presented for decision.

In this amendment the United States charged that the Defendants conceived the plan of

(1) Acquiring all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery used in bottoming shoes (*i. e.,* used in adjusting and attaching the upper to the last in preparing the bottom and heel and fastening them to the upper and in finishing the bottom and heel of the shoe after such operations had been performed), and

(2) Upon such acquisition refusing to sell or lease any of the essential machines except on condition that the shoe manufacturer should buy or lease of the defendants practically all of the machinery necessary or useful to him.

In the petition as sought to be amended it was still

alleged that all the transactions referred to were merely steps in carrying out this unlawful project.

The United States has now in its brief in this Court abandoned this basic charge on which the petition is founded. It does not now charge that the Defendants planned to acquire all concerns engaged in the shoe machinery business, or even all concerns engaged in the manufacture of machines for bottoming shoes. It merely charges that the Defendants have acquired some competing concerns. Furthermore, the United States does not now charge that the Defendants planned to refuse to lease essential machines unless the shoe manufacturer took all other kinds of machines from them. At most, it claims that the effect of the leases is to induce (or, as the United States alleges, to compel) shoe manufacturers to take a limited number of other essential machines in addition to those desired, which machines form only a very small portion of the total number and types of machines furnished by the United Company and a still smaller proportion of the total number and types of the machines which the shoe manufacturer requires.

It will thus be seen that the basic issue as presented by the petition and as modified by counsel for the United States at the end of the trial has now been abandoned and a quite different issue presented, such issue being (see brief for U. S., pp. 301, 302) that there was competition between the constituent companies forming the United Company; that there was competition between the United Company and certain concerns which it later acquired and that the

leases have the effect, not of requiring a lessee taking one or more essential machines to take all other kinds from the United Company, but of inducing him to take and use a certain limited number of other types of essential machines.

The issue so presented is quite different from the issue presented by the pleadings and tried in the District Court. The evidence introduced by the Defendants was intended to meet and disprove, as it conclusively did, the issue presented in the District Court. While we submit that it also incidentally disproved the issue now presented, it is obviously unfair to the Defendants that the issue should now be materially changed, and that a new issue, not directly before the District Court and only incidentally touched upon, should be presented to this Court.

Issue as to the Leases.

As we have shown above, the petition charged that the provisions in the lease and license agreements which are criticized by the United States were only one step in carrying out the unlawful project alleged to have been conceived by the Defendants in 1899. This remained the contention of the United States during the trial, as is shown by the proposed amendment to the petition which it sought to have allowed towards the close of the trial. (Record, Vol. 1, p. 1101.)

In the argument before the District Court, however, counsel for the United States abandoned this contention. They admitted that the Defendants at

the time they formed the United Company did not have in mind the adoption of the leases which they later developed and contended that the intent which prompted the development of these leases was "absolutely immaterial" (see our main brief, p. 234). They thus abandoned the theory that these leases were adopted in pursuance of and in order to carry out the unlawful project which formed the basis of their entire case.

In the brief now filed the United States departs from the position it took at the argument in the District Court and apparently does contend that the leases were adopted as part of some general plan to monopolize. As the record does not support this contention and as it is inconsistent with the admission made by counsel in argument before the District Court, they also take the position then taken by them that even if the leases were not adopted as part of a plan to monopolize they are in and of themselves unlawful (brief for U. S., p. 154).

But this is not an issue before this Court. The leases are material in this proceeding only if it is shown that they were adopted in pursuance of the alleged unlawful project formed by the Defendants to acquire all shoe machinery concerns and then to refuse to lease any essential machines unless the shoe manufacturer took practically all his machines from the Defendants.

Furthermore, in its discussion of the provisions in the leases, the brief for the United States now criticizes provisions which were not referred to in the petition, or in argument in the District Court and

which are not referred to in the assignment of errors filed in taking the present appeal.

The petition charges in Section V that the defendants discontinued the sale of machines (Record, Vol. 1, p. 997) and unlawfully adopted arbitrary, oppressive and unlawful leases which

(1) contained provisions not found in former leases and which compelled boot and shoe manufacturers leasing any of such machines to agree to use exclusively one or more of the classes of machines included in the groups of machines made by the constituent companies upon penalty of having all of the machines included in said groups leased them by the Defendants reclaimed and the leases canceled;

(2) contained an agreement to take the machines for seventeen years;

(3) contained an agreement requiring the lessee to obtain all duplicate parts for the machines from the Defendants at exorbitant prices;

(4) provided in many cases that the lessee should, at the expiration of seventeen years, return the machines and pay a return charge which in some cases amounts approximately to the original cost of building the machines;

(5) contained a provision reserving to the lessor the right to cancel all leases if shoe manufacturers fail to use exclusively and to their full capacity machines leased from the Defendants.

The foregoing statement contained in Section V of the petition purports to be only a statement of the character of the provisions which the leases contain. The provisions which the petition contends are un-

lawful as carrying out the unlawful plan charged are specified in Section XII of the petition as follows (Record, Vol. 1, p. 1028):

(1) Covenants that the lessee shall use exclusively machines of the United Company to perform both the same kind of work as that performed by the leased machine and also all other kinds of work.

(2) A condition that should the lessee violate the above covenants he will thereby forfeit the use of all his leased machines of every kind.

(3) A covenant that the lessee shall use the leased machine for seventeen years.

The only clauses which counsel for the United States relied upon in the District Court to prove its contentions are enumerated by Judge Dodge in his opinion (R., Vol. 1, p. 1156), and are as follows:

(1) The full capacity clause.

(2) The additional machinery clause.

(3) The exclusive use cancellation clause.

(4) The prohibitive clause, *i. e.*, the restricted use clause.

(5) The right to terminate all lease clauses, *i. e.*, the cancellation for breach clause.

As Judge Dodge points out the full capacity clause and the additional machinery clause were not expressly referred to in the petition; the additional machinery clause was eliminated from the leases some years prior to the filing of the petition, and it was conceded by counsel that both these clauses "might be unobjectionable" if not used together with the other clauses. (Record, Vol. I, pp. 1156-57.)

In the amended petition which the United States

sought to have allowed at the end of the trial (Record, Vol. 1, pp. 1101-1103), it specified expressly the clauses in the leases which it claimed proved its contentions, viz:

(1) The full capacity clause.

(2) The additional machinery clause.

(3) The exclusive use cancellation clause as it interpreted that clause.

(4) The restricted use clause.

(5) The cancellation for breach clause.

(6) The provision admitting the validity of patents.

(7) The agreement that the leases should run for seventeen years.

The United States refers to the leases only in VII, VIII and IX of the assignment of errors. The VIIth assignment of errors is to the refusal of the court below to adjudge illegal the restricted provisions in the lease and license agreements, as described in Part V of the Bill and agreements containing like or similar provisions.

The VIIIth assignment of errors is to the refusal of the court below to enjoin and restrain Defendants from enforcing any rights claimed by virtue of such restricted provisions of the leases.

In the IXth assignment of errors the use of the word "Defendants" in the sixth line from the end leaves the meaning of the paragraph doubtful. In any event, this assignment can only be intended to refer to the restricted use clauses.

No other assignments of error claim error of the court below with respect to the provisions of the leases.

In other words, the assignment of errors refers only to the particular provisions described in Part V of the petition.

In its present brief, however, the United States attempts to contend that the following clauses are unlawful, although they were not referred to in the petition, although they were not relied upon in argument or made an issue in the District Court and although they are not referred to in the assignment of errors. These clauses now relied upon by the United States for the first time to sustain its contentions are as follows:

(1) The royalty clause in the leases of Goodyear machines providing for payment of royalty based on the lessee's factory production (Brief for U. S., pp. 167-169).

(2) The royalty provisions of the Clicking machine lease (brief U. S., pp. 169-170, 178).

(3) The clause in leases of metallic machines requiring the lessee to obtain from the United Company fastening material used in the machines (Brief for U. S., pp. 166, 171, 294-296).

(4) The royalty clause in the leases of pulling over machines (Brief for U. S., pp. 170, 178).

(5) The royalty provision in Exhibit 31, a form of lease for metallic machines, providing that an increased price not in excess of 10 per cent may be charged where the machine is not used as part of a series (Brief for U. S., pp. 171, 172).

(6) Various other clauses alleged to be oppressive and coercive and referred to in the brief for the U. S., pp. 187-189.

As we have stated *none of the foregoing clauses*

was referred to in the petition or relied upon in the District Court and no error has been assigned with respect to any of these clauses.

Even if the United States could have properly referred to these clauses in the District Court to sustain its contentions in spite of the fact that they are not specified or referred to in the petition, it is obvious that having failed to rely upon them in the District Court, and further having failed to assign error in respect to them, the United States can not now rely upon them in this court.

Furthermore, we submit that the provisions which were actually referred to and discussed before the District Court are material in the present case only if and to the extent that they are of the character which the petition alleges them to be. The petition alleges them to be unlawful: (1) in that they require the lessor to covenant that he will use machines of the kind leased and of all other kinds leased exclusively; (2) in that they provide that the lessor may cancel all leases if such covenants are violated; and (3) in that they provide that the lessor shall use the particular machine or machines leased for seventeen years. (Record, Vol. 1, p. 1028.)

We submit that the only provisions which conform to these allegations are the full capacity clause and the seventeen-year term, which do provide that the lease shall run for seventeen years, and that the lessee shall use the leased machine or machines so far as he has work for the machines to perform on which he is authorized to use them. (See our main brief, pp. 244-247.)

Finally as Judge Dodge points out, the petition does not contest the lawfulness of the lease system employed by the constituent companies in 1899 at the date of the formation of the United Company (Record, Vol. 1, page 1154).

The contention in the petition is that the Defendants were not content with the lawful monopolies and lawful methods of doing business which existed in 1899 and that they therefore conceived the unlawful plan of combining the constituent companies, acquiring all concerns engaged in the shoe machine industry and refusing to lease essential machines unless the shoe manufacturer took all of the machines from them. In pursuance of this plan it is alleged they "discontinued" the sale of machines and "devised, adopted and put into effect arbitrary oppressive and unreasonable lease and license agreements" which contained provisions "not found in their former leases and license agreements." These provisions the petition undertakes to describe. (Record, Vol. 1, p. 997.)

In other words, the petition only contests the lawfulness of new provisions and clauses employed for the first time by the Defendants and not previously used by the constituent companies. As Judge Dodge pointed out (R., Vol. 1, page 1154), these are the only provisions which the United States may properly rely upon to prove its contentions.

Considering the provisions referred to in the petition in this light, it is obvious that most of them are not material in the present proceeding. For example:

The leases of the constituent companies in most

cases ran for more than seventeen years (see our main brief, pp. 269). The adoption of the seventeen year term was therefore not a new oppressive provision but on the contrary it in most cases reduced the term previously employed.

The leases of the McKay Company contained the exclusive use cancellation clause. (See our main brief, p. 269.) The leases of the Consolidated Company contained the additional machinery clause and the Goodyear turn lease contained a lease requiring the lessee to use the Goodyear turn machines exclusively. (See our main brief, p. 261.) The substitution in place of these clauses of the exclusive use cancellation clause which recognizes the right of the lessee to take his additional machines from competitors and merely reserves to the lessor a right to withdraw its own machines of the same kind in such case, is clearly not the adoption of a more oppressive clause.

The auxiliary restricted use clause restricting the use of auxiliary machines was employed by the constituent companies. (See our main brief, p. 268.)

The repair parts clause was used by all the constituent companies (see our main brief, pp. 259-268).

The leases of the constituent companies permitted the lessor to cancel the lease for violation of agreements obligatory upon the lessee.

The Goodyear Company employed the restricted use clause in leasing its ideal machine restricting the use of this machine to the use with the Goodyear Welter and Stitcher (see our main brief, p. 261).

The full capacity clause was used in the Consoli-

dated Company's lessees (see our main brief, page 269).

An examination of the changes made by the United Company thus shows that the only changes in the leases which the United States can possible contend were (1) occasioned by the use of provisions referred to in the petition or in the District Court and (2) which resulted in additional restrictions upon lessees are the use of the full capacity clause in all leases of machines for which a royalty based on use is charged; and a more extensive use of the restricted use clause.

Issue in Respect to Monopoly.

The petition, as filed in the District Court, charged a plan to acquire and a monopoly acquired of all shoe machinery, and the United States undertook to prove this charge. (See our main brief, p. 11.)

After the United States had introduced its direct case, counsel for the United States limited the charge of monopoly to an attempt to acquire a monopoly and a monopoly acquired in

> "machines for preparing and attaching the bottoms to the uppers of boots and shoes, the eyeletting machines and the clicking machines." (See our main brief, p. 14.)

In its proposed amended petition the United States similarly sought to amend the scope of the petition. (Record, Vol. 1, p. 1101).

By thus abandoning the charge of an attempt to monopolize and a monopoly of all shoe machinery

and limiting it to a charge of an attempt to monopolize and a monopoly of bottoming machinery, clicking and eyeletting machinery, the United States eliminated from the charge of monopoly considerably more than half the total number of machines used by the ordinary shoe manufacturer in his factory. (See our main brief, pp. 606, 607.)

The United States in this Court has attempted to limit its charge still further. Instead of charging monopoly of all bottoming machines, clicking and eyeletting machines, it now disclaims any monopoly of general department machines, a large number of which are used in preparing the bottoms of shoes and in the bottoming process. Furthermore, at page 150 of its brief, the United States apparently limits its charge of monopoly to twelve machines enumerated in the table which is there set forth. If it does not intend to limit its charge to these particular machines, it is quite clear from the record that it can not, with any possibility of reason, contend that there is any monopoly in respect to numerous other machines used in the bottoming process.

While the Defendants did not attempt to prove the number of machines of various types which its competitors put out, believing that it was for the United States to prove its case, and not primarily for the Defendants to disprove it, it definitely appears from the record that there are numerous machines used in the bottoming process which are furnished in large quantities by competitors and in respect to which it is impossible for the United States to claim.

with any reason, that a monopoly exists. For example, take the following machines as illustrations:—

Heel Building Machines,
made by W. J. Young Machinery Company (R., Vol. 1, p. 942), which has put out 2,000 to 3,000; also made by Thomas Bostock, who has put out 100 a year (R., Vol. 1, p. 904).

Fairstitching Machines,
made by Puritan Manufacturing Company, which had put out 1,000 (R., Vol. 1, p. 891).

Cementing Machines for Cementing Soles,
made by Boston Machine Works Company, which has put out 700 to 800 (R., Vol. 1, p. 927).

Heel Compressing Machines,
made by W. J. Young Machinery Company, which has put out over 300. The same concern has also put out various other types of heel-making machinery, including between 150 and 200 lift-gouging machines, and also counter making machinery—300 or 400 counter molding machines having been marketed (R., Vol. 1, pp. 942, 943).

Heel Finishing Machines,
137 made and put out by Harlow Shoe Finishing Machinery Company (R., Vol. 1, p. 942). Similar machines put out by Donnelly Machine Company, which sells 15 or 20 a year (R., Vol. 1. p. 944); by Beckman Machine Company

(R., Vol. 1, pp. 925, 926); and by Matson-Hoyt Machine Company (R., Vol. 1, p. 928).

Toe Softening Machines (to prepare box toe for lasting operation),

made by Beckwith Box Toe Company, 200 having been placed during two or three years (R., Vol. 1, p. 926).

Also machines for same purpose made and put out in considerable quantities by Carlson Brothers (R., Vol. 1, pp. 905-906).

Sole Cutting or Dinking Machines,

made by Quarmby & Hilliker, 150 to 200 put out (R., Vol. 1, p. 929).

Also made by Seelye Manufacturing Company (our main brief, p. 819), which sold 50 to 100 a year in 1899 and is still selling them (R., Vol. 1, p. 328).

Also made by Tower Brothers, who put out 10 or 12 a year (R., Vol. 1, p. 907).

Sole Channelers,

made by Hamel Shoe Machinery Company, and its predecessors, 70 put out (R., Vol. 1, p. 326).

Same concern has put out 20 types of bottoming machines to the extent of between 400 and 450 separate machines (our main brief, p. 810);

Also 70 to 80 channelers made by Haverhill Shoe Machinery Company (our main brief, p. 812).

Also 25 to 30 channeling machines made and put out by American Worsted Machinery Company (R., Vol. 1, p. 953).

Sole Molding Machines,
made by Haverhill Shoe Machinery Company which has put out 40 to 50. (R., Vol. 1, p. 292):
Also 35 made and put out by Hamel Shoe Machinery Company (R., Vol. 1, p. 326).

Sole Leather Rolling Machines,
made by Quarmby & Hilliker which has put out 50; same concern makes stripping machines, having put out 75 (R., Vol. 1, p. 929).

Insole Flap Slashing Machines,
made by Boston Machine Works Company, which employs 100 men and has put out 50 of these slashing machines besides many other types (R., Vol. 1, p. 927).

Welt Grooving and Beveling Machines,

Welt Beating Machines,
made by Hamel Shoe Machinery Company which has put out 25 of each (R., Vol. 1, p. 326).

Bottom Buffing Machines,
made by Donnelly Machine Company which puts out 18 to 20 a year (R., Vol. 1, p. 943).
Tower Brothers also make and put out 10 a year (R., Vol. 1, p. 907).

Numerous other bottoming machines have been made and put out by a score and more of other concerns. (See our main brief, pp. 808-834.)

The result is this:

The United States in the petition charged a mon-

opoly of all shoe machinery. It undertook to prove this charge at the trial and the Defendants were then called upon only to meet this charge.

At the end of the trial it limited its charge to a monopoly of bottoming machines, clicking and eyeletting machines, that is, to a monopoly of most of the types of machines which the United Company manufactures.

In this Court it has apparently undertaken to limit its case still more seriously. It has now chosen twelve machines (brief for United States, p. 150) out of some three hundred different types of machines which the United Company produces and charges that the United Company has a monopoly of these machines.

The character of these particular machines chosen by the United States is referred to in our reply brief (pp. 66 to 72). It is there shown that in respect to three of the machines, instead of the United Company putting out additional machines from 1900 to 1911, the number of machines which the United Company has under lease has actually been reduced. In respect to others, it is shown that they are entirely new machines invented by the United Company since its formation which perform operations previously performed by hand and which are strongly patented. In respect to the McKay machine, it is definitely shown that the United Company has furnished certainly less than half of the total machines in use. In respect to other machines, it is shown that at the time the United Company was formed practically all the

machines of that kind in use were owned by it; that it has put out a comparatively small number of these machines since that date, and in respect to several of these machines, notably the stitcher, a substantial portion of the increase in the number in use since 1900 have been put out by competitors, and the number of other manufacturers putting out welters, stitchers, lasters, nailing and heeling machines is larger and their capacity and power much greater than in 1899.

But apart from this failure of the United States to prove monopoly in respect to these machines, we submit that the question of whether the United Company has an unlawful monopoly of these few types of machines is a very different question from the issue presented by the petition, namely, whether the United Company has a monopoly of all machinery and a very different question from the issue presented by the United States in argument in the District Court and decided by the District Court, namely, whether the United Company has a monopoly of all the numerous types of bottoming machines, clicking and eyeletting machines.

It will be obvious to the Court that if the United Company had been charged in the District Court with a monopoly of twelve specified machines, or even of a slightly larger number out of the three hundred or more types which it manufactures, that it would have been able to direct its evidence specifically to these machines and the reasons for such success as it has had in furnishing these particular machines, and that its presentation of the case might,

and we submit, would have been very different from what it was in view of the very different charge presented in the District Court.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. [redacted] 207

UNITED STATES OF AMERICA, APPELLANT,

vs.

UNITED SHOE MACHINERY COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR GENERAL SHOE MACHINERY COMPANY (SUCCESSOR TO BOYLSTON MANUFACTURING COMPANY).

FRANK Y. GLADNEY,
Amicus Curiæ.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 545.

UNITED STATES OF AMERICA, APPELLANT,

vs.

UNITED SHOE MACHINERY COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR GENERAL SHOE MACHINERY COMPANY (SUCCESSOR TO BOYLSTON MANUFACTURING COMPANY).

SYNOPSIS.

The Patents are Irrelevant,
for

I. What is Granted by the Patent Statutes
II. Is Not Denied by the Anti-Trust Act,
and (reversely)
III. What is Denied by the Anti-Trust Act
IV. Is Not Granted by the Patent Statutes.

V. Irrelevancy Stated in Terms of Procedure.

I. What is Granted by the Patent Statutes.

A. The Right.—(*i*) Its source and (*ii*) its scope.
B. The Remedy.—(*i*) Its source, scope and (*ii*) its exclusiveness.

A.

The Right.—(i) Its Source.

The right is created by the patent statutes.

Gayler *vs.* Wilder (1850), 10 How., at 494 (Chief Justice Taney):

> "The monopoly did not exist at common law, and the rights, therefore, which may be exercised under it cannot be regulated by the rules of the common law. It is created by the act of Congress; and no rights can be acquired in it unless authorized by statute, and in the manner the statute prescribes."

And so—

> [Brown *vs.* Duchesne (1856), 19 How., at 195 (Chief Justice Taney): Shovel Co. *vs.* Flint (1890), 137

U. S., at 43 (Mr. Justice Gray); Paper Bag Patent Case (1908), 210 U. S., at 423 (Mr. Justice McKenna).]

The Right.—(ii) Its Scope. The Right Is Negative.

Bloomer *vs.* McQuewan (1852), 14 How., at 549 (Chief Justice Taney):

> "The franchise which the patent grants, consists altogether in the right to exclude every one from making, using, or vending the thing patented, without the permission of the patentee. This is all that he obtains by the patent."

The other definitions do but clarify the one given:

> [Patterson *vs.* Kentucky (1878), 97 U. S., at 507 (Mr. Justice Harlan); U. S. *vs.* Bell Telephone Co. (1895), 167 U. S., at 238-239 (Mr. Justice Brewer); Paper Bag Patent Case (1908), 210 U. S., at 424 (Mr. Justice McKenna); Bauer *vs.* O'Donnell (1913), 229 U. S., at 10 (Mr. Justice Day).]

B.

The Remedy.—(i) Its Source and Scope.

It is created by statute, and consists altogether in the right to bring infringement suits (R. S., sections 4919, 4921).

The Remedy.—(ii) Its Exclusiveness.

Globe Newspaper Co. *vs.* Walker (1907), 210 U. S., at 364-365 (Mr. Justice Day):

> Import.—Where a statute creates a right and prescribes the remedy, the latter is exclusive and has no alternative.

Being exclusive, the remedy is the essence of the right. U. S. *vs.* Motion Picture Patents Co. (1915), D. C. Pa., 225 Fed., at 804):

> "It (*i. e.*, the patent) is the right to a remedy."

Paper Bag Patent Case (1908), 210 U. S., at 430 (Mr. Justice McKenna):

> "It hardly needs be pointed out that the right can only retain its attribute of exclusiveness by a prevention of its violation. Anything but prevention takes away the privilege which the law confers upon the patentee."

That was said of the statutory action for infringement.

Restating the foregoing in the nomenclature of commerce: *A patent* (if valid, otherwise it is no patent) *is a grant of the right to exclude competition in the thing patented by means of infringement suits in the courts of the United States and not otherwise.*

Of course, the suits may fail; the patent may be declared invalid or not infringed. The right has only a *prima facie* validity, and the article sought to be excluded may be a commercial, but not a patent law, equivalent. The ultimate validity of a given patent right cannot be established, its scope cannot be measured, except by infringement litigation. The patent is a right to litigate; nothing else. And such terms as "patented machine" and "infringing machine" are argumentative, unless or until a court, in the particular instance, has by its decree infused them with finality.

(i. e., What Is Granted by the Patent Statutes)

II. Is Not Denied by the Anti-trust Act.

The anti-trust act does not prohibit the exclusion of competition by infringement suits. In an infringement suit by the patentee to exclude competition, it is no defense that he is a party to a contract, combination, or conspiracy in restraint of trade; the anti-trust act and its prohibitions are irrelevant.

No ruling on the point by this court has been found, but there are decisions elsewhere.

Strait *vs.* National Harrow Co. (1892, C. C.), 51 Fed., at 820 (Judge Wallace):

> "In a suit brought for the infringement of a patent by the owner, any such inquiry (as to the patentee's being a party to an unlawful combination) at the behest of the infringer, would be as impertinent as one in respect to the moral character or antecedents of the plaintiff in an ordinary suit for trespass upon his property."

Likewise:

> [Edison El. Light Co. *vs.* Sawyer-Mann Co. (1892, C. C. A.), 53 Fed., at 598; Soda Fountain Co. *vs.* Green (1895, C. C.), 69 Fed., 333; General Electric Co. *vs.* Wise (1903, C. C.), 119 Fed., 922.]

Therefore, *in a suit by the United Company for the infringement of one of its patents mentioned in this record, the allegations and proofs in the record concerning the contracts and their illegality under the anti-trust act would be impertinent.*

The validity and scope of patent rights, and the right to prosecute an infringement suit, are not contingent upon, and cannot be measured by, either the anti-trust act or contracts charged to be illegal thereunder.

III. Reversely, (A) What is Denied by the Anti-trust Act

IV. (B) Is Not Granted by the Patent Statutes.

A. The Scope of the Denial.

The prohibitions, as respects instrumentalities, are confined to contracts, combinations, in the form of trust or otherwise, and conspiracies.

> As to the rule of interpretation and construction of the statute as applied to such instrumentalities of exclusion: Standard Sanitary Mfg. Co. *vs.* U. S. (1912), 226 U. S., at 49 (Mr. Justice McKenna):
>
> > "The law is its own measure of right and wrong, of what it permits, or forbids, and the judgment of the courts cannot be set up against it in a supposed accommodation of its policy with the good intention of parties and, it may be, of some good results."

(*i. e., What Is Denied by the Anti-trust Act*)

IV. (B) Is Not Granted by the Patent Statute.

The right to contract, combine, or conspire, in any regard or for any purpose, is not sanctioned by the patent law.

U. S. *vs.* Bell Telephone Co. (1886, C. C.), 29 Fed., at 43 (Judge, afterwards Mr. Justice, Jackson):

> "In permitting others to *use* the patented thing, the owner of the patent, whether a corporation or a private person, is not exercising any Federal right, privilege, or franchise. The right of the patent owner to permit or license the use of the invention is not the creature of the Federal franchise or statute, but of the common law." (Italics in the text.)

Minnesota *vs.* Barber (1890), 136 U. S., at 327 (stating the import of the earlier decision in Patterson *vs.* Kentucky, Mr. Justice Harlan):

> "We said that the patent was not a regulation of commerce, nor a license to sell the patented article but a grant that no one else should manufacture or sell that article, and, therefore, a grant simply of an exclusive right in the discovery which the national authority could protect against all interference;"

The same reasoning is implicit in the decision heretofore cited on the source and scope of the patent right.

As this is the crux, perhaps it is permissible to dwell upon it for a few sentences. The legality of a lease contract, whether it permits the use of a machine or a tenement house, is not dependent upon and cannot be measured by the patent statutes, or by the right of the lessor to maintain an infringement suit. The rights of lessor and lessee in *the specimen machine leased* would not be affected by a repeal of the patent statutes. The rights conferred by the lessor and the duties assumed by the lessee *with respect to that specimen* are created by and are dependent upon the contract, and not the statute: take away the contract and they disappear.

Reciting the patents in the leases cannot alter the patent law which grants the right to exclude competition only by an infringement suit; reciting them in the answer cannot alter the Anti-Trust Act which condemns the exclusion of competition by contracts, combinations, or conspiracies. Both recitals are irrelevant in the respective connections.

The application is to be seen in two decisions: one by this court, and one by a lower tribunal. The latter is mentioned first only because the attempt to stretch the law (as seems

to counsel) went to an extreme not equalled in the other instance.

U. S. *vs.* Patterson (1913 D. C.), 205 Fed., 292, S. C., on appeal.

Patterson *vs.* U. S. (C. C. A. 6th), 222 Fed., 592.

Here the defendants—officers and agents of the National Cash Register Company—were indicted for organizing and carrying out a conspiracy in restraint of trade in cash registers. One defense, insisted on with elaboration, was that the trade restrained, if any, by the conspiracy, was a trade in devices which infringed the defendants' patents. The contention was that since the defendants had a right to exclude competition under their patents, there was no violation of the law in restraining such trade by the conspiracy.

The District Court ruled that the patents were irrelevant as a defense and *denied their admission in evidence.*

L. c. 205 Fed., 297 (District Judge Hollister):

> "A part of the patent right is the expressly granted power to bring suits to exclude all infringers. The patentee has no sanction under the patent laws to exclude infringers in any other way."

The ruling of the District Court on the point noted was affirmed by the Court of Appeals. Mr. Justice Day and District Judges Sandford and Cochran sat, the latter delivering the opinion, *l. c.*, 222 Fed., 646:

> "It is not a question whether it is rightful or wrongful interstate trade or commerce that is covered by the conspiracy. It is sufficient that it is interstate trade or commerce."

It is decided, then, *that a conspiracy which restrains interstate trade even in infringing articles violates the Anti-Trust Act; such conspiracy is not sanctioned by the patent*

law. The patents are irrelevant as a defense to such conspiracy.

The other case is

Standard Sanitary Mfg. Co. *vs.* United States (1912), 226 U. S. (Mr. Justice McKenna).

There the court condemned, as illegal under the Anti-Trust Act, a combination in restraint of trade in enameled ware. The nucleus of the combination was a patent: and the restraint took the form of a system of license contracts under the patent. The defense was that the restraint was sanctioned by the patent statute and consequently not to be condemned under the Sherman law.

The court placed the scheme in a class with one condemned in Montague *vs.* Lowry, 193 U. S., 38, *where there was no patent*, and thereupon thrust the patent out of the case with a sentence, *l. c.*, 49:

> "The added element of the patent in the case at bar cannot confer immunity from a like condemnation, for the reasons we have stated."

It is decided, then, by this court, that a system of license contracts under a patent which restrains interstate trade in the articles made under the license violates the Anti-Trust Act; such restraint by contract is not sanctioned by the patent law. The patent is irrelevant as a defense of such restraint.

The "added element" of the copyright has been similarly dealt with. Straus *vs.* Am. Publishers' Ass'n (1913), 231 U. S., at 234-235 (Mr. Justice Day).

Summarizing the Preceding.

The patent law is a statute of grant; it authorizes the patent owner to exclude competition by infringement suits (if he can; many times the attempt fails).

The Anti-Trust Act is a statute of prohibitions or denials;

it denounces the exclusion of competition by means of contracts, combinations or conspiracies. One statute creates rights to bring infringement suits; the other makes certain contracts, combinations and conspiracies crimes.

There is no conflict beween the two enactments; neither carves an exception out of the other. They sanction rights and duties in two separate domains.

In a suit for the infringement of *a patent right*, the Anti-Trust Act and the *duties enjoined by it* are without the issue and irrelevant.

In a proceeding to enforce the *duties enjoined* by the Anti-Trust Act, the patent statutes and *rights* granted thereunder are without the issue and irrelevant.

Whatever judgment this court enters in this proceeding cannot abridge or impair the right of the patent owner to prosecute infringers. "And this is all that he obtains by the patent" (Bloomer *vs.* McQuewan, *supra*).

To expand the right of every patent owner to bring infringement suits, so as to include the right to enter into and carry out contracts, combinations and conspiracies in restraint of interstate and international commerce (all of which are crimes) would be to wrench both the patent statute and the Anti-Trust Act out of their declared functions and make each of them

> "mean not what it says, but what interested parties wish it to mean at a particular time and under particular circumstances" (Northern Securities Co., *vs.* U. S., 193 U. S., at 350, Mr. Justice Harlan).

The Patents Are Irrelevant.

V. The Same Result Stated in Terms of Procedure.

In this proceeding the court cannot adjudicate the validity or invalidity of the patents. There is no such issue.

This court has held that the only way in which the United States can attack or question the validity of a patent, is by

a bill in equity, to have the patent cancelled for fraud in its procurement (U. S. *vs.* Am. Bell Telephone Co., 128 U. S., 315).

This is not such a proceeding, and, therefore, a judgment declaring the patents *invalid* would transcend the record that is, as well as one that could have been made.

The court cannot adjudicate the patents *valid,* for their validity has not been challenged; there are no infringers or alleged infringers before the court, and no other person that could be bound or affected by the judgment in that regard. The allegations in the answer of the existence, scope and validity of the patents go in the air.

The court will not *assume* the validity or invalidity of the patents in determining the legality of the contracts. For, the legality of the contracts is determinable under the Anti-Trust Act; the validity of the patents under the patent statutes. To decree the legality or illegality of the contracts upon the assumption of the validity or invalidity of the patents would be as extraordinary as (in a patent case) to decree the validity or invalidity of the patents upon an assumption of the legality or illegality of the contracts. Rights under the patent statutes are not contingent upon the violation or assumed violation of duties enjoined by the Anti-Trust Act; duties under the Anti-Trust Act cannot be absolved by rights or assumed rights under the patent statutes.

All the space and learning devoted to patents and the patent law on this record are as entirely foreign to the issue involved as all the space and learning devoted to contracts and the Anti-Trust Act would be to the issue in a suit for the infringement of one of the United Company's patents. For, the statute of which the court has here to find the meaning—

> "is a criminal statute. The two sections on which the Government relies both make certain acts crimes. That is their immediate purpose and that is what they say. It is vain to insist that this is not a crimi-

> nal proceeding. The words cannot be read one way in a suit which is to end in fine and imprisonment and another way in which one seeks an injunction" (Northern Securities Co. *vs.* U. S., 193 U. S., at 401, Mr. Justice Holmes, *dissenting*).

In such "a criminal proceeding" this court is asked to adjudicate or assume the validity of the whole jangled mass of patents and thereupon to sanction the exclusion by these contracts of all competitors for 17 years without giving such competitors any opportunity to contest the validity of the patents or to prove the noninfringing character of their devices. This would be the equivalent of granting to the defendants a patent on the industry, for the contracts exclude competition without regard to an *adjudication* of the validity or scope of the patents or the noninfringing character of the excluded machines.

The court declined so to do with respect to the Arrott patent interposed as a defense in the *Standard Sanitary Case, supra,* and the wisdom of the refusal has been demonstrated. For, after this court condemned the scheme to exclude competition by license contracts under that patent, the Circuit Court of Appeals for the Third Circuit, which previously had twice sustained the validity of the Arrott patent, on the third round declared it void (Standard Sanitary Mfg. Co. *vs.* Iron City Mfg. Co., 222 Fed., 671).

For aught that this court can know from this record, what is true of the Arrott patent may be true of every patent that the United Company now owns or ever has owned.

The patents are irrelevant.

Conclusion.

Finally (and this is repetition) the patents are irrelevant for the reason that the condemnation of the restrictions and all of them, will not take from the patent right one jot or tittle.

Victor Talking Machine Co. *vs.* The Fair (1903 C. C. A., 7th), 123 Fed., at 426 (Judge Baker):

"Within his domain, the patentee is czar."

No doubt there is a truth in the connotation, for this court has held that every citizen, including (under many circumstances) the officers of the Government, must respond to a charge of infringement. But the domain of this czar is bounded north, south, east, and west by the right to exclude, and the only sceptre that he wields is an infringement suit, which is not always compelling. Congress by the Anti-Trust Act has established another domain; one in which all interstate trade and commerce must be free from restraints by contracts, combinations, or conspiracies; and in the midst of that domain has placed the jail as a warning to all invaders. The patentee is as powerless in this wider domain as the public and officers of the Government are in his narrower one. They must bow to his prerogative when it is sanctioned by the process of the courts in infringement suits. He in turn must bow to the will of the public sanctioned in the Anti-Trust Act.

The czar in this case has abandoned his domain and invaded one in which there are no rights and in which he has no more immunities than any other citizen.

The Case as a Whole.

This is a case "of great expectation" (Wheaton *vs.* Peters (1834), 8 Peters, at 655, Mr. Justice McLean).

It is feared that the greater part of what is herein written (and much more that has been ruminated) is a vain repetition of truisms which may weary but cannot inform the court.

Aside from the intercorporate relationships of the defendants (matters not touched on here) the case propounds a single astonishing question: *Can one who has the right to*

attempt the exclusion of competition by infringement suits, in the name, but not in the exercise, of that right, actually exclude competition by a system of contracts creating a vast combination?

Throughout there are two statutes and two instrumentalities for excluding competition. These are paired: the patent statute and an infringement suit; the Anti-Trust Act and a contract. One instrumentality is given and one taken away. Congress by the patent statute has created the infringement suit out of the void; the same Congress by the Anti-Trust Act has destroyed the contract, and in destroying has transmuted it into a crime. The defendants contend that the mere *possession* (it is not employed) of the *legal* instrumentality authorizes them to substitute therefor and use instead the *criminal* instrumentality.

The truly titanic effort of the defendants; the origin of the shoe machinery business in the long ago, under the protecting ægis of the patent law; its history and perfectly normal growth in which, with the aging of the art, patents have fallen in ever-increasing numbers, like manna from the heavens; the far-seeing beneficence of the United Company, which, in binding the shoe manufacturer to use only its machines, has precluded the calamity incident to the ignorant choice of a competitor's; the welters, sluggers and stitchers, the principals and auxiliaries, that work in teams, but balk when singly hitched; the tying clauses that do not tie; the excluding clauses that do not exclude; the return charges which preclude a return; this and more, elaborated with patience, illuminated with ingenuity and informed from beginning to end with a protestation of good intentions, bursting from the heaving depths of counsel's heart with a violence that brooks no denial; and all and more sanctioned by the District Court;—comes finally to this pass.

For no ingenuity of argument, no violence of protestation and no amplitude of citation can efface or conceal the capital fact (to a bare statement of which in one sentence, but for

hazarding an imputation of a design to affront the court, this brief might well be confined): *that the system of reticulated restrictions is only "a commercial device"* (Packet Co. *vs.* Bay, 200 U. S., 179, Mr. Justice Holmes) *whereby, as instrumentalities for excluding competition, contracts are substituted for infringement suits.*

By the substitution the effort is made to invest the contract with the protective coloration of the patent right, so that the court, being powerless to deal with the latter, will not lay hands on the former.

Whether or not the substitution shall be sanctioned rests with this court. One may not strive with the court, but perhaps it is permissible to hazard the prediction that if the substitution is sanctioned the driven piles of the Anti-Trust Act and of the anti-monopoly statutes of every State in the Union will creel, and the greater part of those structures will tumble down in ruins.

The patents are irrelevant, for they are a disguise.

Respectfully submitted,

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Amicus Curiæ.

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No. 207.

UNITED STATES OF AMERICA, Appellant,

v.

UNITED SHOE MACHINERY COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR GENERAL SHOE MACHINERY COMPANY (SUCCESSOR TO BOYLSTON MANUFACTURING COMPANY).

PART II. ON REARGUMENT.

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SYNOPSIS.

The Leases.

Legality of the Restrictions, — that is the issue:

Preliminarily.

Benefits conferred or offered by the lessor extraneous the lessor's contractual obligation are irrelevant, for such benefits

Page

A. are not obligated of the lessor or secured to the lessee by the leases and . . . 1

B. are not affected by the Anti-Trust Act . . 3

The Restrictions.

I. Preliminarily to the scope and effect of the restrictions: They are genuine restraints of trade and not mere "reservations" or "grants" of "limited rights" 4

II. The exclusive use clause, in the category of a given type, excludes the use, by the lessee, of any competitive equivalent specimen for seventeen years 10

III. The prohibitive use or tying clause generalizes the effect of the exclusive use clause in the category of different types. 12

IV. Each is an integral function of the other; correlated and interacting, they exclude the use by the lessee of any competitive equivalent specimen (machine or material) of any and every type embraced throughout the seventeen years. 14

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V. The machines (and with them their accessory materials) are integrated into the system of restrictions in such fashion that the maximum degree of the lessee's dependency on the lessor for any particular type of machine, at a given point of time, is, by the lessee obligatorily assumed, in undiminished degree throughout 17 years, as respects every specimen machine (and its restricted material, if any) of every type embraced. **This is the master principle pursuant to which all the machines and materials are contractually articulated into one unit** 15

VI. The cancellation clause aggravates the evil of the restrictions; judicial inquiry into the legality of even the least of them can be invoked by a lessee, only at the hazard of losing his effective equipment 25

VII. Conclusion: the intent of the defendants is attested by the language of the restrictions: commendation of the restrictions by certain lessees is an inevitable concomitant of the lessor's power over all lessees 29

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 207.

UNITED STATES OF AMERICA, APPELLANT,

v.

UNITED SHOE MACHINERY COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR GENERAL SHOE MACHINERY COMPANY (SUCCESSOR TO BOYLSTON MANUFACTURING COMPANY).

PART II ON REARGUMENT.

The legality of the restrictions of the leases is the issue.

A. The Benefits Urged are Not Obligated of the Lessor, or Secured to the Lessees, by the Leases.

In the attempt to justify the restrictions there is relentless insistence on the surpassing merit of the machines, the benefits of the lessor's "service" to the lessees, and the lessor's offer of "independent" leases as the alternative of the restricted leases.

But those things are no part of the lessor's contractual obligation. It nowhere undertakes to furnish the "best machines made". On the contrary, the lessee by the

terms of the leases is compelled to use the machines furnished exclusively for seventeen years, even though during the period the "best machines made" are at the disposition of some one other than the lessor. Indeed, the lessee is expressly prohibited from changing, altering or improving the machines without the written consent of the lessor.

The lessor is not obligated to furnish "any service"; "free of charge" or otherwise. On the contrary, the lessee is expressly bound at his own expense to keep the machines in good repair; to purchase all parts exclusively from the lessor (provided it will supply them; it is nowhere bound to do so) at such prices as it sees fit to establish, unrestrained by any provision in the leases. The lessor is the sole judge as to when repairs are needed, what they are, and what they shall cost. The lessee has but to submit and pay.

The reiteration of the "independent" leases is incessant; it suggests a power riveter.

But, again, the "independent" leases are no part of the restricted leases. The latter do not so much as give the lessee the option to put off his dependence and take on independence. The utmost that is claimed is that when (and as often as) the restricted leases were signed and put into effect the lessor was ready and willing to grant the "independent" leases instead.

However, the restricted leases, as such (without any alloy of freedom to the lessee), long have been, are now, and, by their terms, long will be, in effect. The "independent" leases, in so far as they are related to the restricted, are only a memorial of a freedom once tendered and declined. *Why* this is so is much disputed. Defendants say the lessees prefer the lessor's machines for use exclusively "in series" or as "a team". On the other hand it is asserted that the terms of the "independent"

leases are prohibitive. But the fact that the one set of leases have been executed and are being carried out from year to year while the other set, as to lessees bound by restricted leases, are only past potentialities, is not questioned.

It is obvious, then, that the terms of the "independent" leases are irrelevant to the legality of restrictions in the restricted leases.

If some "independent" leases have been executed and are in effect, then their legality must be determined by their contents. But their mere offer cannot affect the legality of the restricted leases.

The legality or illegality of what has been agreed upon and carried out cannot be even remotely contingent upon the legality or illegality of something else that might have been (but was not) agreed upon.

In the domain of private law a tender of one's obligation may be the equivalent of performance, but this cannot obtain between a citizen and the sovereign. The latter exacts actual obedience of its mandate and rejects an alternative whether tendered or performed. This court must break new ground before an asserted willingness to obey the law will justify its actual disobedience. The lessors may not put into effect the restricted leases and over them erect its antecedent, unexecuted alternative as a lightning rod to ground the incidence of the statute.

B. Such Benefits are Not Affected by the Anti-Trust Act.

Against "the best machines made", "service free of charge", the "instruction of operators free of charge" and "independent" leases (assuming the thing is what its name implies) there is no law. If the court should annul all the restrictions complained of the lessor would still be free to offer all these benefits "free of charge" and the lessees free to accept them and to use the machines "in

series" or as "a team" to the complete exclusion of other machines and materials, *although* they would not as now be obligated so to do for seventeen years.

Throughout the argument the defendants stoutly maintain that the use of the United Company's machines to the almost complete exclusion of other makes is due solely to the superior excellence of the lessor's machines and the surpassing "service" afforded. But after the removal of all the restrictions that excellence and "service" would still have all the commercial potency that they now have. The Anti-Trust Act has to do exclusively with contracts, combinations and conspiracies. It has no pertinency to unobligated gratuities, whether in the form of purely philanthropic offerings or of sops thrown by a commercial autocrat to its grimacing victims to dissipate the rancor of their dependency.

I.

Preliminary to the scope and effect of the restrictions: they are genuine restraints of trade and not mere "reservations" or "grants" of "limited rights".

Before attempting to present the scope and effect of the restrictions it is necessary to meet the defendants' denial of the essential restrictive nature of them. The great number of restrictions, their intricate correlation and the mystifying indirection of their phraseology certainly are without precedent among the decisions of this court. Yet they all may be reduced to the principle of either (1) the exclusive use clause or (2) the prohibitive use or tying clause.

(1) The *exclusive use clause* (invariably characterized by defendants as "the exclusive use *cancellation* clause") provides in express terms that if the lessee of a lasting machine (for example) shall fail or cease to use exclusively

lasting machines of the lessor, the lessor may at its option "terminate forthwith by notice in writing this lease and any other lease of lasting machines", etc.

It is denied that this language imposes any restraint upon the lessee as to his right to use competing machines of the character. The contention is that the provision does not bind the lessee not to use competing machines, but only reserves to the lessor the right to withdraw its own in case he does. This refinement is much stressed by defendants, but a slight inspection shows that it is a mere verbal argument and that it ignores the effect of the reservation as a restraint upon trade. For, consider the correlative rights and duties of lessor and lessee in the leased machine, before and after the lessee's use of a competitive machine. Thus

I. Before using competitive machine.

LESSOR.	LESSEE.
Duty: to permit use for 17 yrs.	Right: to use for 17 yrs.
Right: to cancel, if etc.	Duty: to pay taxes, return charges, etc.

II. After using competitive machine.

Duty: none.	Right: to use at will of lessor.
Right: to cancel, absolute.	Duty: to pay taxes, return charges, etc.

By the use of a competitive machine, the lessee's right and the lessor's duty as respects the leased machine, *in the category of time*, are destroyed, and the lessor's right to cancel is transmuted from a contingent into an absolute right, but (and it is not without a premeditated effect) the lessee's duty remains as before. If the lessor reserved the right to double the royalty (instead of cancelling the

lease) in the event of the use of a competitive machine, the restraint on the lessee would be undeniably obvious. The transmutation of rights and duties in point of time and security of tenure is just as certainly a restraint and one of more deterrent power than an increase in royalty. The burden of an increased royalty may be sufferable, it can be foreseen and its incidence is calculable. But the insecurity and uncertainty of the lessee's situation, incident to the daily recurring hazard of losing an important part of his equipment at the unpredictable choice of the lessor, is superlatively dissuading. It is to be observed that the use of *one* competitive machine (of the type nominated in the clause) even though for but a brief period gives the lessor the right forthwith to retake *all* its own of the same character. The minimum displacement of the lessor's machines, whether in point of number or time, suffices to draw the maximum penalty in both measures. It will shortly be shown that this deadfall, on a huge scale, is erected likewise over all other machines put out under the leases complained of.

The *additional machinery clause* (is in effect an equivalent of the exclusive use clause and) provides in express terms that if the lessee has more work of the kind which can be performed by any of the machines of the lessor (*i. e.*, of the particular type specified) than the capacity of the machine leased, then (1) the lessee shall either take from the lessor sufficient additional machinery to perform the work or (2) in case the lessee fails to do so then the lessor may cancel forthwith "this lease and any other lease" covering machines of the character.

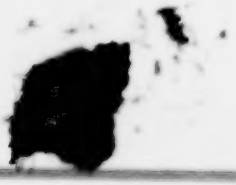
Defendants seek to minimize its significance in this proceeding by the statement that it was discontinued in 1907. In view of the fact that the leases run for seventeen years, the clause can scarcely be said to possess only an historical interest. The net result of substituting the

exclusive use, for this clause, is that the lessee's express obligation to take the additional machines exclusively from the lessor is dropped, and the lessor's alternative right of cancellation for his failure to do so is retained alone. The greater efficacy of the latter to restrain the lessee is undoubted. The lessor by the substitution has not weakened its control, but only rendered it less obtrusive.

(2) The *prohibitive use or tying clause* (characterized by the defendants as "the restricted use clause") provides that the lessee of a lasting machine (for example) shall not use the same on any welted shoes which have been or shall be welted "in whole or in part" by the aid of any welt sewing machinery not held under lease from the lessor, etc.

Notwithstanding the defendants throughout contrast the "independent" with the restricted leases, it is denied that this clause imposes any restrictions on the lessee. In support of this denial the somewhat surprising contention is made that the clause does not obligate the lessee to use either the leased machine or any other machines of the United Company at all. This truism applies equally to the restrictions dealt with in the Motion Picture Patents case (1917), 243 U.S. 502 (Mr. Justice Clarke), and its familiar antecedents. The lessee by the terms of the lease takes the machine for seventeen years. During that period he is responsible for its safe preservation, must insure it against loss by fire, pay the taxes assessed against it, bear the cost of its repair, and at the end of seventeen years return it to the lessor rehabilitated, and the return and transportation charges paid. These various obligations are predicated on the active use of the machine by the lessee or the leases must be placed outside the pale of business transactions.

It is further insisted that the lessor "grants" only a



"limited right" to use the machine and "reserves to itself" all other rights of use in that machine. But it borders on an occultation to say that the lessor has "granted" the right to use a particular specimen machine A, only with its other machine B, and has "reserved to itself" the right to use that same specimen A with some other machine, say C. For the use of a particular chattel is an inseparable incident of its possession in time and place. The lessee has exclusive possession of the specimen in his place of business for seventeen years. That granted, to say that the lessor has "reserved to itself" *any* right of use *in that specimen* within that seventeen years is to fling an impotent challenge to the unalterable constitution of time, space and matter. In connection with land the terminology of "grants" and "reservations" of the right of use may have a realizable meaning. The owner may grant an exclusive right to mine and use the coal underlying and reserve to himself the exclusive right to use and enjoy the surface of the soil. But the right to use (and, therefore, necessarily, to possess) a chattel cannot be subdivided or apportioned except in the category of time, for the reason that simultaneous possession (and, therefore, use) of it by two distinct and separate persons is inconceivable.

The argument struggled with takes on a superficial plausibleness by reason of the double negative employed in the clause. The stereotype form of the prohibitive use or tying clause affecting machines of a different type is as follows: The lessor's leased machine A shall *not* be used to perform operation X on any shoe as to which operation Y is or shall be performed by machine B, *not* leased from the lessor. It is just as true in this clause as it is in algebra, that two negatives equal a positive. Strike out the negatives (as we may without altering the meaning) and it is obvious that the lessee is under a positive con-

tractuàl obligation to use machine B, only in conjunction with A.

This is clear to a demonstration in a tabulation of the correlative rights of lessor and lessee in the leased machine.

LESSOR.	LESSEE.
Duty: to permit use of lessor's machine A to perform operation X only on a shoe as to which operation Y has been or shall be performed by lessor's machine B.	Right: to use lessor's machine A to perform operation X only on a shoe as to which operation Y has been or shall be performed by lessor's machine B.
Right: to have lessee refrain from using lessor's machine A to perform X on any shoe as to which Y has not been or shall not be performed by lessor's machine B.	Duty: to refrain from using A to perform X on any shoe as to which Y has not been or shall not be performed by lessor's machine B.

The lessee is under a *contractual* duty not to use a competitive equivalent of B and this duty correlates a *contractual* right in the lessor.

The principle of the prohibitive use or tying clause is availed of in varying forms and with different effects. The lessee has the right to use certain machines only with accessory materials such as tacks, wire, nails, eyelets, dies, etc., purchased exclusively from the lessor. Again, two machines A and B, performing respectively operations X and Y, are leased for a flat royalty of two cents (for example) for each machine as to each pair of shoes *with the proviso* that if the royalty on A for performing X is paid, that on B for performing Y shall be waived or vice versa. Here the prohibition is accomplished by doubling the royalty on one machine, if the lessee substitutes a

competitive equivalent for the other. There are other variations, but a volunteer may not risk wearying the court with tedious details. Moreover, it was once said: "In an instrument well drawn, as in a poem well composed, silence is sometimes most expressive." *Chisholm* v. *Georgia* (1793), 2 Dall. at 454 (Mr. Justice Wilson).

II.

The exclusive use clause:

In the category of a given type, excludes the use by the lessee of any competitive equivalent machine for seventeen years.

This clause (or its equivalent, the additional machinery clause) is the unit and fundamental restriction. It is likewise the oldest, having been employed in the industry long before the formation of the United Company. So long as specimens of only one type of machine are put out it is all sufficing; as an adjunct to the seventeen year term it is a perfect instrument of monopoly.

In leasing one or only a few specimens the lessor avails of the lessee's momentary dependency on it and by contract projects that dependency as an obligation over a period of seventeen years. At the outset the necessity of resorting to the lessor rests on a fact (*i. e.*, the lessor's exclusive control of the particular type of machine); after the execution of the lease, it rests on an obligation of the lessee extended over seventeen years, regardless of any change in the fact during that long period. To get the use of these only temporarily the lessee must obligate himself to continue that use for the period named. But this is a minor aspect of the matter.

The exclusive use clause obligates the lessee to acquire from the lessor exclusively all additional identical or equivalent specimens required throughout the seventeen years.

At the outset the lessee may require only two specimens; his business may so expand that at the end (say) of ten years he requires fifty additional ones. All these must come exclusively from the lessor under contracts which, from their respective dates, anew project the lessee's dependency seventeen years.

The lessee's temporary need for the use of one or a few specimens is not only as an obligation extended in the category of time seventeen years, but it is likewise simultaneously extended in the category of identical or equivalent specimens so as to embrace all additional machines of the character (however great the number may be) used throughout the period. Such additional machines are put out only on seventeen year leases, so that in the instance of a lessee whose business is expanding the exclusive use clause imports an endless prolongation and a progressive enlargement of the lessee's obligatory dependency on the lessor for the particular type involved. As to the lessee's future requirements for machines of that type competition is completely excluded notwithstanding that competitors may offer equivalents of superior efficiency at lower prices.

The superiority of a given mechanism is relative and lasts only for a brief time. Patents are no guarantee against competition, as the lessor admits when it avails of this clause. There can be no infringement without competition; but there can be (and frequently is) the most intense competition without infringement. The linotype and monotype printing machines, both protected by large numbers of patents, are to a large extent competitive equivalents, each a rival of the other. Automobiles of countless types infest the country like grasshoppers, and no doubt each separate competitive make embodies numerous patented inventions. It is only an accident of history that Morse and Marconi were not contemporaries.

The exclusive use clause in the category of a given type excludes the use by the lessee of any competitive equivalent specimen, whether old, newly invented, patented or unpatented, throughout seventeen years, at the least. It is designed and intended to insure the lessor for seventeen years against the deliberately expected and known imminent hazard of a better machine offered to the lessees on more favorable terms by a rival manufacture. It thoroughly executes the action signified by its name.

The full effect of this clause cannot be made clear until after its correlation is shown.

III.

The prohibitive use or tying clause:

Generalizes the effect of the exclusive use clause in the category of different types of machines (and their accessory materials, if any).

In advance of dealing with the situation that actually existed when the system of restrictions was imposed, let it be supposed that there are two different types of machines designated for the sake of brevity as Type 1 and Type 2. If Type 2 for the time being in its respective sphere is as dominant and as unvexed with competitive equivalents as Type 1, then the exclusive use clause will make the lessor's supply of Type 2 *coexclusive* with its supply of Type 1. On the other hand, if Type 2 is weaker (*i. e.*, in the face of competition) than Type 1, the exclusive use clause will not serve the purpose. (This is notoriously the circumstance in connection with the accessory materials.) The lessee of Type 1 would take a competitive substitute for Type 2 from another source, even though it be a poorer machine, rather than obligate his dependency on the lessor as respects Type 2 for seventeen years.

In this situation the lessor further avails of the lessee's

temporary dependency on it alone for Type 1 by inserting in the lease of that machine the prohibitive use or tying clause and thereby obligates the lessee to use Type 2 exclusively throughout the period. By the insertion of this clause competition as respects Type 2 (the weaker machine) is as completely excluded as it is with respect to Type 1. All subsequent specimens of Type 2 must likewise come exclusively from the lessor. For the lease of Type 1 contains the exclusive use clause and the prohibitive use clause provides that no machine of Type 1 shall be used on any shoe as to which the respective operation of Type 2 has not been or shall not be performed by a machine leased from the lessor. The prohibitive use clause as an adjunct to the exclusive use clause affects all specimens of Type 2. So that it is literally true to say that *that clause generalizes the effect of the exclusive use clause in the category of types embraced.*

The subtle but important fact in connection with the prohibitive use or tying clause is that for seventeen years it imparts to all the types of machines (and their accessory materials, if any) affected, the maximum strength of the strongest when in the apogee of its demand. If there is one type which temporarily is indispensable and as to which at the same time the lessees are dependent exclusively on the lessor, that indispensability in undiminished degree is infused for seventeen years into the weakest type correlated. The lessor's supply of nails, tacks, eyelets, etc., is rendered precisely *coexclusive* with its supply of its most strongly patented machine, when first offered. This chain that binds together new and old machines, patented and unpatented ones, and materials that are wholly open to the public, is as strong as its strongest link, that link taken at the point of time when its strength was at the maximum.

IV.

The exclusive use and prohibitive use clauses:

Each is an integral function of the other.

What the exclusive use clause is to all specimens of the particular type, the prohibitive use or tying clause is to the different types of machines (and the respective restricted materials) embraced. The exclusive use clause alone ties the use of the machines in the category of additional identical or equivalent specimens. If the leases contained only this clause (and it is a staple in the "independent" leases), then a rival machine manufacturer who could supply the shoe manufacturer with all the machines that he required of a given type could compete — provided he could find one who was not obligated as to that type for seventeen years. The prohibitive use clause ties the use of the machines in the category of the different types, it is omitted from the so-called "independent" leases, and the lessor by the initial payments exacted in connection with the omission has placed its own evaluation on the clause as a part of its system of restrictions. If the leases contained this clause only, then a rival who could supply additional equivalent specimens of any of the types could compete in the supply of such additional machines required in the course of time by the lessee.

But the two clauses combined and interacting, each being an integral function of the other, exclude competition even as to a single specimen of any and every type embraced by the two restrictions. To compete, a rival must come prepared to supply the shoe manufacturer with all types embraced by the prohibitive use clause and with all specimens embraced by the exclusive use clause. Even then he must wait at least seventeen years for the opportunity.

V.

The plan pursuant to which the machines and materials are integrated into the system.

The force and effect of each instance of these two restrictions in correlation, and the resultant effect of all the instances, combined and imposed with unequal incidences on the various machines and materials, are matters undeniably difficult of explanation. It may be helpful to begin with the simple and advance towards the complex. In *Chisholm* v. *Georgia* (1793), 2 Dall. at 431, Mr. Justice Iredell said: "I have often found a great deal of confusion to arise from taking too large a view at once."

The outstanding fact of the leasing system is *time values*. Privileges extending over a long period of time are sold in exchange for a price the payment of which is likewise extended. Since the length of time determines the amount of the price, the seller, aiming at the maximum return, fixes a long term and stops at seventeen years — the life of a patent — only because of a supposed legal obstacle to go further. The extended time of the lessee's obligation is the opportunity of the lessor. This is not to intimate a criticism of the leasing system as such; it is only by way of considering an abuse of it. In the instance here involved the seventeen year term serves as the warp in a restraint of which the restrictions are the woof.

Given a brief period of time when the lessee is dependent exclusively on the lessor for an indispensable type of machine, the lessor can transmute that dependency, resting then on a fact, into an obligation and, as such, project it in time beyond the period of the existence of the fact and broaden its scope so as to include many other

things. This is so, for the reason that the shoe manufacturer's need *for the time being*, if not irresistible, is commercially so pressing that it demands satisfaction then, even at the cost of projecting his momentary dependency on the lessor over a long period of years. It is only a truism to say that most necessities are such *in time*. A man stricken with tuberculosis must have the best remedy *then* existent. A better may come in the long run, but meanwhile, in the short run, he may perish. His necessity then and there may be such that, in order to avail of the best remedy then current, he will bind himself to take the same specific or others originating from the same source, exclusively for seventeen years. The factor that brings success or failure in the competitive struggle, is temporal; it changes with time. But a competitor, to survive, must have the best machine extant at any given time. He may get a better in the long run, but in the short run his rivals, who have the machine, will take the business and he will perish.

The compelling dependency of the shoe manufacturers on the lessor at the period of time when the system of restrictions was initiated is a fact established beyond controversy by the record. That dependency did not inhere in any overpowering efficiency or excellence of any particular type of machine. It was inevitably incident to the sudden fusion of the four principal concerns in the creation of the United Company. It is not disputed that these four concerns (viz., 1. Goodyear Shoe Machinery Co., 2. Consolidated and McKay Lasting Co., 3. McKay Shoe Machinery Co., and 4. Eppler Welt Machine Co.) taken together were the source of supply of very much the greater part of the machinery (as defined on the record) available in the country at the time. This is true as to the various then existing types of machines as well as to the aggregate number of specimens of any and all types. Outside of

these four, there was no existing source of supply commensurate with the requirements of the shoe manufacturers as a whole. A large shoe manufacturer for indispensable parts of his entire equipment was unavoidably dependent on the group, but his dependency was decentralized, multiplex and apportioned among the four (undoubtedly in unequal degrees). The pressure which any one could bring to bear in imposing conditions was partial.

That this was the situation, curiously enough, is vouched for by the defendants. They deny that there was competition among any two or more of the group and at the same time they predicate a justification of the restrictions on the assertion that three of the four concerns (the Eppler Company they say was not actually putting out machines), had long employed in their respective leases equivalents of the exclusive, and prohibitive, use clauses. The fact is doubly significant. It shows that these concerns had a practical monopoly within their respective spheres; negativing the existence of any considerable competition on the outside. It shows also that the shoe manufacturers were acutely dependent on each member of the group for that portion of his equipment exclusively supplied by such member.

At this point of time the focus of the lessee's mutual hope and of the machinery manufacturers' mutual fear, was precisely concentric; future competition among the members of the group, each breaking in upon the trade exclusively controlled by the others. For (to revert a sentence) the clauses mentioned when and wherever they occur are at once a signal of danger and a safety device; they attest the imminence of the competition which they exclude; and the reality of the danger is as certain as the efficacy of the device. Where they are, competition is not, but threatens to be.

The hope and the fear alike eventuated in the formation of the United Company. The shoe manufacturers hoped to have their manifold dependency on the group of concerns lifted by competition. The syndicators contrived successfully to centralize, accentuate, intensify and vastly prolong that dependency. From that moment forward the dependence of the shoe manufacturer on the lessor for his entire equipment (as by the record defined) was single and complete. *For the time being* there was no other source of supply; after a while competition might spring up, but meanwhile an equipment must be had on whatever terms obtainable. The United Company had to offer now, not a single machine which had no competitive equivalent whatever, but that which gave it for the time being infinitely more power in imposing conditions, to wit, the one complete equipment, no important part of which had a competitive equivalent whatever. The shoe manufacturers then and there were confronted with the alternative of using the machines on the conditions tendered, or practically going back to the awl, the bristle point and the peg. In the situation the lessor's power and the correlative dependency of the shoe manufacturers was unique in the history of the industry.

After syndicating the machines into a unit, the lessor likewise syndicated the restrictions into a system. The shoe manufacturer's dependency as respects several important types of machines for the moment was complete and rested on the fact that the lessor was then the exclusive source of supply for such types. The whole problem was to convert that dependency into a long time obligation and at the same time broaden that obligation so as to embrace machines and materials for the supply of which the lessees were in no wise dependent on the lessor. To do this the lessor took those types of machines its supply

of which (by reason of patents or otherwise), for the time being, was most absolute and on the right to use those machines grounded an obligation to use all the other machines and the accessory materials supplied by it exclusively for seventeen years.

There can be no dispute about the part played in the plan by the respective groups of machines. The lessor's plan and intent, the relative importance of each group of machines in the system, is dispersed in anagram in the lease clauses, as will now be shown. The leases of the strongly controlled groups of machines carry the exclusive use clause and the prohibitive use or tying clause, obligating the use of the weaker machines and the materials.

As an aid to imparting or acquiring a notion of the scope of the prohibitive use or tying clause as applied in the leases the chart or graphic printed as an exhibit to the petitioner's brief is of distinct value as indicating the eight groups under which the various machines are classified and the manner in which they are related by the prohibitive use clause. (The chart has been criticized by the defendants, but the only inaccuracies *of fact* suggested are, that the chart includes group 5 (pegging machines), the machines which are not used on welt or turn shoes, and that within the several groups there are *some* machines not tied as the chart would indicate. This is only to say that the chart is in the abstract and does not indicate all exceptions. Admitting the full import of the criticism the essential usefulness of the chart is not impaired. It does indicate the relations of the various groups, the most important machines in each of which are tied as indicated, and when considering only welt or turn shoes group 5 may easily be ignored.)

The great value of the chart is in the fact that it imparts completeness and diagrammatic vividness to one's

notion of the scope of the prohibitive use clause, and at the same time it exhibits the very great difficulty (and in the writer's case failure) of fully and accurately describing in words the precise mode of the restriction. Almost unavoidably one characterizes the restriction as tying together the use of two or more machines. This affords to the mind the image of two or more machines so bound together as to the right of use that one cannot be taken and others left. The chart shows that this is not necessarily true. Frequently the contractual ligature has strength in only one direction; the privilege of using machine A may obligate the use of B, but this may or may not obtain reversely. *The scheme in the main is one of non-reciprocal dependency.* The arrows on the chart indicate the dominant and servient relation of the groups, pointing *away* from the dominant and *towards* the servient. For example, in order to use *certain* of the machines in group 1, the lessee must use *certain* of the machines in groups 2, 6, 7, and 8, but of these only 6 is reversed. As extremes we have group 3 which is dominant to 2, 6, 7, and 8, though servient to none, and group 8 which is dominant to none though servient to 1, 2, 3, 4, 6, and 7. Intermediate is group 6 that is in both a dominant and servient relation.

The great difficulty of adequately describing or even retaining before the mind an idea of this peculiar and complicated inter-dependence affords the opportunity for the pertinacious dialectic of the defendants. One can deal in generalities only at the peril of having an exception pointed out and dilated upon at such length that the generality is plausibly emptied of even a partial truth. The non-reciprocal character of the dependency makes any general statement delusively inexact, for the adversary has only to select a machine (or group) serviently related by the restrictions to establish a destructive exception.

Thus one may not assert that in order to lease one important (or "essential") machine or group of machines of the lessor the lessee must lease all such machines embraced by the restrictions, for the lease pertaining to the Goodyear machines (group 8) contains no such provision, and those machines or their competitive equivalents are incontestably important or "essential". This one glaring instance of the non-reciprocal incidence of the restrictions is a staple of the defendants' argument. A weakness of the system of restrictions that was and is inevitable is relied upon to disprove its strength.

For the chart demonstrates that at the time the restrictions as pleaded were imposed the maximum degree of the exclusiveness of the lessor's control existed in connection with some of the machines in groups 1, 2, 3 or 4. All the machines and materials affected by the restrictions must be (commercially speaking) indispensable or "essential", otherwise they could not be marketed under such a burden. They differ only in the degree of the exclusiveness of the lessor's control at the period mentioned. The system of restrictions levels *this exclusiveness from zero upward to its maximum* and generalizes it at that maximum as to all the machines and materials affected.

The chart shows instantly what of the "essential" machines were in the highest degree within the exclusive control of the lessor and what ones were dangerously free from that control and to which a like degree of exclusiveness had to be contractually imparted from the other groups.

In point of imparting its exclusiveness to other groups or borrowing from others their exclusiveness:

Group 1 imparts to five and borrows from one.
" 2 " " four " " " three.
" 3 " " five " " " none.
" 4 " " four " " " none.

(We now drop to the distinctly debtor class).

Group 6 imparts to five and borrows from six.
" 7 " " two " " " six.
" 8 " " *none* " " " *six.*

Here then we have a stark and unqualified admission from the lessor as to what machines for the supply of which the lessees were in fact most completely dependent on it, and as to what others that dependency is created entirely by contract. Thus the lessee's dependency for some of the machines in group 3 *is by contract extended in undiminished degree to machines in five other groups.* The machines in those other five groups as respects a lessee who wants only group 3, are one hundred per cent parasitical. Bowing to the commercial necessity of availing of group 3 he is thereby obligated to take certain machines in the five groups related whether he desires them or not. Group 8, the Goodyear machines, stares at one like the empty eye socket of Polyphemus. The dependency of the lessee on the lessor for those machines is *entirely vicarious.* The lessor was so thoroughly frightened at its total lack of control of machines of this type that it imparted to them the lessee's dependency for certain machines in each and all groups 1, 2, 3, 4, 6, and 7 (group 5 is ignored, for the reason stated). The Goodyear machines are contractually forced upon every lessee who uses certain of the machines in any of the groups mentioned. The lessor to make sure of precluding competition as to these (the weakest group, correlated) tied them inversely to the greatest possible number of other machines. They are one hundred per cent borrowers in point of competitive strength. Apart from this borrowing the lessor's control of them would be zero. By the leases the lessor's control of the Goodyear machine is rendered *co-exclusive* (in point of time and number of

specimens) with its control of its most recent and strongest controlled type. Yet defendants have attempted to draw from this inevitable and obvious weakness of the lessor's control of the Goodyear machines a proof of the great freedom of the lessees. They might as well dilate upon the absence of a restriction on the right to use leather, eyelets, tacks or nails obtained from the lessor.

The entire plan of the restrictions then is this: The strongly controlled types carry the exclusive use clause. The prohibitive use clause generalizes the effect of this in the category of the weaker types. In this manner (to summarize) *the maximum exclusiveness of control particular to any indispensable type is by the restrictions invested in the lessor in like degree of exclusiveness as to every specimen of every type embraced.* Or phrased from the view point of the lessee: *the maximum degree of the lessee's dependency on the lessor for any particular type of machine, at a given point of time is, by the lessee, obligatorily assumed, in undiminished degree throughout seventeen years as respects every specimen machine (and its restricted material if any) of every type embraced.* Under the system of restrictions a little leaven of monopoly, monopolizes the whole restricted mass from the centre to the outermost periphery.

More than once in the printed argument the defendants have likened the various machines to component parts of one great machine and on the right to control any single part have argumentatively predicated the right to control the whole. The comparison is apt, but this machine is commercial and not mechanical. The co-ordination is contractual and not physical. It was not assembled in a factory, but in a lawyer's office. The main drive shaft is the prohibitive use clause; the strengthening ribs that sustain it against any shock of competition is the exclusive use clause. Standardization has been carried to a

hitherto unknown extreme of fixed rigidity; all the component parts and even the accessory materials for seventeen years must come exclusively from the original designer.

It is useless to cite authorities on the illegality of this system of restrictions. When closely examined these leases are a far more extreme and wider reaching restraint than can be found in any other case so far dealt with by this court, construing the Anti-Trust Act. Since the enormity of the restrictions is wholly unmatched by anything in the reported decisions, the latter are dull reading with the lease restrictions before one's eyes.

A word on the seventeen-year term alone will suffice, for this is the base of the whole superstructure. It has been pointed out that the temporary dependency of the lessees on the lessor is the occasion for the imposition of their contractual dependency. Under free competition the power of superlative merit, while such merit is superlative, is irresistible and is only another name for success. To infallibly secure the co-ordination between industrial rewards and this industrial merit, is the profound and momentous purpose of the Anti-Trust Act. But a mechanism that dominates the market today, on the advent of a superior two or three years hence, may be scrapped as junk. Suppose the manufacturers of buggies, wagons and drays seventeen years ago had placed all users thereof under contract to use those instrumentalities exclusively during seventeen years for the transportation (privately) of persons and freight. What room would there have been for the overwhelming superiority of the motor car? The intrinsic and ineradicable evil of the seventeen-year term of the leases is that it secures and maintains the maximum exclusive ascendancy for the lessor's machines long after those machines may (and in all probability have) become industrial anachronisms. But this is only one evil. For

the seventeen-year term is broadened so as to include all specimens and materials subsequently required, so that the history of the industry for seventeen years in the future was written seventeen years ago in the past.

VI.

The Cancellation Clause.

The cancellation clause incorporates all the lessee's several, isolated obligations into a single all embracing one, and to that imparts an irresistible sanction. All the lessee's separate dependencies on the lessor for all the machines and materials are aggregated into one indivisible and overpowering dependency.

This clause provides that if any breach or default shall be made in the observance of *any one* or more of the conditions "in this agreement contained or *contained in any other lease*" subsisting between the lessor and the lessee "and expressed to be obligatory upon the lessee", the lessor shall have the right "to terminate forthwith *any or all leases*" then in force between the lessor and the lessee, etc.

The manner of enforcing the provision is simple. The lessor cancels "forthwith" by giving a notice in writing, and the lessee grants to the lessor "full right, power and authority" upon such termination "to enter upon the premises and into" "any place where the leased machinery" may be and "take possession thereof and take away the same".

It is said that this provision does not occur in *all* the leases, but it does occur in at least *one* of the forms executed by every lessee, and that suffices to incorporate it into all. Again, it is said that the exclusive use provision does not come within the words "expressed to be obligatory upon the lessee", but then that clause carries with it

as one of its terms the right to cancel all leases in which it occurs. The two forms of the clause embrace the entire equipment leased.

No doubt the right of cancellation is unobjectionable in a normal contract and particularly so if it is mutual to both parties. There is no mutuality of obligation in the leases and the lessee has no right of cancellation for breach, for the simple reason that no conditions are assumed by the lessor. Defendants say the privilege is necessary to protect the lessor against acts of dishonesty or unfairness on the part of a lessee. But honesty and fairness are only the mint and anise of the lessee's obligation. He is bound to use all the lessor's restricted machines and materials exclusively for seventeen years. These comprise the whole of his bottoming equipment, without which all his other machines would be useless and his factory an idle and vain thing. Now "generally speaking, the measure of a condition is the consequence of a breach". *Motion Picture Patents Co. v. Universal Film Co.* (1917), 243 U.S. at 519 (Mr. Justice Holmes, *dissenting*). Tested by that standard, the hazard of forfeiting his bottoming equipment, and with it his entire manufacturing business, is the measure of each and every obligation imposed by the intricate net work of restrictions. The use of five pounds of eyelets or nails purchased from a competitor of the lessor gives the latter the absolute right to visit the lessee's business with a ruinous consequence comparable only to the devastation of a cyclone or a conflagration.

How then can the lessee obtain any relief from any of the restrictions? He can obtain no injunctive relief under the Anti-Trust Act, for that kind of relief may be had only at the instance of the Government. He cannot enjoin the cancellation in a State court, for he has in advance agreed to it as a term of the contract. To test the legality of the

restrictions in the courts, he must breach at least one or more to raise an issue. If he commits such a breach, long before the issue can be determined his business will have been ruined by the loss of his equipment.

The hazard of invoking judicial inquiry into the validity of the restrictions is so great as to render the privilege of making the attempt purely illusory. The State of Massachusetts, by a statute enacted in 1907 (Chap. 469 of the Acts and Resolves of Mass. 1907, page 419) (see Opinion of the Judges of the Supreme Court 1907, 193 Mass. 605) outlawed all these restrictions in that State with a detailed particularity that omits nothing to their identification, except the name of the United Company, and yet no lessee in Massachusetts has undergone the hazard of seeking his freedom from them in the courts of that State.

The penalty for violating the Sherman Act or the Massachusetts statute is a jail sentence or a fine or both. The penalty to the lessees for violating the terms imposed by the United Company is business ruin. The United Company has succeeded in giving to its self-imposed restrictions a more terrorizing sanction than either Federal or State Governments have attached to their respective anti-monopoly statutes. And the shoe manufacturers, confronted with the alternative of violating the law or violating the illegal impositions of the United Company, have weighed the consequences attached and chosen the former. To them a business burdened by illegal (and even criminal) restrictions to which they are unwilling parties, is to be preferred to no business at all.

The court has already dealt with a case on principle indistinguishable. In *Ex parte Young* (1907), 209 U. S. 123 (Mr. Justice Peckman) the facts were: The State of Minnesota had enacted a railway rate statute and affixed such severe penalties for its violation that the law was held void for that it deprived the railroads of the right to resort to

the courts to have their rights determined. Mr. Justice Peckham delivering the opinion of the court said (145–6):—

> "The company, in order to test the validity of the acts, must find some agent or employee to disobey them at the risk stated. The necessary effect and result of such legislation must be to preclude a resort to the courts (either state or Federal) for the purpose of testing its validity. The officers and employees could not be expected to disobey any of the provisions of the acts or orders at the risk of such fines and penalties being imposed upon them, in case the court should decide that the law was valid. The result would be a denial of any hearing to the company."

Later in the opinion he said (p. 147): "it may therefore be said that when the penalties for disobedience are by fines so enormous and imprisonment *so severe as to intimidate the company and its officers from resorting to the courts to test the validity of the legislation, the result is the same as if the law in terms prohibited the company from seeking judicial construction of laws which deeply affect its rights.*" (Italics mine.)

The situation of the shoe manufacturer is little better. He is not threatened with imprisonment, but he, too, in order to test the validity of the leases in the courts must disobey them at the risk of having his factory stripped of a large and indispensable part of his equipment (forced upon him by the United Company) and that means business disaster. If the Minnesota statute had omitted the imprisonment feature of the penalty, and provided for a forfeiture of all the rolling stock, the railroads then would have been placed in no worse situation than the lessees are now. In

either circumstance a sudden sequestration of equipment means a wholly irreparable destruction of the industry.

Clumsily screened by the derisive rhetoric of "the best machines made", "service free of charge", "independent leases", "delicately constructed machines adapted to work only in series or as a team", "wholesale prices for a group of machines" and "the poor man's equipment furnished without initial investment", this terrorizing deadfall, for eighteen years, has stood between the courts and a lessee seeking to invoke judicial inquiry into the validity of the restrictions, and among over one thousand lessees there is no reported instance of any single one having risked the incalculable consequence of releasing the trigger. In view of the enormity of the restrictions, this eighteen years unbroken unanimity of silence on the part of a thousand lessees, is as piercingly significant as the unheard groans of victims overwhelmed beneath the fallen roof of a mine.

Can it be that this corporation can thus immunize against judicial inquiry into their validity such contractual exactions (compelling practically all the shoe manufacturers of the United States to use the machinery of the defendant *to the exclusion of the machines of all others*) and thereby evade the provisions of the Anti-Trust Act, when a like prerogative, as respects a legislative enactment, has been denied by this court to one of the sovereign States of the Union?

VII.

Finally.

As usual in such cases the defendants much protest their good intentions and the absence of a purpose to restrain trade. But the leases in every paragraph expound the intent and proclaim the purpose. They are the defendants' advance confession of a premeditated and systematically worked out plan to exclude competition in the

business of manufacturing and selling shoe machinery. On the question of intent and purpose these provisions "are heavier than the mere breath of a witness". *Dalrymple* v. *Craig* (1899), 149 Mo. at 356 (Valiant, J.). The leases show not only what was intended, but what has actually been done, and "a party cannot avoid the legal consequences of his acts by protesting at the time he does them that he does not intend to subject himself to such consequences". *International Contracting Co.* v. *Lamont* (1894), 155 U. S. at 310 (Mr. Justice, now Chief Justice, White).

Moreover, a group of lessees have testified to their entire satisfaction with a system of restrictions that at the least for seventeen years precludes them from availing of a single competitive equivalent of the restricted machines regardless of its superiority or lowered royalty. But this also was to be expected.

The defendants since 1899 have possessed and exercised an unrestrained power over all the lessees. They have had favors in the nature of unobligated "service" and free bonuses to be awarded or withheld according to the behaviour of a lessee. Soft speech and unprompted obedience as the twin con-comitants of unrestrained power were old at the point where authentic history begins.

> "The Lion, the Ass, and the Fox went hunting together and it was agreed that whatever was taken should be shared between them. They caught a large fat Stag which the Lion ordered the Ass to divide. The Ass took a deal of pains to divide the Stag into three pieces, which should be as nearly equal as possible. The Lion, enraged with him for what he considered a want of proper respect for his quality, flew upon him and tore him to pieces. He then called on the Fox to divide. The Fox, nibbling

off a small portion for himself, left the rest for the Lion's share. The Lion, highly pleased with this mark of respect, asked the Fox where he had learned such politeness and good-breeding. 'To tell the truth, Sire', replied the Fox, 'I was taught it by the Ass that lies dead there'". (Aesop.)

In *Henry* v. *A. B. Dick Co.* (1912), 224 U. S. at 55, the Chief Justice, dissenting, said: "Take a patentee selling a patented engine. He will now have the right by contract to bring under the patent laws all contracts for coal or electrical energy used to afford power to work the machine or even the lubricants employed in its operation. Take a patented carpenter's plane. The power now exists in the patentee by contract to validly confine a carpenter purchasing one of the planes to the use of lumber sawed from trees grown on the land of a particular person, or sawed by a particular mill."

The illustrations given fall short of the reality with which the record confronts the Court.

Respectfully submitted,

FRANK Y. GLADNEY,
Amicus Curiæ.

Supreme Court of the United States

OCTOBER TERM, 1917

No. 207

THE UNITED STATES,
Appellant,

v.

UNITED SHOE MACHINERY COMPANY,
OF NEW JERSEY, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

SUMMARY OF BRIEF AND ARGUMENT ON BEHALF OF UNITED SHOE MACHINERY COMPANY, ET AL., APPELLEES.

(REARGUMENT)

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BOSTON
PRESS OF GEO. H. ELLIS CO.
1917

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In the Supreme Court of the United States

OCTOBER TERM, 1917.

No. 207.

THE UNITED STATES, *Appellant*,

v.

UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL., *Appellees*.

Appeal from the District Court of the United States for the District of Massachusetts.

SUMMARY OF BRIEF AND ARGUMENT ON BEHALF OF THE UNITED SHOE MACHINERY COMPANY, ET AL., APPELLEES.

PART ONE.

INTRODUCTORY AND GENERAL MATTERS.

The record in this case, though condensed, is so long, and the transactions involved so numerous and complicated, that the Brief and Argument for the Appellees is necessarily of considerable length.

The following Summary of the Brief and Argument has, therefore, been prepared for the assistance of the Court. It is not intended to take the place of the Brief, but to summarize the evidence and argument and thus aid the Court in reading the Brief itself.

I.

HISTORY OF THE CASE.

This is a direct appeal by the United States under the Expediting Act from a decree of the District Court for the District of Massachusetts dismissing the petition filed in this case.

The Court below which tried the case was composed of three judges of the first circuit—Judge Putnam, Judge Dodge, and Judge Brown (R. Vol. 1, pp. 1064, 1070).

All the testimony was given in open court under the new equity rules, with the exception of certain evidence relating to patents which was heard before a Special Examiner. The trial in open court occupied about eleven weeks.

All three judges rendered opinions, agreeing that the case was without merit, and that the petition should be dismissed.

In accordance with the opinions of the Court a decree was entered on May 14, 1915, dismissing the bill (R. Vol. 1, p. 1188).

The evidence taken in open court has been condensed and is contained in Vol. 1 of the Record. The evidence as to patents by direction of the Court was not condensed and is contained in Vol. 2 of the Record. The Exhibits are found in Vols. 3 to 5. There are also a large number of physical exhibits which could not be reproduced in the record.

II.

PARTIES DEFENDANT.

The petition having been dismissed as to nine corporate defendants prior to the taking of testimony, there remain 11 corporate defendants and 23 individual defendants (see Main Brief, pp. 3–5).

The United Shoe Machinery Company (hereinafter referred to as the "United Company"), a New Jersey corporation organized in 1899, is the principal defendant. It manufactures, leases, and sells certain types of patented shoe machinery and also supplies used by shoe manufacturers.

The United Shoe Machinery Corporation, a New Jersey corporation organized in 1905, owns the stock of the United Shoe Machinery Company. It is not an operating company and does not manufacture, sell, or lease shoe machinery.

The other corporate defendants are subsidiary companies and the United Company owns all or a majority of their stock. These subsidiary companies conduct minor departments of the United Company's business. For a statement of the business done by these subsidiary companies, see Main Brief, pp. 4–5.

None of these subsidiary companies competes with the United Company or with any other subsidiary company. Practically no evidence was introduced in re-

gard to them and they may be disregarded in the present case.

The individuals made defendants are or have been directors or officers of the United Company or its subsidiaries. As to most of these individuals no evidence was introduced except this fact.

III.

THE ALLEGATIONS OF THE PETITION.

The petition may be divided into several parts.

1. The Shoe Machinery Industry and the Situation existing in the Industry in 1899.

The petition alleges that the principal essential shoe machines are (R. Vol. 1, p. 991):—

(*a*) Lasting Machines.

(*b*) Welt Sewing and Outsole Stitching Machines.

(*c*) Heeling Machines.

(*d*) Metallic Fastening Machines.

Prior to 1899, it is alleged, the principal concerns engaged in the shoe machinery industry were:—

(*a*) The Goodyear Shoe Machinery Company (hereafter called the Goodyear Company), which itself and through its subsidiaries the International Goodyear Company and the Goodyear Company of Canada made 80 per cent. of the welt sewing and outsole stitching machines and 10 per cent. of the lasting machines used in the country;

(*b*) The Consolidated & McKay Lasting Machine Company (hereafter called the Consolidated Company), which made lasting machines and which owned the Davey Pegging Machine Company which made machines for attaching soles by wooden pegs;

(*c*) The McKay Shoe Machinery Company (hereafter called the McKay Company), which made metallic fastening machines and heeling machines; and

(*d*) The Eppler Welt Machine Company (hereafter called the Eppler Company), which itself and through its subsidiary the International Eppler Welt Machine Company made welt sewing and outsole stitching machines.

These companies, it is alleged, were in 1899 manufacturing their machines under patents. It is further alleged that many of the basic patents were about to expire and the lawful monopoly of such machines would have shortly come to an end (R. Vol. 1, pp. 992–3).

2. Unlawful Plan Charged.

The petition next alleges that certain of the individual defendants, being owners and officers of the above-named companies, not satisfied with the lawful monopolies which they held under their patents, and intending unlawfully to extend the patent rights held by them and to use the same as the means for unlawfully controlling interstate and foreign commerce in shoe machinery, determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery, to destroy existing competition in such machinery, and to exclude all others from such trade.

They therefore conceived the following plan (R. Vol. 1, p. 994), namely:—

(1) To acquire

> "the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery";

and

(2) Having done so,—

> "to refuse to sell or lease any of the essential machines to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery of

whatever kind necessary or useful to such manufacturer of shoes,"

and thereby to exclude all competition in shoe machinery and to monopolize the trade therein.

3. Steps in Carrying Out the Foregoing Plan.

The petition next charges that certain acts described in the petition were done "in carrying out the above-mentioned unlawful project" (R. Vol. 1, p. 994). These acts may be summarized as follows:—

Formation of the United Company.

The defendants in February, 1899, formed the United Company, which took over the business of the Goodyear Company (and the International Goodyear Company which it controlled), the Consolidated Company, and the McKay Company in exchange for stock and cash at values far in excess of their real worth. Certain stock, it is alleged, was also issued for cash at par, which was used, among other things, to purchase the stock and business of the Eppler Company, its subsidiary the International Eppler Company, and also the Goodyear Company of Canada. It is alleged the defendants thus acquired control of the greater portion of the trade and commerce in the machines above described, to wit, Welt Sewing and Outsole Stitching Machines, Lasting, Heeling, and Metallic Fastening Machines (R. Vol. 1, pp. 995–996).

Leases of Machines.

It is alleged that the defendants thereupon discontinued the sale of machines and adopted arbitrary lease and license

agreements containing provisions not found in previous leases (R. Vol. 1, p. 997). These provisions, it is alleged in the conclusion of the petition (R. Vol. 1, p. 1028), are unlawful in that they exact unlawful covenants and conditions on the part of the lessee requiring him to use machines leased from the United Company of all kinds exclusively, providing that if these covenants are violated the lessee shall forfeit all his machines, and requiring him to use the leased machines for seventeen years.

Acquisitions of Other Concerns.

It is alleged that the defendants, in pursuance of their purpose to monopolize the shoe machinery industry, have acquired about 59 different competing concerns. Particular stress is laid on the purchase of the inventions of Thomas G. Plant made in September, 1910, more than eleven years after the formation of the United Company (R. Vol. 1, pp. 999–1023).

Covenants Taken from Vendors and Inventors.

It is alleged that the defendants took from the vendors covenants not to engage in business for long terms of years in competition with the defendants and to assign future inventions they might make or own (R. Vol. 1, p. 1000).

Other Monopolistic Acts.

The petition charges that the defendants have by threats induced customers to desert competitors; have offered rebates to shoe manufacturers dealing with them exclusively; have threatened competitors; have bought patents and

not used them; and "have done many other unlawful acts, too numerous to here set forth in detail" (R. Vol. 1, p. 999).

4. Profits.

It is alleged that the United Company has made excessive profits (R. Vol. 1, p. 1026).

5. Monopoly Acquired.

It is finally alleged that the defendants have by the above means acquired an unlawful monopoly of shoe machinery (R. Vol. 1, p. 1027).

6. Relief Asked.

A variety of relief is asked for, the principal relief requested being, (*a*) that the United Company be dissolved, and (*b*) that the provisions in the leases complained of be declared illegal and that the United Company be enjoined from enforcing them (R. Vol. 1, pp. 1029–1032).

ATTEMPT OF THE UNITED STATES TO LIMIT THE CHARGE MADE IN THE PETITION.

The petition, as shown above, charges that the defendants planned to monopolize all shoe machinery and also charges the monopolization of all shoe machinery in pursuance thereof.

During the course of the trial it developed that the United Company did not manufacture, and had never

attempted to manufacture, or acquire concerns for manufacturing certain important classes of shoe machinery comprising about half the machines used in the ordinary shoe factory, such as a variety of machines used in sewing the uppers of shoes, and further that there were numerous manufacturers of various machines of the kinds furnished by the United Company. The United States, therefore, admitted of record that it only charged a plan to obtain a monopoly, and a monopoly acquired in certain limited classes of machinery, viz., machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines. An amendment so limiting the petition was presented just before the close of the case but was not allowed.

This attempt to limit its case accentuates the complete failure of the United States to prove its charge as made by the petition and its attempt to succeed by making a different case. The case was tried on the theory that an attempt to monopolize and a monopoly of all shoe machinery was charged. The limitation of the charge to certain limited classes of shoe machinery is a material variance.

For a fuller statement of this attempt to limit and to vary the charge made by the petition, see our Main Brief, pp. 11–15.

IV.

THE ISSUE IN THE PRESENT CASE.

The issue presented in the District Court was whether the defendants formed a plan, as charged in the petition: (1) To acquire all concerns engaged in manufacturing shoe machinery, or (if the limitation insisted on by the United States be accepted) to acquire all concerns engaged in manufacturing certain specified classes of shoe machinery; and (2) thereupon to refuse to lease any essential machines unless the shoe manufacturer took practically all his other machines from them. And if they did form such a plan, whether or not such plan was unlawful, and whether they carried out the plan and thereby acquired an unlawful monopoly.

At the trial in the District Court there was no attempt to show the adoption of any such unlawful plan by direct evidence. The United States for proof of the plan relied entirely upon various transactions which it alleged were undertaken in pursuance thereof.

The District Court held that the various transactions justified no inference of any such unlawful plan or of any other unlawful plan; that they were normal lawful transactions; and that no unlawful monopoly was acquired thereby. This conclusion necessarily followed from the various facts found by the District Court. Accepting these facts, we submit no doubtful question of law is raised.

The case below was heard in open court. Practically all the evidence introduced by the United States came from hostile witnesses whose testimony was disputed. It comes before this Court in condensed form (see Main Brief, pp. 38–42).

In accordance with the well-recognized rule applicable in such cases the findings of fact made by the District Court should be accepted if they find any support in the record.

In *Adamson* v. *Gilliland*, 242 U. S. 350, a patent case heard by the District Court on oral testimony, the practical rule was said by the Court to be,—

> ". . . that so far as the finding of the master or judge who saw the witnesses 'depends upon conflicting testimony, or upon the credibility of witnesses, or *so far as there is any testimony consistent with the finding, it must be treated as unassailable*'" (italics ours).

For additional authorities on this point, see Main Brief, pp. 33–37.

This rule is especially applicable in a case like the present in which the question of intent is of primary importance and which involves such a large number of different transactions and such a vast amount of testimony. The officials of the United Company testified in open court for weeks and explained fully their motives and purposes, and the District Court which saw and heard them is the best judge of their character and credibility. Furthermore, the District Court took evidence in open court for nearly three months and examined hundreds of transactions involving the entire business life of the company. Their findings of fact as to the purposes and intent of the defendants, and

the effect of their transactions made after such exhaustive study should not be disturbed unless this Court is convinced that they cannot be sustained (see Main Brief, pp. 38–42).

The primary issue before this Court, therefore, is whether the findings of fact made by the District Court find any support in the record. Unless manifestly wrong they should be accepted, and if accepted they dispose of the present case. If this Court determines that the District Court's findings are manifestly wrong, then and then only it will be necessary for this Court to determine the true facts and to apply the law thereto.

V.

FINDINGS OF FACT BY THE DISTRICT COURT.

The more important facts found by the District Court are quoted in our Main Brief, pp. 44–70. We shall summarize them here.

The District Court found, among other things, as follows:—

1. Findings as to Alleged Unlawful Plan formed by the Defendants.

The District Court found that the defendants did not plan to acquire all concerns engaged in the shoe machinery business, as alleged in the petition, nor all machines for attaching the bottoms to the uppers of shoes, to which classes of machines the United States attempted to limit its charge during the course of the trial (see Main Brief, pp. 44–45).

The District Court found that the defendants did not plan to refuse to sell essential machines except on condition that practically all other machines were taken from them (see Main Brief, p. 45).

The District Court thus found that the defendants never formed the unlawful plan charged in the petition.

The District Court further found that the evidence failed to afford "any support for the alleged charges in the bill of

intended oppression, arbitrary conduct, or anything of that nature" (see Main Brief, pp. 65–66).

The foregoing general findings, we submit, dispose of the petition. But the District Court went further, and, considering the various transactions complained of separately and their effect, found that none of them was unlawful or shown to have been carried out with unlawful purpose, and they thus disposed of any possible charge whether or not made by the petition which could be based upon these transactions.

2. Findings as to Formation of the United Company.

The District Court found that the defendants' basic patents were not about to expire in 1899, and that this was, therefore, not a motive for the formation of the United Company. The evidence so completely refuted this charge that the United States has abandoned it (see *infra*, pp. 73–74; see also Main Brief, pp. 48–49).

The District Court found that the constituent companies which were consolidated into the United Company were dealing, with slight and immaterial exceptions, in distinct non-competing lines of machinery; that the purpose of the consolidation of these companies into the United Company was not to eliminate competition; and that such competition, if any existed between them, was not significant enough to make their consolidation unlawful (see Main Brief, pp. 45–48). It also found that the constituent companies were not taken over at excessive prices as alleged (see Main Brief, p. 49).

3. Findings as to the Leases.

The District Court found that the leasing system was of great benefit to shoe manufacturers (see Main Brief, p. 50).

It found that the United Company did not discontinue the sale of machines as alleged. None of the constituent companies had ever sold machines (see Main Brief, p. 50).

> "An attempt to support this charge by evidence wholly failed. Nothing of the kind was done nor is it easy to see what grounds for making the charge could ever have been supposed to exist" (R. Vol. 1, p. 1153).

The District Court found that the evidence completely refuted any charge that the United Company by its leases compelled shoe manufacturers taking machines previously furnished by one of the constituent companies to take other machines which had been put out by one or more of the other constituent companies and that the United Company was entitled to a full clearance from this charge (see Main Brief, pp. 51–52).

The District Court found that the provisions in the leases adopted by the United Company were not adopted for the purpose of excluding competitors' machines but were

> "obviously prompted by the purpose of developing the company's business"

through the perfectly legitimate method of offering them "on terms more advantageous to users" (R. Vol. 1, p. 1159).

The Court said (R. Vol. 1, p. 1159):—

> "Modifications in the contracts offered them tending, as these are shown to have done, to enable the company,

through provisions adapted to increase the number of shoes worked on by each machine, to lessen the royalty charged per pair, and to diminish or dispense with the initial payment before required, were so obviously prompted by the purpose of developing the company's business through the perfectly legitimate method of offering them on terms more advantageous to users, that it would be unjust to treat them, on evidence no stronger than that here presented, as really intended to accomplish an arbitrary exclusion of users from any dealings with others."

The District Court found that not only were the provisions adopted for a legitimate purpose but that they were not inherently unlawful apart from unlawful intention as they did not accomplish any unlawful restraint (see Main Brief, pp. 52–54).

The District Court further found that the defendants' success was due not in any substantial degree to the provisions complained of in the leases. It was due to the merits of the United Company's patented machines (see Main Brief, p. 55).

As to the allegations that the United Company oppressed its lessees by requiring them to pay exorbitant charges for repair parts and unreasonable return charges on leased machines the District Court found that there was no evidence to justify these charges. It said:—

"The evidence failed to show that lessees from the United Company had ever been compelled to pay exorbitant charges for repair parts, etc., or to pay any unreasonable return charges on leased machines" (R. Vol. 1, p. 1155).

4. Findings as to Acquisitions.

With reference to the acquisitions the District Court treated separately from the other cases the acquisition of the patents and inventions of Thomas G. Plant in 1910, on which great stress was laid by the United States.

In considering the other alleged acquisitions, which were mostly of slight importance, the District Court eliminated a large number of them from consideration because they involved:—

(*a*) The acquisition of concerns which were not engaged in furnishing shoe machinery at all, but were making or dealing in supplies such as sandpaper, patent brushes, pegwood, wire, treeing machines, needles, awls and rawhide mallets, nails and tacks, cement, blacking, metallic heels and counters and eyelets; or

(*b*) Machines or inventions for use with uppers, as to which no monopoly is charged; or

(*c*) Mere employment contracts or contracts to commute existing obligations not involving the acquisition of any business, machinery, or patents (R. Vol. 1, pp. 1138–1139).

As to the remaining instances which related to the acquisition of patent rights, patents, or machines "capable of being included within some of those kinds of shoe machinery" (R. Vol. 1, p. 1139) to which the case relates, the District Court found that as to the larger portion the acquisition was not of a competing machine or device, but, on the contrary, the acquisition was of a machine or device "of a kind not then being produced by the United

Company" (R. Vol. 1, p. 1139). As to the comparatively few remaining acquisitions, it appeared that the United Company

> "was at the time producing or trying to develop for production a patented machine for doing work more or less similar to that for which the invention of the machine acquired was intended" (R. Vol. 1, p. 1139).

The District Court found that in all such cases

> " . . . it appears that the acquisitions made were of patented improvements, whether or not embodied in an actual machine, enabling the United Company to increase the efficiency of its own machines, or to complete the development of others with which it was then experimenting or had not yet succeeding[ed] in rendering commercially successful.
>
> "No case, however, is found among the acquisitions of the character last descr bed wherein it has fairly been made to appear that actual competition existed between the device or machine acquired and any machine then being produced or experimented with by the United Company, of such consequence as justifies either the conclusion that the acquisition was for the purpose of suppressing such competition, or the conclusion that a material restraint of trade was thereby accomplished" (R. Vol. 1, pp. 1139–1140).

The Court further found that in most of these cases the vendor or the United Company claimed infringement which was settled by the acquisition (R. Vol. 1, p. 1140).

The Court further found that these acquisitions were

> "in importance and amount, only of a consequence relatively small in proportion to the entire field then lawfully belonging to the United Company.
>
> "It does not appear that they contributed anything essentially important to that degree of commercial suc-

> cess obtained by the company as above. If they assisted in obtaining it, it was by assisting the development of the machines to whose ultimate efficiency it was due. It can hardly be said as to any of them that they afforded anything more than a basis whereon to build. Speaking of them generally, it may be said that the invention or machine obtained required further development in the company's hands before it could be properly used" (R. Vol. 1, p. 1140).

The Court further found that during the same period the United Company refused to purchase concerns and inventions much more numerous than those purchased (R. Vol. 1, p. 1141).

The District Court further found that the acquisitions were not made at excessive prices and that this was not even insisted on by the United States in argument (see Main Brief, p. 62).

5. Findings as to the Purchase of Plant's Patents and Inventions.

The United Company in 1910 acquired many valuable inventions from Thomas G. Plant, and much stress is laid on this acquisition by the United States, apparently as showing that an unlawful purpose existed from 1899, the date of the formation of the United Company.

The District Court's findings completely refute the contentions of the United States. It found that Plant was not

> "a competitor in the ordinary sense. He was not carrying on any going business in shoe machinery. He was neither producing his machines nor supplying them to users upon any commercial scale, nor was he prepared so

to supply them, though he had issued an illustrated catalogue of them" (R. Vol. 1, p. 1142).

It found that the evidence

> " . . . sufficiently proves that they [the negotiations for the purchase] were never sought by the defendants and that there was never any attempt on their part to get Plant to sell them his inventions or machines or anything else; but that, on the contrary, all the efforts toward such a purchase were made by him" (R. Vol. 1, p. 1143).

The Court further found that the Plant machines embodying his inventions were not commercially successful, or capable of profitable use in their then stage of development (see Main Brief, pp. 59–60).

The Court found that the purchase was not made to escape competition. The reasons for the purchase were found to be the value of the Plant patents

> "used as they [the defendants] only could have used them in further developing and perfecting the machines they were then producing or trying to produce" (R. Vol. 1, p. 1145);

and the relief of the United Company from a vast amount of pending litigation and controversy (R. Vol. 1, p. 1145).

The inventions were found to be worth the price paid for them (R. Vol. 1, p. 1145).

The Court said:—

> "The above reasons, none of them open to any charge of illegality, seem to me to have been the really operative reasons which must have induced the defendants to enter into the Plant bargain upon the terms which he finally offered them. They appear so adequate as legitimate

business reasons for doing this as in my opinion to leave no reasonable ground for holding, against the defendants' denial, that it was really a purchase to suppress competition" (R. Vol. 1, pp. 1145–1146).

6. Finding as to Covenants taken from Vendors.

The Court found that the covenants taken from vendors showed no unlawful purpose; that they were framed in each case according "to the circumstances of the particular transaction;" and that it was not proved that any of them exceeded what the law permits (see Main Brief, pp. 62–63).

7. Findings as to Other Unfair, Monopolistic or Oppressive Acts.

The District Court acquitted the defendants entirely of these charges, holding that, in spite of "efforts which may fairly be described as extraordinary" to introduce every act or word of the defendants which might lend color to these charges, the results were so insignificant that the conclusion seems justified that the policy and methods of the defendants were in general "above reproach in any of these respects" (see Main Brief, pp. 63–64).

8. Finding as to Profits.

The District Court found that the United Company's profits were not shown to be unreasonable or excessive or its charges for machines exorbitant (see Main Brief, p. 64).

9. Findings as to Monopoly.

The District Court found that the United Company had no unlawful monopoly of all machinery and the United States, as we have stated, abandoned this charge (see Main Brief, p. 66). The Court further found that the defendants had no monopoly of machines for attaching the bottoms to the uppers of shoes as to which classes of machines the United States limited its charge. The Court said:—

> "In that part of the field of trade in shoe machinery to which the case is now limited as above, the defendants have been not monopolists but competitors. Their only means for holding the field have been legitimate means—better machines. *Their specialization in machines for bottoming shoes, and not a monopoly of such machines, has been the cause of their success*" (italics ours) (R. Vol. 1, p. 1135).

The Court further found that the defendants' success was due to the merits of their patented machines and the service they rendered users of the machines. Thus the various transactions criticised by the United States, since they were not the cause of the amount of business done by the defendants, become immaterial.

The District Court said:—

> "It is impossible to believe that the defendants' equipment is in so many shoe factories for any other substantial reason than the merits of what they have had to offer" (R. Vol. 1, p. 1187).
>
> "Nor can I regard the case as one in which any presumption arises, from the fact that so large a proportion of the users of these machines use the defendants'—that the defendants have committed any of the above forbid-

den acts in accomplishing the above result. The proof is too complete that it has been in fact reached by the use of methods entirely lawful, the leading features whereof are below indicated" (R. Vol. 1, p. 1136) (see also Main Brief, pp. 67–70).

The Court, after referring to the United Company's patents and improvements, the service it has rendered users of its machines, and the standardization of the parts of its machines, added:—

"That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question" (R. Vol. 1, p. 1137) (see also Main Brief, pp. 67-70).

VI.

THE PRESENT CASE IS UNIQUE IN SEVERAL RESPECTS.

The present case differs materially from any case heretofore presented to this Court with the exception of *United States* v. *Winslow*, 227 U. S. 202, in which the formation of the United Company was held lawful.

In the first place, the United Company's machines were created under and are strongly protected by patents, are superior to any other machines made, and, as the District Court found, represent "the highest development ever reached in the art to which they belong" (R. Vol. 1, p. 1137). There is a natural presumption that a concern which furnishes the best machines made, which are patented, and which therefore cannot be manufactured by anyone else, should lawfully have a large portion or all of the business in machines of this character, just as the Bell Telephone Company, due to its patents, has furnished practically all the telephones in use.

Another unique characteristic of the present case is that no previous competition was eliminated by the United Company. Its constituent companies, except for a slight incidental overlapping of the field of one or two machines out of a large number, dealt in distinct non-competing machines. These machines were patented and were the best made, and therefore at the time of the formation of the United Company there were, for practical purposes, as the

United States alleges in its petition and now admits, no competitors in the field.

The United Company, therefore, did not enter a field in which competition existed and eliminate such competition. It entered a field in which, due to lawful patent monopolies of its constituent companies, there was, as a practical matter, no competition to eliminate. The machines as to which monopoly is charged are the same machines of which the constituent companies had lawful patent monopolies, but developed to an extraordinary degree of efficiency by a multitude of new inventions which are the subject of many new and now existing patents, and certain new patented machines invented or developed by the United Company since its formation.

PART TWO.

FACTS AND ARGUMENT.

I.

SPECIAL CHARACTERISTICS OF THE SHOE MACHINERY INDUSTRY.

The shoe machinery industry has special characteristics which differentiate it strikingly from any other industry in the country. These characteristics existed when the United Company was formed, and its methods of business were necessarily adapted to meet them. In considering whether the defendants' methods were "usual," "normal," and "orderly," whether they were entered into "with the legitimate purpose of reasonably forwarding personal interest and developing trade," or "on the contrary were of such a character as to give rise to the inference or presumption that they had been entered into or done" with unlawful intent (*Standard Oil Case*, 221 U. S. 1, 58), it is essential to bear constantly in mind the particular conditions with which the defendants dealt. The test in the present case is not what would be normal, reasonable, and legitimate in the tobacco or cotton goods business, but solely what was normal, reasonable, and legitimate in dealing with the conditions peculiar to the shoe machinery industry.

Some of the most striking characteristics of the shoe machinery industry are as follows:—

1. A great variety of different machines are used in the manufacture of each shoe. Thus on certain classes of shoes over 100 different operations are performed by different machines (Defs.' Ex. 235, R. Vol. 5, pp. 531–671).

There is also a great variety of types of shoes made, such as the McKay sewed shoe, in which the upper is united to the sole by a seam running through both outsole and insole inside the shoe; the welt shoe, in which a narrow strip of welt is attached to the upper and insole, and the outsole then attached to the welt so that the foot does not rest on the seams which attach the sole; the turn shoe, which has a single sole to which the upper is sewed while the shoe is inside out, the shoe being then turned during the process of manufacture; the pegged shoe, in which the sole is attached by wooden pegs; the nailed shoe, in which it is attached by nails; the standard screw shoe, in which it is attached by screws; and also various modifications of these types, such as the mock welt. Each type of shoe requires to a certain extent different machines.

The result is that a great variety of machines are required in the shoe trade. The United Company, which has specialized in bottoming machines and which does not manufacture any machines for sewing the uppers of shoes, and which manufactures and furnishes only from 30 per cent. to 50 per cent. of the total number of machines used in the ordinary factory (see Main Brief, pp. 602–605), nevertheless makes over 300 different kinds of machines.

2. The shoe machinery business, as stated above, is of recent origin. The industry, being entirely the result of inventions, has been dominated by patents. While machines of the kind in use seventeen or more years ago, on

which the patents have expired, can now be manufactured by any one, there is no demand for such machines. The later improvements have been so remarkable and have increased the efficiency and capacity of the machines to such an extent and effected such increased savings in the manufacture of shoes that it would not pay a shoe manufacturer to use unpatented machines of the type in use twenty years ago, even if he obtained them free. To find a market for his machines and to compete on equal terms a shoe machinery manufacturer must have machines embodying new inventions which make his machines as efficient as those of the latest type.

3. From the very beginning of the industry all of the principal shoe machines have been leased and not sold, the lessor depending for his return on a royalty of a certain specified sum for each pair of shoes on which the leased machine was used. Originally an initial payment was also charged to cover the cost of installing the machines and instructing operatives, but this has since been largely eliminated by the United Company.

Under this lease system the entire industry of manufacturing shoes by machinery was created and developed. It was the system under which the constituent companies furnished all their machines, at the time the United Company was formed. It had been adopted because it was found most satisfactory to the shoe manufacturer, and best adapted to increase the use of the machines, and, consequently, the return to the shoe machinery manufacturer; in other words, because it was best suited to the conditions of this particular industry.

For a full statement of the reasons for the adoption of the lease system, see Main Brief, pp. 248–253.

4. Bottoming Machines are extremely delicate and have many moving parts which easily get out of adjustment, thus either stopping the use of the machines, delaying their operation or causing poor work. Furthermore, the moving parts frequently wear out or need replacement. It is thus essential to the continuous and efficient operation of such machines that a stock of repair parts be near at hand to replace broken and worn parts and, owing to the delicate character of the machines, it is further essential that the shoe manufacturer should be able to obtain the frequent services of skilled mechanics thoroughly acquainted with the machines in order to repair them and maintain them in efficient condition. If such parts and service are not immediately available when a machine breaks down or gets out of adjustment, imperfect work results or the machine cannot be used at all.

The importance of maintaining the machines in efficient condition is multiplied many fold by the fact that a number of different machines are used in the manufacture of each shoe. The work in the shoe factory is planned to travel from one room to another in fixed quantities. A certain number of pairs of shoes are started each day and an equal number are finished each day. There is a regular flow of shoes through the factory from one machine to another. No large number of shoes are kept prepared ready for the operation of each machine. To do so would necessitate having a large amount of capital invested in material and lasts and would require too much space to store the partially prepared shoes. Furthermore, shoes in process of manufacture must be in "temper," that is, the soles and heels must be artificially moistened. Once in "temper" the shoe must be completed as rapidly as possible.

When one machine breaks down, it, therefore, not only stops the work on that particular machine, but it stops the work on the entire line or series of machines of which that particular machine forms a part (see Main Brief, pp. 334–338).

The daily capacity of many of the important machines is very large, some of them having a production of over 1,200 pairs per day. As most shoe factories have a comparatively small production, many, if not most of them, require only one machine of certain kinds (see Main Brief, p. 173). If one of these machines breaks down, it stops the entire production of the factory. All of the operatives are thrown out of work and the income of those companies which have leased machines on a royalty basis ceases until such machine is repaired.

Furthermore, the machines have been constantly improved and thereby changed and new machines invented, and it is essential to their effective operation that operatives be instructed by the manufacturer of the machines as to their proper use.

Shoe manufacturing is carried on to a large extent by small manufacturers. They cannot afford to keep skilled mechanics to repair their machines and instruct operatives in the use of the machines, nor can they afford to maintain a stock of extra parts. Even the large shoe manufacturers cannot furnish such service for themselves effectively and without undue cost. The manufacturer of the machines who can provide such service for a large number of factories can alone furnish it economically and efficiently.

II.

FORMATION OF THE UNITED COMPANY.

Our first inquiry is whether the formation of the United Company affords evidence of the unlawful plan charged in the petition or was a step in carrying it out.

We do not understand that the United States denies that there were substantial business reasons for the formation of the United Company, or that it denies that these legitimate business reasons were motives for the formation of the company. We understand their contention to be that there was competition between certain of the constituent companies, and that the elimination of this competition was also a motive for the formation of the company or made it inherently unlawful.

The United Company was organized in February, 1899, to take over the business of the Goodyear Company, the Consolidated Company and the McKay Company.

Each of these three companies occupied a special field of its own which it had created and developed under its patents. The machines of each company were used for different purposes and therefore did not compete. No other person had invented equally good machines and each of these companies, therefore, was furnishing practically all the machines of the kinds it manufactured which were used in the country (see Main Brief, pp. 84–89).

1. BUSINESS DONE BY THE CONSTITUENT COMPANIES.

A. Business of the Goodyear Company.

The Goodyear Company manufactured and leased patented machines for attaching the welt to the upper and the outsole to the welt of Goodyear welt shoes. It had two principal machines—the Goodyear Welt and Turn Machine (called the welter) for attaching the welt to the upper, and the Goodyear Outsole Rapid Lockstitch Machine (the stitcher) for attaching the outsole to the welt. The welter was used also in the manufacture of Goodyear turn shoes. The Goodyear Company had also thirteen auxiliary machines used in preparing the work for the welter and stitcher or in finishing it in certain details after the operation of the welter and stitcher, and three auxiliary machines similarly used in connection with its welter in the manufacture of Goodyear turn shoes (see Main Brief, p. 85).

The manufacture of the foregoing machines constituted the principal business of the Goodyear Company.

The Goodyear welt shoe was a better grade of shoe than the McKay, pegged, or standard screw shoes, which were the classes of shoes generally made by machines, but the Goodyear welt shoe was more expensive to manufacture. It gradually proved its merit, but in 1899 only 22,700,000 pairs of welt shoes were made out of a total production in the country of 172,786,000 pairs of shoes of all kinds, of which practically half were McKays. In 1898 only about 17,000,000 pairs of welt shoes were made. About an equal number of turn shoes were made in that year. The Good-

year Company, therefore, occupied a comparatively limited and special field which it had itself created and which it lawfully controlled by reason of its patents.

The Goodyear Company also manufactured and leased the Ideal Lasting Machine. This machine was designed and adapted for lasting women's welt shoes, which no other machine in the market could do successfully. It was not adapted for lasting men's welt shoes. The manufacture of this machine was an insignificant part of the Goodyear Company's business. Only .77 of 1 per cent. of the shoes lasted on machines in 1899 were lasted on the Ideal. Most women's welt shoes were at that time lasted by hand.

For a more complete statement of the business done by the Goodyear Company, see our Main Brief, pp. 84–86.

B. Business of the Consolidated Company.

This company manufactured and leased three kinds of patented lasting machines; namely, the Chase, the McKay & Copeland, and the Hand Method McKay Machine.

The Chase Machine was adapted to and developed for lasting men's welt shoes (R. Vol. 1, p. 397, lines 39–40).

The McKay & Copeland Machine was commercially adapted only for lasting heavy brogans (R. Vol. 1, p. 399, lines 13–14), that is, very heavy coarse shoes (R. Vol. 1, p. 397, line 14).

The Hand Method McKay Machine was designed and adapted for lasting McKay sewed shoes (R. Vol. 1, p. 399, line 22). It could not be used for lasting welt shoes (R. Vol. 1, pp. 399–400).

The Consolidated Company in 1899 had been endeavor-

ing to develop a hand method welt lasting machine. This machine had not been made commercially satisfactory (R. Vol. 1, p. 400, lines 27–32).

C. Business of the McKay Company.

This company manufactured and leased patented metallic fastening machines, used to insert metallic fastenings, and patented heeling machines, used for the preparation and attaching of heels (R. Vol. 1, p. 4, lines 23–36).

D. Other Concerns acquired by the United Company at its Formation.

Incidentally to the acquisition of the three constituent companies mentioned above, the United Company acquired the following concerns:

The *Goodyear Company of Canada* and the *International Goodyear Company.* These concerns respectively held the patents for the Goodyear Company's inventions which had been taken out in Canada and abroad and they were furnishing the Goodyear machines in Canada and abroad under those patents. The acquisition of these concerns merely enabled the United Company to furnish Goodyear machines outside the United States.

The *Davey Pegging Machine Company.* This company made a pegging machine used in attaching the soles of shoes by pegs. It did not compete with any of the other companies. As few pegged shoes are made its business was small. In 1911 the United Company had only 146 Pegging Machines outstanding (Defs.' Ex. 228, R. Vol. 5, p. 430).

The Davey Company was a subsidiary of the Consolidated Company, and was acquired incidentally as a result of the acquisition of that Company.

E. Acquisition of the Eppler Company.

The Eppler Welt Machine Company and its subsidiary the International Eppler Welt Company were attempting to furnish a patented welter, stitcher, and a few auxiliary machines for making a welt shoe by the Eppler process. This process was, as the record shows, much inferior to the Goodyear process, and although the Eppler Company had been organized for a number of years it did practically no business, and in 1899 it was evident that its machines were doomed to failure. Its machines infringed the Goodyear Company's patents, patent suits brought by the Goodyear Company were pending to enjoin their use, and counsel for the Goodyear Company was confident of success. After the formation of the United Company was agreed upon, it was found that the Eppler Company could be acquired and the litigation thus settled. The Eppler Company was accordingly acquired, not to obtain its business, as it had practically none, but to enable the United Company to start business free from litigation (*infra*, pp. 52–55).

F. Field Occupied by the Constituent Companies.

As shown above each of the constituent companies was engaged in manufacturing a limited class of machines which it had created and developed under its patents, and in which it specialized. They were not in competition.

Thus the Goodyear Company made a welter, stitcher and certain auxiliaries and a machine for lasting women's welt shoes. The Consolidated Company made lasting machines for men's welt, McKay and heavy nailed shoes. The McKay Company made metallic fastening and heeling machines.

These machines were all used in the bottoming of shoes. They did not, however, include all machines used for this purpose. Thus the constituent companies did not manufacture the McKay Sewing Machines used for attaching the uppers to the bottoms of substantially one-half of the shoes manufactured in 1899 (Defs.' Ex. 215, R. Vol. 1, p. 424). They did not manufacture any of the General Department Machines, of which the United Company now manufactures over 170 different kinds (Defs.' Ex. 227, R. Vol. 5, p. 425), and a number of which are used in the bottoming process.

Furthermore, they made no machines for cutting out, sewing and making the uppers of shoes, or button-hole machines, and of course they did not manufacture the 39 machines which have been invented by the United Company since its organization for performing operations previously performed by hand.

The field occupied by the constituent companies, therefore, was comparatively limited.

Defendants' Exhibit 221A (R. Vol. 5, p. 370A) gives a list of eighty-five different dealers in machinery, findings and supplies advertising in the trade papers in the years 1899 to 1902, which the United Company did not purchase and made no attempt to purchase. This list includes such important companies as the Wheeler & Wilson Sewing Machine Company, which supplied probably 90 per cent.

of the machines which united the parts of the upper of the shoe (R. Vol. 1, p. 415, lines 12–14), and the Reece Buttonhole Machine Company, which furnished probably every machine for making buttonholes in shoes and for finishing the buttonholes (R. Vol. 1, p. 415, lines 15–17).

The fact that the United Company made no attempt to acquire these other important companies establishes conclusively that the United Company was not formed for the purpose of acquiring all concerns engaged in the shoe manufacturing business, and further that it did not plan, as alleged in the petition, to require shoe manufacturers to take from it all shoe machines which they needed.

G. Capital of United Company.

The United Company was organized with $25,000,000 authorized stock, half common and half preferred. A total of $17,247,000 of stock was issued. Of this amount $14,851,565 par value was issued in exchange for stock of the Goodyear, International Goodyear, the Consolidated, and the McKay Companies. $2,395,435 par value was issued for cash which was used for the purchase of the Eppler Company, Canadian Goodyear Company, for payment of debts of the constituent companies, organization expenses, and $500,000 working capital (see Main Brief, pp. 91–92).

The par value of the stock issued did not exceed the value of the stock and properties acquired (see Main Brief, p. 92), and the District Court so found (see Main Brief, p. 49).

2. PURPOSES FOR WHICH THE UNITED COMPANY WAS FORMED.

Prior to the formation of the United Company a shoe manufacturer would lease his welt machines from the Goodyear Company, his lasting machines (except for women's welts) from the Consolidated Company, and his metallic fastening and heeling machines from the McKay Company.

This situation had serious disadvantages, both to the shoe manufacturers and to the companies, and prevented an efficient use of the machines. It was undoubtedly one of the reasons that the welt machines were not more largely used and that half of the shoes then manufactured were lasted by hand instead of by machine.

In the first place it is essential to the efficiency and productivity of such machines that service be rendered with them by the manufacturer of the machines. We have explained above the vital importance of this service which consists in furnishing skilled mechanics to repair machines, in keeping a stock of repair parts at some convenient place near the shoe manufacturer's factory, and in instructing operatives in the use of the machines (*supra*, pp. 30–31). If a single machine of a series of bottoming machines breaks down, it stops production on the entire series. In many small factories which have a single machine of a kind, this means stopping the work of the entire factory. It further means that lessors of all the machines of the series receive no royalty while they are not producing shoes.

Each of the constituent companies was endeavoring to furnish service, but no one of them had by itself sufficient

machines outstanding in any one factory to enable it to furnish a satisfactory service. Originally most of the shoe manufacturing business was done in Massachusetts near the company's plants so that new parts and mechanics could be furnished the shoe manufacturer within a comparatively short time.

As the shoe manufacturing business spread over the country, it was absolutely essential to the efficiency of the machines that the constituent companies should maintain offices at convenient places in the various shoe manufacturing districts of the country, maintain mechanics at such offices, and also keep there a full supply of parts. None of the constituent companies could afford to do this satisfactorily.

The result was that each company suffered, and furthermore, no one company could remedy the situation. If, for example, the Goodyear Company gave good service and the McKay Company did not, the machines of the Goodyear Company would be out of use whenever the McKay machines broke down.

Furthermore, in furnishing such service as was given there was much unnecessary duplication of expense. Each company had its offices or agencies in the same place and each was sending mechanics to the same factory (Main Brief, p. 175–178).

In the case of shoe machinery, one machine prepares the work for the succeeding machine. The principal bottoming machines must be constructed and adapted for use together; otherwise they cannot be used together at all or poor work inevitably results (see Main Brief, pp. 334–340). As the different bottoming machines were made by the different constituent companies, each of which had its own ideas, there was not complete harmony between them.

Again, there are many parts of the various machines in common. Had the machines all been manufactured by one company these parts could have been standardized and the same part in many cases be used in a number of different machines, thus obviating the necessity of carrying so many different kinds of parts. Owing to the fact that the machines were manufactured by different companies, there was no standardization of parts, which resulted in much inconvenience and expense (Main Brief, pp. 168–170).

Mr. Winslow, who was the chief executive of the Consolidated Company, and Mr. Howe, who was the executive head of the Goodyear Company, early in 1898 came to the conclusion that if the Goodyear Company, making welt and turn machines, and the Consolidated Company, making lasting machines, were consolidated in a single company, such company could greatly improve the service rendered lessees of the machines, could economize in the manufacture of the machines by concentrating the manufacture in one factory and by standardizing the parts, and as a result could greatly increase the productivity and efficiency of the machines. The result would be increased production by the machines, greater satisfaction to lessees, a reduction in the charges made for the machines, and an increase in the total royalty earned by each machine. It was further believed that by lowering the cost of the machines and improving the service, shoe manufacturers would be encouraged to increase their manufacture of Goodyear welt shoes, the best type of shoes made, but the most difficult to manufacture (see Main Brief, pp. 159–160). Mr. Winslow's testimony as to the reasons for the formation of the United Company appears in R. Vol. 1, pp. 407–413.

The same reasons which caused Mr. Winslow and Mr.

Howe to deem it highly desirable that the Goodyear and Consolidated Companies should be united, of course applied equally to the consolidation with them of the McKay Company, which made heeling and metallic machines, the two other important elements then required in a series of bottoming machines. After the consolidation of the Goodyear Company and the Consolidated Company was agreed upon, but before it was consummated, the McKay Company was, therefore, approached and agreed to unite with the others. Mr. Winslow testified (R. Vol. 1, p. 529, line 27):—

> "The McKay people were approached because I advised it, and I advised it because I believed that with the metallic and heeling machines and the Goodyear machines and the lasting machines we could give better service, get a better product from the machines, and give better results both to the manufacturers and to ourselves.
>
> ". . . the unification of the service would allow those machines to be kept in continuous operation, giving a larger productive capacity to them and at less expense than in any other way."

Another incidental reason for the formation of the United Company was that Mr. Howe, who was the real manager of the Goodyear Company, and Mr. Brooks, who managed the McKay Company, could not devote much of their time to the business and wished to withdraw. By combining these businesses with the Consolidated Company the services of the men active in that company were obtained (see Main Brief, p. 161).

Both Mr. Winslow and Mr. Howe denied specifically any intent to monopolize shoe machinery as charged in the petition (see Main Brief, p. 163).

The directors of the three constituent companies sent

out circulars to their stockholders announcing the plan for the consolidation and recommending that it be carried out. These circulars expressed briefly the purposes testified to by Mr. Winslow and Mr. Howe. They show the belief that great advantages would accrue from one concern furnishing the different types of shoe machinery used by shoe manufacturers and that economies would result therefrom (see Main Brief, pp. 161–163).

3. THE FORMATION OF THE UNITED COMPANY WAS HELD LAWFUL IN UNITED STATES v. WINSLOW, 227 U. S. 202.

The question of the legality of the formation of the United Company was before this Court in *United States* v. *Winslow*, 227 U. S. 202. The indictment in that case set forth almost precisely the same facts in respect to the formation of the company as the present petition, with the exception that the United States in framing the indictment in that case did not deem the Eppler Company of sufficient importance to refer to it. It was alleged, as in the present case, that the constituent companies were making machines under their various patents.

It was held in that case that the combination was so obviously "on the face of it" simply "an effort after greater efficiency" and so unadapted to accomplish an illegal purpose, that even the unlawful intent which was charged would not make it unlawful.

The Court said (p. 217):—

> "On the face of it the combination was simply an effort after greater efficiency. The business of the several

> groups that combined, as it existed before the combination, is assumed to have been legal. . . . The disintegration aimed at by the statute does not extend to reducing all manufacture to isolated units of the lowest degree. It is as lawful for one corporation to make every part of a steam engine and to put the machine together as it would be for one to make the boilers and another to make the wheels. Until the one intent is nearer accomplishment than it is by such a juxtaposition alone, no intent could raise the conduct to the dignity of an attempt. ". . . we can see no greater objection to one corporation manufacturing seventy per cent. of three non-competing groups of patented machines collectively used for making a single product than to three corporations making the same proportion of one group each."

The United States has sought to differentiate the present case on the following grounds:—

1. It contends that there was competition between the Ideal lasting machine of the Goodyear Company and the lasting machines of the Consolidated Company.

2. It contends that the Eppler Company was not mentioned in the indictment of *United States* v. *Winslow;* and that there was competition between the Goodyear Company and the Eppler Company.

The elimination of this competition it alleges was a motive for the formation of the United Company, or made its formation inherently unlawful.

The District Court found that there was no actual competition of any significance either in lasting or welting machines, and no unlawful intent shown in connection with the organization of the Company.

However, as the United States has laid such stress on these contentions, we have considered the evidence at length in our Main Brief (Alleged Lasting Machine Competition,

Main Brief, pp. 94–132, Alleged Eppler Company Competition, Main Brief, pp. 133–158), and we shall briefly consider these contentions in this Summary.

4. ALLEGED COMPETITION BETWEEN THE GOODYEAR COMPANY AND THE CONSOLIDATED COMPANY IN LASTING MACHINES.

The Goodyear Company at the date of the formation of the United Company manufactured 19 different machines; namely, its welt and turn machine, outsole machine, 13 welt auxiliary machines, 3 turn auxiliary machines, and the Ideal lasting machine. Its principal business, as we have stated, was the manufacture of its Goodyear welters, stitchers, and auxiliary machines, the field it had created and developed by its inventions. Only 248 Ideal machines were outstanding and their use was comparatively insignificant. Thus in 1899 only .77 of 1 per cent. of the shoes lasted by machines in that year were lasted on Ideal machines, and, as not more than half the shoes made in that year were lasted by machines, less than .40 of 1 per cent. of the total shoes lasted in 1899 were lasted on the Ideal machines (see Main Brief, pp. 84–85, 114).

The total possible competition, then, between the Goodyear Company and the Consolidated Company consisted in one type of machine out of 19 different types produced by the Goodyear Company, and this machine was used on less than .40 of 1 per cent. of the shoes made.

But further than this the Ideal machine was adapted for use only on women's welt shoes. While it was possible

to use it on men's welt shoes, it was not structurally adapted for such use and was so used to an insignificant extent. The Consolidated Company on the other hand had no machines which were adapted for use or could be used commercially on women's welt shoes, the field of the Ideal machine.

There is therefore no foundation whatsoever for the contention of the United States that the Ideal machine competed in any practical sense with the Consolidated Company's machines.

A. Use of the Ideal Machine.

Mr. Howe testified:—

> "The Ideal Laster was adapted to work on women's welts, light leather, which no machine in the market at that time would do successfully . . . . the machine was designed and almost wholly used for lasting women's welts" (R. Vol. 1, p. 626, lines 44–45; p. 627, lines 1–3).

The reason that the Ideal machine could not be used successfully on men's welt shoes was due to structural characteristics of the machine which rendered it unadapted for commercial use on men's shoes. Heavier leather is used on men's shoes and the dimensions of such shoes differ from women's. The Ideal machine was not adapted for dealing with these different characteristics. For a full statement of these structural differences, see Main Brief, pp. 104–106.

That the United States did not place much reliance on its contention that the Ideal machine competed with the Consolidated Company's machine is shown by the fact that it did not attempt in its direct case to introduce any evidence as to the use of the Ideal machine on men's welt

shoes, or the use of the Consolidated Company's Chase machine on women's welt shoes.

In its rebuttal it presented a number of witnesses in an attempt to show such use. As we point out below, these witnesses fail to show any use of the Chase machine on women's welt shoes, and their testimony as to the use of the Ideal on men's welt shoes, the field of the Chase machine, only confirmed the evidence of the defendants that the machine was used to an insignificant extent on men's shoes.

The testimony of most of the witnesses for the United States was not relevant to the issue at all. In the first place, some of them testified as to the use of the Copeland Rapid Lasting Machine, an earlier type of lasting machine, which had been put out by the Goodyear Company, but which was obsolete and no longer manufactured in 1899, so that the question of its possible use was immaterial at that date (Main Brief, pp. 106–108). A number of these witnesses testified only to the use of the Ideal machine on men's welt shoes long after 1899, when it appeared that, owing to a change in the type of shoes and to certain new inventions applied to the Ideal machine, which were naturally not foreseen in 1899, the difficulties encountered in lasting men's welt shoes with the Ideal machine were partially overcome (Main Brief, pp. 109–114).

This testimony showed that the Ideal machine was used in or prior to 1899 on men's welt shoes in only three factories, 18 machines at the most out of 248 machines outstanding being so used (see Main Brief, p. 114). The total use of the Ideal machine on men's welt shoes probably did not exceed .03 of one per cent. of the total shoes made in 1899 (see Main Brief, p. 114).

B. Use of the Chase Machine.

The Chase machine of the Consolidated Company was adapted and developed for lasting men's welt shoes as distinguished from women's welt shoes, the field of the Ideal. Mr. Winslow testified:—

> "The Chase lasting machine was especially adapted to and was developed for the lasting of men's welt shoes" (R. Vol. 1, p. 397, lines 39–40).

Mr. Howard, the patent expert of the United Company, who had been connected with it since its formation, testified:—

> "So far as I can learn, the Chase lasting machine was never used, either before or after 1899, in lasting women's welt shoes" (R. Vol. 1, p. 971, lines 10–14).

The United States in its rebuttal case attempted to show a use of the Chase machine on women's welt shoes, but utterly failed. No one of its four witnesses relied on for this purpose testified to such use. One testified to a use on women's McKay shoes, one to a use on women's shoes but not on welt shoes, and two testified that in their opinion it could be used on women's welt shoes but gave no instance of such use (see Main Brief, pp. 100–101).

The finding of the District Court (see Main Brief, p. 117) that the Ideal and Chase machines had different fields, that, although a few Ideal machines were used on men's shoes "notwithstanding their want of adaptation to such use," that no attempt was shown "to put either ma-

chine into the market as against the other," and that "no competition between the two in the usual sense of the term" was shown, is fully sustained by the record.

C. The Consolidated Company's Hand Method Welt Lasting Machine.

Prior to 1899 the Consolidated Company had attempted to construct a hand method machine which would last welt shoes, but it had only succeeded in constructing an unsuccessful experimental machine.

The reasons that the machine could not be used commercially are fully explained in our Main Brief, pp. 119–121.

While the Company had endeavored to put out the machines, as Mr. Winslow testified, they were not being accepted by the manufacturers, only a few were out, and they were being sent out and coming back.

Mr. Howard testified:—

> "the machines were being knocked around from pillar to post. They didn't stick. They would be sent out on trial and they wouldn't stay" (R. Vol. 1, p. 969, lines 4–6).

In 1900 a new device was invented and incorporated in the machine and later improved, which, for the first time, made the machine commercial (see Main Brief, p. 121). This invention, of course, was not known or foreseen at the date of the formation of the United Company and was only a possibility.

Not only then was there no actual competition between the hand method welt machine and the Ideal machine in 1899, but the hand method welt machine was an entirely

different type of machine from the Ideal machine, which was of the bed type. Even when the hand method welt machine later became commercially successful, it, therefore, found a field of its own more or less different from that of the Ideal (see Main Brief, pp. 123–124).

The finding of the District Court that the hand method welt machine was not commercial and was not an article of commerce in any practical sense in 1899, when the United Company was formed (see Main Brief, p. 125), is fully supported by the record.

D. Conclusion as to Lasting Machine Competition.

The record fails to disclose any competition of any practical significance between the Ideal machines of the Goodyear Company and the machines of the Consolidated Company.

We submit that it is self-evident that the United Company was not formed to eliminate the possible competition of the Ideal machine, which was only one out of 19 machines made by the Goodyear Company, and of which only 248 were outstanding out of over 4,200 lasting machines in use, and which was not adapted for use on any class of shoes for which the Consolidated Company had a commercial machine. It is clear that the purpose of the consolidation was to unite in the new company the Goodyear machines of the Goodyear Company and the lasting, heeling, and metallic machines of the other companies, as the defendants testified. The acquisition of the Ideal machine was not the reason for the formation of the United Company, but resulted incidentally because it happened to be owned by the Goodyear Company, there being no intent disclosed to eliminate competition

and no competition of any practical significance being eliminated.

We submit that it cannot possibly be contended with reason that the wholly insignificant use of the Ideal machine by three manufacturers on men's welt shoes for which it was not adapted made inherently unlawful the consolidation of the Goodyear Company and the Consolidated Company—a consolidation obviously beneficial to the companies and to shoe manufacturers.

And, finally, even if the Ideal machine had been adapted for use on men's welt shoes as well as women's, and had been used extensively in this field in competition with the Consolidated Company's Chase machine, and had been owned by a separate company, it would have been legal and proper for the United Company to acquire both machines. The Ideal machine was patented and was admittedly the only machine which could successfully last women's welt shoes. The United Company was entitled to furnish a machine for this purpose, which it could only do by acquiring the patents on the Ideal machine. The mere fact that it acquired the Chase machine which was used on men's welt shoes would not bar it from entering the field of furnishing lasting machines for women's welt shoes also in the only way in which this was at the time practicable or possible, namely, by the purchase of the Ideal machine.

It may be added that both the Ideal machine and the Chase machine have become obsolete.

5. ALLEGED COMPETITION BETWEEN THE GOODYEAR COMPANY AND THE EPPLER COMPANY.

Welt shoes differ from other types in the method by which the sole is attached. In the welt shoe a narrow strip of leather is attached to the outside of the upper and to the insole, and the outsole is attached to this welt. In McKay shoes the sole is attached directly to the insole by a seam which runs through both and thus appears on the inside of the shoe. In pegged and metallic fastened shoes the outsole is attached by pegs, nails, or screws.

In the Goodyear welt shoe the upper, insole and welt are first sewed together by a chain stitch. A light single thread lies in a prepared channel in the insole, and the double thread is laid on the welt outside the surface on which the foot rests. As a result, there is no seam which can disturb the foot.

In the Eppler welt process the bulky double thread of the chain-stitch was laid in the prepared channel in the bottom of the insole and under the surface on which the foot rests (see Main Brief, p. 133). The Eppler machine was so organized that it could only make the shoe in this way, so that it was impossible to use the Eppler machine on women's welt shoes, which have light inner soles, or on turn shoes, and it was much inferior to the Goodyear machine (see Main Brief, p. 134).

The contention of the United States appears to be that even if the Eppler Company did a very small business it was the only company outside of the Goodyear Company

which furnished machines for attaching the soles by welts, and that by its acquisition all competition, even if trivial, in welt machines was eliminated. But, as we have shown, the welt method was only one of several methods of attaching the soles. Welt shoes constituted about 10 per cent. of the total shoes made in 1899 and McKay shoes nearly 50 per cent. The Goodyear machines did practically all of this welt work then done, the Eppler Company's machines doing an insignificant amount. There were only 30 to 40 Eppler welters outstanding, about a third of which were in the factory of the president of the Eppler Company (see Main Brief, p. 141). The Eppler method of shoe making was, as we have shown, quite different from the Goodyear and was only one of a number of methods. So far as competition can be said to exist between different methods of attaching the sole, the real competition met by the Goodyear Company was from the McKay method of attaching the sole and not from the trivial and inferior work done by the Eppler machines.

That the Eppler Company, although it had been in business since the early 90's, did a trivial business, is undisputed. The reason is clear. In spite of the testimony of a few witnesses for the United States that the Eppler machines did good work, the record abundantly shows that these machines were inferior to the Goodyear and bound to become obsolete, as they have since become.

The outstanding characteristic of the Goodyear shoe which makes it the best shoe made is that no seam can be felt by the foot. In the Eppler shoe the bulky double chain laid on the inner sole was likely to cause a ridge under the foot. Thus Mr. Keith, the president of the Eppler Company, testified that this double stitch had a tendency

to raise a ridge or lump around the inside of the sole against the foot, which had the effect both of lessening the durability of the shoe and of making it uncomfortable (R. Vol. 1, p. 391, lines 10–17).

Charles S. Smith, a witness for the United States, testified that the chain-stitch of the Eppler machine,—

> "being larger and more bulky than the single stitch, occupied more room and was likely to leave a ridge around the inside of the shoe, which would come against the foot" (R. Vol. 1, p. 353, lines 6–9).

It was necessary to use a thick and expensive insole to prevent the seam from hurting the foot, which added greatly to the expense of making Eppler welt shoes (R. Vol. 1, p. 415, lines 36–43).

The Eppler machines were also inferior in construction to the Goodyear machines (R. Vol. 1, p. 677, lines 17–21).

Furthermore, the Eppler Company did not have a complete or satisfactory set of auxiliary machines which are essential to the successful manufacture of welt shoes. It lacked important auxiliary machines such as were supplied by the Goodyear Company and were essential to the commercial success of the welt process (see Main Brief, p. 143).

Most of the witnesses for the United States admitted that the Goodyear machines did better work and were superior (see Main Brief, pp. 144–148).

Furthermore, the Eppler machines infringed the Goodyear Company's patents and eight suits were pending to enjoin the use of these machines. The far-reaching character of these patent infringements is set out in our Main Brief, pp. 136–138. It thus appears that, even had the

Eppler machines been in any practical sense competitive, such competition was in violation of the Goodyear Company's patent rights and it was entitled to terminate it by suits in equity or by purchase.

It is clear that it was not the defendants' purpose in forming the United Company to eliminate this trivial competition. The United Company was agreed upon before the acquisition of the Eppler Company was even considered (see Main Brief, p. 138).

It is also clear that the acquisition of the Eppler Company had no effect of any significance on the position of the United Company. Any one to-day can manufacture these machines since the patents have expired, but no one does so, because no one desires to make shoes by this inferior Eppler process.

The sole purpose Mr. Winslow had in acquiring the Eppler Company was to terminate the patent litigation and thus enable the United Company to start business free from litigation (see Main Brief, pp. 134–136). Had the litigation brought by the Goodyear Company been continued, it would have been necessary for the United Company in certain cases to sue its own lessees who were using Eppler machines and also using the lasting, heeling and metallic machines of the Consolidated Company and the McKay Company (see Main Brief, p. 135). An incidental reason in Mr. Howe's mind was that the Eppler machines made a different kind of shoe from the Goodyear shoe and the acquisition of the Eppler patents would enable the United Company to furnish machines for this kind of shoe if any lessee desired to make them (see Main Brief, p. 155). Only two or three did and the machines rapidly became obsolete.

6. CERTAIN STATEMENTS RELIED UPON BY THE UNITED STATES TO SHOW UNLAWFUL INTENT IN THE FORMATION OF THE UNITED COMPANY.

The United States in an endeavor to prove the existence of the unlawful project which it charges in the petition, and further to show that the United Company was formed as a first step in the carrying out of this unlawful project, relies upon certain statements which, it contends, show an unlawful intent existing at the date of the formation of the United Company.

The circular issued to the Goodyear stockholders contained, among other things, the following statement (R. Vol. 4, P.'s Ex. 152, p. 1097):—

> "The United Company will also from time to time acquire other shoe machinery properties, either by direct ownership or by purchase of shares of their stock."

This statement, the United States says, shows the unlawful intent to acquire all competing concerns which it charges. The contention is without the slightest foundation. There were numerous types of machines which the constituent companies did not make. Mr. Howe, who drew the circular, testified that he had in mind that the United Company, if successful, would naturally take over some of these other machines which supplemented but did not compete with the machines of the United Company. The United Company by so doing would not eliminate competitors but would merely add additional types of machines. No

intent is evidenced to acquire competing machines (see Main Brief, pp. 161–163).

A similar recital in a contract made in September, 1899, seven months after the United Company was formed, with Peabody & Co., of Australia, agents for the United Company, to the effect that the United Company contemplated acquiring other lines of machinery and shoe findings, had the same significance. The United Company had in mind at the time acquiring the business of making blackings, cements, and stains, which it did not then manufacture, and which Peabody & Co. wanted to obtain a supply of. This recital was inserted in the contract under which Peabody & Co. agreed to act as agents in order to assure them that the United Company contemplated furnishing them with these supplies and possibly with other supplies or machinery which it did not manufacture at the time. (See Main Brief, pp. 164–165).

Testimony of Mr. Howe that he was opposed to mere working agreements between the constituent companies and wished a consolidation because he felt a mere working agreement between them might be held in restraint of trade is relied on by the United States as a confession of unlawful purpose to eliminate competition. Mr. Howe obviously did not fear that such a working agreement would restrain competition between the constituent companies, because he testified no competition existed. His notion was that an agreement whereby each of the companies obligated itself to manufacture its machines in a certain way, to join in furnishing service and in other ways to agree to act as though consolidated, might be deemed an improper contract for a corporation to obligate itself to, as it would have the effect of a consolidation, although such consoli-

dation was not formally agreed to. He did not have restraint of competition in mind (see Main Brief, pp. 165–166).

The insistence of the United States on these statements shows the utter lack of testimony on which to base its contentions.

7. METHODS BY WHICH AND EXTENT TO WHICH THE PURPOSES FOR WHICH THE UNITED COMPANY WAS FORMED HAVE BEEN CARRIED OUT.

Before considering the various transactions occurring after the formation of the United Company which the United States relies upon as showing the adoption and execution of the unlawful project charged, we shall briefly consider the extent to which the purposes for which the United Company was formed have been carried out.

This inquiry is of the greatest importance in the present case, not merely because it confirms the defendants' testimony as to their motives in forming the United Company, but also because—

(*a*) It shows conclusively that the formation of the United Company for the purpose of enabling it to carry out these purposes, far from "prejudicing the public," has been of enormous benefit to the development of the shoe industry and consequently to the public.

(*b*) It further shows that the continuance of the success which the constituent companies had at the date of the formation of the United Company followed from the improvements which the United Company made in its machines, the efficient service it rendered users of its machines and the

remarkable new machines it invented. The record thus fully substantiates the District Court's finding that the United Company's success was due to the excellence of its patented machines and the service rendered with them.

A. Improvements in Service.

Service to the shoe manufacturer, as we have stated, consists in repairing and adjusting machines, supplying new parts by having a depot near at hand, instructing operators and furnishing operators, in case the shoe manufacturer is unable to obtain them, in order to keep his factory going, and in acting as engineer generally and advising as to the best machines for a particular purpose or as to the best methods of manufacturing shoes.

Such service to be effective must be almost instantaneous. The business of a shoe manufacturer in Chicago, Philadelphia, or even Brockton, which is about forty miles from the United Company's factory at Beverly, is seriously handicapped if he must send to Beverly for a new part, or for a man to repair or adjust a machine. This is, as we explained, because if a single machine of the bottoming series breaks down it stops work completely on an entire series of bottoming machines. In every factory this is serious; in the majority of the factories of the country which require but one of many types of machines such a breakdown of a single machine stops the entire production of the factory until it can be repaired.

In 1899 each of the constituent companies attempted to furnish service so far as it could in view of its financial resources and the comparatively small number of machines it had outstanding. Not one of the three companies, how-

ever, gave a good service (see Main Brief, p. 176; see also testimony of Jonathan Brown, Main Brief, p. 178).

Almost immediately after the formation of the United Company the plans with reference to the improvement of the service commenced to be put into effect and the different offices of the constituent companies in any one place were amalgamated into a single office (see Main Brief, p. 178).

In 1911 the United Company had 27 different stations in 13 different states. At each of these depots or stations mechanics are kept to repair machines and instruct operators. These men answer calls for service from shoe manufacturers situated in their district, immediately travelling to the shoe manufacturer's factory. A stock of parts is carried in each of these depots for practically every machine which the United Company produces so that its mechanics are in a position to repair any machine immediately. The investment in parts carried by the United Company in 1911 for the service alone (not including any parts for new machines) was $1,415,474.49 (see Main Brief, p. 179).

The number of roadmen employed in this service increased from 237, employed by the United Company in 1899, to 689 employed in 1913, and the number of branch office managers and assistants increased from 12 to 31 (R. Vol. 5, Defs.' Ex. 211, p. 293). The total calls answered in the year 1911 were 192,524, and including calls for instruction to operatives 201,413. The time of the roadmen occupied in this work consumed 1,365,384 hours (see Main Brief, p. 179).

The number of operatives taught during 1911 was as follows:—

Goodyear operators taught	2,209
Metallic operators taught	956
Heeling operators taught	1,006
Lasting operators taught	1,359
Pulling-over operators taught	956
Eyelet and general operators taught	2,403
Total operators taught	8,889

Defendants' Exhibit 214 (R. Vol. 5, p. 311) shows in detail the number of calls made by each office, the number of operators taught through each office, and the number of hours consumed in this service.

Defendants' Exhibit 213 (R. Vol. 5, p. 298) shows the number of times service was rendered L. A. Crossett, Inc., a typical shoe manufacturer. The total calls as shown by that exhibit for the year 1911 (p. 311) were 1,150, or almost four for each working-day.

This service is rendered absolutely free of charge to shoe manufacturers. Shoe manufacturers are not even charged with the travelling expenses of the roadmen. All they pay is the cost of new parts (R. Vol. 1, p. 421, lines 18–23). This service cost the United Company for the year 1911 $1,196,494.86 (R. Vol. 1, p. 974, line 22).

The United Company is the only shoe machinery company which furnishes service of this satisfactory character (R. Vol. 1, p. 423, lines 1–4).

As to the improvement of the service, Mr. Winslow testified as follows (R. Vol. 1, p. 420, lines 35–45):—

> "As to the development of the service for shoe manufacturers since 1899, the service is now so far ahead of what existed in 1899 that there is really no comparison. At each depot is a general manager and a body of men who are experts in the adjustment and repair of all the

machines. These men are at the call of the manufacturers by telephone at any moment of the day and are at their service nights, if necessary, to rearrange their factories or readjust their machines. There are men to teach new operatives how to run the machines and how to take care of them. That service is complete in each shoe manufacturing district in the country."

Numerous shoe manufacturers testified as to the necessity for this service and the very effective service which the United Company renders.

JOHN STROOTMAN, a shoe manufacturer of Buffalo, New York, making from 800 to 1,200 pairs per day (R. Vol. 1, p. 742, lines 41–43), testified:—

"The service which the United Company gives us is excellent, and it is an all-important factor in the manufacture of shoes. We could not run a factory without the company's skilled men to keep the machines in order and keep them running. So far as I know, no other company furnishing shoe machines gives service of that kind" (R. Vol. 1, p. 744, lines 12–17).

C. WILLIS BENNETT, a shoe manufacturer of Fitchburg, Mass., making from 800 to 1,400 pairs a day (R. Vol. 1, p. 757, lines 32, 42–43), testified:—

"As to my experience with them with reference to service, why, their service has been, I might say, indispensable. I don't know what I should do without their service. Whenever I have a machine break down, I immediately telephone to their branch office at Marlboro, and they have a man come up there from Marlboro, who is an expert on that particular machine, to put the machine in order, and they do all this without any expense to me, aside of course from the cost of the broken part of the machine, if there are any parts broken" (R. Vol. 1, p. 758, lines 36–44).

ROBERT P. HAZZARD, a shoe manufacturer of Gardiner, Me., making about 5,000 pairs of welt shoes a day (R. Vol. 1, p. 640, lines 34–35; p. 641, line 10), testified:—

> "The United Company's service is one of the greatest necessities for the economical running of a modern shoe factory. . . .
>
> "When manufacturers get that service it not only means bigger wages for the employees, but it means better results for the manufacturer and cheaper shoes for the consumer. In my judgment, with the United Company's service the consumer is buying shoes cheaper than he could if the royalty were done away with and efficient service were not furnished" (R. Vol. 1, p. 643, lines 16-17, 42–p. 644, line 3).

For further testimony of shoe manufacturers as to the service rendered by the United Company, see Main Brief, pp. 181–187.

B. Concentration in One Factory and Standardization.

When the United Company was formed, the Goodyear Company manufactured its machines in Boston. The Consolidated Company was located in leased premises at Beverly, Mass., and the McKay Company had its factory at Winchester, Mass., which was unsuited to the purpose, as there was no labor market.

As Mr. Winslow testified, one of the purposes in forming the United Company was to economize in the manufacture of machinery by bringing that manufacture into one modern factory and standardizing the manufacture (see Main Brief, pp. 159–160). Shortly after the United Com-

pany was formed a committee was appointed to visit various manufacturing plants and gather data as to the best methods of manufacture, the most efficient machines, the most efficient arrangement for carrying on the manufacture from one department to another, and the best character of factory for the operatives.

After about a year's work by this committee a new concrete factory was built at Beverly, Mass. The factory had its own foundry. Provision was made for the standardization of parts which effected a considerable saving, and the consolidation of the three factories also effected a large saving in management expenses.

For testimony as to the concentration in one factory and the standardization of parts, see Main Brief, pp.168–170.

C. Inventions and Improvements in Machines Made by the United Company.

While the machines of the constituent companies at the date of the formation of the United Company represented remarkable inventions, and were the best or the only machines of the kind invented, the art of shoe machinery was young, and was, and still is, capable of great development. Not only was it possible by new inventions to add improvements to the existing machines which would greatly increase their efficiency, and with the assistance of the patents embodied in those machines and of fresh inventions to create new and better machines to take their place, but it was possible to invent machines to perform many operations which were at the time still carried on by hand.

To carry on the work necessary to develop this field a large expenditure for research and experimentation

was necessary. The formation of the United Company and its larger resources, as was expected, made this possible.

Soon after the United Company was formed the development of inventions was put in the hands of a committee of inventors. Every new idea was submitted to this committee, and, if reported upon favorably, work was undertaken to develop it. A large organization has been employed by the United Company for this work (see Main Brief, pp. 187–189).

In this experimental work the United Company has expended very large sums of money. For example, from 1907 to 1911 a total of $2,267,954.70 was spent (R. Vol. 1, p. 426, lines 25–39).

Defendants' Exhibit 217 (R. Vol. 5, pp. 323–51) is a typical report showing the experimental work done during the month of October, 1911. It shows that work was done on 61 different machines or parts of machines during that month. The report sets out in detail each of the machines on which work was done and the expenditure on each.

In addition to conducting its own Experimental Department the company has purchased from others such inventions offered it as it was thought would improve its machines.

The result of this effort and expenditure of money has been a remarkable development in the art of shoe machinery.

The United Company has, since 1899, brought out at least an average of 7 or 8 new machines a year (R. Vol. 1, p. 427, lines 12–13).

Mr. Winslow testified that since 1899 the United Company has invented and put out to its customers 150 new machines.

These are shown in a list—Defendants' Exhibit 246—(R. Vol. 1, p. 503, lines 7–23). 39 of these machines do work previously done by hand (Defs.' Ex. 247, R. Vol. 5, p. 690).

Among the striking illustrations of new machines which the United Company has invented to take the place of hand work are the Rex Pulling-over Machine and its auxiliaries and the clicking machine. They have resulted not only in much better work, but in a large saving to shoe manufacturers. The pulling-over machine was first put out about 1903 and the auxiliaries later, and the clicking machine was first put out about 1908. These machines are referred to more fully in our Main Brief, pp. 189–190.

All of the machines put out in 1899 have been improved and the greater part of the principal machines have been replaced by new or improved machines.

In the Goodyear Department, for example, nearly all the machines have been so replaced (R. Vol. 1, p. 430). In addition, numerous new auxiliary machines have been introduced. Thus in 1899 the United Company supplied 13 auxiliary machines for use in making welt shoes, while in 1911 it supplied 35 such auxiliary machines. In 1899 it supplied three Goodyear auxiliary machines for making turn shoes, while in 1911 it supplied nine such auxiliary machines (R. Vol. 5, Defs.' Exs. 242–245, pp. 681–683).

The machines which the United States contends that the United Company has monopolized are these improved or new machines, all of them patented, and a number of them performing work which was performed by hand until these machines were recently invented by the United Company.

When the United Company developed a new machine, or an improved model of a machine, to take the place of an existing machine, it substituted the improved machine for the old machine then under lease without any charge to the shoe manufacturer and the old machine was taken back and scrapped (see Main Brief, pp. 189, 190). By this liberal policy it has enabled lessees to have at all times the most up-to-date shoe machinery without any loss due to discarding the machines they held. When it developed a new auxiliary machine it furnished it to lessees for a nominal initial payment or rental without charging any additional royalty whatsoever.

D. Increased Efficiency of Machines Resulting from Inventions and Service Furnished by United Company.

The improvement in the defendants' machines, the addition of new machines to assist in the work of the principal machines and the service which the United Company has been able to render in connection with its machines have resulted in a remarkable increase in their efficiency. The result has been that each machine has been able to turn out a greatly increased number of shoes.

For example, each Goodyear welt sewing machine in 1910 sewed 66.7 per cent. more shoes than in 1899; each Goodyear outsole stitching machine sewed 69.5 per cent. more shoes in 1910 than in 1899; each Goodyear welt sewing machine used for turn sewing sewed 54.3 per cent. more shoes in 1910 than in 1899; each heel-attaching machine attached 62.3 per cent. more shoes in 1910 than in

1899; each lasting machine lasted 24 per cent. more shoes in 1910 than in 1899 (R. Vol. 1, pp. 428–429).

E. Savings to Shoe Manufacturers by Reduction of Charges and Increased Efficiency of Machines.

Shoe manufacturers have benefited both directly and indirectly from the increased efficiency of the United Company's machines and the better service it has rendered with them.

They have benefited directly by a reduction in royalties and initial payments charged by the United Company, which reductions the United Company has been able to make because its return in royalties from machines, each of which, being more efficient, operated on an increased number of shoes, has been larger. They have also benefited directly by the saving in material effected by the use of many of these machines, such, for example,—as the clicking machine, which effects a great saving in leather, and the improved welter, which Mr. Hazzard, a shoe manufacturer, testified saved at least $500 per machine a year in welting alone (see Main Brief, p. 544).

Shoe manufacturers have also benefited indirectly from the fact that their business has not been interrupted by the breaking down of machines, and because, owing to the improved service rendered and the increased capacity of the machines, a less number of machines requiring less factory space can do more work, and also because they have been furnished with many machines to perform more efficiently and quickly operations previously performed by hand. Such indirect savings cannot be estimated with any exactness, but they are very large.

The direct savings are also large. Mr. Winslow testified that the savings effected in 1911 over 1899 in the manufacture of the Goodyear welt shoe, by reason of the increased efficiency of the machines and the decrease in royalties, was 8¼ cents per pair. He gave in detail the savings effected by various new or improved machines used in the manufacture of welt shoes (see Main Brief, pp. 192–194).

The total royalty per pair of shoes charged for all the principal royalty machines furnished by the United Company for the manufacture of Goodyear welts is 5.694 cents for men's welts and 4.694 cents for women's and misses' welts; the total royalty for all the principal royalty machines furnished for women's and misses' turn shoes is 1.972 cents, and for children's turn shoes .5 cents; the total royalties for the principal royalty machines used for men's and women's McKay shoes is 1.746 cents, and for children's McKay shoes 1.391 cents (R. Vol. 1, p. 503, lines 29–36). In addition there are very small annual rentals on certain machines which add no appreciable amount to the cost per pair of shoes (see Main Brief, pp. 196–197).

It will thus be seen that the saving on a welt shoe effected since 1899 is more than the total royalty now charged.

The royalty for the turn machine was reduced 50 per cent. shortly after the formation of the United Company (R. Vol. 1, p. 503, lines 2–4). The United Company acquired a sole-laying machine for which a royalty of ¼ cent per pair was charged previous to its acquisition by the United Company, and an insole machine for which a royalty of ½ cent was charged previously to its acquisition, and the United Company has added both these machines to its Goodyear auxiliaries and leased them to shoe manu

facturers without charging any additional royalty whatsoever, thus saving the shoe manufacturer ¾ of a cent per pair (see Main Brief, p. 192).

The United Company has also practically eliminated the installation charge or initial payment previously charged for its machines. Thus, for installing an equipment of machines for making welt shoes to operate on 1,000 pairs of shoes per day the constituent companies charged $11,300.50 as an initial payment. In 1911 this initial charge including the first year's rentals of certain machines was reduced to $2,467.50, a saving to shoe manufacturers of $8,833 (see Main Brief, p. 196).

The United Company has in no case increased its royalties.

The United Company has also made reductions in prices of tools and supplies furnished shoe manufacturers (see Main Brief, p. 195).

And in addition to these reductions in royalties, initial payments, and prices for tools the United Company has furnished in all cases much improved machines, and in many cases new machines, without any increase in royalty or cost to the shoe manufacturer. Thus, as an example, though it has eliminated the initial payment for Goodyear machines which was charged by the Goodyear Company, the United Company now furnishes for welt work, for the same royalty charged in 1899, a vastly improved welter and stitcher all of a much larger capacity, and 35 auxiliary machines in place of 13 auxiliary machines furnished in 1899. On turn work it has reduced the royalty 50 per cent., has eliminated the initial payment charge, and in addition has furnished a much improved machine and 9 auxiliary machines instead of 3 fur-

nished in 1899 (R. Vol. 5, Defs.' Ex. 244, 245; R. Vol. 5, p. 683).

The formation of the United Company, and its consequent ability to economize in manufacturing expenses, in the cost of service, and to maintain a large experimental department have alone made these very large savings possible.

For a more complete statement of the savings to shoe manufacturers, see Main Brief, pp. 191–197.

F. Benefits to Operatives of the Machines.

Operatives of shoe machines are generally paid by the piece, that is, a certain amount for each pair of shoes operated on by them. Any increase in the efficiency of the machines tending to a larger production per machine thus increases the number of shoes worked on by each operative. The increased efficiency of the United Company's machines has resulted in an increase in the compensation paid operatives, although shoe manufacturers have in many instances actually reduced the piece price.

Thus the testimony shows that the average output of the Model K Welter is 40 dozen pairs a day instead of about 25 dozen pairs on the old machine and that an operative as a result can earn 20 per cent. to 36 per cent. more on the new welter, although the piece price on the old welter was one-third more than on the new (see Main Brief, p. 197). On the Model M Stitcher the operatives can earn 24 to 45 per cent. more than on the old stitcher, although the piece price is 40 per cent. less than on the old stitcher (see Main Brief, p. 198).

G. The Development by United Company of Goodyear Method of Making Shoes.

One of the purposes in forming the United Company, as testified by Mr. Winslow, was to encourage and increase the manufacture of Goodyear welt shoes, the best type of shoe made. This was to be done by the development of new machines to assist in that manufacture, by lowering the cost of installation of the Goodyear machines and by furnishing an efficient service to maintain the machines in operating condition, and to instruct operators in their use (R. Vol. 1, p. 407, lines 22–30). The United Company has consistently carried out this purpose and may be said to have specialized in machinery for making the Goodyear welt shoes.

It has, in the first place, enormously increased the efficiency of its welter and stitcher, the two principal machines used in this process. As we have shown above, it has greatly increased the number of auxiliary machines furnished with its welter and stitcher (*supra*, p. 70). It has eliminated the initial charges made in 1899 on its principal machines, resulting in a large saving to the shoe manufacturer (*supra*, p. 70).

There has resulted a great increase in the production of Goodyear welt shoes. In 1899, 22,700,000 pairs of welt shoes were made out of a total of 172,786,000. In 1910, 86,231,000 pairs of welt shoes were made out of a total of 278,916,000 (R. Vol. 1, p. 424, lines 24–35).

III.

THE EVIDENCE REGARDING DEFENDANTS' PATENTS.

The petition alleges in effect that in 1899 the important or basic patents on the principal machines were about to expire and that the defendants, knowing this, contrived a plan by which they could in effect create a new and unlawful monopoly to take the place of the lawful patent monopoly which they were about to lose through expiration of the patents; and this is what the United States expected and undertook to prove (R. Vol. 1, pp. 992–994).

The United States utterly failed to substantiate this charge. On the contrary, it was shown that at the date of the formation of the United Company the machines which the patent expert for the United States selected to sustain its charge embodied patents which had more than fourteen years to run.

The District Court found that the allegation was not proved and said:—

> "It seems obvious, therefore, that the allegations in question could not have been founded, when they were made, upon any adequate or complete investigation of the facts."
>
> . . . . . .
>
> . . . "I must regard the allegations here in question as not sufficiently supported by proof; and hold that no such motive is shown to have prompted either the organi-

zation of the United Company, or any of its subsequent doings" (R. Vol. 1, pp. 1133, 1134).

The United States has abandoned this contention. It was not mentioned in briefs or arguments for the United States at the first hearing in this Court. Accordingly, although the evidence on this issue is reviewed in the Main Brief (Main Brief, pp. 199–232), there is no occasion for taking time here for any analysis or discussion of that evidence.

The record shows that throughout the history of this industry every machine which has been useful has been patented. And the record further shows that practically all this patented development of shoe machinery has been accomplished by the United Shoe Machinery Company and its predecessors, and that the period since February, 1899, has been a period of more important and more rapid development than any corresponding period in the history of the industry.

The District Court held:—

"At any rate it must be accepted that from the beginning the machinery offered by the respondent corporation was, in all its essential elements, protected by patents, and that there has been no proof to the contrary" (R. Vol. 1, p. 1115).

IV.

LEASES OF SHOE MACHINERY.

Our next inquiry is whether the lease and license agreements under which the United Company furnishes its machines to be used by shoe manufacturers are, as the United States alleges in its petition, a step in carrying out the unlawful project charged.

The leases are relied upon to prove the existence and consummation of the second part of the unlawful project charged in the petition, namely, the alleged refusal to sell or lease what the petition styles the principal machines, viz., lasting, welt sewing and outsole stitching, heeling, and metallic fastening machines, unless the shoe manufacturer took practically all other machinery from the defendants.

The United States attempted to sustain this charge by contending that the so-called Restricted Use Clause which restricts the use of the machines of one department to use in connection with a machine or machines of another department or departments has this effect. The clause has no such effect, and, furthermore, leases containing this clause are only alternative forms of lease, and lessees have always been able to obtain from the United Company leases not containing such Restricted Use Clauses on terms no higher and in many cases less than were charged by the constituent companies.

The District Court found as to this charge:—

(R. Vol. 1, p. 1162–4.) "The alleged plan of a refusal of what before could be had separately, as a means of compelling the taking of other machines, was a principal ground for invoking the Sherman Act.

"The leases in evidence, as documents, fail to substantiate the charges either as to the contrivance of such a plan or as to its execution. It appears that after the consolidation there was no refusal or imposition of conditions as alleged, but that the defendants continued to give manufacturers terms which were substantially the same as before and in some instances better than those offered by the constituent companies before the consolidation.

". . . As the leases prove no such plan, whether of the extent alleged or of less extent, and as the evidence proves the exact contrary of what is charged, we think that the United Shoe Machinery Company is, upon the merits, entitled to a full clearance from this charge."

In describing the leases the petition also alleges that the United Company discontinued the sale of machines and adopted arbitrary lease and license agreements which "contain provisions, not found in their former lease and license agreements" (R. Vol. 1, p. 997).

The record wholly fails to sustain any such charge. The United Company did not discontinue the sale of machines, for the constituent companies had only leased and never sold any of their machines. The District Court said (R. Vol. 1, p. 1153):—

"An attempt to support this charge by evidence wholly failed. Nothing of the kind was done, nor is it easy to see what grounds for making the charge could ever have been supposed to exist."

Counsel for the United States, in arguing the present case, have not limited themselves to an attempt to prove

the existence and consummation of the unlawful project charged in the petition. They have criticised various clauses, such as the Repair Parts Clause, the Full Capacity Clause, and others, which obviously have no relation to the existence or carrying out of a plan to refuse to lease certain machines unless practically all others were taken. Furthermore, in the District Court they even abandoned the contention that the clauses in the leases which they criticised were adopted with unlawful intent, and they merely contended that the lease system has resulted in an illegal restraint or monopoly and that the intent of the defendants is immaterial. As the District Court said:—

> "At the argument the admission was made on behalf of the United States that there was no proof that at the time they formed the United Company the defendants 'had in mind the adoption of the system of leasing which they later developed.' And the position then taken by the petitioner in argument was that the leasing system referred to has resulted in illegal restraint or monopoly and that the intent which prompted its development is therefore 'absolutely immaterial'" (R. Vol. 1, pp. 1154–1155).

The District Court found (*supra*, pp. 16–17), and the record abundantly proves, that the clauses in question were not adopted with intent to exclude competitors or monopolize, but for the purpose of enabling the lessors to offer the most satisfactory terms to lessees while at the same time they reserved reasonable protection for themselves. The following facts are shown by the record:—

1. From the very beginning of the shoe machinery industry, about 1860, it has been the almost invariable practice in respect to the principal bottoming machines and a common practice as to all shoe machines to lease and not

sell them, and to charge for their use a royalty of a certain amount per pair for shoes on which they are used. This remarkable system under which the shoe manufacturer obtains machines with little or no capital expenditure and pays for them a royalty determined by the amount of use he has for them has proved of enormous benefit to the shoe manufacturing industry and the public.

2. At the time the United Company was formed this lease system was firmly established in the industry and had been proved by experience best suited to the needs of the shoe manufacturer and the machinery manufacturer. The United Company, therefore, not only wished to continue it, but it could not have abandoned the system even had it desired so to do without disastrous and unjustifiable consequences.

3. The clauses contained in the leases of the constituent companies were such as experience had proved were necessary to protect the lessor, who places valuable machinery in the hands of numerous lessees situated all over the country, to be paid for according to the extent it is used.

4. The United Company has not changed the essentials of this system which was employed by the constituent companies. It has from time to time made modifications in the leases, just as the constituent companies had previously made them, in order to meet new conditions, to make its leases conform with one another and to enable it to offer better terms to its lessees. It has also from time to time necessarily adopted new leases for wholly new machines, but these have been similar to the leases already employed. A number of these modifications made by the United Company have removed restrictions contained in the constituent companies' leases which the development of the industry

proved were no longer necessary for its protection. These modifications have been made from time to time, not in pursuance of any plan made in 1899, but only as some special reason arose which made the change advisable. None of these modifications were made for the purpose of excluding competitors. As the District Court found, they were "obviously prompted by the purpose of developing the company's business through the perfectly legitimate method of offering them [the machines] on terms more advantageous to users" (R. Vol. 1, p. 1159). Modifications intended to exclude competitors "would have been different in character from modifications represented by these clauses" (R. Vol. 1, p. 1159).

5. The clauses criticised by the United States are essential to enable a lessor of shoe machinery like the United Company to furnish machines without a substantial initial charge, to be paid for only as used and in other respects upon the best possible terms. In other words, the clauses are essential to a commercially satisfactory leasing system.

The District Court said with reference to the contentions of the United States (R. Vol. 1, p. 1187),—

> "The attack arises from the attempt to adjust the payments to the amount of use which particular manufacturers may have for the patented inventions."

The attack of the United States, therefore, is not upon clauses which are not essential to the maintenance of this system but which could be dispensed with without affecting the terms upon which lessees obtain their machines. The attack is upon clauses which are absolutely necessary to the protection of the lessor under this system, and, therefore, an attack upon the very existence of this system of marketing

shoe machinery upon which the shoe industry is founded, and which has proved so highly satisfactory to shoe manufacturers. To destroy this lease system would be to affect disastrously not only the shoe machinery industry, but also the shoe manufacturing industry, which is founded upon it.

1. THE LEASING SYSTEM.

There are four striking characteristics of the present leasing system. It is these characteristics which have made it so satisfactory to shoe manufacturers and which have resulted in such an enormous development of the shoe manufacturing industry. The clauses in the leases are employed to enable the United Company to offer machines on these favorable terms.

1. Under this system machines are installed in the shoe manufacturer's factory with practically no initial cost.

2. For the use of the machines the lessee is only required to pay a royalty based upon the use which he has for them. If the lessee has no work for the machines to perform he is required to make no payment. It is true that the leases usually contain a guarantee of a minimum payment, but this guarantee is small, is not strictly enforced, and is inserted not to obtain compensation for the machines, but to prevent a shoe manufacturer from keeping a machine indefinitely if he has no work for it to do (see Main Brief, pp. 310–311).

3. A shoe manufacturer who uses a series of machines is given a wholesale or reduced rate. Where a series of machines is used by a shoe manufacturer the cost of caring for each machine is reduced and the royalty received from

each machine is increased. The United Company, therefore, obtains a larger return on each machine at a smaller expense where a series of machines is used and is thus able to offer a wholesale rate in such case.

4. Under the lease system the lessor, who understands the mechanical characteristics of the machines better than the shoe manufacturer, repairs and adjusts the machines, maintains a stock of new parts needed to replace broken parts, instructs operators in the use of the machines, and generally maintains the machines in their most efficient operating condition. By caring for the large number of machines which it has outstanding it is enabled to do this far more efficiently and with less expense than would be possible to the individual shoe manufacturer.

Advantages of Leasing System.

The reasons for the adoption of this lease system and the reasons why it has proved so satisfactory are more or less obvious, but we shall briefly summarize them. For a more extended statement, see our Main Brief, pp. 248–253.

(*a*) Under this lease system a shoe manufacturer does not have to provide the capital necessary to buy outright these expensive machines. As a number of shoe manufacturers testified (see Main Brief, pp. 250, 344–347), machinery of this kind depreciates rapidly and banks are unwilling to lend money on it. Shoe manufacturers can hardly figure as an asset at all such machines as they buy.

Under the lease system the shoe manufacturer is not required to tie up his capital in machinery, but can employ it in buying supplies and producing shoes.

Furthermore, comparatively little capital is necessary in

the shoe manufacturing industry, provided machines can be obtained without capital expenditure. No special factory is required, as any loft which can be readily leased is sufficient. Shoes are made quickly and are sold for cash. The ordinary shoe manufacturer turns over his capital from three to eight times a year (see Main Brief, p. 250.) The business, unlike most manufacturing businesses, can be conducted successfully on a very small scale, as is shown by the fact that in 1911 out of a total of 1,110 operating factories 274 produced less than 100 pairs of shoes per day, 495 produced less than 300 pairs per day, and 636, or more than half, produced less than 500 pairs per day (see Defs.' Ex. 229, R. Vol. 5, p. 441).

The result is that under the leasing system men of very small capital, such as superintendents in shoe factories, are able to enter the shoe manufacturing business on a small scale as independent manufacturers. Many of the most successful shoe manufacturers to-day started with practically no capital, which would have been impossible except under this system.

EDWARD W. BURT, a shoe manufacturer, testified:—

> "As to the effect which it would have had with reference to my ability to go into business at all, I never could have started. I started without any money in shoe manufacturing. I was able to do that because I could obtain my machines by this method.
>
> "That is one of the greatest reasons why I could start in the shoe business—because I could get machinery with practically no expense.
>
> "I know that there are other men who from small beginnings have been enabled to start and grow. I have had experience along that line. I have had two superintendents leave me, both starting in the shoe business. They had practically no money" (R. Vol. 1, p. 741, lines 19–31).

For similar testimony of other shoe manufacturers, see Main Brief, pp. 252, 253.

By thus enabling the man of ability but small capital to enter the business, the United Company has naturally extended and enlarged its business. The two classes of persons who resent this method of leasing machines are, first, certain large shoe manufacturers who are able and would be willing to buy machines outright if they could thus prevent the entry into business and the resulting competition of small manufacturers who are enabled by the leasing system to do business; and, second, competing machinery manufacturers who are not in position or are unwilling to lease machines to shoe manufacturers and wait for their return over a period of years.

(*b*) The art of shoe machinery is still new, and from the beginning it has developed rapidly. A machine may be the best of its kind to-day, but improvements made in a new model a year or two years hence may render it obsolete. Were shoe manufacturers required to buy machines, they would hesitate to invest large amounts of capital in machines which might have to be scrapped shortly afterwards. Persons contemplating entering the business would be deterred by this possibility. Shoe manufacturers who had already purchased machines would hesitate to buy new models or to buy new machines for doing work previously done by hand until they were sure that the new or improved machine was a success and that no further improvements were likely to be made. The shoe industry would thus be greatly retarded.

Under the lease system the United Company takes the risk of the machine becoming obsolete. The shoe manufacturer takes his machine without investing any capital

in it, and, furthermore, confident that if the United Company produces an improved machine, or makes an improvement in the machine already leased, it will give him the new machine or improvement without cost.

(*c*) Under the lease system the shoe manufacturer pays for his machines only as he uses them. If business is poor his royalties proportionately decrease; if good, they increase. The amount of payment is thus automatically adjusted to the amount of business which the shoe manufacturer does, and he is not burdened with heavy annual charges when business is poor. This is especially important to the small manufacturer who has little capital.

(*d*) The principal bottoming machines are delicate, and need constant repair and adjustment. No small shoe manufacturer and few large ones could afford to keep trained mechanics on hand to adjust and repair machines or to keep a sufficient stock of parts on hand to meet emergencies. If machines were sold so that the machinery manufacturer was not vitally interested in maintaining their efficiency, they would get out of repair and become discredited and do far less efficient work.

Where the machinery manufacturer merely leases the machines and is paid by a royalty which is dependent on their being maintained in efficient condition, much more efficient machines result and they give much greater satisfaction to the shoe manufacturer. The machinery manufacturer having a large number of machines to which it gives this service can furnish it better and more economically than the shoe manufacturer himself.

2. OTHER CONSIDERATIONS APPLICABLE TO THE LEASING SYSTEM.

In considering the leases it should be borne in mind that, like the leases of any other property, certain general clauses are necessary, and that it is not intended or contemplated that every clause should be strictly and literally enforced at all times and on all occasions.

For example, take the lease of a house. It frequently provides that no nails shall be driven in the walls, and that the property shall be kept in the same repair as when rented, and that for a breach of these provisions the lessor may evict the tenant. If the lessee drives a single nail into the wall or if a pane of glass is broken and he fails to repair it at once, the lessor may evict him unless the Court intervenes. The lessor, as a rule, does not contemplate that he will evict, nor does he attempt to do so, for a trivial breach of this character. But it is impossible in advance to define in words exactly what is trivial and what is not. The lessor, therefore, necessarily inserts a general clause covering all cases and enforces it only in such cases as at the time appear to be material.

The same is true of the clauses contained in the United Company's leases. For example, the United Company does not plan to cancel the lease if the lessee does not for a short period and for some special reason use some one machine to capacity, or if he uses without the United Company's consent a repair part which happens to be at hand and was not made by the United Company. This is conclusively shown by the record. But the United Company

cannot in words provide in advance for all conditions and define exactly the cases in which it will be materially damaged and entitled to take action. It must reserve general rights. If in certain cases these rights might be enforced harshly and unfairly, this does not condemn them. The question is whether they are inserted for this purpose and are so enforced, or whether they are inserted for a reasonable and proper protection and only enforced when such protection is necessary.

The lease system lends itself easily to fraud on the lessor if the lessee is not honest. The lessor is paid for its principal machines according to the number of shoes made on such machines. Certain machines where the revolutions of a shaft are involved have recording mechanisms which record the revolutions of the shaft but do not record exactly the number of shoes on which the machine is used, and furthermore such mechanisms may be tampered with; other machines, such, for example, as lasting machines, can have no recording mechanism attached. The lessor obviously cannot have a representative in the factory recording the exact use of each machine. It is dependent largely upon the honesty of the reports made to it by the lessee and his operatives. Necessarily it must have clauses which when it is dishonestly or unfairly treated will enable it to take immediate action for its protection.

Under the lease system a relationship far more intimate is created than in the ordinary case of lessor and lessee. The relationship is really a quasi partnership. The United Company furnishes a considerable portion of the shoe manufacturer's capital in the shape of machinery. It gets paid for this only to the extent such machinery is used, or, in other words, as a practical matter, in proportion to the success of

the lessee's business. It, therefore, supplies capital, and, in effect, shares profits. It is almost as interested in the success of the lessee's business as is the lessee. This has the great advantage, from the lessee's point of view, of making it to the interest of the United Company to give him efficient machines and to maintain them in the best possible operating condition. But it means that the United Company necessarily has a right to direct that these machines shall be used in the most efficient manner in order that its own revenue from them may be properly protected.

3. THE LEASES OF THE CONSTITUENT COMPANIES PRIOR TO THE FORMATION OF THE UNITED COMPANY.

As we have stated, the lease system started with the beginning of the shoe machinery industry and was firmly established in 1899, when the United Company was formed.

The leases used by the constituent companies in 1899 are given in Plaintiff's Exhibits 3–13, R. Vol. 3, pp. 22–120.

These leases do not conform exactly to each other—some of them seek to protect the lessor in one way and some in another. A number of these leases at the date of the formation of the United Company, especially the Goodyear leases, required initial payments. The lessee did not take machines under leases requiring substantial initial payments unless he intended to use them, and after he took them he had an interest in using them. These leases requiring initial payments did not necessarily require the same provisions protecting the lessor as the non-initial payment forms.

The following clauses were used in these leases of the constituent companies:—

1. In machines having many moving parts it is essential that the parts be made of proper material, and that they be made for the particular machine in which they are used, so that they will fit perfectly. Experience had shown that if the lessee replaced broken parts with parts obtained from others than the lessor, such parts might not be properly made, might be of inferior material, or might not fit the machine. In such case the machine depreciated in value, returned less royalty, did poorer work, and became discredited.

Every lease of the constituent company, therefore, provided that without the lessor's consent no duplicate parts should be placed in the leased machine except those obtained from the lessor. This is the Repair Parts Clause considered below.

2. Experience had shown that the machinery manufacturer could not afford to develop and construct expensive patented machines and install them in a shoe manufacturer's factory, to be paid for as used, unless the lessee took them for an extended term, and the lessee on his part naturally desired to know that he could retain his machines for an extended period without an increase in royalties.

All of the leases of the constituent companies, therefore, ran for extended periods.

Most of the lasting machine leases ran until cancelled for breach of conditions; in other words, they ran for the life of the machines (P.'s Ex. 6, Art. 9; P.'s Ex. 9, par. 9; P.'s Ex. 10, par. 9). In the case of heeling machines the leases ran for seventeen years and for such further time as any patents embodied then or thereafter in the machines

were in force (P.'s Ex. 11, par. 8). In all other cases the leases ran for the life of the patents then embodied, or which might thereafter be embodied, in the machines. As improvements were not infrequently added to the machines, these leases, as a practical matter, ran indefinitely.

3. Experience had proved that in some cases after the lessor had gone to the expense of constructing and installing a machine and instructing operators in its use the lessee used some other machine permanently or for a time and the lessor's machine was left idle.

This had led the Consolidated Company to adopt a clause requiring the lessee to use the machine to its full capacity so far as he had work for it to perform. This is the so-called Full Capacity Clause. Only in the initial payment lease of the Consolidated Hand Method Lasting Machine was the Full Capacity Clause omitted (P.'s Ex. 8, R. Vol. 3). The initial payment required under this lease was deemed a sufficient guarantee that the lessee intended in good faith to use the machine if he had work for it to perform.

The same situation had led the McKay Company to require that the lessee, if he took its heeling machine, should pay a royalty based on all heels he made, whether or not made by the McKay Company's heeling machines (P.'s Ex. 11, par. 3). This is the so-called Factory Output Clause, used in one alternative form of lease of Goodyear machines.

4. Experience had shown the Consolidated Company that if it went to the expense of installing a machine without initial payment it met with two difficulties: first, the lessee might last his shoes largely or wholly by hand or if the machine were used, the company might not receive

sufficient royalty from one machine to recompense it; and, second, the lessee might obtain another machine of the same kind, and, although he used the Consolidated Company's machine to a considerable extent or entirely, he might dishonestly report that much of the work was done on the other machine, or he might use the Consolidated Company's machine only upon slow or difficult work and the other machine for quicker or easier work, in either event depriving the lessor of a fair return. The Consolidated Company met the situation by requiring the lessee to take additional machines for any additional work he might have, thus requiring an exclusive use of its machines of the kind leased (see P.'s Ex. 6, Art. 12; P.'s Ex. 7, par. 12; P.'s Ex. 9, par. 12; P.'s Ex. 10, par. 12).

This is the so-called Additional Machinery Clause, the only clause which ever appeared in any of the United Company's leases requiring the taking or use of any machine in addition to the particular machine covered by the lease. This clause was used only to a slight extent by the United Company and was eliminated completely from all leases put out after 1907 (see Main Brief, pp. 323–326).

The Goodyear Company, in its turn leases, although it charged an initial payment, had deemed it necessary, for the reasons outlined above, to require an exclusive use of its turn machines (P.'s Ex. 3, par. 6; R. Vol. 3, pp. 25–26). This clause was eliminated by the United Company in December, 1900 (see Main Brief, p. 281).

5. The McKay Company, to protect itself against the possibility of not obtaining a fair return where the lessee provided himself with other machines of the same kind for his work, either because of dishonest reports on the part of the lessee as to the use of its machines or because the

McKay Company's machines were in such case used only on slow or difficult work or were only used during the lessee's busy season, adopted a clause which did not require the lessee to take additional machines and thus use its machines exclusively, as in the case of the Additional Machinery Clause, but which permitted the lessee to use other machines and merely reserved an option to the McKay Company to withdraw its own machines in such case. This is the so-called Exclusive Use Clause which has been employed by the United Company and which the United States attacks.

6. The Goodyear Company, which had developed its welter and stitcher for use together, both being essential to the integrity of its Goodyear welt shoe, leased them for a single royalty and provided that if either were used on any shoe both should be used. In other words, it restricted them to use together.

Its auxiliary machines it had developed from time to time and had leased to lessees of its principal machines without requiring any additional royalty. It thus increased and improved the work done by the principal machines and enhanced the reputation of the Goodyear shoe. It did not charge a separate or additional royalty for these auxiliary machines, because it wanted to encourage lessees to use them and thus improve the quality and reputation of the Goodyear shoe. But the Goodyear Company could not lease these machines without royalty unless they were used on shoes on which its principal machines for which a royalty was paid were also used. The Goodyear Company, therefore, restricted these auxiliary machines to use on shoes on which its principal machines were used. In other words, the entire group of Goodyear machines was treated

as a unit and a single royalty was charged. But the lessee was not required to take or use the auxiliary machines and he was entirely free to use auxiliary machines obtained from others with the Goodyear Company's welter and stitcher.

This clause restricting the use of the auxiliary machines is the Auxiliary Restricted Use Clause, which has been continued by the United Company.

For a fuller statement of the reasons for adopting the Auxiliary Restricted Use Clause, see *infra*, pp. 151–154; also Main Brief, pp. 375–378.

7. The Goodyear Company put out the Ideal Lasting Machine as well as its Goodyear machines. This machine was invented and adapted for use with the Goodyear welter and stitcher. A separate royalty was charged for its use, but it was restricted to use on shoes on which the Goodyear Welter and Stitcher operated. The Goodyear Company, by thus adding it to the series of Goodyear machines which it was already caring for and placing it only in factories in which it had these other machines, was able to care for it at less expense and to charge less for the Ideal machine than would otherwise have been possible and was also able to maintain the machine in efficient working condition and thus maintain its reputation.

The clause by which the Ideal machine was so restricted is the Restricted Use Clause criticised by the United States. As employed by the United Company in its leases of various machines, it is only an alternative clause. The machines of each department are also leased at the option of the shoe manufacturer on independent unrestricted leases.

8. All of the leases contained a provision reserving to the lessor the right to cancel the lease if the agreements on the

part of the lessee were broken, thus enabling the lessor to protect itself against future and additional damage.

9. In addition to the foregoing clauses certain other clauses were contained in the different leases, among others the following:—

(*a*) It was provided in certain leases that the lessor might cancel if the machines were unused for a certain length of time (P.'s Ex. 7, par. 8; P.'s Ex. 9, par. 8).

(*b*) In certain leases the lessee guaranteed a minimum royalty (P.'s Ex. 7, par. 3; P.'s Ex. 9, par. 3).

(*c*) In one of the leases the lessor was given the right to cancel the lease if the machine was not used sufficiently to earn a certain royalty within a given period (P.'s Ex. 6, par. 8).

(*d*) The Consolidated Company had found that its machines were sometimes taken for the purpose of enabling the lessee to beat down the wages paid hand-lasters, or for the purpose of enabling it to get better prices from some other shoe machinery manufacturer. Most of its leases, therefore, provided that the leased machines should not be used, "as a means of reducing the price of hand-lasting, nor to control hand lasters, or to influence any trade in connection with any other lasting machines not controlled by the licensor, or the price list for lasting thereon" (P.'s Ex. 6, Art. 12; P.'s Ex. 7, par. 12; P.'s Ex. 9, par. 12; P.'s Ex. 10, par. 12).

4. MODIFICATIONS MADE IN THE LEASES BY THE UNITED COMPANY.

The United Company, as we have stated, could not have changed the essentials of the lease system even had it so desired without throwing the entire shoe machinery industry of the country into confusion. It could not have recalled and cancelled the outstanding leases without the consent of the lessees, which it could not have obtained. As to all machines then outstanding it was obviously necessary to continue the system. The great majority of shoe manufacturers did business on a small scale and had comparatively little capital. They had been induced to enter the business by the offer of machines upon the lease system. Had the United Company refused to furnish additional machines on this basis it would have seriously crippled many of the lessees and worked a great injustice. On the other hand, if it did continue to furnish machines on the existing basis, it was essential that it continue the clauses which experience had shown were necessary for the protection of the lessor or similar clauses.

Apart, then, from the fact that the lease system had proved itself best adapted to the needs and conditions of the shoe machinery business, the United Company found itself practically pledged to its continuance.

The United Company has not changed the essentials of the system at all. For over a year it made no changes whatsoever in the leases, but simply used the same forms of lease employed by the constituent companies—a proof

that the United Company was not formed for the purpose of changing the leases, in which case such changes would have been made at once. When it did from time to time thereafter make modifications they were only made in new leases. Outstanding leases were not disturbed (see Main Brief, pp. 273–274).

A certain number of modifications were introduced for the purpose of making the leases consistent; some eliminated restrictions employed by the constituent companies which in the course of time proved unnecessary; other modifications were gradually introduced to enable the United Company to meet new conditions and offer better terms to its lessees.

The District Court said (R. Vol. 1, p. 1158),—

> "Regarding the various modifications so introduced, it may be said in general that they tended to relax previous restrictions upon the use of leased machines, and to reduce the cost to the lessee of installing them."

The United Company has, at the option of the shoe manufacturers, sold outright without restrictions all but one of the General Department machines which it has gradually developed and acquired. It has thus departed in this respect from the policy of the constituent companies, which only leased machines.

The United Company eliminated in 1900 the provision in the Goodyear Company's lease requiring an exclusive use of the Goodyear Company's turn machinery. It employed the Additional Machinery Clause only to a slight extent and eliminated it entirely in all leases put out after 1911 (see Main Brief, pp. 323–326).

In order to make its leases consistent and to have them

run for a definite period, the United Company has introduced a seventeen-year term in its leases. This has not increased but in most cases reduced the term used by the constituent companies. The Full Capacity Clause used by the constituent companies in a number of leases has been used in all leases of machines for which a royalty based on use instead of a fixed royalty is charged. The Exclusive Use Cancellation Clause previously used by the McKay Company has been substituted for the Additional Machinery Clause, and is generally used in leases of machines for which a royalty based on use is charged.

The formation of the United Company resulted in its furnishing a series of machines of different kinds or departments instead of having the same furnished by different companies. Where the machines of different kinds were used as a series, the result was that each machine could be cared for more efficiently and more economically and each machine produced a larger royalty. The United Company was, therefore, enabled from time to time to reduce its charges for machines so used as a series, and thus share with its lessees the economies and increased revenues which resulted from such use. It effected this reduction to a large extent by eliminating initial payments where machines were taken for use as a series. Where such a reduction was made because a machine was to be used as part of a series, it was, of course, necessary to provide that the machine should be used in the manner agreed upon, and the United Company, therefore, introduced into such leases the so-called Restricted Use Clause, providing that machines taken for use as a series should only be used in this manner. This was the method employed by the Goodyear Company in leasing its Ideal machine.

A lease which did not contain this Restricted Use Clause was offered lessees as an alternative.

The Restricted Use Clause was not introduced immediately upon the formation of the United Company but only from time to time as some reduction in price or terms was effected.

These changes or modifications did not change the essentials of the leasing system in effect at the date the United Company was formed.

5. EXAMINATION OF THE LEASE CLAUSES OBJECTED TO.

A. Repair Parts Clause.

The United Company's leases provide that the lessees shall obtain from the United Company all duplicate parts needed to repair the machines.

The leased machines belong to the United Company. When a part is replaced, the new part, of course, belongs to the United Company. Unless such new part is adapted for use in the machine and is of equally good material as the part it replaces, the machine will not only depreciate in value, but might be seriously damaged, and it will do less efficient work and return less royalty. It is absolutely essential to the lessor that it control the character of the parts placed in its own machines. The United Company could properly provide that all repairs on its own machines should be made by itself, and in such case could, of course, use its own parts. As this in some cases might delay the repair of the machine, the lessee is authorized to make

repairs, provided he uses parts obtained from the United Company and which it knows are of proper construction and will fit the machine.

The petition does not allege that this clause is unlawful, but it alleges that the United Company has charged exorbitant prices for these parts and thus oppressed its lessees (R. Vol. 1, p. 997). Not only did the United States utterly fail to prove this allegation, but the defendants disproved it (see Main Brief, pp. 299–302). The District Court held that there was no evidence justifying this allegation (see Main Brief, p. 55).

B. Return Charge Clause.

The petition charges that the United Company exacted a return charge at the termination of the leases, which in some cases amounted to approximately the original cost of building the machines.

No evidence was introduced to substantiate this charge. On the contrary the defendants showed that in the year 1911 the cost of repairing returned machines was approximately $350,000 and the charges to lessees only about $70,000, showing a loss of $277,763.49 (see Main Brief, p. 302). This is only another example of the unfounded charges made by the United States.

C. Seventeen-Year Term.

The adoption of this term by the United Company reduced the term employed in most cases by the constituent companies (see Main Brief, pp. 302–306). It,

therefore, affords no evidence of an intent to obtain a monopoly by new methods as charged in the petition. It was obviously adopted to make the various leases consistent and to make them run for a definite term instead of indefinitely as was the case with most of the constituent companies' leases.

A long term is essential both from the point of view of the lessor and of the lessee. The United Company constructs millions of dollars' worth of machinery which it places in its lessees' hands without initial payment. It can only do so if the lessee will agree to take and use the machinery for an extended period so that the resulting royalties will compensate for its investment.

A shoe manufacturer also requires an extended period. He embarks in business on the strength of obtaining patented machinery without initial cost. He desires an assurance that he may retain this machinery without an increase in royalties. An agreement on the part of the United Company to permit a shoe manufacturer to retain its machines, and not to raise its royalties for a period of seventeen years, although the cost of machines may increase very largely, is certainly of advantage to shoe manufacturers.

If a rival shoe machinery manufacturer finds that the execution of these leases makes it more difficult for him to furnish machines, to what is this due? Obviously it is due to the fact that the rival finds that shoe manufacturers have already obtained machines to perform their work; that their needs are, therefore, largely satisfied; and that the market for practical purposes is limited to furnishing machines for additional work and to furnishing machines to new manufacturers just entering business. But this

is the field to which the manufacturer of practically every commodity is limited, that is, to supplying new needs.

If the leases ran for shorter terms,—say for ten or twelve years,—a competitor would find himself in the same position. Indeed, if the machines had been sold to shoe manufacturers outright, the competitor would be little if any better off. Shoe manufacturers who purchased machinery would not discard it until it became obsolete or worn out. Their demands for new machinery would for practical purposes be limited to their requirements for additional machines.

The difficulty the competitor finds, then, is not that these leases run for seventeen years instead of, say, for twelve years, but that existing shoe manufacturers are supplied with the machinery they require so that the demand for additional machinery is limited.

To contend that every shoe manufacturer must be left free to terminate his leases with the United Company and discard its machines without obligation to the United Company is to contend that no leases except those terminable at will can be made. But to so hold is to deny the right to contract at all.

As said by this Court in *Coppage* v. *Kansas*, 236 U. S. 1 (p. 21):—

> "For constitutional freedom of contract does not mean that a party is to be as free after making the contract as before; he is not free to break it without accountability. Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised; and each particular exercise of it involves making an engagement which, if fulfilled, prevents for the time any inconsistent course of conduct."

In *Chicago, etc., R.R. Co.* v. *Pullman Car Company,* 139 U. S. 79, this Court held lawful a contract under which the Pullman Company was given the right for fifteen years not only to furnish parlor cars on the railroad company's line, but to furnish them exclusively on the existing line and on any other lines thereafter owned by the Railroad Company. The Court said (p. 89):—

> "We cannot perceive that such a contract is at all in restraint of trade."

There is absolutely no evidence in the record that this clause has ever been used to oppress lessees. Although the United Company has the right to require under the letter of the lease a lessee to retain his leased machine for seventeen years, it has always waived this right by furnishing the lessee with any new or improved machine which it developed without additional charge of any kind (see Main Brief, p. 306).

It has also been ready to permit a shoe manufacturer to cancel his leases if circumstances justified. Thus Mr. McElwain, whose company is one of the largest shoe concerns in the country, was told that he might cancel his leases if he desired to use other machines (R. Vol. 1, p. 502, lines 12–18).

It is alleged that the term of the leases runs beyond the term of the patents. If true this would be immaterial, as the agreement that it shall run for seventeen years is a normal business agreement, and is not dependent on the fact that the machines are patented. But as a practical matter it has never been true. The machines have been so constantly developed that most of them contain inventions covered by applications for patents, which when is-

sued will run beyond the term of the lease, and the machines are usually improved by some invention after they are leased. The result is that in no case does it appear that unpatented machines are held under the leases.

The record then shows that the adoption of the seventeen-year term actually reduced the term required by the constituent companies; that an extended term is a benefit to both lessor and lessee; and that there is not the slightest evidence that the term was adopted or used to oppress shoe manufacturers.

D. Full Capacity Clause.

The Full Capacity Clause requires the lessee of a machine to use such machine to its full capacity upon all shoes made by the lessee upon which it can be used.

The reason for this clause is obvious.

The lessor invests its money in a valuable machine, installs it in the lessee's factory, and instructs the lessee's operatives, relying for his return on a royalty paid on each pair of shoes on which the machine is used.

But unless the lessee uses the machine the lessor will get no return. The agreement to use the machine is absolutely necessary if the machine is to be leased on this basis.

It seems obvious that the lessee cannot complain of this clause. If he does not intend to use the machine for such work as he may have for it, he has no right to take it under a lease whereby he is required to pay only if the machine is used. If he does intend to use the machine for his work, there is no reason why he should not agree to do so.

Nor can a competitor of the United Company complain. He has no right to demand that a shoe manufacturer taking

machines from the United Company shall be as free to deal with him as if such lease had not been made. If the machines were leased for a fixed rental, which even the United States admits would be lawful, such competitor would not find it any easier to dispose of his own machines, for the lessee would use the machines for which he was paying rental, and not those taken from a competitor for which he would be obliged to make an additional payment.

That the Full Capacity Clause was inserted only for the purpose of assuring the lessor a return from machines leased for a royalty dependent on the number of shoes on which they are used is conclusively shown by the fact that this clause is not used in respect to machines for which no royalty based on the number of shoes operated on is charged (see Main Brief, p. 312).

The United States apparently insists that a fixed rental or monthly rental would be equally satisfactory. Such is not the case. If a fixed rental were charged, the shoe manufacturer would be required to pay the same amount, whether business was good or bad. Furthermore, if he changed the character of his work he would be subjected to a disadvantage. If, for example, in one year he made 1,000 pairs of McKay shoes per day and had McKay lasting machines for this purpose, and the next year he made 750 pairs of welts and only 250 pairs of McKays a day, he would be required to pay for his McKay lasting machines exactly the same amount as during the previous year when he used them four times as much. Under the present system his McKay lasting royalties would be reduced three-fourths.

Again, under a fixed rental the small shoe manufacturer would be placed at a distinct disadvantage. 25 per cent.

of the United Company's lessees make less than 100 pairs per day (R. Vol. 1, p. 454, line 45; p. 455, line 1). If a machine having a large capacity, as most of them have, were leased for a fixed rental, a small shoe manufacturer making 100 pairs per day would pay for its use on each pair of shoes many times the amount paid by the large manufacturer who used it to capacity.

It is obvious that this clause is essential if machines are leased to be paid for only to the extent they are used. To eliminate this clause would, as a practical matter, prevent the further employment of this highly beneficial method of charging for the use of the machines.

For a more complete discussion of the Full Capacity Clause, see Main Brief, pp. 307–312.

E. Additional Machinery Clause.

The Additional Machinery Clause required the lessee to take from the lessor additional machines of the same kind as those leased if his work required it.

As we have shown above, it was used by the Consolidated Company to assure it a proper return on its investment and to protect it against receiving a return not fair to it by the use of other machines of the same kind (*supra*, pp. 89–90). As it was used only to a very slight extent by the United Company and eliminated from all its leases by 1907, four years before this suit was brought, it is of no importance in the present case except as showing that the United Company eliminated from the lease system the only clauses obligating the lessee to take any additional machines.

For a discussion of this clause, see Main Brief, pp. 323–326.

F. Exclusive Use Cancellation Clause.

When a machinery manufacturer installs his machine in a shoe factory to be paid for by charging a royalty for each pair of shoes on which it is used, he runs a risk of not getting a fair or proper return when the lessee uses another machine of the same kind for the following reasons:—

1. The lessor, in order to obtain his stipulated royalty, must know how many pairs of shoes are operated on by his machine. He cannot afford to employ an inspector to watch the machine all the time. On certain machines he can place a recording mechanism which roughly shows the amount of use, but this may get out of order or be tampered with. On other machines, such as lasting machines, no such recording mechanism is practicable. The lessor must, therefore, depend for the most part on the reports made to him by the lessee and his operatives. When another machine of the same kind is used, the lessor may have good reason to believe, though absolute proof is difficult, that many shoes made on his machine are reported either carelessly or dishonestly as made on the other machine.

2. The shoe business is seasonal. A shoe manufacturer having an average production of 1,000 pairs per day will at certain seasons make 2,000 pairs per day and at others 500. He must be provided with an equipment sufficient to make 2,000 pairs per day, although he uses this capacity only for a short period in each year (see Main Brief, p. 255).

If a shoe manufacturer leases a machine on a royalty basis and then obtains another machine of the same kind elsewhere, he may use the leased machine only in the busy season, thus paying only a small annual royalty for it, and use the other machine during the entire year.

3. Work on different types of shoes varies; some shoes can be operated on much quicker than others. A lessee having two machines of the same kind may use one machine on slow work and thus incur a comparatively small royalty payment which does not compensate for the machine, and do his quick work on the other machine.

It is obvious that a lessor of a machine under the royalty system must protect himself so as not to be deprived in the above ways of a fair return where other machines of the same kind are used by the lessee.

As we have stated above, the Consolidated Company protected itself against these dangers as well as others by requiring an exclusive use of its machines of the kind leased (*supra*, p. 90). The Goodyear Company also required an exclusive use of its turn machines (*supra*, p. 90). The McKay Company protected itself by providing that if the lessee supplied himself with other machines of the same kind for his work it might withdraw its own machines (*supra*, pp. 90–91).

The United Company, as a result of its experience, determined that it was not necessary for its protection to require an exclusive use of machines of the kind leased, and, therefore, gradually eliminated from the lease system the additional machinery clause requiring such exclusive use, and adopted instead the clause used by the McKay Company.

This clause is referred to in the briefs as the "Exclusive Use Cancellation Clause." The use of the word "Exclusive" is perhaps misleading in that it may imply that the lessee is required to use the United Company's machines of the kind leased exclusively. Such is not the case, in spite of the insistence of the United States. The clause

does not obligate the lessee to use any machines whatsoever of the United Company. On the contrary, it recognizes the right of the lessee to use other machines and permits him to do so if he chooses. It merely gives the United Company an option in such case to withdraw its own machines of the same kind.

It must further be borne in mind that the clause only permits the United Company to withdraw a machine where another machine of the same kind is used. For example, the United Company may withdraw its lasting machines if other lasting machines are used by the lessee, but it cannot for this reason withdraw its Goodyear, metallic, heeling, General Department, or any other types of machines.

Not only does this clause recognize the right of the lessee to use the machines of others, but in employing this clause it was not the intention of the United Company to exercise its option to withdraw its own machines merely because other machines of the same kind are used. The purpose of the United Company is merely to reserve this right in case, owing to the use of other machines of the same kind, the United Company, for this reason, is deprived of a fair return on its own machines.

Mr. Winslow testified:—

> "The purpose of the Company has been nothing more than to reserve to the Company the right to cancel leases of machines of a type which the lessee had ceased to use exclusively, if conditions became too onerous to continue them" (R. Vol. 1, p. 47, lines 18–21).

It is difficult to see how this clause restrains trade or compels a use of the United Company's machines. The lessee of heeling machines, for example, is free to use any

other heeling machines he pleases. If he prefers a competitor's heeling machine and uses it and the United Company exercises its rights under this clause and withdraws its own heeling machine, this only leaves the lessee free to use the competitor's heeling machine which he prefers. The clause, therefore, cannot compel the shoe manufacturer to use the United Company's machines.

The competing machinery manufacturer will be actually benefited by the enforcement of this clause. If the United Company withdraws its machines, the business naturally goes to the competitor.

Had the United Company intended to compel an exclusive use of its machines, it would have so provided. It surely would not have eliminated from its leases the Additional Machinery Clause, which required such exclusive use and substituted the right to withdraw its machines, which expressly recognizes the lessee's right to use other machines.

That the clause is merely intended to permit the United Company to withdraw its machines because it does not receive a fair royalty, due to the use of other machines, is further shown by the fact that the clause is not employed with reference to machines for which a fixed rental is paid whether or not the machines are used. It is not necessary in these leases, because the use of other machines cannot affect the amount of compensation paid the United Company (see Main Brief, p. 317).

If this clause could in any way be so enforced as to exclude competitor's machines, or to compel a use of the United Company's machines (which we deny), the record fails to show a single instance in which it has been so enforced.

We submit that the record conclusively shows that this clause was adopted for the purpose of affording a reasonable and proper protection to the lessor; that it cannot be exercised so as to compel an exclusive use of the United Company's machines; and that the United Company has never attempted to enforce it for this purpose. There is, therefore, no ground for contending that it is unlawful in itself or that it evidences an unlawful intent.

Furthermore, the United Company is under no obligation to permit any shoe manufacturer to use its patented machines. When a shoe manufacturer requests the United Company to install its heeling machines, for example, in his factory, the company is absolutely free to refuse for any reason whatsoever. If it does consent to install its machines and licenses the shoe manufacturer to use them, it is free to permit such use for such period, long or short, as it in its sole discretion determines advisable. Having the right to refuse any use whatsoever, it cannot be criticised for limiting the term of such use. Therefore, in permitting the use of its machines until it determines to withdraw them, it is wholly within its rights, no matter what the reasons for or the effect of such withdrawal (see Main Brief, pp. 320–323).

G. Cancellation for Breach Clause.

This clause permits the cancellation by the lessor of all leases between the lessor and the lessee, provided, and only provided, the lessee violates a condition in one or more of such leases "expressed to be obligatory upon the lessee"; in other words, some condition which the lessee obligates himself to carry out.

This clause, therefore, merely provides that if the lessee does not act in good faith, but violates his agreements by refusing to pay royalties or taxes, by abusing the machines, by failing to use them to capacity when he has work for them to perform, or by otherwise acting contrary to his undertakings, the United Company may at its option sever relations with him.

The leases of the constituent companies all contained provisions giving the lessor the right to cancel if the lessee violated the lease. Practically every lease of property has such a condition.

Counsel for the United States apparently objects to the present clause because it permits the cancellation not only of the particular lease the agreement in which is broken, but of all other leases between the parties. The United Company could perfectly well furnish all its machines on a single lease, as did the constituent companies prior to the formation of the United Company, and if it did so this objection of the United States would not be applicable. For convenience it issues different leases for machines of different departments and new leases when new machines are taken, but the relationship between the United Company and a lessee is essentially a single relationship which is expressed for convenience in a number of different leases. If the lessee violates an agreement in any one of these documents which warrants any cancellation, it is as fair to cancel all as it would be to cancel that particular one.

It is impossible to see how this clause can restrain trade or tend to create a monopoly. The shoe manufacturer cannot complain if he loses his leases because he violates his agreements. A rival shoe machinery manufacturer cannot complain of the exercise of this clause because he

is obviously benefited if a shoe manufacturer is deprived of machines by the United Company and, therefore, must seek his machines elsewhere.

The United States further contends that this clause is unlawful because it permits the United Company to withdraw all its machines if the lessee violates the Full Capacity Clause or the Restricted Use Clause. The contention is that a lessee will not use a competitor's machine in violation of the Full Capacity Clause or the Restricted Use Clause if he thereby runs the risk of losing all his machines taken from the United Company.

But surely this argument does not show the Cancellation Clause to be unlawful. The argument depends wholly upon whether the Full Capacity Clause and the Restricted Use Clause are lawful. If they are lawful, then it is obviously fair that the lessee should be bound by them, and if he chooses to violate them that his leases should be cancelled. The right to cancel for violation of agreements by the lessee can under no circumstances be unlawful if it is proper to exact such agreements from the lessee.

Furthermore, if it were possible to exercise this right of cancellation so as to oppress lessees, the record fails to show any such instance.

The record fully sustains Mr. Winslow's testimony that the clause was inserted only to permit the United Company to sever its relations on account of conduct by the lessee which "in the ordinary business relations between men would make continuance of the relations impossible" (R. Vol. 1, p. 447, lines 22–34). In only five cases (apart from bankruptcy) have leases been cancelled. In each of these cases the lessee either had abandoned the use of the United Company's machines entirely or was persistently cheating

the United Company of the royalty due on its machines (see Main Brief, pp. 429–430).

The United States has contended that this Cancellation Clause, taken in connection with the Exclusive Use Cancellation Clause, considered *supra*, p. 105, permits the United Company to cancel all its leases if its machines of a particular kind are not used by the lessee exclusively. But this is obviously not true. This Cancellation for Breach Clause which we are now considering permits cancellation only for violation for a condition "expressed to be obligatory upon the lessee." The Exclusive Use Cancellation Clause does not obligate the lessee to use the United Company's machines exclusively or at all; it merely reserves an option to the United Company in such case to cancel its leases of certain machines if other machines of that same kind are used. As the lessee is not obligated to use machines of the kind leased exclusively, the provision is not a condition "obligatory upon the lessee;" there is no agreement to "breach" or "violate;" and, therefore, the use of other machines gives the United Company no right to cancel all its leases or any of its leases under this Cancellation for Breach Clause.

H. Restricted Use Clause.

The United States contends that this clause was adopted to force a shoe manufacturer desiring to take one type of machine to take other kinds. It was relied on to prove the basic charge in the petition that the defendants formed an unlawful plan to refuse to lease any essential machines, unless the shoe manufacturer took practically all others from it.

The clause as employed by the United Company is so totally unadapted to accomplish this result as to show it has no such effect, and was adopted for no such purpose.

(1) Wording of the Restricted Use Clause.

The Restricted Use Clause provides that a machine of a certain kind or department shall not be used on any shoe on which certain other operations are performed by machines not leased from the United Company. For example, in the lease of the hand method welt laster, the clause provides that the leased lasting machine shall not be used on shoes the soles of which are welted or stitched on machines not leased from the United Company (P.'s Ex. 15, R. Vol. 3, p. 129 at p. 131).

The clause does not obligate the lessee to use any of the United Company's machines. It does not require the lessee to use the lasting machine taken under the lease or the United Company's welter and stitcher. It merely provides that if the lessee does use the lasting machine it shall not be used on shoes which are welted or stitched except on machines leased from the United Company. In other words, it provides that the lasting machine, being taken for use with the welter and stitcher, shall be so used.

If the lessee desires to use a competitor's lasting machine he is free to do so. If he desires to use a competitor's welter and stitcher he is also free to do so. The only restriction is that if he does use an outside welter and stitcher he shall not use the leased lasting machine on shoes on which the outside welter and stitcher are used. If he wishes to use the lasting machine in connection with such

outside welter and stitcher he may exchange his restricted lease for an unrestricted lease by making an initial payment of $300.

(2) Reasons why a Lower Rate can be Offered where Machines are Taken for Use as a Series.

As we have stated, the Restricted Use Clause was adopted to enable the United Company to offer certain of its machines at lower rates where they were taken to be used as part of a series.

It is of the utmost importance to understand clearly the reasons why the use of the United Company's machines as a series reduces the cost of caring for each machine and increases the royalty received from each machine and thus makes it possible for the United Company to offer a reduced rate where its machines are used as a series. We beg the Court to read carefully the explanation in our Main Brief, pp. 339–343. We shall summarize the reasons here.

1. A series of different machines is used in making each shoe. If any one machine of the series is poorly constructed, or not properly cared for, so that it does poor work or breaks down, work on the entire series is stopped, and, as the royalty for each machine is based on its use, each machine when not used ceases to produce royalty for the lessor.

When a machine which is not properly cared for and frequently breaks down is introduced into the series, the lessor of other machines necessarily suffers as his royalties are reduced.

> "The productive efficiency and quality of work done by any line of machines is only equal to that of the least efficient machine in the line" (R. Vol. 1, p. 857, lines 26–28).

As the United Company furnishes the best machines made and is practically the only shoe machinery manufacturer which furnishes efficient service (R. Vol. 1, p. 867, lines 32–35) if its series of principal machines is not used, each machine which is used necessarily produces less royalty.

2. We have described above the character of the service rendered by the United Company with its machines (*supra*, pp. 59–63). It is obvious that the cost of this service per machine is less where a series of machines is located in one factory than if the same number of machines were leased separately and scattered through different factories.

3. The United Company's machines are adapted for use together. This is a matter of vital importance. For example, the lasting machine must prepare the work for the welt machine and leave it in such condition that the welt machine can operate on it. Improper operation of any machine of the series may impair the efficiency of the operation of a number of the other machines of the series (see Main Brief, pp. 333–340).

It is obvious that the interjection into a series of the United Company's machines of a machine not adapted to be used with the rest of the series will result in poorer work and less work and therefore less royalty for the United Company.

4. The United Company furnishes the best machines made, as the District Court found (R. Vol. 1, p. 1137). When an inferior machine is used with its machines, especially a machine not particularly constructed for use with them, poor work is likely to follow. It is often extremely difficult in such case to determine which of a series of machines is responsible for the poor work (see Main Brief,

pp. 338–339). The use of an inferior machine as part of a series is likely to discredit the other machines of the series, although they are not responsible for the defective work which results.

The foregoing conditions show beyond question that when a series of the United Company's machines is used, the total number of shoes operated on by each machine is increased, and, therefore, the amount of income on each royalty machine is proportionately increased; that the cost of caring for each machine is reduced, the reputation of the machines is maintained, and the regularity and certainty of output is assured.

These results clearly justify the United Company (if any justification is needed) in granting the shoe manufacturer who uses a team or series of the United Company's machines a better rate than is granted a shoe manufacturer who uses a single machine out of the series or only a portion of the series.

This is all that the Restricted Use Clause accomplishes. It enables the shoe manufacturer to share in the economies and increased return which result where he uses a series of machines.

(3) Contentions of the United States with respect to the Restricted Use Clause.

We do not understand that the United States denies that economies result from the use of a series of the United Company's machines. Its contention, as we understand it, is:—

1. That the Restricted Use Clauses compel a shoe manufacturer taking machines of one department or type to

take also machines of another type or types and that they are for this reason inherently unlawful.

2. That even if this is not so, the Restricted Use Clauses were adopted with intent to exclude competitors, and, therefore, are unlawful, or evidence an unlawful intent.

(4) Contention that the Restricted Use Clause Compels a Shoe Manufacturer using One Type of Machine to Use Other Types.

Even if it were true that by the Restricted Use Clause a shoe manufacturer could not use one type of machine, for example, lasting machines, obtained from the United Company unless he used other types of its machines, such, for example, as its welter and stitcher, this would, as we show below, not make the clauses unlawful.

The owner of a series of machines adapted for use together is not required to permit their use separately. He is fully within his rights if he only permits the use of the entire series and refuses to permit the use of a part of the series (see *infra*, pp. 136–151).

But the entire contention of the United States that the Restricted Use Clause compels a shoe manufacturer desiring to use one type of machine to use other types is based on a false assumption, viz., that the shoe manufacturer can only obtain restricted leases.

This, as we have stated, is not true. The United Company has always been willing to lease its machines of any department under unrestricted leases. A shoe manufacturer, therefore, who desires to use the United Company's lasting machines and who does not wish to use its

welter and stitcher is not compelled to do so. He can take the United Company's lasting machine on an unrestricted lease, making an initial payment.

The entire argument of the United States that the United Company compels a shoe manufacturer taking one type of machine to use other types is, therefore, without foundation and the District Court therefore very properly held that the United Company was "upon the merits, entitled to a full clearance from this charge" (*supra*, p. 76).

(5) Contention that the Initial Charges for Unrestricted Leases are Prohibitive.

To meet the fact that a shoe manufacturer can obtain unrestricted leases if he so desires, the United States contends that the charges for unrestricted leases are so large as to be prohibitive.

The royalty charged under unrestricted leases is in practically every instance the same as the royalty charged under restricted leases. The only difference is that an initial payment is charged for an unrestricted lease (see Main Brief, p. 359).

The United States introduced absolutely no evidence that such initial payments were unreasonable or prohibitive. It did not even show what relation these initial payments bear to the value of the machines. Counsel for the United States to prove its contention relied on the fact that most shoe manufacturers prefer and take the restricted leases. This fact, it contended, shows that the unrestricted leases are prohibitive.

The District Court found, and the record shows, that the United Company's machines are the best machines

made, that they are constructed for use together, and that no other manufacturer of machines furnishes adequate service with them. It is, therefore, not strange that most shoe manufacturers use a series of the United Company's machines; and, since apart from any other reasons they prefer to use such a series, it is not strange that they take advantage of the wholesale rate offered where such a series is used, and, therefore, hold restricted leases. This certainly affords no evidence that the charges for the unrestricted leases are prohibitive.

That such charges are not prohibitive is shown, first, by the fact that they are the same charges that were made by the constituent companies, and, second, by the comparatively large number of unrestricted leases which are actually taken by shoe manufacturers.

As the District Court found, the United Company continued to offer on unrestricted leases and on terms which were as favorable and in certain cases more favorable than those offered by the constituent companies, the various machines previously furnished by the constituent companies, although the cost of building machines has increased, the United Company's machines have been much improved, and it furnishes far more efficient service and a larger number of auxiliary machines.

As shoe manufacturers had paid the rates demanded by the constituent companies for many years prior to the formation of the United Company, it can hardly be contended with reason that more favorable rates are prohibitive.

The extensive use of unrestricted leases also shows conclusively that the initial payments are not prohibitive. For example, shoe manufacturers took, during the twelve years from the formation of the United Company up to

1911, 869 unrestricted leases of the Hand Method McKay lasting machine alone. In 1905 there were outstanding 186 unrestricted leases of principal metallic machines, 536 unrestricted leases of heel-attaching machines, and 322 unrestricted leases of lasting machines (see Main Brief, p. 364). In 1911 there were 225 metallic machines, 415 principal heel-attaching machines, 514 auxiliary heeling machines, and 1,506 lasting machines held on unrestricted leases (see Main Brief, p. 364).

This extensive use of the unrestricted leases proves conclusively that they are not prohibitive, as the United States contends.

The United States at the first argument in this Court laid considerable stress on the testimony of F. C. Rand, vice-president of the International Shoe Company, that his Company held 1,635 machines leased from the United Company; that the cost of installing them under restricted leases was between $10,000 and $12,000; and that the cost under unrestricted leases would be over $250,000, a difference of approximately $240,000 (R. Vol. 1, p. 180, lines 38–45; p. 183, lines 37–38).

But this evidence utterly fails of its purpose. The International Shoe Manufacturing Company is one of the largest shoe manufacturers in the world, having $25,000,000 capital, making 50,000 pairs of shoes a day and operating 20 different factories (R. Vol. 1, p. 184). $240,000 (an average of $12,000 for each of its factories) is on its face not a prohibitive sum to pay for the right to take the United Company's machines adapted for use as a series and to use them independently for a period of seventeen years. Certainly it is not a prohibitive sum for a $25,000,000 corporation to pay.

Furthermore, this sum of $240,000 includes the purchase price of all General Department machines used by the International Company in its twenty factories. When purchased they would be owned by the company outright and the company would thus avoid the annual rental which would otherwise be payable on them.

Furthermore, counsel for the United States argues as though the International Company would be required to pay this sum of $240,000 if it wished to use the United Company's machines in part and competitors' machines in part. But under no circumstances would this be true. In the first place, as we show below, the machines of the United Company to use with which others are restricted are comparatively limited in number, so that the International Company could take and use a very large number of the machines it requires in its factories from competitors without having to change a single restricted lease held by it to an unrestricted lease. In the second place, a very considerable portion of this sum consists of initial payments for Goodyear machines. As they are not restricted under any form of lease to use with machines of other departments, it would not be necessary to take them on initial payment leases in order to use them with machines of others. In the third place, if the International Company desired to use a competitor's machines, for example, a competitor's heeling and metallic machines, it would, of course, not take these machines from the United Company. It would, therefore, not pay the United Company any initial premiums for such machines. The sum of $240,000 includes initial payments on machines of all kinds furnished by the United Company. To find what the International Company would pay if it took all machines

except heeling and metallic machines from the United Company on unrestricted leases, it would be necessary to deduct from the sum of $240,000 the initial payments on the metallic and heeling machines and also, as we have stated, the initial payments on the Goodyear machines. The amount left would be a comparatively small part of $240,000.

As to the contention that the initial payments charged are prohibitive or unreasonable, the District Court found as follows (R. Vol. 1, p. 1166):—

> "But surely, if the argument is made that there is coercion through an excessive price, such an argument can have no weight whatever for any purpose legal or ethical unless the fact that it is excessive affirmatively appears. From such evidence as is presented in this case as to the amount of initial charges upon independent leases we can draw no support for the charge of coercion through excessive charges."

(6) Contention that the Restricted Use Clauses were Adopted for the Purpose of Excluding the Use of Competitors' Machines.

As the Restricted Use Clauses do not compel a shoe manufacturer desiring to take one type of machine to take other types, since he is free to take the type he desires on an unrestricted lease for a reasonable payment, our next inquiry is whether the Restricted Use Clauses were adopted with intent to exclude competitors and are unlawful for this reason.

We have shown that a reduced or wholesale price is fair and reasonable when a series of machines is used. We have also shown that the United Company could only offer such

a wholesale price by agreeing with the lessee that a machine taken for use as part of a series should be so used, that is, by employing the Restricted Use Clause or some clause having the same effect.

The Restricted Use Clause must be held to have been introduced for this legitimate business purpose unless there is affirmative evidence to show that the United Company introduced the clause, not for this purpose, but for the purpose of arbitrarily compelling the use of its machines and the exclusion of competitors' machines. Not only is there no evidence of such purpose, but the contrary is affirmatively shown by—

1. The testimony of the officials of the United Company as to the purpose for which the Restricted Use Clause was adopted;

2. The findings of the District Court made after hearing the testimony of the witnesses and after an exhaustive study of the leases and their effect;

3. The fact that the United Company always offered alternative unrestricted leases;

4. The history of the adoption of the Restricted Use Clauses;

5. The limited effect of the Restricted Use Clauses.

(a) Testimony as to the Purpose of the Restricted Use Clauses.

Mr. Winslow testified that the purpose of the Restricted Use Clause was to enable the United Company to eliminate the initial payments and thus reduce its charges and at the same time secure a fair return.

"The restricted-use clause was adopted in our leases for the purpose of giving the company a proper return for the use of the machines when they were leased without initial premiums, and for that reason alone. With the terms of royalty fixed the company would not, without the initial premiums, receive a fair return for the machines unless they were used together as restricted in the leases. As a business proposition, after the initial premiums were removed, there would be no security whatever for a proper and fair return for the use of the machines without the restricted-use clause" (R. Vol. 1, p. 452, lines 29–38).

. . . . . .

For his testimony as to the reasons why such fair return could be secured where the initial payments were eliminated by requiring the machines to be used as a series, see Main Brief, pp. 342–3.

(b) Findings of the District Court as to the Purpose of the Defendants in adopting Restricted Use Clauses.

The District Court held that the Restricted Use Clauses were not adopted with any unlawful purpose. Among other things it said (R. Vol. 1, p. 1184):—

"The grouping of the machines in order that some may aid others in turning out a product affords a sufficient mechanical reason for installing them as groups and a sufficient business reason for dealing with them as groups.

"That there are sound mechanical and business reasons for grouping together machinery as it is grouped by a series of prohibitive leases is abundantly established. The United States fails to show that the grouping of machines is in fact made merely as an unlawful artifice and not because of sound mechanical and business reasons."

Referring to the Restricted Use Clause and other modifications made by the United Company in the leases, the District Court further held (R. Vol. 1, p. 1159):—

> "Modifications in the contracts offered them tending, as these are shown to have done, to enable the company, through provisions adapted to increase the number of shoes worked on by each machine, to lessen the royalty charged per pair, and to diminish or dispense with the initial payment before required, were so obviously prompted by the purpose of developing the company's business through the perfectly legitimate method of offering them on terms more advantageous to users, that it would be unjust to treat them, on evidence no stronger than that here presented, as really intended to accomplish an arbitrary exclusion of users from any dealings with others."

(c) History of the Adoption of the Restricted Use Clause.

From the contentions of the United States and the allegations of the petition one would expect to find that the defendants immediately, upon the formation of the United Company, arbitrarily inserted the Restricted Use Clauses in the various leases.

An examination of the record shows that the Restricted Use Clause was not inserted in any lease for over a year after the United Company was formed, and that it was then introduced only from time to time in leases of different types of machines as the United Company found it possible to reduce its charges for such machines when they were used as part of a series. The following summary will show that in practically every case where the clause was adopted it was accompanied by such a reduction in charges:

Goodyear Machines. The United Company has never restricted the use of its Goodyear machines to use with machines of any other department, although they are in many respects its most important machines.

Metallic Machines. The Restricted Use Clause was not employed in leases of metallic machines until June, 1900.

The royalty for metallic machines is obtained entirely from the sale to the lessee of wire and nails adapted for use in the machines. Such wire and nails are composed largely of copper. Copper had increased in price from 11 cents and less in 1899 and prior thereto, to 16½ cents in 1900. The United Company, however, had not raised the price charged lessees for this material, the result being that it was selling lessees material at cost or less, and, therefore, receiving no royalty for its machines. It was entitled to increase the price charged for material, but did not wish to do so. It determined that it could afford to continue selling material at the existing prices to lessees, who also used its welter and stitcher, and lasting machines. The total royalty obtained from the three sets of machines would afford it a fair return. It, therefore, inserted in its leases of metallic machines thereafter put out a clause restricting their use to use with its welter and stitcher, and lasting machines, and continued to furnish materials at the same price as previously. To lessees desiring to use its metallic machines with lasting or welting machines obtained from others it offered a lease in which 10 per cent. more was charged for material than under the restricted lease. Later it adopted a lease without restrictions in which an initial payment was charged and the price of materials was the same as under the restricted lease. The lessee has, therefore, been offered

three alternative forms of lease, two of which contain no restrictions. No other restrictions have ever been introduced into the metallic leases. For a discussion of the introduction of the Restricted Use Clause into the metallic leases, see Main Brief, pp. 275–276, 290.

Heeling Machines. No Restricted Use Clause was employed in leases of heeling machines until 1904, over five years after the formation of the United Company. The Goodyear Company had charged substantial initial payments for its welting and stitching machines, and these charges had been continued by the United Company. The amount of these charges made it difficult for shoe manufacturers of small capital to make Goodyear shoes. This placed the small shoe manufacturer at a disadvantage. In order to remove this disadvantage and to encourage the further use of Goodyear machines, the United Company, in the fall of 1904, decided to eliminate these initial payments. As pa· ial compensation for the elimination of these payments, it introduced into its heeling machine leases a Restricted Use Clause restricting the heeling machines to use with its lasting and metallic machines and (if used upon welt or turn shoes) to use with its welter and stitcher, and (if used upon pegged shoes) to use with its pegger. When the manufacturer used a series of these machines, each machine produced more work, and the cost of caring for each machine was reduced. To shoe manufacturers who did not use its other machines of these classes the United Company offered an unrestricted lease of heeling machines under which an initial payment was charged. For a discussion of the introduction of the Restricted Use Clause in heeling machine leases, see Main Brief, pp. 277–278; 289–290.

Lasting Machine Leases. No change in the leases of lasting machines was made for over a year after the formation of the United Company.

The Ideal Lasting Machine, previously manufactured by the Goodyear Company, had always been restricted to use with the Goodyear welter and stitcher. No new restriction was ever introduced into the leases of this machine. The machine itself has become practically obsolete (see Main Brief, p. 286).

The lease of the McKay & Copeland machine was not changed until August, 1903, four and one-half years after the formation of the United Company. A new form was then put out reducing the initial payment previously charged, and restricting the use to use with the United Company's welter, stitcher, pegging, metallic, and heeling machines. The old form of unrestricted lease could be obtained by any lessee who desired it (see Main Brief, p. 287). This machine is now practically obsolete (R. Vol. 1, p. 454, lines 8–9).

No change was made in the leases of the Chase machine until 1901. A new form was then adopted restricting its use to use with the United Company's welting and metallic machines. It eliminated the Additional Machinery Clause which required an exclusive use of the machine. An unrestricted lease requiring an initial payment was offered as an alternative. This machine is now practically obsolete (see Main Brief, p. 287).

No change was made in the lease of the Consolidated Hand Method McKay machine until the end of 1900. The United Company then adopted two forms of lease, one requiring an initial payment and containing no Restricted Use Clause, and the other requiring no initial payment and

restricting the machine to use with the Goodyear welter and stitcher and metallic machines. The Additional Machinery Clause was eliminated from the new lease. The restriction to the Goodyear welter and stitcher was of no effect, as the machine was adapted for use only on McKay work on which Goodyear machines are not used (see Main Brief, p. 288).

No change was made until December, 1900, in the lease of the hand method welt laster, which was purely an experimental machine, in 1899. At this time, when the machine was made commercial, two forms of lease were adopted. Under one form the royalty was reduced from one cent to five-eighths of a cent per pair and the machine was restricted to use with the welter and stitcher. Under the other form the machine was unrestricted, the same reduced royalty of five-eighths of a cent was charged, and an initial payment of $300 (see Main Brief, p. 289).

(d) Use of Restricted Use Clause in Leases of New Types of Machines.

As new types of machines were gradually invented they were generally offered on restricted or unrestricted leases at the option of the shoe manufacturer.

Thus two forms of leases were adopted for eyeletting machines, which were first put out in 1902. Under the restricted lease no initial payment was charged and the machine was restricted to use with certain other machines. Under the unrestricted form an initial payment of $100 was charged (see Main Brief, p. 294).

Similarly two forms of lease were adopted for other new

machines which were invented or developed by the United Company, one form being an unrestricted initial payment lease and the other a restricted non-initial payment lease, except that in the case of General Department machines, including the McKay sewing machines, instead of offering an unrestricted lease as an alternative, the United Company sold the machines outright at the option of the shoe manufacturer, and except that no restricted lease was ever offered of clicking machines (see Main Brief, p. 294).

The gradual introduction of the Restricted Use Clause into the leases over a long period of years, and the fact that it was not employed at all for over a year after the United Company was formed, shows conclusively that it was not one of the purposes in the formation of the United Company to use this clause generally in the leases or impose it generally upon lessees. The fact that in practically every case it was accompanied by a reduction in charge shows that its purpose was to enable the United Company to make such reduction.

(e) The Fact that Alternative Unrestricted Leases were Offered Lessees Shows that the Restricted Use Clause was not Employed to Compel the Use of the United Company's Machines.

As we have stated above, the United Company continued to offer its lessees unrestricted leases on terms as favorable and in some cases more favorable than were offered by the constituent companies.

It is inconceivable that if the defendants had planned

to form the United Company and then introduce Restricted Clauses in the leases which would compel a lessee taking machines of one type also to take machines of other types that it would have continued to offer machines without such restrictions on more favorable terms than were previously offered.

(f) The Limited Effect of the Restricted Use Clauses.

The comparatively limited effect of the Restricted Use Clauses will show how unadapted they are to exclude the use of competitors' machines. Far from prohibiting a shoe manufacturer who holds a machine under a restricted lease from using such machine unless he also takes and uses all other types furnished by the United Company, the Restricted Use Clause restricts such machine to use in some cases with only one and in others only two or three other kinds of machines and permits the shoe manufacturer to use it in connection with the great majority of machines in his factory whether obtained from a competitor or not.

The restrictions imposed when the restricted forms of lease are taken are as follows (see Main Brief, p. 371):—

The Goodyear Department machines, although in many respects the most important machines the United Company makes, have never been restricted to use with the machines of any other department.

Metallic machines are restricted to use only with the welter and stitcher, and lasting machines.

Heeling machines are restricted to use only with the welter and stitcher, lasting, pegging, and metallic machines.

Lasting machines now in practical use are restricted as follows:—

The Hand Method Welt Machine to the welter and stitcher.

The Hand Method McKay Machine to metallic machines.

The No. 5 to the welter and stitcher, pulling-over, and metallic machines.

The McKay Sewing Machine when leased and not sold outright is restricted to use only with the lasting machine.

General Department machines when leased and not sold outright are restricted to use only with the welter and stitcher, lasting, pegging, and metallic machines.

Eyeletting machines are restricted to use with the welter and stitcher, lasting, pegging, metallic, and heeling machines.

Pulling-over machines are restricted to use with the welter and stitcher, lasting, metallic, pegging, and heeling machines.

The clicking machine is not restricted to use with any other machines, but a smaller royalty is charged when used with the United Company's welter and stitcher, and lasting machine.

In practice the restrictions are actually less than would appear from reading the above statement. A manufacturer of McKay shoes does not use the welter and stitcher, and therefore he is not affected by a restriction to those machines; a manufacturer of turn shoes does not use a stitcher and usually does not use lasting machines; and only a very few manufacturers make pegged shoes and are affected by the restriction to the pegger.

It will be seen that the machines which are restricted are restricted to use with a comparatively limited number of principal bottoming machines. With two slight exceptions the machines to use with which others are restricted are only the welter and stitcher, lasting and metallic, and,

in some few instances, heeling machines. The two exceptions are that the No. 5 Lasting Machine, a new machine, first put out in 1908, is restricted to use with the pulling-over machine, and a few machines are restricted to use with the pegging machine. As the hand method lasting machines will do the kind of work done by the No. 5, and as very few pegged shoes are made, these exceptions have no real significance.

As the manufacturer of McKay shoes and the manufacturer of nailed shoes, which together constitute about half the shoes made (R. Vol. 1, p. 424), do not use either the welter or stitcher, they are concerned only with the restrictions which relate to lasting, metallic and heeling machines.

No machines of any kind are restricted to use with the Goodyear auxiliary machines (of which the United Company manufacturers 43 different kinds), General Department machines (of which the United Company manufactures over 170 different kinds), McKay sewing machines, pulling-over machines (with the single slight exception noted above), eyeletting machines, clicking machines, lacing machines, treeing machines, insole machines, buttonhole machines, and various other miscellaneous machines which the United Company manufactures. Of course none are restricted to use with machines for sewing uppers and other machines which the United Company does not manufacture. The result is that a shoe manufacturer can obtain any machine he desires from the United Company even on the restricted form of lease and use it with any one or all of the many machines enumerated above obtained from competitors.

As no machines are restricted to use with the above-

mentioned types of machines, it is obvious that the Restricted Use Clauses do not compel lessees to take them, or any of them.

Furthermore, the remaining types of machines, namely, the Goodyear Department, lasting, metallic, and heeling machines are not all restricted to use together. The Goodyear machines are not on any form of lease restricted to use with either the lasting, metallic or heeling machines. Neither the lasting nor the metallic machines are on any form of lease restricted to use with the heeling. The Goodyear welter and stitcher, the lasting, metallic and heeling machines are not on any form of lease restricted to use with the Goodyear auxiliaries, nor are any of these auxiliaries restricted to use together.

There are, therefore, various combinations in which a shoe manufacturer can obtain from the United Company on restricted leases such of these machines as he desires to take from it, and obtain from competitors for use with them such other machines of these types as he needs. For example, a shoe manufacturer making welt shoes may in the following combinations use the United Company's machines with a competitor's machines of the type named, although the United Company's machines are held on non-initial-payment or restricted leases.

No. 1. The United Company's Goodyear Welter and Stitcher.
Competitor's Welt Auxiliary Machines (in whole or in part).
Competitor's Lasting Machines.
Competitor's Metallic Machines.
Competitor's Heeling Machines.

No. 2. United Company's Goodyear Welter and Stitcher.
United Company's Goodyear Welt Auxiliary Machines (in whole or in part).
Competitor's Lasting Machines.
Competitor's Metallic Machines.
Competitor's Heeling Machines.

No. 3. United Company's Goodyear Welter and Stitcher.
United Company's Goodyear Welt Auxiliary Machines.
United Company's Hand Method Welt Lasting Machine.
Competitor's Metallic Machines.
Competitor's Heeling Machines.

No. 4. United Company's Welter and Stitcher.
Competitor's Welt Auxiliary Machines.
United Company's Metallic Machines.
United Company's Hand Method Welt Lasting Machine.
Competitor's Heeling Machines.

In any of the above combinations the lessee is free to use competitors' machines of all the kinds not enumerated. For other combinations, see Main Brief, pp. 373–374.

The result is that a lessee who does not want to make initial payments to the United Company and who takes restricted leases of such machines as he desires from the United Company is still able to use his machines so taken with the great majority of machines in his factory, whether such other machines are obtained from competitors or not.

Had the United Company intended by the Restricted Use

Clauses to compel a shoe manufacturer taking machines from it to use its machines exclusively, or practically exclusively, and thus exclude a competitor's machines, it would surely not have so drawn the Restricted Use Clauses that they permit the lessee who takes machines under them to use them in connection with the great majority of machines in his factory, even though obtained from competitors.

I. Legality of the Restricted Use Clause.

The Restricted Use Clause is:—

1. A normal provision designed to accomplish a legitimate business purpose beneficial alike to the lessor and the lessee.
2. It does not in any way restrain trade.
3. It is a valid patent restriction which the United Company is entitled to impose.

(1) The Restricted Use Clause is a Normal Provision Designed to Accomplish a Legitimate Business Purpose.

The Restricted Use Clause, being a normal provision designed to accomplish a legitimate business purpose, is lawful even if no patents or patent rights were involved. We shall, therefore, first consider it without reference to the patent situation.

We have shown above that the Restricted Use Clause was adopted to enable the United Company to offer to a shoe manufacturer desiring to use a series of its machines a reduced or wholesale rate, and that it is the only practicable way in which such a right can be offered under the leasing system.

That the United Company is entitled to share with its lessees the economies which result where a series of its machines are used seems too obvious for argument. Such a transaction benefits both the United Company, by enabling it to offer its machines on better terms, and the shoe manufacturer, by giving him lower rates for his machines. It is a normal legitimate business transaction.

If this be so, surely the United Company can provide for such reduced rate in the only practicable way, namely, by agreeing with the shoe manufacturer that machines taken for use as a series shall be so used.

Counsel for the United States, as we understand them, do not deny that economies result from the use of a series of machines. Their contention, as we understand it, is:—

(1) That the Restricted Use Clause was adopted with unlawful intent and for this reason is unlawful;

(2) That even if not adopted with unlawful intent it is inherently unlawful because of its effect on competitors.

We have reviewed above certain of the evidence which fully sustains the District Court's finding that the clause was not adopted with unlawful intent, but for the purpose of enabling the United Company to offer a reduced or wholesale rate.

We shall, therefore, now discuss briefly the contention that the clause is inherently unlawful because of its effect on competitors. For a more complete discussion of the subject, see our Main Brief, pp. 383–393.

Let us first inquire just what effect this clause has upon competitors. It is obvious that it does not affect at all a competitor who offers a complete series of machines. A shoe manufacturer just entering business is free to choose between the United Company's series and such competitor's

series. A shoe manufacturer who already holds the United Company's machines is free, so far as this Restricted Use Clause is concerned, to cease using the United Company's machines and to take and use the competitor's series of machines.

The sole objection of the United States, therefore, must be that if a shoe manufacturer desires to use one or two of the series of machines furnished by the United Company he may by reason of the better terms offered when the entire series is used be induced to use such series and not interject into the series one or more machines obtained from the competitor. The result, it contends, is that a competitor offering a single machine or less than an entire series is at a disadvantage.

The United Company's machines are adapted for use together and for all practical purposes constitute a single article. Except that they do not have a physical connection they constitute a single article just as much as do the component parts of a parlor car or a locomotive. The boiler of a locomotive has a less intimate relation to the wheels than has the lasting machine, which prepares the work for the welter, to such welter. A device for holding or folding paper forming part of a printing press has less connection with the rollers which perform the actual operation of printing. There is no more reason why the United Company should be required to permit the use of its lasting machine and welter separately than there is why it should permit the use of the different parts of its welter separately.

When analyzed, the contention of counsel for the United States merely amounts to this,—that a manufacturer who furnishes a complete article has an advantage over the

manufacturer who offers only one of the component parts of the article, and, therefore, that the manufacturer of the complete article either cannot offer it for sale as a complete article at all, or must, if he offers it for sale or use, also offer each component part separately on terms which will enable others to obtain certain parts from him and the remaining parts from his competitors and thus get the complete article as cheaply as if it were obtained as a whole from him. We submit that to state this contention is to refute it.

Take an illustration on all fours with the present case. The Pullman Company leases its parlor cars to railroads. It obviously has an advantage over a competitor who only manufactures car wheels. Such competitor offering his wheels to the railroad is met by the statement that the Pullman Company either refuses to lease its wheels and bodies separately or that, if it does, it charges retail prices which total more than the price charged for the complete article. The contention of the United States, as we understand it, is, first, that the Pullman Company must lease the parts of its car separately so that the manufacturer of wheels shall not be at a disadvantage; and, second, that it must lease the separate parts at such prices that the total for all the parts will not exceed the prices charged for the complete car, or will be so little in excess that the manufacturer of wheels alone will not be at a disadvantage.

But on what possible theory can the Pullman Company be required to lease the parts of its car separately, or, if so, on what possible theory can it be forbidden to charge a wholesale price for the complete car?

It is no offence against morals or law for a manufacturer of a complete article to refuse to sell or lease the parts separately. The Pullman Company would be fully justi-

fied in leasing its car only as a whole, and the United Company would be fully justified in furnishing the use of its machines only as a series and refusing to offer any use of individual machines separately.

The District Court said:—

> (R. Vol. 1, p. 1184.) "The grouping of machines in order that some may aid others in turning out a product affords a sufficient mechanical reason for installing them as groups and a sufficient business reason for dealing with them as groups."

But if we assume that the United Company is required by law to permit the use of its different types of machines separately, surely it is not prohibited from charging more when a machine is taken for use separately than is charged when it is taken for use as a part of a series.

Such a reduced charge is merely a wholesale price. It is customary in practically every business in the country. In the usual sale at wholesale, for example in the sale of six machines of the same kind, the actual saving if any effected is usually small. In the case of the use of a series of six different machines which are adapted for use together, which are cared for by the lessor, and are paid for according to the number of shoes they produce, there is no question but that a large saving is effected which justifies the reduced price. That the United Company can grant the use of a series for a reduction equal in its judgment to the increased return effected by such use, or any part of such increased return, we submit is beyond question.

One further fact must be borne in mind. The machines leased belong to the United Company. It does not sell them or part with title. In its leases it is not attempting,

therefore, to provide how machines which it has sold and disposed of shall be used in the future; it is merely regulating the use of its own property. It has a right to refuse to permit any person to use machines which it owns. In consenting that such machines be used it does not part with the right to direct how they shall be used. And in providing that its own machines which are adapted for use together and when so used produce the best results shall be used together, it is clearly not overstepping its rights as owner of the machines.

We submit that the Restricted Use Clauses constitute merely a control by the United Company of the use of its own machines which is clearly justified. We further submit that these clauses are reasonable normal agreements providing merely for a wholesale price and are clearly not condemned by the Sherman Act.

For a more complete discussion of this question, see Main Brief, pp. 380–396.

(2) The Restricted Use Clauses do not Restrain Trade.

The Restricted Use Clauses are clearly not within the Sherman Act if they do not restrain trade, but, on the contrary, relax an existing restraint. Such is their actual effect.

The United Company's machines are its property. No shoe manufacturer, therefore, has a right to use them without the United Company's consent. An absolute legal restraint exists prohibiting their use by shoe manufacturers, except so far as the United Company consents to relax this restraint.

In agreeing under the terms of the Restricted Use Clauses that the shoe manufacturer may use them as a series, but not separately, the United Company grants the shoe manufacturer a right he did not have previously, namely, the right to use these machines as a series. The shoe manufacturer's liberty of action is not restrained in any respect whatsoever. The Restricted Use Clause does not require or obligate a lessee to use the United Company's machines. It merely permits him to use them if he so desires. Prior to accepting a lease of the United Company's machines he could use any other machines obtained from competitors, but he could not use the United Company's machines at all. After accepting restricted leases of a series of the United Company's machines he can still, so far as the Restricted Use Clauses are concerned, use any other machines obtained from competitors he pleases and he also has acquired the right to use the United Company's machines as a series.

In other words, his liberty of action has not been in the slightest degree restrained and he has acquired an additional right, namely, the right to use a series of machines, which right he did not have previously.

A provision which in no way restrains the freedom of the lessee and which grants him an additional right can hardly be termed a restraint of trade.

It is true that if the shoe manufacturer were granted the right not only to use the machines as a series, but also the right to use any one or more of them as he chose, he would obtain still greater rights. But this does not refute the fact that the grant of the right to use as a series is the grant of an additional right which the shoe manufacturer did not have before and that it imposes no new restraint (see Main Brief, pp. 396–399).

(3) The Restricted Use Clause is the Grant of a Valid Patent License and is therefore Lawful.

The agreements under which the United Company's machines are leased constitute agreements whereby the machines themselves are loaned to the lessee and they also constitute licenses under the patents embodied in the machines granting the lessee a right to use such patented inventions so embodied in the machines to the extent set forth in the license. The Restricted Use Clause provides that the leased machines shall be used only as part of a series. It is a grant of a limited instead of a complete and unrestricted right of use.

A patentee is granted the right to exclude all others from making, using, or vending his patented machine without his permission. It has never been questioned that he can refuse such permission or that he can at his discretion grant a complete or partial permission to exercise these rights. The patentee's motive in refusing to grant any rights, or in granting only partial rights instead of full and complete rights of use or sale, cannot be questioned.

As the patentee has a complete monopoly, any license to use or sell a patented article which he grants whether partial or complete is a relaxation of a lawful restraint imposed by law on its use or sale, and such grant cannot, therefore, restrain trade or create any additional monopoly in the patented article.

In granting a partial license to use or sell, the patentee reserves all rights not granted. If the licensee oversteps the rights granted him he becomes an infringer.

We do not understand that the foregoing principles have ever been questioned by this Court.

In the present case, the United Company in granting a lease containing a Restricted Use Clause merely grants a partial license to use. It permits the licensee to use the leased machine as part of a series comprised of other patented machines owned by it. It does not grant the right to use the machine otherwise. The licensee, therefore, cannot use the leased machine except in a series without overstepping the limits of his grant and becoming an infringer.

We have shown above that the purpose of the United Company in granting a partial right of use is solely to enable it to offer a reduced rate for a series of machines. But even if its purpose were otherwise, it would be immaterial, since the United Company as patentee is entitled to grant either partial or complete licenses or no licenses at all, regardless of its motives.

Any person using a patented article commits infringement and can be enjoined unless the patentee has lost the right to control such use of the patented article. A patentee loses the right to control such use only (1) where he sells the patented article without reservation and thus places it outside the limits of the patent monopoly, or (2) where he grants a license to use it in the manner in which such second party is using it.

In the present case the United Company has not sold its patented machines and, therefore, has not placed them outside the limits of its patent monopoly, nor has it granted a license to use them except as a series. Any use of the machines except as a series, therefore, constitutes an infringement of its patents.

The United Company in installing its machines in a factory does not sell them. It retains full title and at the

termination of the lease, whether by expiration of the term or due to a prior cancellation, the lessee has no further rights or interest in them. The machines, therefore, are not sold and paid for; they do not pass outside the limits of the patent monopoly, but remain subject to the protection of the patent and the control of the United Company and can only be used as the United Company expressly permits. The only permission to use held by the lessee is contained in the lease and license agreement under which the machines are installed.

By such lease and license agreement the lessee is granted the right to use the leased machines only in certain defined ways. He can use them only at a certain factory, he must use them himself and he can use them only as part of a series of the United Company's patented machines. Any use contrary to these provisions he is not authorized to make, and, therefore, such use constitutes an infringement of the United Company's patents.

Counsel for the United States, however, assert that such a restricted license is not a proper patent license, and to sustain their contentions cite certain recent cases of this Court. We respectfully submit that these cases in no way sustain their contention or contravene the principles of law laid down above or their application to the present case.

In *Motion Picture Patents Co.* v. *Universal Film Co.*, 243 U. S. 502, the patentee granted a license to make and sell a patented machine for exhibiting moving-picture films. The licensee was, however, required to sell such machines under the restriction and condition that the machines should be used solely for exhibiting pictures containing the inventions of a certain patent for films. The patent on the films had

expired. The defendant leased a machine which had been sold to its lessor bearing a notice setting forth the above restrictions, and the defendant used this machine with films furnished by a third person of a kind not permitted by the attempted restriction. Suit for infringement of the patent on the machine was brought.

The question was, as stated by the Court:—

> "May a patentee or his assignee license another to manufacture and sell a patented machine and by mere notice attached to it limit its use by the purchaser or by the purchaser's lessee, to films which are no part of the patented machine, and which are not patented?"

The case is clearly distinguishable from the present case on three grounds:—

1. In the Motion Picture Patents case the patented machine had been sold and paid for and thus placed outside the limits of the patent monopoly. The patentee was attempting to restrict an article which had passed beyond his control.

In the present case, as we have pointed out, the machines have not been sold or paid for. They remain the undisputed property of the United Company and cannot be sold or used except to the extent that it permits.

2. In the Motion Picture Patents case the restriction was held to be a restriction on the use of films and not on the use of the patented machine at all. Since the restriction, therefore, was held not to restrict the use of the patented machine, it was, of course, not a patent restriction. No question of the effect of the granting of a limited or partial right of use was involved. At the most the restriction was an attempt by mere notice or agreement to restrict

the use of a machine which had been sold and had passed beyond the control of the patentee.

That the restriction was on the films and not on the machine was shown by the facts of the transaction. The patentee had sold the patented machine and had no interest in its future use. The purpose of the restriction was, therefore, clearly to obtain control of unpatented films used in the machine. The patentee, having charged such price as he saw fit for the machine and the right to use it, attempted in addition to control the use of the films, which had no relation to the use of the machine. This Court, therefore, held:—

> "Both in form and in substance the notice attempts a restriction upon the use of the supplies only and it cannot with any regard to propriety in the use of language be termed a restriction upon the use of the machine itself."

In the present case the restriction is clearly on the use of the patented machine. The United Company's machine is designed and adapted for use in connection with other patented machines which no one else furnishes. When so used it produces more work and better work. The United Company is vitally interested in having the machine which it owns used most effectively and in the manner for which it is designed. The reputation of its machine is thus enhanced and the royalty payable to the United Company increased. In providing that its machine shall be used in the manner for which it is designed to be used, and in which it can be used most effectively, the United Company is obviously controlling the use of the machine itself and not of any other machine or article. In form as well as in substance the restriction is on the use of the patented machine.

3. In the Motion Picture Patents case the patentee attempted to control the use of unpatented films and thus to acquire a monopoly of such unpatented films which had no relation to its patent.

In the present case the restriction relates entirely to the United Company's patented machines. The United Company is not attempting directly or indirectly to control or to require the lessee to take or use unpatented machines or materials.

The facts in the Motion Picture Patents case and the decision in that case have, therefore, no bearing upon the present case. Nor does that case in any way affect the well-recognized rule that a patentee may grant a complete or partial license to use, and that, in case of a partial license to use, any use not so licensed constitutes an infringement.

In *Strauss* v. *Victor Talking Machine Co.*, 243 U. S. 490, the Victor Company attached a notice to each machine providing that its use for demonstration purposes only was granted dealers and retailers; that they could sell the machine to the public with a right to use it only upon payment to them of a royalty of $200; and that title remained in the Victor Company until the expiration of the patents embodied in the machine. The Victor Company received the full payment to which it was entitled upon delivering the machines to the wholesaler and received no part of the $200 for which the machines were to be sold to the public. The defendant, a retailer, obtained machines from retailers or wholesalers for less than $200, the price which was to be paid when sold to the public, and was selling these machines for less than $200. The Victor Company prayed that the defendant be enjoined from

selling the machines and from violating the Victor Company's patent rights.

The Court held that the evident purpose and intent of this transaction was not to control any use of the machines, but that it was a mere attempt to restrict the prices charged for them after the plaintiff had been fully paid for the machines and they had passed into the possession of dealers and the public, in other words, after they had passed outside the limits of the patentee's control, and that the case, therefore, fell within the rule of *Bauer* v. *O'Donnell*, 229 U. S. 1.

It is obvious that in the present case the United Company has not disposed of its machines and received full payment for them and they have therefore not passed beyond the limits of its patent monopoly.

In *Bauer* v. *O'Donnell*, 229 U. S. 1, the plaintiff sold Sanatogen, a patented remedy in packages bearing a notice that they were licensed for sale and use by retailers at a price not less than one dollar. The defendant, a retailer, had bought packages from jobbers which he sold for less than the price named. He was sued for infringement.

The majority of the Court held that the patentee by selling the packages with full right of use had "exercised" his exclusive right to sell granted him by the patent law and had placed the packages outside the "limits of the monopoly granted by the patent law." The attempted restriction on future sales was, therefore, not a restriction of any patent right, or the grant of a limited patent right, since all rights which the patentee had in respect to these particular packages had been sold and transferred by him. No future sales of these packages could, therefore, constitute an infringement. No question of a patent restriction was, therefore, involved in the case.

In *Henry* v. *Dick*, 224 U. S. 1, accepting the minority opinion as the opinion of the Court, since the decision of the majority was overruled in the Motion Picture Patents case, we again find that the decision has no bearing upon the present case.

In that case a patented mimeograph was sold and paid for, and a notice was attached to the machine stating that it could be used only with paper, ink, and other supplies furnished by the Dick Company. Suit was brought against the defendant Henry for contributory infringement in selling ink to one Miss Skou to be used on a machine which she had so bought and owned.

A majority of the Court held that, in spite of the sale of the machine to Miss Skou, the patent right granted Miss Skou was a limited one, namely, the right to use the machine with supplies furnished by the Dick Company, and that the use of the machine with other supplies constituted an infringement. Henry was, therefore, held to be a contributory infringer.

The minority did not dispute the rule of law applied by the majority, namely, that if a limited license were granted, any use not so permitted constituted infringement, but did dispute its application to the facts of that case. It held that the restriction in question was not a reservation of a right to use the machine, but was a restriction upon the use of the materials employed in using the machine. It held that under the sale to Miss Skou every possible patent right in the machine was transferred to her. Thus the minority said (p. 65):—

> "That the sale here in question was one of all the rights which the patent protected has, it seems to me, at the outset been demonstrated beyond reasonable dispute."

As the machine had, therefore, been sold with full rights of use, it had, of course, passed beyond the limits of the patent monopoly, and the restriction was necessarily not a reservation of patent rights in the machine, since these had all been sold, but a mere attempt by notice to restrict the use of certain unpatented materials in the machine.

The case is clearly inapplicable to the present case. In the present case the machine has not been sold, but it is still owned by the United Company, and only a limited right of use has been granted, namely, the right to use in a certain factory by the lessee himself and as part of a series of machines.

We submit that in the present case we have a clear case of (1) a control by the United Company of machines still owned by it and within the limits of its patent monopoly, and (2) a limited patent license granting a right to use the machines as part of a series and prohibiting or refusing any other use.

The United Company is entirely within its rights as patent owner in granting such a limited right of use and in declining to grant full rights of use.

For a full discussion of this subject and of the cases relating to patent restrictions, see our Main Brief, pp. 399-419.

J. Auxiliary Restricted Use Clause.

By the Auxiliary Restricted Use Clause the use of auxiliary machines, which aid or assist the work of the principal machines of a department, are restricted to use with such principal machines.

Nearly all of such auxiliary machines are in the Goodyear Department. The Goodyear Company restricted them to use with its principal machines, the welter and stitcher, and the United Company has merely continued this same practice.

The principal machines are not restricted to use with the auxiliary machines. A lessee who takes a welter and stitcher can use them with auxiliaries obtained from competitors if he so desires, or can use them with auxiliaries obtained partly from competitors and partly from the United Company.

There were various reasons why this method of furnishing auxiliary machines was adopted and why it has been continued.

1. The welter and stitcher were first invented. Afterwards the Goodyear Company, and later the United Company, invented from time to time auxiliary machines, to assist the work of the welter and stitcher, by preparing the work for those machines or by completing the work after leaving those machines. The company wished to furnish these machines without additional royalty in order to encourage and increase the use of its welter and stitcher on which it was receiving a royalty. It, therefore, loaned them to the lessee without charging any additional royalty, receiving only a comparatively small initial payment, or, after 1904, a rental, and obtaining its compensation through the increased use and productivity of the welter and stitcher. But of course it could not afford to give the lessee these expensive machines without royalty unless they were used with its welter and stitcher, for which a royalty was paid. It, therefore, restricted them to use with the welter and stitcher.

2. The principal machines, the welter and stitcher, have recording mechanisms which record more or less accurately the amount they are used and thus enable the United Company to determine the royalty due. Such mechanisms cannot be placed on most of the auxiliary machines. By restricting the use of these machines to use with the welter and stitcher, the United Company is relieved of the almost impossible task of checking the separate use of all of these numerous auxiliary machines.

3. The United Company does not like to lease a machine unless it can keep it in efficient and satisfactory condition. If it leased each auxiliary machine separately for a separate rental or royalty which seemed reasonable, it could not afford for such royalty to care for these separate machines. When one or a number of auxiliary machines are taken for use with the welter and stitcher as a unit, the expense of caring for them is, of course, less per machine.

4. It would be almost impossible to divide the comparatively small Goodyear royalty fairly among the 45 machines of the Goodyear Department. The royalty for many of the machines would be trivial and the expense of determining the amount of use of each of such machines would amount to more than the royalty. They are, therefore, leased as a unit.

5. If a separate royalty were placed on each auxiliary machine, when a new auxiliary machine was invented and a royalty charged for it, the total royalty for the Goodyear set would be increased, or the royalties on each of the machines of the Department would have to be revised. By leasing the machines as a single series this difficulty is avoided.

6. If a royalty were charged for each auxiliary machine, many shoe manufacturers might not take certain auxiliary

machines, although they improve the quality of the Goodyear work but they would attempt to get along without such machines at all. The United Company wants each lessee to have all the kinds of auxiliary machines he needs in order that his work may be as perfect as possible and in order to increase the productivity and capacity of the welter and stitcher. By leasing the auxiliary machines without additional royalty the lessee is encouraged to use them and this improves his product, enhances the reputation of the Goodyear shoe and Goodyear machines, and increases the capacity of the welter and stitcher.

For a more complete discussion of the reasons for the adoption of the clause, see Main Brief, pp. 375–378.

The Auxiliary Restricted Use Clause was adopted by the Goodyear Company to accomplish the above reasonable and proper results. It was continued by the United Company for the same reasons which led to its adoption. It is a normal reasonable agreement adapted to accomplish a legitimate business purpose, and apart from any consideration of patent rights it is clearly lawful.

Furthermore, for the same reasons given above in respect to the Restricted Use Clause, it does not restrain trade, since it merely grants the lessee patent rights he did not have before and in no way restricts his previous freedom of action (*supra*, pp. 141–142), and it is a valid grant of a limited patent license and the control of patented machines which have never been sold and are still within the limits of the patent monopoly, and it, therefore, constitutes a lawful exercise of patent rights (*supra*, pp. 143–151).

K. Factory Output Clause.

In the fall of 1904 the United Company adopted a form of lease under which the initial payments theretofore required on its Goodyear machines were eliminated. This represented a very substantial reduction in charges. Partly to compensate the company for this reduction, it charged under this new form of lease a royalty based on the total number of welt shoes made by the lessee in his factory, whether or not made on its machines. In other words, when a lessee took its machines without initial payments, such lessee agreed to pay a royalty for the use of the machines based on the total number of shoes on which such machines were capable of use, whether so used or not. If the lessee did not wish to pay on this basis, he could take the former lease under which initial payments were charged (see Main Brief, pp. 422–424).

The United States insists that this royalty constitutes a charge for shoes manufactured on competitor's machines. This is not true. It is a royalty paid solely for a lease of the United Company's machines and is based on the amount of use which the lessee has for such machines. Furthermore, as stated, the lessee can take a lease without this clause if he prefers.

This Factory Output Clause was employed by the McKay Company in its heeling leases (*supra*, p. 89).

L. Clicking Machine Royalty.

The clicking machine is not restricted to use with any other machine under any form of lease. A small royalty based on the amount of dies used on the machine is charged.

If used with the United Company's welter and stitcher, or turn machine, and lasting machine, no further royalty is charged. In such case the total royalties received from the series is deemed sufficient compensation. If used with a welter and stitcher, or turn machine, or lasting machine not obtained from the United Company (which the lessee is free to do), an additional royalty is charged. In other words, the rate is less when the machine is used as part of a series of the United Company's machines.

The United States terms this a penalty for using the competitor's machines. It is, in fact, only a wholesale rate for the use of a series of machines, the lessee being free to use the machine either as part of a series or not as he prefers.

The insistence of the United States that this clause is unlawful shows that its real contention in respect to the leases is that machines must not be leased as a series for a wholesale royalty, but that each machine must be leased separately for a separate royalty.

For a discussion of this clause, see Main Brief, pp. 424–426.

6. ENFORCEMENT BY THE UNITED COMPANY OF ITS LEASES.

The United Company has treated its lessees with the utmost liberality and has enforced its leases only when it was treated with flagrant unfairness. A lessee who has treated the United Company fairly and who has used its machines so as to afford it a fair return has never been harassed because of a technical violation of his leases. Mr. R. P. Hazzard, a large shoe manufacturer, expressed the

true relation between the United Company and its lessees when he testified:—

> "I have never taken as much interest in the legal wording of the United Company's leases as I have in the personality of its people, and I have always had fair treatment from the United Company" (R. Vol. 1, p. 653, lines 17–20).

As stated, the United Company has never taken advantage of its technical rights under the leases and has enforced them only when it was treated unfairly and did not receive a fair return for its machines. In spite of extraordinary efforts to prove the contrary, the United States utterly failed to show a single instance of any arbitrary enforcement of the leases (see Main Brief, p. 429; App. II, pp. 743–807).

Apart from bankruptcy, it has cancelled its leases in only five instances during the period of more than twelve years in which it has done business, and in each case the lessee had either ceased using its machines at all or was dishonestly using them without paying royalty (see Main Brief, pp. 429–430).

On the other hand, the record shows instances in which it did not take any action, although it would have been fully justified in so doing (see Main Brief, pp. 430–431).

The following instances illustrate the extent to which the United Company has treated its lessees far more liberally than was required by the leases, thus showing that the clauses in the leases were intended only as protection in case it did not receive a fair return.

A. The United Company has furnished the service which we have discussed above to its lessees, costing it more than $1,000,000 a year, although not required to do so by the leases (see Main Brief, p. 427).

B. It has not required lessees to pay the full cost of repairing machines upon their return, although the leases require such payment (see Main Brief, pp. 427–428).

C. As new or improved machines have been invented the United Company has substituted them for outstanding machines without charge to the lessee and has scrapped the old machines although under no obligation to do so (see Main Brief, pp. 189–190, 428).

This, of course, has been an enormous expense to it.

D. The United Company has supplied all new auxiliary machines without charging additional royalty although under no obligation to do so (see Main Brief, pp. 377, 428).

E. The United Company has enforced the clause requiring minimum payments only for the purpose of requiring a lessee to return idle machines which were earning no royalty (see Main Brief, pp. 311, 428).

F. The United Company has permitted lessees to return machines for which they had no use, to change from one form of lease to another (Main Brief, pp. 306, 311, 430), and has offered to permit a lessee to give up his leases and take machines from a competitor when circumstances justified (Main Brief, pp. 359, 430).

7. COMPLETE FAILURE OF UNITED STATES TO PROVE THE CHARGE IN THE PETITION IN RESPECT TO THE LEASES.

We have above discussed the leases as though it were open to the United States to contest their legality on any ground it pleases. The leases, however, are really material in this case only in so far as they prove the charge made by the petition.

The charge made by the petition is that the defendants planned (1) to acquire all concerns engaged in the shoe machinery business; and (2) to refuse to lease welting, stitching, lasting, heeling, and metallic machines which the petition refers to as essential machines, unless the shoe manufacturer took practically all other machines from them (Main Brief, p. 235). The leases are alleged to be only a step in carrying out this plan and are relied on by the United States to prove the second part of the charge.

In other words, the charge is this: (1) The defendants planned that the United Company should take over the machines made by the constituent companies, viz., welting, lasting, metallic, and heeling machines, which are described as essential machines and of which the constituent companies had lawful patent monopolies; (2) that they also planned to acquire concerns making all other types of machines which were not essential; and (3) that they then planned to use the essential machines to force shoe manufacturers to take such other types of machines, such as General Department machines, etc., by refusing to lease the essential machines unless the shoe manufacturer also took such other types.

As the District Court pointed out (R. Vol. 1, p. 1163), the only clauses in the leases on which the United States relies as having this effect are the Restricted Use Clauses.

That the Restricted Use Clauses do not have this effect is conclusively shown by the fact that unrestricted leases are also offered lessees. But further than this, even if leases containing the Restricted Use Clauses were the only leases offered, and even if they did compel a shoe manufacturer taking machines of one department to use machines of other departments, they do not have the effect which the petition alleges. As we have shown, they do not restrict the use of

the so-called essential machines, viz., welting, lasting, metallic, and heeling machines to use with other types of machines. On the contrary, with one minor exception in the case of the No. 5 Lasting Machine, all the restrictions either (*a*) limit the use of certain so-called essential machines to use with other essential machines or (*b*) limit the use of other machines such as General Department, eyeletting, pulling-over machines, etc., to use with the essential machines. Whatever their effect, therefore, it is obvious that they do not require a shoe manufacturer taking the so-called essential machines to take other types.

For a fuller discussion of the complete failure of the United States to prove the charge in the petition as to the leases, see Main Brief, pp. 244–247.

V.

THE ACQUISITIONS OF OTHER CONCERNS AND PATENTS.

The petition alleges that in pursuance of the defendants' unlawful plan to acquire all concerns engaged in the shoe machinery business the United Company "absorbed many competitors" (R. Vol. 1, p. 999). It then recites *58 transactions which it alleges were of this character, and concludes,—

> "The competition which previously existed between said several concerns has been entirely destroyed" (R. Vol. 1, p. 1023).

1. COMPLETE FAILURE OF THE UNITED STATES TO PROVE ANY ATTEMPT TO ACQUIRE COMPETITORS OR ANY ATTEMPT TO ACQUIRE ALL CONCERNS ENGAGED IN THE SHOE MACHINERY INDUSTRY.

Instead of showing, as alleged in the petition, that 58 competitors engaged in the shoe machinery business were absorbed, the record shows conclusively that in none of

* The Plant purchase is the only transaction which involved any considerable number of patents or any substantial consideration. As the United States has for this reason laid great emphasis on this transaction, we consider it separately (*infra*, pp. 182–196). The allegation in respect to the Boston Blacking Company was withdrawn (R. Vol. 1, p. 47, lines 21–43).

the 58 transactions put in evidence was any competing shoe machinery business of any significance acquired.

1. In 9 of the 58 transactions no tangible property or business of any kind was acquired. These 9 transactions consisted of mere employment contracts, agreements commuting or settling prior obligations, or the acquisition of patent licenses or patents covering new inventions which the United Company wished to use. No shoe machines or shoe machinery business was acquired by any of these transactions (see Main Brief, p. 456).

2. By 15 of the remaining 49 transactions the United Company acquired the businesses of furnishing supplies of various kinds such as wire, eyelets, McKay needles, Goodyear needles, awls, mallets, tacks, nails, brushes, heels and counters, peg-wood, and a few mere tools. None of these transactions related to shoe machinery at all. In no case was the acquisition made for the purpose of eliminating competitors, and in each case the United Company acquired something it did not have before. Of course no shoe machines or shoe machinery business were acquired in any of these transactions (see Main Brief, p. 457).

3. In 8 of the remaining 34 transactions the party from whom the shoe machinery was acquired was not engaged in business but merely had a patented experimental machine. By 7 of these transactions the United Company acquired new machines which it did not have before, or patented inventions for the purpose of embodying them in its own machines. In the remaining transaction the United Company acquired control of patents which properly belonged to the McKay Company, and which the McKay Company, prior to the formation of the United Company, had brought suit to recover. By none of these transactions

was a company engaged in the shoe machinery business acquired (see Main Brief, p. 460).

4. In 17 of the remaining 26 transactions the United Company acquired a new machine or new machines for performing operations for which it did not have any machine at the time (see Main Brief, p. 463).

5. By 7 of the remaining 9 transactions the United Company acquired patented improvements or inventions for the purpose of enabling it to supply better machines than it had before (see Main Brief, p. 464).

6. The two remaining transactions related solely to foreign business in patented machines and were in effect merely purchases of foreign patents (see Main Brief, p. 465).

An analysis of the transactions thus shows that by all of them in which any property or business of any kind was acquired, the United Company acquired something it did not have before.

In a very few cases there was a slight overlapping of the field of a machine or business acquired with that of the United Company, but in every such instance either the United Company's machine or product was very inferior and unsatisfactory and was discarded when the new machine was acquired, or the acquisition of the overlapping machine or product was merely incidental to the transaction, entirely outside of its real purpose and object, and such slight competition, if any, as existed was of no significance in the trade. In every one of these transactions the important fact bearing both upon the intent and what was actually accomplished was that the United Company acquired a new machine or new product which it did not have before, but which its customers used, or a new invention which was needed to improve its machines.

The District Court, referring to the comparatively few instances in which any possible appearance of competition existed, said:—

> (R. Vol. 1, p. 1139.) "The instances then remaining in which the United Company was at the time producing or trying to develop for production a patented machine for doing work more or less similar to that for which the invention of the machine acquired was intended, are the only ones capable of being regarded as of any possible significance for the purposes of the petitioner's case. In all such cases it appears that the acquisitions made were of patented improvements, whether or not embodied in an actual machine, enabling the United Company to increase the efficiency of its own machines, or to complete the development of others with which it was then experimenting or had not yet succeeding[ed] in rendering commercially successful.
>
> "No case, however, is found among the acquisitions of the character last described wherein it has fairly been made to appear that actual competition existed between the device or machine acquired and any machine then being produced or experimented with by the United Company, of such consequence as justifies either the conclusion that the acquisition was for the purpose of suppressing such competition, or the conclusion that a material restraint of trade was thereby accomplished. In most of the cases of this sort the machine or device acquired was claimed to infringe patents belonging to the United Company, or the patent acquired was one which some machine belonging to it was claimed to infringe, or the application acquired was in interference with applications of its own; and the object of the acquisition is shown to have been the avoidance or compromise of pending or threatened litigation. In such cases it is still less possible to say that any wrongful absorption of a 'competitor's' business has been proved."

This finding of the District Court is fully sustained by the evidence.

An examination of those 58 transactions shows, therefore, that the United Company did not actually acquire or absorb any concerns offering competition of any significance whatsoever. The record further shows conclusively that the United Company did not attempt to acquire competitors or to acquire all concerns engaged in the shoe machinery business as charged in the petition.

During the period in which these transactions took place the United Company was offered and declined to purchase over 75 different concerns, many of them of large size and importance, engaged in furnishing shoe machinery and supplies (see Main Brief, p. 448). It also was offered and declined to purchase during the period from June, 1904, to December, 1911, alone, 493 inventions. A considerable portion of the so-called acquisitions consisted merely of the purchase of inventions of the same kind as the 493 so offered for sale and declined (see Main Brief, p. 450). In addition there are numerous other manufacturers of shoe machinery which the United Company made no attempt to purchase. Defendant's Exhibit 336 contains a list of 125 shoe machinery manufacturers who, between them, manufacture every kind of shoe machinery made (see Main Brief, p. 449). Appendix III to the Main Brief (Main Brief, pp. 808–834) contains a summary of the testimony of shoe machinery manufacturers representing 48 different concerns which manufacture machines which compete with one or more of the machines furnished by the United Company.

Many of the concerns which were offered to the United Company and which it declined to purchase were large concerns. Some of them furnished complete lines of

machines and were active competitors of the United Company. The list includes, among others, the following (see Main Brief, pp. 448–9):—

The Duplessis Company (now the Hamel Shoe Machinery Company), which furnishes a complete line of machines for making welt and turn shoes and which has done a large business.

The Haverhill Shoe Machinery Company, which is prepared to furnish a complete line of machines "whether it is for welts or McKays or turns or pegs or anything else."

The R. H. Long Co., which is prepared to furnish a complete line of machines for welt or turn shoes.

The Union Lockstitch Co., which made and marketed large numbers of outsole stitchers.

The Wheeler & Wilson Company, which manufactured 90 per cent. of the machines used in making uppers.

The list of concerns which the United Company declined to purchase includes concerns making machines of practically every kind used in the manufacture of shoes. For a statement of the business done by these concerns, see Mr. Winslow's testimony, R. Vol. 1, pp. 472–476.

The evidence thus shows conclusively that the United Company neither acquired nor attempted (1) to acquire all concerns engaged in the shoe machinery business, or (2) to acquire all concerns engaged in making bottoming machines, *i.e.*, machines of the character to which the case has been limited, or (3) to acquire such concerns as competed with it.

The findings of the District Court to this effect (see Main Brief, p. 450) are thus fully sustained.

This being so, the so-called acquisitions have no significance in the present case.

However, in order to illustrate further the true character of these acquisitions, we wish to point out briefly in this summary:—

(*a*) Certain characteristics of the shoe machinery industry and the development of that industry by the United Company in order to show clearly why these acquisitions were made.

(*b*) The insignificant character of most of the transactions and the comparatively insignificant effect on the shoe machinery industry of these acquisitions.

(*c*) The complete failure of the United States to prove its allegations that plants have been closed and businesses discontinued, that exorbitant prices were paid, and that letters patent have been acquired and not used.

A great mass of evidence was introduced with reference to these various transactions. They are so numerous that we cannot in this summary analyze the evidence in respect to each. A statement and analysis of their character is contained in our Main Brief, pp. 436–490; and Appendix I (Main Brief, pp. 655-739) contains an index of the various transactions and a statement of the evidence relating to each transaction with references to the record.

2. REASONS FOR THE ACQUISITIONS.

The reasons for the acquisitions cannot be thoroughly understood without an understanding of the situation of the United Company at the time of its formation and of the character of the shoe machinery industry and its development since that date.

When the United Company was formed:—

(*a*) It had a comparatively small number of machines for performing an equally small number of operations. It did not have machines for performing numerous of the total number of operations which must be performed in the manufacture of each shoe (R. Vol. 1, p. 2, lines 10–22; p. 3, lines 15–19; p. 4, lines 23–27). Its machines were largely adapted for welt work and not for other classes of work (R. Vol. 1, p. 48, lines 35–38). As an example of the limited number of its machines it had no General Department machines, of which it now furnishes over 170 different types.

(*b*) The United Company's own machines, while the best made and for this reason used almost exclusively for the operations they performed, were still capable of great improvement if time and money were expended in invention and experimentation. Such improvement would consist almost entirely of the addition of inventions to machines on which the United Company held dominating patents. No one but the United Company could, therefore, make improvements in machines of the type which it manufactured and offer them to the public.

As an example of the extent to which the United Company's machines have been perfected and developed by the addition of patented improvements, it may be noted that the Model K Welting Machine is a combination of the inventions of 25 patents made at different times, the Outsole Stitcher, of the inventions of 22 patents, and the No. 5 Slugging Machine, of the inventions of 20 patents. All of the important machines represent a number of patents combined to produce the most effective possible machine.

(*c*) There were in 1899 many operations performed by hand. It was possible and probable that, by the expendi-

ture of money in invention and experimentation, machines could be developed for performing many of these operations.

(*d*) The United Company in 1899 furnished no supplies of the many different kinds used by shoe manufacturers. As it developed its service system and established its stations in various places in the shoe manufacturing districts, it was possible for it to keep at them such supplies for quick delivery to shoe manufacturers, to furnish these supplies more cheaply than a concern which sold no machines and only one or two classes of supplies, and to furnish supplies which were especially adapted for use with shoe machines.

The United Company, upon its formation, was confronted with the question whether it would remain content merely to put out the machines it had acquired from the constituent companies in the stage of development in which they then were, or whether it should use its best endeavors to advance the art of shoe machinery by improving its own machines, by inventing new machines to assist its principal machines and to do work then done by hand, and by furnishing shoe manufacturers through its service station with supplies which would be a distinct convenience to them and assist in the effective conduct of the shoe manufacturer's business.

The defendants realized that the art of shoe machinery had been created and developed largely by the constituent companies because of their constant efforts to invent and improve the classes of shoe machinery they manufactured. They realized that there was opportunity for enormous improvement in the shoe machinery of that day and in the development of new machines; they owned the best bottoming machines and were the only persons who could

improve these machines, and they realized that with their knowledge of the industry and their resources they were best equipped to develop new machines.

Accordingly they undertook this work of experimentation and development. We have already shown how in the comparatively short period of twelve years by a liberal and wise expenditure of money in inventive work the United Company has improved the efficiency of machines manufactured in 1899 to such an extent that, due to this cause and the improved service the United Company renders, each welter produced 66.7 per cent. more shoes in 1910 than in 1899; each stitcher, 69.5 more shoes; each heel-attaching machine, 62.3 more shoes; and each lasting machine, 24 per cent. more shoes (*supra*, pp. 67–68). We have also shown how during this short period the United Company developed 150 new machines, 39 of which perform work previously done by hand (*supra*, pp. 65–66).

Most of the inventions embodied in these new and improved machines were the product of the United Company's own Inventive Department. Occasionally in the progress of this work, however, the United Company found that some other person owned an invention which could advantageously be added to one of its many machines and it acquired such invention, or it found that after it had developed an improvement such improvement infringed a patent owned by another person, or it found that in developing a new machine the acquisition of some patent was necessary or advisable to produce an effective result. As illustrating the extent to which the United Company's machines combine its own inventive work and the inventions of others, the Model K Welter embodies inventions of 19 patents developed by the United Company and 6

patents acquired from others; the Outsole Stitcher, 17 patents developed by the United Company and 5 acquired from others; the No. 5 Slugging Machine, 17 patents developed by the United Company and 3 acquired from others; the Universal Channeling Machine, 8 patents developed by the United Company and 3 acquired from others; the Ensign Lacing Machine, 5 patents developed by the United Company and 4 acquired from others; the Star Channel Cementing Machine—Model D, 3 patents developed by the United Company and 1 acquired patent (see Main Brief, p. 443).

The United Company also acquired from time to time machines which it did not manufacture at the time and which it desired to furnish shoe manufacturers. Most of these machines were General Department machines and were either sold or leased by the United Company at the option of the shoe manufacturers. The purchase of these machines was of benefit to the shoe trade, since the United Company could manufacture the machines more economically and furnish with them efficient service, which previously had not been furnished at all with these machines. In addition, the United Company from time to time acquired the business of furnishing various supplies to its customers.

In most of the acquisitions the United Company acquired a single patent, a single machine, or a single supply, such as peg-wood, needles, or brushes. In none of them, except the Plant purchase considered below, did it acquire any large number of patents or did it acquire any large number of machines.

Disregarding for the present a number of transactions, such as employment contracts by which no property was

acquired, and which were not acquisitions at all, the record shows that the acquisitions were not made for the purpose of monopolizing shoe machinery or eliminating competitors, and that they had no such effect, but that they were made for the following purposes:—

1. To enable the United Company to furnish its customers with supplies which the United Company did not manufacture at the time.

2. To enable the United Company to furnish to its customers patented machines for performing operations for which it had never before had any machines.

3. To assist the United Company in developing entirely new machines upon which it was experimenting. The result in each such case was a better machine than could have been developed by the United Company or such other person if the patent or patents of such other person had not been combined with those of the United Company.

4. To enable the United Company to add some improvement to the machines it was then putting out. In every such instance the acquisition of such patented improvement enabled the United Company to produce a more efficient machine than would have been possible in the industry if such patented improvement had not been acquired and had not been combined with its own patents.

As stated above, the United Company made a number of acquisitions because the patent or patents thereby acquired stood in the way of some development made or planned in its own machines. In several cases the machine acquired infringed the United Company's patents or some patent application was in interference with a patent application of the United Company. By such acquisitions expensive and annoying patent litigation was avoided,

and in some cases the use of inventions became possible at once, the use of which might otherwise have been delayed for years pending the outcome of patent litigation. In all of the cases in which the United States may urge there were any apparently competing machines acquired, patent litigation was settled (see Main Brief, pp. 472–4).

3. COMPARATIVELY INSIGNIFICANT EFFECT OF THE TRANSACTIONS UPON THE CLASSES OF MACHINES AS TO WHICH MONOPOLY IS NOW CHARGED.

In 44 of the 58 transactions the United Company did not acquire any machine which is within the class of machines as to which monopoly is now charged (see Main Brief, p. 470).

While in some of the remaining transactions the United Company acquired useful machines which it did not manufacture before, or patents which effected substantial improvements in its machines, such acquisitions, when compared with the remarkable inventions which the United Company developed itself and the new machines which it produced itself, are of comparatively insignificant importance.

Had the United Company not acquired any of these machines and patents and had they all been combined together in one company, while the United Company would have been prevented from making substantial improvements in its machines and from putting out a number of types of machines which it did not manufacture, there is not the slightest foundation in the record for a contention

that such new company upon making such acquisitions would have had machines which competed or were capable of competition in any significant sense with the United Company's machines.

The District Court held:—

> "Taken together, the acquisitions of this class [namely, the class in which any possible competition could be charged] are, in importance and amount, only of a consequence relatively small in proportion to the entire field then lawfully belonging to the United Company. It does not appear that they contributed anything essentially important to that degree of commercial success obtained by the company as above. If they assisted in obtaining it, it was by assisting the development of the machines to whose ultimate efficiency it was due. It can hardly be said as to any of them that they afforded anything more than a basis whereon to build. Speaking of them generally, it may be said that the invention or machine obtained required further development in the company's hands before it could be properly used" (R. Vol. 1, p. 1140).

4. THE UNITED COMPANY DID NOT PAY EXORBITANT PRICES FOR THE ACQUISITIONS.

The petition alleges that the defendants paid exorbitant prices for these acquisitions (R. Vol. 1, p. 999).

There is not a suggestion in the record that in any instance more was paid than the property was worth.

During the period from 1907 to 1911 the United Company paid for concerns which could be said to be doing a shoe machinery business $375,000. During the same period it expended in its Experimental Department $2,267,000 (see Main Brief, p. 454).

The District Court held that this allegation was neither proved nor seriously urged (R. Vol. 1, p. 1142).

5. CONTENTION THAT PLANTS HAVE BEEN CLOSED AND BUSINESS DISCONTINUED.

The petition alleges in respect to a number of acquisitions that plants were closed and the business discontinued.

In only 6 transactions did the United Company acquire any real estate at all. In none of these instances did the United Company acquire any machines as to which monopoly is charged. As to five of these instances, three of which involved the manufacture of supplies, and one of treeing machines, the business was continued and is still carried on in the same plants as previously. In the sixth case the business was so carried on for a period and then for convenience transferred to the United Company's plant at Beverly (see Main Brief, pp. 481–2).

The petition alleges that patents were acquired, but not used, thus depriving the public of the benefits arising therefrom (R. Vol. 1, p. 999). There is not the slightest evidence to support this allegation (see Main Brief, pp. 474–5). On the contrary, the record conclusively disproves it.

6. CONCLUSION AS TO THE ACQUISITIONS.

As we have shown above, the record conclusively establishes and the District Court found that the concerns acquired were not competitors; and that the acquisitions were not made for the purpose of eliminating competitors or for the purpose of acquiring all concerns engaged in the shoe machinery industry. The acquisitions, therefore, do not prove the existence of the unlawful project charged

in the petition; they were obviously not steps taken in pursuance of any such plan and they are, therefore, immaterial in the present case.

Nor were they unlawful from any other point of view.

As we have seen, they were made to enable the United Company to furnish some supply, some patented machine, or some patented improvement which it did not have before. They were plainly a mere continuation of that "effort after greater efficiency" which was the purpose of the formation of the United Company and which was approved by this Court in *United States* v. *Winslow*, 227 U. S. 202. Such "effort after greater efficiency" naturally resulted in the United Company's increasing the number of types of machines and supplies which it furnished and in improving its machines from time to time as opportunity to do so offered.

That such acquisitions of new and non-competing types of machines, patents, or supplies is lawful was established in *United States* v. *Winslow*, supra. This Court said in that case (p. 217):—

> "On the face of it the combination was simply an effort after greater efficiency. . . . The disintegration aimed at by the statute does not extend to reducing all manufacture to isolated units of the lowest degree. It is as lawful for one corporation to make every part of a steam engine and to put the machine together as it would be for one to make the boilers and another to make the wheels."

By the original formation of the United Company the non-competing businesses of manufacturing welting, lasting, heeling, and metallic machines were combined in one company. By the later acquisitions which we are now

considering something new, not previously owned by the United Company, was acquired. Compared with the importance of the machines combined at the formation of the United Company, such acquisitions, however, are comparatively insignificant. The formation of the United Company being lawful, as this Court held, these acquisitions are unquestionably lawful and proper.

In certain of the acquisitions the United Company was at the time, in the language of the District Court, "producing or trying to develop for production a patented machine for doing work more or less similar to that for which the invention of the machine acquired was intended" (R. Vol. 1, p. 1139).

These are the only cases in which it can possibly be contended that there was any possibility of competition. In practically all of these cases the United Company acquired, as we have stated, something new that it did not have before, and in all of such cases it settled patent litigation or infringements, which if not settled would have retarded the development of its machines.

It may be contended that in some of these cases the owner of the machine or patent so acquired might have developed it or sold it and competed with the United Company. In practically every case this is a mere speculation. The District Court found that no actual competition of any significance was eliminated by any of those transactions (R. Vol. 1, pp. 1139–1140).

When it is remembered that in practically every such case the United Company acquired a patented improvement enabling it to improve or develop some machine, that most of the acquisitions did not relate in any way to machines as to which monopoly is charged, and also that the

United Company did not acquire any of the concerns actively competing with it, although many of them, its most important competitors, were offered to it for sale, it is impossible to believe that these acquisitions were made to eliminate a possibility of future competition.

But if there was a speculative possibility of competition in any of these instances between the owner of the patent or machine acquired and the United Company, it must be remembered that the Sherman Act does not condemn a transaction merely because some competition, speculative or even actual, may incidentally be eliminated. Every partnership of two persons engaged in commerce would in such case be condemned. To be illegal the transaction must be undertaken for the purpose of eliminating such competition, or must result in some undue or unreasonable restraint of competitive conditions or obstruction to the natural course of trade which prejudices the public interests.

In *Nash* v. *United States*, 229 U. S. 373, the Court said (p. 376):—

> "Those cases may be taken to have established that only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, *prejudice the public interests* by unduly restricting competition or unduly obstructing the course of trade" (italics ours).

See also quotation from *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, at p. 487 of the Main Brief.

Where two persons own patents under which each can manufacture an inferior machine, and by a combination of the two patents a superior and more efficient machine can be constructed, obviously the public interest is not prejudiced by the acquisition for this purpose by one of

the patentees of the other patent, even if some competition between the inferior machines is thereby incidentally eliminated. The outstanding fact in such a transaction is that the public gets a superior machine. As the Sherman Act is intended to prohibit only such contracts as prejudice the public interest, it surely does not condemn such a transaction.

Take the telephone as an example. In *United States* v. *American Bell Telephone Company*, 167 U. S. 224, the right of a patentee to acquire other patents which improve his apparatus, although thereby his monopoly is extended, was affirmed as undoubted. The Court said (p. 249):—

> "Much is said in the briefs and in the arguments about the practical continuance of the telephone monopoly. It is well to understand exactly what is meant thereby. No one questions that the Bell patent has expired, and that all of his invention is free to the use of the public. It is not denied that Berliner's invention is something independent and distinct from the Bell invention. It is the combination of these inventions with those of Blake and Edison which makes the instrument in commercial use, and because this is the most serviceable it is the one that the public insists upon having. But each invention has independent rights. It loses nothing because when united with another it results in an instrument more valuable than either alone will give. Suppose that at the expiration of this Berliner patent some new invention shall be made by which in connection with those already free to the public an instrument can be manufactured far surpassing in utility that used today, and the Bell Company shall purchase that invention, the public, which always insists on having the best and most serviceable, will undoubtedly take the new instrument, and in that way it may happen that what is called the telephone monopoly is practically still further continued. But surely that does not abridge the legal rights of anyone.

> The inventor of the latest addition is entitled to full protection, and if the telephone company buys that invention it is entitled to all the rights which the inventor had."

It appears from that case that the telephone as it then existed embodied a combination of four patents. Bell's invention was the fundamental invention. The others were improvements which had been made from time to time. After the expiration of Bell's patent, a telephone could have been constructed by the addition of either one of the improvements. Can it possibly be contended that the owners of those new inventions, although there would possibly or probably have been competition between them if they had remained separate, could not combine and by the use of all their patents make a more perfect instrument? We think it clear from the language of the Court that such a combination was permissible.

One further consideration should be borne in mind with reference to the acquisition of patents and patented machines. A business dominated by patents, like the shoe machinery industry, is quite different from an unpatented industry. In an unpatented industry, like the oil business, or the tobacco business, every one is free to engage in the business and free to enlarge his plants, or construct new plants, and thus satisfy the demands of all his customers without acquiring the property of any other concerns engaged in the business.

In a business like the shoe machinery business no one can engage in it unless he can produce machines as good as or better than those produced by some one else making the same class of machines. No one wants machines representing the stage of development in the industry which was

reached seventeen or more years ago. Furthermore, for the same reason, no one can continue in the business unless his machines continue to be as good as those made by others. The result is that a shoe machinery manufacturer may find he must purchase patents enabling him to make modern machines, or go out of business. For example, take a manufacturer who makes a patented heeling machine. Another person obtains a patent or patents which enable him to manufacture a superior machine. The result is that the machine of the first manufacturer will in time become obsolete, just as the Ideal Lasting Machine has become obsolete, and he will be driven out of business unless he can acquire the right to furnish the new machine, which he can only do by acquiring the patents; in other words, by buying the business of the second manufacturer, which, of course, is dependent upon and follows such manufacturer's patents.

Surely the first manufacturer is not required by law to see his business disappear and to refrain from buying the patents embodied in the superior machine, because thereby competition between his inferior machine and such superior machine may be incidentally eliminated. The superior patents lawfully restrain him from competing on equal terms. In acquiring them he is not imposing any restraint on commerce which it is the purpose of the Sherman Act to prevent. He is, on the contrary, merely removing a restraint which prevented his offering the best machine and the machine which his customers desire.

VI.

THE PURCHASE OF PLANT'S PATENTS AND INVENTIONS.

In September, 1910, the United Company acquired the patents and inventions of Thomas G. Plant. In the same transaction it acquired from Plant 60 per cent. of the capital stock of the Thomas G. Plant Company, a corporation manufacturing women's shoes.

The United Company has laid great stress upon the Plant purchase, because it is the only acquisition made by the United Company involving patents relating to any considerable number of machines and involving a substantial purchase price. Except that the patents thereby acquired were of great value, and, when incorporated into the United Company's machines, resulted in the greatly increased efficiency of a number of machines, whereas the other transactions were mostly concerned with a single patented improvement or machine, the Plant transaction did not differ from the more or less insignificant transactions which we have considered above. As the District Court found and the record abundantly proves, it was not made to eliminate a competitor, but to enable the United Company to incorporate the Plant patented improvements in its superior machines and to settle a vast amount of threatened and pending patent litigation which would have seriously interfered with and retarded the development of the United Company's machines.

It is not unimportant to note that this transaction upon which so much reliance is placed by counsel for the United States took place over eleven years after the formation of the United Company. The acquisition of the Plant patents eleven years after the formation of the United Company, even if this transaction were of the character which the United States alleges, would, considered by itself, have little significance in proving the unlawful project charged in the petition which it is stated was formed in 1899.

Plant had constructed a number of experimental machines embodying his inventions and had installed them in the shoe factory which he controlled where women's shoes were made exclusively, the factory of the Thomas G. Plant Company. He had not put any machines into any other factory. It should be clearly understood that the Plant machines which are mentioned in the record, and which we shall hereafter refer to, were not machines that Plant had to sell or machines that the United Company purchased. Those machines had been bought and paid for by the Plant shoe manufacturing concern and they were not for sale. Their only importance in this case is that they were concrete evidence showing how much or how little Plant had accomplished in producing machines, and that they contained his valuable inventions.

1. PLANT WAS NOT A COMPETITOR.

Plant was not a competitor of the United Company. He did not own any factory for manufacturing machines; he was not carrying on any shoe machinery business and he was not prepared to supply any machines. He declared

that he did not want to go into the shoe machinery business, that he desired to retire from business; and after the purchase he did retire. There is uncontradicted evidence showing that the sole purpose of the Plant enterprise was to create something which he could sell to the United Company. He so stated himself and the history of his negotiations with the United Company proves this to be the fact. He offered a large commission—$250,000 and later $500,000—to an influential shoe manufacturer if he succeeded in effecting a sale to the United Company, and he later offered and had to pay a commission of 5 per cent. to another intermediary who undertook to effect a sale to the United Company (see Main Brief, pp. 515–517).

The record establishes that the Plant machines were crude, really in the experimental stage, entirely useless for men's shoes and unfit for the making of women's shoes; that in their use in the Plant shoe factory they were constantly breaking down; that they broke a great number of lasts; that it was necessary to employ a large number of men to repair shoes that were defective on account of the poor work of the machines; that it cost three and a quarter cents per pair more to make shoes on them than it cost on the United Company machines; that the profits of the Plant shoe business after the Plant machines were installed were one-half less than they had been when the United Company machines were used; that the machines could not be used for manufacturing shoes according to the methods universally followed by other shoe manufacturers; and that after the purchase the managers of the shoe factory, Plant's former associates, found it impracticable to continue the manufacture of shoes with Plant's machines and of their own volition discontinued the use of those machines and

substituted United Company machines. This evidence was almost entirely uncontradicted. After it had been introduced, the United States made no effort in its rebuttal case to meet this evidence.

The District Court found (R. Vol. 1, p. 1143):—

> "Whatever the merit of Plant's inventions, these machines in which he had first embodied them are not shown by the evidence to have been commercially successful in September, 1910, or to have been capable of such success in their then stage of development .... In the state in which the United Company took them over, they were not found capable of profitable use. Nothing is found in the evidence which affords reasonable support for the petitioner's contention that they were 'right at the threshold of extensive competition with the United Company.'"

For a more complete discussion of the evidence showing that Plant was not engaged in the shoe machinery business and that his machines were not commercially successful or capable of profitable use, see Main Brief, pp. 513–515, 517–534.

2. PLANT'S VALUABLE INVENTIONS.

On the other hand, in the course of his experimental work Plant had made or acquired many inventions which were embodied in his machines. Although their mechanical embodiments in Plant's crude machines were defective and unsatisfactory, the United Company's experts could see that many of those inventions were extremely valuable and represented very important advances in the shoe machinery art which would be of the utmost value if combined with the United Company's patents. These inventions were

broadly claimed in Plant's patents, and accordingly the United Company could not use the inventions without infringing his patents (see Main Brief, pp. 535–538, 541–550).

3. THE INTOLERABLE PATENT COMPLICATIONS.

Plant had, however, developed his inventions and constructed his experimental machines upon the foundation which for many years the United Company and its predecessors had been building; he had, in other words, added his improvements to old machines of the United Company. As Mr. Howe testified,—

> "He had taken our machines, whether he had a right to or not, and had made certain improvements on them" (R. Vol. 1, p. 669, lines 17–18).

Under these circumstances extensive infringement of the United Company's patents naturally occurred.

The testimony was uncontradicted that 37 of Plant's machines, including practically all of his important machines, infringed claims in 99 patents and 3 pending applications owned by the United Company amounting in the aggregate to 546 claims; and that many claims were infringed by more than one machine with the result that there were 708 distinct cases of infringement of the United Company's patents by Plant's machines (see Main Brief, pp. 551–553).

On the other hand, for several years Plant's inventive work had been going on simultaneously with that of the United Company's inventors, and in certain instances he had anticipated the United Company with the result that the United Company had unwittingly embodied in 15 of its

machines improvements which infringed Plant's patents. A number of its most important machines were involved, such as the latest model welter, the No. 5 lasting machine, and the latest models of heel-attaching machine and rounding and channeling machine (see Main Brief, pp. 553–554). There had also been declared by the Patent Office 23 interferences between patent applications owned by Plant and applications owned by the United Company. These involved improvements in important machines of the United Company, such as lasting, heeling, nailing, leveling, pulling-over, and other machines (see Main Brief, p. 554).

The details of this vast amount of patent infringement and conflict are more fully discussed in the Main Brief, pp. 541–542, 547, 550–556. It is unquestioned that Plant could not have used most of the important machines he had constructed, unsatisfactory though they were, since the United Company's patents would have prevented, and it is further clear that the United Company would not have been able to use many important improvements which it had developed independently, but which had been anticipated by Plant. The natural development of its machines on which it had expended large amounts of money would have been retarded until the expiration of Plant's patents many years later if the purchase of these patents had not been made. Furthermore, it would have been necessary for the United Company to withdraw from the hands of shoe manufacturers many infringing machines at great expense and to reorganize these machines and replace the infringing machines with the reorganized machines. In the meantime, its lessees undoubtedly would have been harassed by patent suits brought by Plant, and if he had obtained injunctions while they still held infringing machines they might have

been obliged to stop their entire production until the United Company was able to furnish them with new machines. In addition the United Company would have become involved in a vast amount of patent litigation which would not only have been expensive but which would have involved much of the time and attention of the United Company's officials and experts.

4. THE NEGOTIATIONS FOR THE PURCHASE.

The United Company had never sought nor even considered any purchase from Plant until overtures were made by Plant. The interviews resulting from those overtures were all sought by Plant and his proposals were several times declined without encouragement to renew them. Throughout the negotiations, which extended over three months, Mr. Winslow insisted that he would not consider the purchase unless there were opportunity for the United Company's experts to examine the Plant machines and determine the value of his inventions, and that he would consider purchasing those inventions upon no basis other than the value which they would have to the shoe industry and to the United Company in the advancement of the art.

After negotiations had several times been broken off by the United Company and renewed by Plant, he finally permitted its experts to examine the machines in the Plant shoe factory. As a result of the extended and thorough examination which was then made it was determined that while the Plant machines themselves were crude and unsatisfactory, Plant had made some very valuable inventions which could be incorporated in the United Company's machines with great advantage to the United Company and to its cus-

tomers. Accordingly, when Plant offered to sell those inventions at a much lower price than he had previously named, and offered also to include his valuable holdings in the shoe manufacturing company, the United Company accepted the offer.

The District Court found (R. Vol. 1, p. 1143),—

> "The evidence regarding Plant's negotiations with the defendants sufficiently proves that they were never sought by the defendants and that there was never any attempt on their part to get Plant to sell them his inventions or machines or anything else; but that, on the contrary, all the efforts toward such a purchase were made by him."

For a statement of the evidence with respect to these negotiations, see Main Brief, pp. 564–573.

5. THE VALUE OF THE PLANT PATENTS AND THE USE MADE OF THEM BY THE UNITED COMPANY.

The value of the Plant patents to the United Company is best illustrated by the use which was made of them.

The United Company has incorporated into 26 of its machines the inventions embodied in 43 of Plant's patents. It has improved and adopted 17 of Plant's patented machines (see Main Brief, pp. 538–539, 550).

The record abounds in testimony as to the increased efficiency of the United Company's machines by the addition of Plant improvements, the savings in material and other economies thereby effected, the increased output of

the improved machines, and the resulting increase in wages received by operatives who are paid by the piece.

The more important of the Plant inventions which were especially useful in the United Company's machines were those relating to the welter, stitcher, lasting machine, rough rounding machine and heel-attaching machine (Main Brief, p. 550).

The improvements in the welter and stitcher were the most striking and alone justify the purchase.

For the first time in the history of the industry Plant had embodied in a welt sewing machine means for cutting off the welt close to the end of the seam, means for holding the end of the welt in proper position to start on the next shoe with minimum waste of welting, a welt measurer which determined the amount of welt left on the shoe when it was cut off and positively prevented waste of welt, and, finally, means for automatically stopping the machine and casting off the last loop of thread from the barb of the needle. Always previously it had been necessary for the operator to stop the machine by putting his hand on the belt pulley, first slowing down the machine, then stopping it, and finally turning the machine backward at such time and in such manner as to free the needle from the last loop of thread, in order to free the shoe from the machine. Then with a hand knife he cut the welt. In starting with the next shoe he had to hold the end of the welt with his finger and this involved wasting about two inches of welting upon each pair of shoes, worth at least a quarter of a cent per pair and more on men's shoes (Main Brief, p. 536).

These improvements were of the utmost importance.

On the other hand, Plant's welter, incorporating his improvements, infringed a patent of the United Company

which covered broadly a welt holder but under which the United Company had never been able to produce a commercial welt holder. The result was a deadlock. Neither Plant nor the United Company, unless one acquired the patents of the other, could lawfully make use of this extremely important invention (Main Brief, pp. 541–542). Furthermore, the Plant welter, even when it embodied this infringing invention, lacked valuable improvements which were incorporated in the United Company's welter. Only by the incorporation of the Plant inventions in the United Company's welter could Plant's inventions be utilized to the best advantage. In adapting the Plant inventions to its machines, the United Company developed still further improvements (Main Brief, pp. 542–543).

The result was a new model of the welter embodying all these inventions and far superior to any machine previously produced. R. P. Hazzard testified that the previous machine produced 25 dozen shoes a day, and the new model 40 dozen, an increase of over 50 per cent. in capacity (Main Brief, p. 544). He further testified that in addition to this increased capacity the machine saved $500 to $600 a year in welting alone (Main Brief, p. 544). Blagden, an operator on welt machines, testified that although the piece price paid for work on the old machine was one-third more than on the new machine, he was, nevertheless, able to earn 20 per cent. more on the new machine (Main Brief, pp. 544–545).

The savings in welting and increased capacity on the new machine must therefore amount to at least $800 per year. On 2,527 machines, the number of welters the United Company had out in 1911, this would amount to over $2,000,000 annually when the machines were used throughout the year (see Main Brief, p. 545).

For a further discussion of the improvements in the welter, see Main Brief, pp. 536–537, 541–546.

Plant had made inventions for the stitcher which stopped the machine in proper position to remove the shoe and to receive another shoe. Before this, it had always been necessary for the operator to remove one hand from the shoe, stop the machine by hand, and then lift the presser-foot so he could remove the shoe and then lift the presser-foot in order to introduce a new shoe. All this work was eliminated by the Plant inventions, which, therefore, effected a great saving in time and in the effort required of the operator (see Main Brief, p. 537).

The incorporation of the Plant stitcher patents into the United Company's stitcher increased the efficiency of the machine to a remarkable extent and also greatly benefited the operators. Hazzard testified that the average piece price on the old model was 40 per cent. more than on the new model but nevertheless, due to the increased speed of the new model, the operator earned an average of 24 per cent. more wages (Main Brief, pp. 547–548).

These valuable Plant inventions when incorporated in the United Company's machines were furnished lessees without any increase in royalties, although they had cost the United Company $2,500,000, and although in the case of a number of machines, such as the welter and stitcher, it meant substituting new machines embodying the old and new inventions for the comparatively new machines then held by lessees (Main Brief, p. 550).

6. THE PLANT PATENTS WERE WORTH MORE THAN THE PRICE PAID FOR THEM.

For the Plant inventions and patents and for 60 per cent. of the stock of the Thomas G. Plant Shoe Company, a shoe concern which Plant had built up and which he made it a part of his offer to the United Company should be included with the patents, since he desired to get out of business, the United Company gave $3,000,000 cash and $1,500,000 par value of its stock, having a market value of twice the par value. In other words, it paid a total of $6,000,000 in cash and stock. Of this amount Mr. Winslow considered that $2,500,000 was paid for the Plant patents (Main Brief, p. 562).

The stock of the Plant Shoe Company was easily worth at least the balance of the purchase price, namely, $3,500,000. This company had earned an average of $738,000 a year for four years and in one year had earned $1,122,196.28 (Main Brief, p. 562). 60 per cent. of its average earnings capitalized at 10 per cent. gives a value of $4,428,000, leaving only $1,527,000 as the amount paid for the patents.

The patents were worth far more to the United Company and the public when combined with the United Company's patents than the amount paid for them. As we have shown, the improvements in the welter alone resulted in savings which were worth more than this amount.

7. CONCLUSION AS TO THE PURCHASE OF THE PLANT INVENTIONS.

The Plant purchase was made, as the District Court found, to acquire the valuable Plant patents in order to incorporate them in the United Company's machines and to avoid the intolerable patent confusion and litigation which would have otherwise resulted.

There is nothing in the record to justify a contention that this purchase was really made to eliminate competition. Plant was not competing, his machines were not capable of successful competition, and, owing to the infringement of the United Company's patents and their own weakness, it was at least questionable, if not improbable, that he would ever be able so to reorganize and develop them as to make them commercially successful. The United Company did not institute or press the negotiations for purchase, but merely considered Plant's repeated offers and when he offered to sell for a reasonable price the United Company accepted the offer.

Mr. Winslow testified in respect to his attitude during the Plant negotiations:—

> "My entire and only interest was whether those patents could be made of benefit to our customers and the trade. If they could be of benefit, if they were of large benefit, and the trade ought to have them, I should be very glad to buy them and embody them in our machines for what I thought they were worth, irrespective of what they had cost him—but I would not pay a cent more for them" (R. Vol. 1, p. 482, lines 26–32).

The District Court, after referring to the value of the Plant patents when combined with the United Company's patents and the litigation which threatened, said:—

> "The above reasons, none of them open to any charge of illegality, seem to me to have been the really operative reasons which must have induced the defendants to enter into the Plant bargain upon the terms which he finally offered them. They appear so adequate as legitimate business reasons for doing this as in my opinion to leave no reasonable ground for holding, against the defendants' denial, that it was really a purchase to suppress competition" (R. Vol. 1, pp. 1145–1146).

The purchase, therefore, cannot be held to be unlawful on the ground of intent. Nor can it possibly be held to have been inherently unlawful apart from unlawful intent. No actual competition was eliminated by the purchase, as Plant was not engaged in furnishing shoe machinery. There was only a possible or speculative competition in the event that Plant should be able in the future to avoid infringement of the United Company's patents and make his machines commercial.

On the other hand, it was of the utmost importance to shoe manufacturers generally and to the public that machines embodying the United Company's inventions and the Plant improvements should be produced. Only in this way could the best machines possible in the then stage of development of the art of shoe machinery be manufactured. And this result could only be accomplished by the acquisition of the Plant patents. Since the Sherman Act only condemns transactions which prejudice the public interests (*supra*, p. 178), it is clear that it does not condemn this transaction so obviously beneficial to the public

which has thus received the benefit of vastly more efficient machines than would otherwise have been possible without paying one cent more in royalties than was paid previously.

One test of the legality of the purchase is whether the public interest would be injured if the United Company now sold the Plant patents. Such a sale would mean that 26 of the United Company's machines would in the future be stripped of valuable inventions; that these machines would produce fewer shoes per day, and that shoe manufacturers would not be able to make the very large savings in material which is now possible; that shoe manufacturers would be obliged to pay higher piece wages since the capacity of the machines would be reduced, and operatives, even with increased piece prices, would probably earn less per day. The purchaser of these Plant patents would not be able to make effective use of them, since he could not combine with them the United Company's patents, and since machines made under them would infringe the United Company's patents; indeed, it is doubtful if such purchaser of the Plant patents could make commercially successful machines at all.

For a full discussion of the evidence regarding the purchase of Plant's patents and inventions, see our Main Brief, pages 507–586.

VII.

COVENANTS TAKEN FROM VENDORS, INVENTORS, AND EMPLOYEES IN CONNECTION WITH THE ACQUISITIONS.

The petition alleges that the defendants, in pursuance of their unlawful plan, have taken from vendors and inventors covenants not to engage in business for long terms of years in competition with the United Company, or to assign future inventions relating to boots and shoes (R. Vol. 1, p. 1000).

The District Court found these covenants were of the kind usually taken in such cases; that none of them clearly exceeded what the law permits, and that they failed to indicate any unlawful purpose (R. Vol. 1, p. 1141).

This finding of the District Court is fully supported by the record.

When covenants were taken they were of the usual character taken from the vendor of a business or from an inventor entering into a contract of employment or selling patent rights. Such agreements have been long recognized as essential to the protection of the vendee or employer. Indeed, covenants not to compete, if not expressed, are implied by law in Massachusetts where practically all of these transactions took place (see Main Brief, p. 496). In the present case the covenants were in no instance shown to exceed what is usual, lawful, and necessary. They utterly

fail to establish any intent to obligate either vendors or patentees unlawfully. The record shows that the officers of the company had no plan or design whatever with respect to these covenants, and that their form was left to the attorney who drew the papers and who inserted the form used in such cases.

In thirteen transactions there were no covenants as to competition or future inventions whatsoever. In most of the transactions where covenants were inserted it is evident that especial pains were taken to limit the covenant strictly to the particular kind of machines or goods which were sold.

The petition seriously misstates the extent and scope of many of the covenants, although the documents themselves were in the possession of the United States for a long time prior to the filing of the petition (see Main Brief, pp. 500–506).

For a discussion of the covenants and of the law bearing on them, see Main Brief, pages 491–506.

VIII.

THE UNITED COMPANY HAS NOT MADE EXORBITANT PROFITS.

The petition charges that the United Company has made enormous and unreasonable profits (R. Vol. 1, p. 1026).

Presumably this allegation was made to support the charge that the defendants planned by their unlawful project to "enhance the cost of said machines to users thereof" (R. Vol. 1, p. 997).

As the record shows that the United Company reduced the cost of its machines materially, this charge of a plan to enhance the cost is utterly unfounded. If, in spite of the increased cost of building machines, the United Company by its economies has reduced their cost to shoe manufacturers and at the same time has made large profits, this would hardly show an unlawful purpose.

But the charge that the United Company has made exorbitant profits is without foundation and the District Court so found (see Main Brief, p. 599).

The earnings from March 1, 1905, to March 1, 1911, based on net assets, are shown to have been 14.01 per cent. and the average rate of dividends to net assets, 7.10 per cent. (Main Brief, p. 598). These are surely not exorbitant earnings for a corporation which produces the best shoe machines made, which is the owner of many remarkable

patents and which has had such extraordinary success in developing new machines.

In the foregoing estimate of earnings based on net assets the United Company's patents were valued at only $400,000. The pulling-over machine alone cost $1,000,000 to develop, to say nothing of the patents on the many other new machines which the United Company has produced. If in making the foregoing estimate a fair value had been placed on the patents, the net earnings and dividends based on assets would have been very substantially reduced (see Main Brief, p. 599).

IX.

ALLEGED UNFAIR OR MONOPOLISTIC ACTS.

In Section VI, R. Vol. 1, p. 999, the United Company is charged with having made various threats or committed various unfair or oppressive acts. No specific instances are set out in the petition, but a bill of particulars setting forth the specific instances relied upon was filed during the course of the trial (R. Vol. 1, p. 1075).

The United Company during the course of its existence has had dealings with thousands of persons. It has over a thousand lessees with whom it is constantly in touch and with whom it has very intimate relations; it has had an average of over 80 new lessees a year; it has dealt with all the persons from whom it made the acquisitions considered above, and it has declined to purchase over 75 concerns and hundreds of inventions.

During this period and in its dealings with all these thousands of persons it has, of course, not been able to satisfy all of them. The United States produced at the trial practically every person who felt he had any grievance of any kind whatsoever against the United Company. These included inventors who had tried unsuccessfully to get the United Company to adopt and purchase their inventions, persons who had tried unsuccessfully to sell their businesses to the United Company, persons who had sold patents or machines to the United Company and felt for one reason or another that they had not received all they were entitled

to, lessees who had not treated the United Company fairly and had been requested to conform to certain of the provisions of their leases or against whom in a very few instances the United Company had enforced the leases, competitors who resented the success of the United Company and a group of large manufacturers who have sought to eliminate the competition of the small shoe manufacturers by getting for themselves more favorable terms from the United Company than it grants small shoe manufacturers.

The alleged statements of the employees of the United Company to which objection is made include statements made not merely by the principal executive officers but by minor officials or employees.

No one of these transactions considered by itself is of significance in the present case, in which the charge is one of a plan to acquire all shoe machinery concerns and to refuse to lease essential machines unless others are taken and the acquisition thereby of a monopoly of shoe machinery. It can hardly be contended that any one of these various alleged unfair acts is material in proving this charge. Their only importance is whether they show a consistent course of arbitrary action toward competitors and lessees and thus show a general unlawful intent and course of conduct on the part of the United Company.

An examination of the evidence relating to these transactions not only shows that they prove no such contention, but shows that the United Company, as the District Court found, has been "above reproach in any of these respects."

The District Court said (R. Vol. 1, pp. 1152–1153),

> "In view of the long period and wide fields thus searched, the numerous abandoned attempts to prove something of the kind above indicated, and the insignifi-

cant result of the evidence actually offered and finally relied on, the conclusion seems fully justified that the policy and methods pursued by the defendants and by the United Company have been, in general, above reproach in any of these respects."

It is significant that in respect to at least 30 of the more than 50 different alleged acts or threats specified by the United States in its Bill of Particulars it did not attempt to introduce any evidence whatsoever.

In the cases in which threats on the part of the employees of the United Company against competitors were charged it is significant that in no case is it contended that any attempt was made to carry out such threats. In every case in which any employee of the United Company was charged with making a threatening statement, such employee, if alive and available as a witness, denied having done so.

It was evident that these charges of unfair acts were made recklessly and without proper investigation of the facts by the United States.

X.

THE UNITED COMPANY HAS NO UNLAWFUL MONOPOLY OF SHOE MACHINERY.

It is essential to the case of the United States that it prove the existence of the unlawful monopoly of shoe machinery which it charges.

The United States, as we have shown, offered no direct proof of the unlawful project charged in the petition. For such proof it relies on the various acts of the defendants. If these acts have not resulted in an unlawful monopoly from 1899 to the present time, it is obvious that they were not adapted to accomplish a monopoly and, therefore, are not evidence of the existence of any such unlawful plan to monopolize.

Again, the purpose of this suit is (*a*) to have the United Company dissolved because it is an unlawful monopoly, and (*b*) to have the leases declared unlawful because they have created or assisted in the creation of this unlawful monopoly. If the United Company has no unlawful monopoly, it should not be dissolved. If the leases have not created an unlawful monopoly during the period from 1899 to date, they should not be held illegal on the ground that they have done so.

1. THE UNITED COMPANY HAS NO MONOPOLY OF ALL SHOE MACHINERY AS CHARGED IN THE PETITION.

The petition charges that the defendants in or prior to 1899 "determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery" (R. Vol. 1, p. 994), and it finally charges that by the various transactions specified the United Company has acquired such a monopoly.

That the United Company has no monopoly of all shoe machinery as charged by the petition appeared conclusively and was admitted by the United States (Main Brief, pp. 13–14, 606–608).

There is a large field of shoe machinery, including all machines for sewing the uppers of shoes, which the United Company does not manufacture at all. The following examples illustrate what proportion of the total number of shoe machines used by the ordinary shoe manufacturer are manufactured by the United Company.

Jonathan Brown & Sons, large McKay shoe manufacturers, who use all of the United Company's machines they can obtain, have 424 machines in their factory, of which only 128, or 30 per cent., were obtained from the United Company. Excluding General Department machines, which can be bought outright from the United Company at the option of the shoe manufacturer, and which are not included in the machines as to which monopoly is charged, only 15 per cent. of the machines in Brown & Sons' factory

were obtained from the United Company (see Main Brief, p. 603).

R. P. Hazzard, a large shoe manufacturer, who uses and prefers the United Company's machines, has 746 machines in his factory, of which less than 44 per cent. were obtained from the United Company, or, excluding General Department machines, less than 40 per cent. (see Main Brief, p. 603).

Thus the United Company furnishes considerably less than half of the total number of machines used (see Main Brief, pp. 603–604).

2. LIMITATION OF CHARGE OF MONOPOLY BY THE UNITED STATES.

Such being the facts as shown by the evidence, the United States, at the close of the trial of this case, attempted to limit its charge of monopoly to a monopoly of "machines for preparing and attaching the bottoms to the uppers of boots and shoes, the eyeletting machines, and the clicking machines" (R. Vol. 1, p. 839, lines 13–22; see also Main Brief, pp. 13–14).

While a considerable number of General Department machines, of which the United Company makes over 170 different kinds, are used in preparing the bottoms of shoes, it appeared that there were large numbers of machinery manufacturers making these classes of machines and no evidence was introduced to show what proportion, if any, the United Company furnished of these classes. At the first hearing of the case in this Court Mr. Smyth, of counsel for the United States, eliminated these machines from the

charge of monopoly, saying, according to the stenographic report of his argument:—

> "Something has been said about the General Department machines. We make no question with respect to them, and they are not involved in this law suit."

The foregoing concessions limit the charge of monopoly to a comparatively few machines. In Jonathan Brown's McKay shoe factory, for example, the machines of this class constitute only 15 per cent. of the total number of machines he uses and in Hazzard's welt shoe factory they constitute less than 40 per cent. (see Main Brief, p. 603). There are thus excluded from the charge of monopoly all machines for sewing uppers, buttonhole machines, lacing machines, all General Department machines, treeing machines, and various other miscellaneous machines.

The machines included in the charge are:—

Machines of the kind which were manufactured by the constituent companies in 1899:	Welting Machines. Lasting Machines. Heeling Machines. Metallic Machines. Pegging Machines.
Machines first put out by the United Company after 1899:	Eyeletting Machines. Pulling-over Machines. Clicking Machines. McKay Sewing Machines.

3. THE UNITED COMPANY HAS NO ACTUAL MONOPOLY OF MACHINES OF THE CLASSES TO WHICH THE CHARGE OF MONOPOLY IS NOW LIMITED.

The United Company has competitors who furnish machines of all the types as to which monopoly is charged. Some of them furnish complete lines of machines and do a considerable business.

Defendant's Exhibit 337 (R. Vol. 5, p. 906), compiled from catalogues, letters, and advertisements of various shoe manufacturers, gives a list of manufacturers and dealers who furnish machines of every type for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines, as to which monopoly is charged. Each machine is listed separately and the names of the concerns offering them are given. A total of 74 different concerns furnishing these machines is named.

Defendant's Exhibit 331 (R. Vol. 5, p. 838) gives a list of concerns putting out welt and turn machines and outsole stitching machines from 1899 to 1911.

Defendant's Exhibit 332 (R. Vol. 5, p. 843) gives a list of Goodyear auxiliary machines and machines for the same operations which other machinery manufacturers have offered for doing the same work.

Appendix III to our Main Brief summarizes the testimony of 50 witnesses—practically all shoe machinery manufacturers—representing 48 different concerns which, as their testimony shows, furnish machines of one kind or another which compete with the United Company's machines. A number of these machines are General Depart-

ment machines, which have been eliminated from the case by counsel for the United States, but a considerable number are machines of the classes as to which monopoly is still charged.

These lists show a large number of concerns which offer competing machines. Some, as stated, offer to furnish complete lines of machines.

Hamel, a witness for the United States, who succeeded to the business of the Duplessis Company, testified,—

> "We have a complete set of machines for making turn shoes and a complete set of machines for making welt shoes" (R. Vol. 1, p. 327, lines 15–16).

He and his predecessor have done a considerable business in bottoming machines even compared with the business of the United Company (see Main Brief, pp. 610–611).

The manager of R. H. Long Machinery Company testified that his company is ready to supply a full line of machinery for welt or turn shoes (R. Vol. 1, p. 345, lines 43–44).

The representative of the Haverhill Shoe Machinery Company, a witness for the United States, which has done a considerable business (Main Brief, p. 612), testified:—

> "We undertake to fill the requirements of a manufacturer whatever they are. We advertise that we furnish any manufacturer a full line of all kinds of shoe machinery, whether it is for welts or McKays, or turns or pegs or anything else. We are prepared to make good if our people that manufacture machines don't go back on us" (R. Vol. 1, p. 301, lines 3–9).

In addition, several large foreign concerns furnish complete lines of machines and, of course, these machines can

be obtained in this country if desired by shoe manufacturers (see Main Brief, p. 612).

The contention of the United States that a shoe manufacturer must come to the United Company for some of his essential machines because he cannot obtain them elsewhere is without foundation. Twenty of the concerns with which the Haverhill Company did business had no machines from the United Company (Main Brief, p. 613).

The United Company had only 1,033 lessees in 1911. Mr. Donham, secretary of the United Company, testified that he should say there were between 1,300 and 1,500 shoe manufacturers in the United States at that time. The census for 1910 showed in the neighborhood of 1,300. The petition alleges that there were about 1,300 in 1911 (see Main Brief, p. 614).

It is true that shoe manufacturers cannot obtain from competitors machines of exactly the same kind as the United Company makes, since its machines are patented. Nor can they obtain as good machines elsewhere. That they can obtain machines elsewhere for performing the operations performed by the United Company's machines and that a considerable business is done by others in bottoming machines is proved by the record (see Main Brief, pp. 608-614).

The District Court found (R. Vol. 1, p. 1135):—

> "In that part of the field of trade in shoe machinery to which the case is now limited as above, the defendants have been not monopolists but competitors. Their only means for holding the field have been legitimate means—better machines. *Their specialization in machines for bottoming shoes, and not a monopoly of such machines, has been the cause of their success*" (italics ours)

4. CONTENTIONS OF THE UNITED STATES IN RESPECT TO THE ALLEGED MONOPOLY.

The United Company, as we have shown above, has no actual monopoly of the machines in question. It does, however, do a very large and successful business in these classes of machines, furnishing most of the machines of these kinds in use. Of course this is no proof of any unlawful monopoly, unless it is shown that this undoubted success of the United Company is due to arbitrary and unlawful methods.

The United States, as we understand their argument, contends, that this success is due primarily:—

(1) To the acquisition of competitors.

(2) To the Restricted Use Clauses in the leases, which, it contends, compel a shoe manufacturer taking one kind of machine to take other kinds.

(3) To the fact that the shoe manufacturers hold the United Company's machines under lease and competitors are thus deprived of a market for their machines.

We shall briefly consider these contentions.

5. THE UNITED COMPANY HAS NOT OBTAINED ITS SUCCESS BY ELIMINATING COMPETITORS.

As we have shown, at the time the United Company was formed its constituent companies were putting out practically all the welting, lasting, heeling, and metallic machines which were being manufactured in the country (*supra*, pp.

26, 37). The Consolidated Company, through its subsidiary company, the Davey Company, was also putting out practically all the pegging machines in use.

The United Company, therefore, did not enter a field in which there was competition and eliminate the competition in these machines.

The United Company has not acquired competing concerns making the classes of machines which were furnished by the constituent companies. Including the Plant purchase, only 11 of the acquisitions related to patents or machines of this character. Only 6 of these concerns were doing any shoe machinery business at all. In all of these transactions something new was acquired which the United Company did not have. Apart from the valuable patents acquired from Plant, the transactions were of slight consequence. The aggregate considerations paid for such of these concerns as were actually doing shoe machinery business was less than $150,000, and no real estate was acquired from any of these concerns (see Main Brief, p. 472).

On the other hand, the record shows that while in 1899 there was practically no competition in machines of these classes, there are now a number of competitors doing a considerable business in such machines. Most of these competitors have been offered for sale to the United Company and their purchase declined (*supra*, pp. 165–166). So far, then, from entering a field in which there was competition and eliminating such competition by the acquisition of competitors, the record shows the reverse.

In respect to the machines developed by the United Company after its formation as to which monopoly is also charged, the record likewise shows conclusively that the

success of the United Company has not been due to the acquisition of competitors.

Eyeletting machines were developed by the United Company and first put out in 1902 (see Main Brief, p. 623). No competitor making eyeletting machines has ever been acquired. The clicking machine was developed and first put out in 1908 (see Main Brief, p. 622). No competitor making clicking machines has ever been acquired. Pulling-over machines were first put out by the United Company in 1902 and the Auxiliary pulling-over machines about 1905 (see Main Brief, p. 622). No competitor making pulling-over machines has ever been acquired or eliminated. The only purchase relating to pulling-over machines was the purchase of the experimental pulling-over machine of the Seaver Process Lasting Company in 1900, a machine which was not capable of successful operation nor ever put upon the market. This was acquired in order to obtain patents to assist the United Company in developing its own machine (Main Brief, Appendix I, pp. 673–674). At the time of this purchase the United Company was experimenting, but it did not succeed in developing a pulling-over machine until two years later. At the time of this purchase, therefore, no business of manufacturing pulling-over machines had even been created and no competition was, therefore, eliminated.

The United Company did acquire in 1908 the Richardson Company's business and patents relating to a McKay sewing machine in order to improve its McKay machine, and later, as an incident to the Plant purchase, acquired the Stanley Company's business in McKay machines. But this gave it no monopoly or control of McKay machines. Any machine-shop can manufacture them and they can be obtained of a

large number of shoe manufacturers and dealers (see Main Brief, p. 609). The United Company only acquired patents enabling it to make an improved machine.

It is clear that such success as the United Company has had in furnishing the foregoing machines which comprise all the machines as to which monopoly is charged has not been due to the acquisition of competitors.

6. THE UNITED COMPANY'S SUCCESS IS NOT DUE TO ANY COMPULSION RESULTING FROM THE RESTRICTED USE CLAUSES IN ITS LEASES.

The United States contends that the Restricted Use Clauses compel a shoe manufacturer desiring machines of one kind or department to take machines of other kinds or departments which he would otherwise take from the United Company's competitors and that this compulsion accounts in part for the United Company's success.

We have shown above that a shoe manufacturer can obtain machines of any kind he pleases from competitors, though, of course, they are not of the type of the United Company's patented machines and are inferior. But no one is compelled to take machines from the United Company for the reason that he cannot obtain machines for performing the same operation elsewhere.

We have also shown in discussing the leases that unrestricted leases of the machines of every department are offered lessees on reasonable terms, or, in the case of General Department machines, that they are sold outright without restrictions.

The consequence is that if a shoe manufacturer desires to take machines of any department from the United Company he can do so and can obtain all other machines from competitors. The Restricted Use Clauses, therefore, cannot compel a monopoly of the United Company's machines. That they do not compel such monopoly, or account for the United Company's success in furnishing machines of the kind as to which monopoly is charged by compelling a shoe manufacturer desiring other types of machines to take these types also, is conclusively shown by the following illustrations.

No machines which the United Company puts out are restricted to use with its eyeletting machines under any form of lease (*supra*, p. 133). The alleged monopoly of these machines, therefore, cannot be due to the fact that lessees desiring to use other types of machines are compelled by the Restricted Use Clauses to take eyeletting machines also.

No machines which the United Company puts out are restricted to use with clicking machines. Thus the Restricted Use Clauses cannot compel their use.

No machines which the United Company puts out are restricted to use with its 43 Goodyear auxiliary machines. The Restricted Use Clauses, therefore, cannot compel their use.

No machines which the United Company puts out are restricted to use with its pulling-over machines, except the No. 5 Lasting Machine, a new machine developed by the United Company in 1908 (Main Brief, pp. 295, 357). As the hand method welt and hand method McKay lasting machines can do the work done by the No. 5 machine, this single exception in an alternative form of lease can

have little effect in compelling a use of pulling-over machines.

No machine the United Company puts out is restricted to use with the McKay sewing machine (Main Brief, p. 354). The Restricted Use Clause, therefore, cannot compel a use of McKay machines.

No machines are restricted to use with any of the 172 General Department machines. If monopoly is claimed as to any of these machines it cannot be the result of compulsion exerted by the Restricted Use Clauses (Main Brief, pp. 357–358).

On March 1, 1911, there were 56,873 machines of the above kinds outstanding out of a total of 90,276 machines under lease (Defs.' Ex. 228, R. Vol. 5, p. 430).

If the Restricted Use Clauses do not account for the success of the United Company in furnishing eyeletting, pulling-over, clicking, Goodyear auxiliary, and McKay machines, and it surely cannot be contended that they do, it would require strong evidence to show that they account for its success in furnishing welting, lasting, heeling, metallic, and pegging machines, the other types as to which monopoly is charged.

7. CONTENTION THAT ~~THE FACT THAT~~ THE UNITED COMPANY BY ITS LEASES MONOPOLIZES POSSIBLE CUSTOMERS.

The United States contends that the fact that shoe manufacturers hold the United Company's machines under lease excludes competitors and accounts for its success in furnishing machines. In other words, the United States

charges that possible customers have been monopolized, and as a consequence the business of furnishing machines is monopolized.

Of course the fact that many or most shoe manufacturers already have the best machines made makes it difficult for competitors to supply them with machines, especially inferior machines. But this is no ground for charging unlawful monopoly. As the District Court said (R. Vol. 1, p. 1185),—

> "One who goes into a field of manufacture already occupied must expect to find factories so fully equipped that they are no longer customers."

We have shown that the only clause in the leases requiring a lessee to make any use whatsoever of the United Company's machines is the Full Capacity Clause, which requires a use only of the particular machine or machines leased. Shoe manufacturers are free to take any additional machines they may require from competitors. In addition all new manufacturers are free to take all their machines from competitors or such machines as they desire from the United Company on unrestricted leases when necessary, and the remainder from competitors.

746 new concerns started in business from March 1, 1900, to December 31, 1911, an average of 62 a year. In addition 270 new concerns succeeded old concerns, an average of 22 a year (Defs.' Ex. 223, R. Vol. 5, p. 390). The United Company had only 1,033 lessees in 1911 (see Main Brief, p. 614).

All of these new concerns, a total of 1,010, were entirely free to take competitors' machines. Furthermore, any existing firm can dissolve or its members or stockholders

can form a new corporation and start business free from any obligations to the United Company. This large field of new concerns is surely open to competitors whatever view is taken of the United Company's leases.

The truth is, as the District Court pointed out, that manufacturing facilities and natural resources may be monopolized, but it is not practicable to monopolize possible customers (R. Vol. 1, pp. 1181–1182).

If every shoe manufacturer in the country to-day were required to deal with the United Company exclusively, competitors having equally good or superior machines which they offered on as favorable or more favorable terms would not be deprived of a market. There would almost immediately be a large group of new shoe manufacturers in the market, including those who entered business for the first time in the natural course of events, and those who saw an opportunity to compete with existing manufacturers by getting machines on more favorable terms from competitors.

XI.

THE CAUSES OF THE UNITED COMPANY'S SUCCESS.

The reason that most of these new shoe manufacturers just entering business obtain their machines from the United Company is not due to the elimination of competitors. They can obtain their machines elsewhere. It is not due to the Restricted Clauses in the leases. They need take no machines from the United Company; they can take unrestricted leases of such of its machines as they desire and even if they do take from the United Company all of its machines they desire on restricted or non-initial payment leases, they can, as we have shown (*supra*, pp. 131–136), still take many, and in some instances all, of their other machines from competitors and use the United Company's machines with them. For instance, if they take the United Company's welter and stitcher on any lease whatsoever, they can obtain all their other machines from competitors and use the welter and stitcher with such machines. It is obvious that the reason such new shoe manufacturers, who are under no obligation to the United Company, choose its machines is because they prefer them.

The United Company's success is due to entirely lawful and natural causes which are shown in the record.

1. THE UNITED COMPANY'S LAWFUL PATENT MONOPOLIES.

In an unpatented industry, such as the tobacco business, any one having sufficient capital is free to enter and engage in the business on equal terms. It would be extraordinary if one concern acquired all or most of the business and such a result might well raise a presumption of unlawful methods. In a patented industry like the shoe machinery business, which is not yet fully developed and is still dominated by patents, one manufacturer is almost certain to have superior patents and, therefore, to obtain a large part, if not all, of the business. Until the industry has passed the stage of great improvements and the important patents have expired, such a result is normal and to be expected. The shoe machinery industry is still in this condition of development. In view of the very recent invention of most shoe machines by the United Company and its constituent companies and the remarkable improvements and inventions made by the United Company, it is only strange that so many other concerns are engaged in the business at all.

Take the telephone as an example. The Bell Company, as is well known, absolutely dominated the telephone field for many years through the acquisition of the Bell patent and the subsequent patents of Berliner, Blake, and Edison (see *United States* v. *Bell Telephone Company*, quoted *supra*, p. 179). There were no competitors at all in the field. Yet this success was entirely lawful and due to its lawful patent monopolies. It was the success which the Government insures to successful inventors.

This Court in *United States* v. *Winslow*, supra, said of the United Company's machines (p. 217),—

> "The machines are patented, making them is a monopoly in any case, the exclusion of competitors from the use of them is of the very essence of the right conferred by the patents, *Paper Bag Patent Case*, 210 U. S. 405, 429, **and it may be assumed that the success of the several groups was due to their patents having been the best"** (black letters ours).

The United Company's machines have been used by shoe manufacturers for the same reason the Bell Company's telephone was used. No other telephone was as serviceable and the public "insists upon having the best and most serviceable." After the expiration of the Bell patent this remained true because of the acquisition of the later improvements of Berliner, Blake, and Edison (see *United States* v. *American Bell Telephone Co.*, supra). There is no more justification for charging unlawful monopoly in the present case than there would have been in the case of the telephone.

The Goodyear Company, through its patents, created welt machines and the business of manufacturing and furnishing them. No machines for making welt shoes had ever before been invented. It naturally obtained all the business of these machines when first put out and since its machines, due to subsequent improvements, have remained pre-eminently the best, it and its successor the United Company naturally retained this business. The same is true of the lasting, metallic, and heeling machine business. All of these machines are recent creations. Lasting machines were just coming into use in the early 90's and were only

partially developed in 1899 (see Main Brief, pp. 84–87). All of these machines have been constantly improved and have remained unquestionably the best machines of their kind in the market.

The eyeletting machines were first developed by the United Company in 1902. Pulling-over machines, which cost $1,000,000 to develop, were invented by the United Company and first put out in 1903; and the pulling-over auxiliaries since then. Is it extraordinary that no one else in the short period since 1903 has been willing to spend such an amount of money in attempting to develop an equally efficient machine and that no one else has succeeded in so doing? The clicking machine was invented by the United Company and first put out in 1908. In other words, this machine, of which a monopoly is charged, was unknown to the world three years prior to the filing of the present suit (see Main Brief, pp. 622–623). Is it extraordinary that the United Company, which created the machine, has furnished most of the machines in use, and that no machine as good or superior has in this short period of time been invented by any one else?

These machines which the United Company and its constituent companies created under their patents are the machines as to which a monopoly is charged. They are, as the District Court found, superior to any other machines on the market. It would take strong evidence, wholly lacking in this case, to show that the success of the United Company has not been due to the lawful patent monopolies under which the machines were created and under which they have been perfected and improved.

2. OTHER CAUSES OF THE UNITED COMPANY'S SUCCESS.

In addition to its lawful patent monopolies which make its machines far better and more efficient than any machines manufactured by competitors and which alone account for the United Company's success, the following factors have also contributed to this success:—

A. The United Company furnishes a remarkable service with its machines of vital importance to shoe manufacturers. No such service is furnished by any other manufacturer of bottoming machines.

B. The United Company has assured the shoe manufacturer of the most modern and most efficient machines by replacing outstanding machines with new and improved machines when invented, without cost to the shoe manufacturer.

C. The United Company furnishes machines constructed and adapted for effective use together.

D. The United Company offers its machines on remarkably favorable terms under a leasing system which requires the shoe manufacturer to make practically no capital expenditure; it has created business in this way by enabling many small shoe manufacturers to enter business; and it has consistently reduced its charges, although the machines have been greatly improved and the cost of their manufacture is increased. As Mr. Jones, a witness for the United States and an opponent of the United Company, stated publicly and affirmed in his testimony in this case (R. Vol. 1, p. 136, lines 2–13),—

"The terms which the Machinery Company have recently offered their patrons on certain lines of machinery are so liberal that the outsiders cannot compete."

3. FINDING OF THE DISTRICT COURT AS TO THE CAUSES OF THE UNITED COMPANY'S SUCCESS.

The District Court found that the United Company's success was due to the various factors outlined above. It held:—

> "That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question" (R. Vol 1, p. 1137).

For its further findings in this respect see Main Brief pp. 67–70.

XII.

THE RELIEF PRAYED FOR.

The United States asks that the United Company be dissolved; that the leases be declared unlawful and that the United Company be enjoined from enforcing them.

The utter impossibility of granting this relief without disastrous consequence to shoe manufacturers and the public shows conclusively that the United Company is not an unlawful combination and that the clauses in its leases are reasonable provisions necessary to enable it to offer its machines on the present favorable terms. This subject deserves the most careful study, and we respectfully call the Court's attention to the discussion in our Main Brief, pp. 630–646. We shall summarize the discussion here.

1. A DISSOLUTION OF THE UNITED COMPANY'S BUSINESS WOULD DISASTROUSLY AFFECT SHOE MANUFACTURERS AND THE PUBLIC.

The United Company's business consists of manufacturing a great variety of different kinds of machines under patents. The manufacture of each machine is dependent on the ownership of the patents protecting it; in other words, the right to manufacture the machine follows the ownership of the patents. So long, for example, as the United

Company retains its patents on the welter, no one else can manufacture it. If it transfers these patents, it can no longer manufacture the machine and would be in no better position to do so than any other member of the public.

The United Company has a single manufacturing plant at Beverly at which its machines are manufactured. The four or five other plants it owns through subsidiary companies are small and manufacture only supplies and a few miscellaneous machines of no special importance (Main Brief, pp. 631–632).

A division of the United Company's business could be attempted in only one of three ways:—

(1) By attempting to divide it into competing concerns;

(2) By attempting to compel the company to dispose of the acquisitions it has made;

(3) By dividing it into non-competing concerns similar to the original constituent companies.

1. *Attempt to Divide the United Company into Competing Concerns.* The United Company has for practical purposes a single improved machine of each type. Where it has two models of the same machine, or in the very few instances where it has two different types of machine which can perform the same operation, in practically every instance both models or types embody certain patents in common so that if the patents on one machine were transferred the other could not be manufactured.

No other concern can acquire a right to make any of the machines unless it acquires the United Company's patent rights which are embodied in the machine. The only way in which it would be possible to attempt to create competition would be to divide the patents on each machine between the United Company and some other concern.

For example, the present outsole stitcher was created by a combination of the inventions of 22 different patents, each of which contributes some factor of efficiency. It would be possible to order the United Company to dispose of 11 of these patents.

But if this were done, what would be the result? (*a*) Neither the United Company nor its assignee could make the present efficient machine. The art of making this machine would be put back a generation and the remarkable fruits of the development work which have resulted in the present machine would be lost; (*b*) if both concerns could construct machines under the patents held by them, one or the other concern would indubitably have superior patents (patents, of course, do not all have the same value), and as a consequence one machine would be superior to the other and competition on equal terms would not be created; (*c*) as neither concern would have patents enabling it to construct the present machine, but would only have certain patents applicable to a machine of this kind, each concern would have to develop and reorganize a new machine out of the patents it held. It might be a matter of years before this could be done so as to produce commercial machines. For examples of the difficulties involved, see our discussion of the difficulties confronting Plant in the reorganization of his machines (see Main Brief, pp. 531–534). In the mean time, there would be no machines to offer shoe manufacturers who now look to the United Company for their supply.

These difficulties would arise in respect to all of the machines.

Again, only one of the concerns would have a plant to manufacture machines, since the Beverly plant cannot be

divided into parts. Only one concern would have the patterns, etc., for the manufacture of the machines. The other concern would have to obtain a plant, obtain tools and special patterns, and, before it could manufacture, it would be obliged to reconstruct the present machines so as to avoid infringement of the patents held by the other concern.

The above brief discussion shows the utter confusion and the disastrous consequences which would result from an attempt to create competition in machines of the type manufactured by the United Company by a division of the patents. It shows conclusively that the combination of these patents in one concern not only does not prejudice the public, but is of vital importance to the public and is the cause of the remarkable advance made in recent years in the shoe machinery industry.

In every other case in which dissolution has been ordered there was a combination of different plants or businesses which, when separated, could continue to serve the public with the same goods or product previously furnished. The only difference has been that competition was created.

2. *Attempt to Set Apart the Acquisitions.* As the United Company by its acquisitions of inventions relating to shoe machines, or of shoe machines, has in practically every instance acquired something new, an attempt to set apart the machines, inventions, and the business of furnishing supplies so acquired would not create competition.

Furthermore, in most instances it would result in stripping some machine of the United Company of an improvement, thus decreasing the efficiency of the machine without giving the assignee any patent which would enable him to place an efficient or even commercial machine on the market.

The Plant acquisition, as we have shown, was the only one of any importance. If the United Company sold the Plant patents, it would be obliged to strip 26 of its important machines of valuable improvements; a number of its other machines would have to be rebuilt and reorganized in order to avoid infringement of the Plant patents so sold; the vast improvements made in the new models of welter and stitcher would be lost; the vendee would get a variety of patents which by themselves and without combination with the United Company's patents would not be capable of really effective and efficient use, he would have no manufacturing plant, and it would be doubtful, to say the least, if he would ever produce or be able to produce commercially satisfactory machines which would compete with the United Company (see discussion of Plant acquisition, Main Brief, pp. 507–586).

3. *Division into Non-competing Groups.* A division of the machines of different departments among different non-competing concerns would, of course, be possible. Thus the Goodyear machines could be put in one company, and the lasting, heeling, metallic, and new machines in four other non-competing companies. But no useful result would be accomplished. No competition would be created, and the companies could again combine unless enjoined, as such combination would be lawful (*United States* v. *Winslow*, supra). On the other hand, the result of such a division of the business would be that the advantages of service rendered economically by one concern, of savings in manufacturing expenses, standardization of parts, and an adaptation of the different types of machines so as to harmonize with each other, would be lost.

2. TO HOLD THE LEASES VOID WOULD DISASTROUSLY AFFECT SHOE MANUFACTURERS AND THE PUBLIC.

The leased machines belong to the United Company. If the leases are held void, no lessee would be entitled to use the United Company's machines which he now holds until he made a new agreement with it.

If the United Company cannot employ the present clauses which, as we have shown, are essential to the existing leasing system, it must necessarily in any new agreements made with its lessees adopt an entirely new system.

We believe the record demonstrates conclusively, that if the present clauses cannot be used the United Company cannot grant shoe manufacturers the present favorable terms. If the United Company cannot use the Full Capacity Clause, it certainly cannot install valuable machines in a shoe factory and depend for its return on a royalty based on the use of the machines. If it cannot lease its machines for a long term of years, it certainly cannot construct machines to be placed in a factory without initial payment and run the risk of their being returned before a fair royalty has been paid. If it cannot reserve the right to take back its machines when the lessee provides himself with other machines of the same kind to do his work, it cannot place its machines in the lessee's factory on the present basis without initial payments. If it cannot take back all its machines when the lessee violates agreements in respect to certain of them and threatens to violate his agreements as to the remainder, it cannot afford to place them in the lessee's factory without a substantial guarantee

in the form of a cash initial payment. If it cannot lease auxiliary machines for use with principal machines as a unit, it cannot afford to lease and care for these machines at all on a royalty basis. If it cannot employ the Restricted Use Clauses or clauses having the same effect, it cannot offer a reduced price for the use of a series of machines although such use brings it in a greater return and the cost of caring for the machines is less; and it must, therefore, charge a higher price for each machine leased based on its use independently.

As a result then, the United Company, if the leases are held unlawful, must either sell its machines outright or in any event charge large initial payments, a fixed rental instead of the present royalty based on use, and it must charge for each machine a price based on its use independently. This being so, the principal advantages of the present leasing system (*supra*, pp. 81–84), which has proved so highly beneficial to shoe manufacturers and on the basis of which the shoe machinery industry was created and is founded, would be lost.

In other words, as we have shown (*supra*, pp. 79–80), the attack of the United States, while in form an attack upon certain provisions in the leases, is in reality an attack upon the leasing system itself, since these clauses are essential to its maintenance. If the use of these clauses is forbidden, it means the destruction of the system of leasing without initial payments for a royalty based on the amount of use and with a reduction where machines are used as a series and thus produce a greater return.

This would be particularly hard on the small shoe manufacturers, who are especially assisted by the present system which enables them to get machines without capital ex-

penditure and enables them to pay royalty on the basis of production and not on the basis of the capacity of the machine, which is many times greater than their usual requirements. It would indubitably prevent many men of small means from entering the industry in the future and would thus assist the large manufacturers in concentrating the shoe business into their own hands.

The immediate consequence of declaring the leases illegal would be that shoe manufacturers would lose their present leases, and to obtain new leases would necessarily be required to pay the United Company at least substantial sums in the way of initial payments and would necessarily obtain less favorable terms in other ways. In case it should be decided necessary to sell machines outright instead of leasing them, shoe manufacturers would be required to purchase all their machines outright, and pay the full value of the machines. Either result would be especially hard on small shoe manufacturers, all of whom would find it difficult, and many of whom would find it impossible, to make the payments (see Main Brief, pp. 636–639).

3. CONTENTION OF THE UNITED STATES THAT THE UNITED COMPANY CAN BE RESTRAINED FROM ENFORCING THE LEASES WITHOUT DECLARING THE LEASES VOID.

Counsel for the United States seek to avoid the foregoing consequences which would result if its prayer were granted, by contending that the United Company may be enjoined from enforcing the illegal clauses in the leases without de-

claring the leases void. In this way they suggest that shoe manufacturers may retain their present machines without additional payment and be freed from the provisions which protect the United Company as owner of the machines.

Such a proposal would, of course, not compel the United Company to give shoe manufacturers additional machines or improved machines on the same terms, so that its effect would be comparatively short-lived, nor would it compel the United Company to grant these terms to new manufacturers entering business hereafter, who would thus be placed at a distinct disadvantage.

But further, as applied to present leases, the proposal is without justification.

For example, take the seventeen-year term. If the United Company were enjoined from enforcing this term, it would be because it is illegal. If so, there would be no term in the leases and either party could cancel them. If the lessee had a right to return the machines because the seventeen-year term is illegal he could not refuse to return them on the ground that it is legal and, therefore, binds the United Company.

Take the Full Capacity Clause. The machines were placed in the lessee's hands on the understanding that they would be used to capacity if the lessee had work for them to perform. This agreement goes to the very root of the contract; if not complied with, the United Company might get no return whatever on its machines. If not complied with by the lessee, an important part of the consideration for the lease agreement is removed, and the entire agreement between the parties falls. To hold otherwise would be to hold that the Court can create a new contract between

the parties not agreed to by either and in some instances at least deprive the United Company of its entire return in its machines, and thus, as a practical matter, confiscate them.

The same is true of the Restricted Use and other clauses (see Main Brief, pp. 639–642).

In the case of the Factory Output Clause, to enjoin enforcement of it and at the same time permit the lessee to retain the machines would deprive the United Company of any royalty whatever on its valuable Goodyear machines for which it gets its highest royalties, since this is the only clause in the leases of most of these machines requiring any payment of royalty whatsoever. These machines would by decree of this Court be confiscated without any payment at all.

We submit that there is no justification for the contention that these clauses, which go to the very root of the contracts between the United Company and its lessees, and in fact constitute the contracts, can be held illegal, without necessarily holding the contracts themselves (that is, the leases) illegal (see Main Brief, pp. 639–644).

4. THE LESSEES ARE NECESSARY PARTIES TO THE SUIT.

To hold the leases unlawful would deprive the lessee of the right to use the United Company's machines for the terms of the leases at the present favorable rates and force them to make new agreements with the United Company

on terms which, as we have shown, would necessarily be less advantageous.

The lessees are, therefore, vitally interested in the question whether the leases are to be held valid. They are necessary parties in a suit to declare the leases invalid. For authorities to this effect, see Main Brief, pp. 644–646.

XIII.

CONCLUSION.

The history of the United Company during the twelve years of its existence has been the history of the development of an efficient and intelligently and ably managed enterprise which by normal methods has vastly improved the art of shoe machinery and the manufacture of shoes.

The attempt of the United States to prove that the success of the United Company was due to unlawful means completely failed. The charges of the United States were made recklessly and without investigation. The petition is replete with allegations made without any foundation of fact whatsoever. Thus, for example, the allegation that the United Company discontinued the sale of machines; the allegation that the patents of the constituent companies were about to expire; the allegation that the leases required the lessee to covenant to use United Company's machines of the kind leased and all other kinds exclusively; the allegation that the United Company acquired various patents and held them without making any use of them, thus depriving the manufacturer and the public of the benefits arising therefrom; the allegation that exorbitant prices were charged for repair parts; the allegation that the constituent companies were taken over for values far in excess of real worth, and numerous other allegations, were shown to have no foundation whatsoever, although the true facts would have been disclosed upon the slightest investigation.

The District Court heard the witnesses in open court and thoroughly investigated the entire business history of the United Company. The facts on which its opinions are based are fully sustained by the record, and completely dispose of the contentions of the United States.

We respectfully submit that the decree of the District Court dismissing the bill should be affirmed.

Respectfully submitted,

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